Internal Revenue
bulletin

Bulletin No. 2013–46
November 12, 2013

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2013–22, page 496.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2013.

T.D. 9638, page 487.

These final regulations under section 382 of the Code provide relief in certain situations from the segregation rules for public groups of shareholders in determining owner shifts and ownership changes.

Notice 2013–68, page 501.

This notice updates interim guidance contained in Notice 2006–40, relating to the credit under § 45J of the Code for production of electricity at advanced nuclear power facilities. Specifically, this notice prescribes the application process by which taxpayers may request an allocation of the national megawatt capacity limitation, describes the consultation between the IRS and the Department of Energy concerning these applications, and specifies the method that will be used to allocate the national megawatt capacity limitation that limits the allowable credit. This notice modifies and supersedes Notice 2006–40.

Notice 2013–69, page 503.

This Notice provides guidance to foreign financial institutions (FFIs) entering into an FFI agreement with the Internal Revenue Service (IRS) under section 1471(b) of the Code and § 1.1471–4 of the Treasury Regulations (the FFI agreement) to be treated as participating FFIs. This notice also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of an FFI agreement, as modified by the IGA. This Notice provides a draft copy of the FFI agreement, which will be finalized before December 31, 2013.

Announcement 2013–43, page 524.

Announcement of the Results of the 2012–2013 Phase III Allocation Round of the Qualifying Advanced Coal Project Program. This announcement discloses the results of the 2012–13 allocation round under the qualifying advanced coal project program of § 48A of the Code.

EMPLOYEE PLANS

Notice 2013–66, page 498.

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in October 2013; the 24-month average segment rates; the funding segment rates applicable for October 2013; and the minimum present value rates for September 2013. The rates in this notice reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP-21).

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

T.D. 9638

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Application of the Segregation Rules to Small Shareholders

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 382 of the Internal Revenue Code (Code). These regulations provide guidance regarding the application of the segregation rules to public groups of shareholders in determining owner shifts and ownership changes under section 382 of the Code. These regulations affect corporations.

DATES: *Effective Date:* These regulations are effective on October 22, 2013.

Applicability Date: For dates of applicability, see §1.382–3(j)(17).

FOR FURTHER INFORMATION CONTACT: Stephen R. Cleary, (202) 622-7750, or Marie C. Milnes-Vasquez, (202) 622-7530 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 382 imposes a limitation on a corporation's use of net operating loss carryovers and certain other attributes following a change in ownership of the corporation (loss corporation). A loss corporation has an ownership change if the percentage of stock of a loss corporation that is owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of the loss corporation owned by such shareholders at any time during the testing period (generally, a three-year period). Pursuant to section 382(g)(4)(A), individual shareholders who own less than five percent of a loss corporation are aggregated and treated as a single 5-percent shareholder (a public group).

The regulations extend the public group concept to situations in which a loss corporation is owned by one or more entities, as defined in §1.382–3(a) (generally, partnerships, corporations, estates, and trusts). If an entity directly or indirectly owns five percent or more of the loss corporation, that entity has its own public group if its owners who are not 5-percent shareholders own, in the aggregate, five percent or more of the loss corporation. An entity that owns a five-percent or more direct interest in a loss corporation at any time during a testing period is a "first tier entity," and a "higher-tier entity" is any entity owning a five-percent or more direct interest in a first tier entity or any other higher tier entity at any time during a testing period. (Such entities are referred to as 5-Percent Entities in this preamble.)

The application of the segregation rules results in the creation of a new public group in addition to the one (or more) that existed previously. That new group is treated as a new 5-percent shareholder that increases its ownership interest in the loss corporation.

The segregation rules apply to transfers of loss corporation stock by an individual 5-percent shareholder to public shareholders and a 5-Percent Entity's transfer of loss corporation stock to public shareholders. In addition, the current segregation rules, subject to the cash issuance and small issuance exceptions (described in this preamble), treat issuances of stock under section 1032, redemptions, and redemption-like transactions as segregation events.

Generally, the small issuance exception exempts the total amount of stock issued during a taxable year to the extent it does not exceed 10 percent of the total value of the corporation's outstanding stock at the beginning of the taxable year or 10 percent of the class of stock issued and outstanding at the beginning of the taxable year (the 10-percent limitation). However, the small issuance exception does not apply to any issuance of stock that, by itself, exceeds the 10-percent limitation. If stock is issued solely for cash, the cash issuance exception exempts a percentage of the total stock issued equal to 50 percent of the aggregate percentage ownership interest of the public groups of the corporation immediately before the issuance. If the small issuance exception excludes only a portion of a stock issuance, the cash issuance exception may apply to the portion not excluded under the small issuance exception.

Notice 2010–49, 2010–27 I.R.B.. 10, invited public comment relating to possible modifications to the regulations under section 382 regarding the treatment of shareholders who are not 5-percent shareholders (Small Shareholders). See §601.601(d)(2)(ii)(*b*). On November 23, 2011, the IRS and the Treasury Department published a notice of proposed rulemaking in the **Federal Register** (REG-149625–10, 2012–2 I.R.B. 279; 76 FR 72362–01) containing proposed regulations (proposed regulations) that, if finalized, would provide relief in certain cases from the segregation rules of the current regulations under section 382.

Summary of Proposed Regulations

The proposed regulations provide exceptions, in addition to those in the current regulations, that would exempt from the segregation rules certain transactions involving the stock of loss corporations and 5-Percent Entities. The preamble to the proposed regulations explains that these additional exceptions are intended to reduce tax administration and compliance burdens with respect to transactions that do not bear indicia of loss trafficking, and thus do not implicate the policies underlying section 382.

A. *Secondary Transfer Exception*

The proposed regulations generally would render the segregation rules inoperative with respect to transfers of loss corporation stock to Small Shareholders by 5-Percent Entities or individuals who are 5-percent shareholders. In these cases, the stock transferred will be treated as being acquired proportionately by the public groups existing at the time of the transfer. This rule also applies to transfers of ownership interests in 5-Percent Entities to public owners and to 5-percent owners who are not 5-percent shareholders.

B. *Small Redemption Exception*

The proposed regulations provide an exception that would exempt small redemptions of the stock of a loss corporation from the segregation rules (small redemption exception) that is based upon the 10-percent limitation of the small issuance exception in the current regulations. The small redemption exception would annually exempt from the segregation rules, at the loss corporation's option, either redemptions of loss corporation stock equal to 10 percent of the total value of the loss corporation's stock at the beginning of the taxable year, or redemptions of loss corporation stock of up to 10 percent of the number of shares of the redeemed class of loss corporation stock outstanding at the beginning of the taxable year. Pursuant to this exception, each public group existing immediately before the redemption would be treated as redeeming its proportionate share of exempted stock.

C. *General Exception to Segregation Rules for 5-Percent Entities*

Under the proposed regulations, the segregation rules would not apply to certain transactions involving a 5-Percent Entity (general exception). Under the general exception, the segregation rules would not apply if, on the date of the transaction at issue, (i) the 5-Percent Entity owns 10 percent or less (by value) of all the outstanding stock of the loss corporation (ownership limitation), and (ii) the direct or indirect investment in the stock of the loss corporation does not exceed 25 percent of the 5-Percent Entity's gross assets (asset threshold). For purposes of the asset threshold, the 5-Percent Entity's cash and cash items within the meaning of section 382(h)(3)(B)(ii) would not be taken into account.

The preamble to the proposed regulations describes the purpose of the general exception:

> The IRS and the Treasury Department believe that the proposal strikes an appropriate balance between reducing complexity and safeguarding section 382 policies. The proposal will enable loss corporations to disregard indirect changes in its ownership that may, under the current regulations, require burdensome information gathering and may unnecessarily impede the loss corporation's ability to reorganize its affairs. At the same time, however, the proposal imposes criteria that protect the government's interests. The asset threshold makes it unlikely that the loss corporation's attributes motivate transactions in the equity of 5-Percent Entities. Additionally, like the small issuance exception and the relief for redemptions that appears elsewhere in this proposal, the ownership limitation makes it unlikely that transactions among Small Shareholders one or more tiers removed from the loss corporation implicate loss trafficking concerns. * * *

Summary of Comments and Explanation of Provisions

Comments were received in response to the proposed regulations. A public hearing was not requested, and none was held. The comments generally supported the provisions of the proposed regulations, but requested a number of revisions. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. In general, the final regulations follow the approach of the proposed regulations, with some revisions. The more significant comments and revisions are discussed in this section.

A. *Secondary Transfer Segregation Rule*

The proposed regulations contain a clarification of the application of §1.382–2T(j)(3) of the current regulations (secondary transfer segregation rule). Under the secondary transfer segregation rule, in general, the segregation rules apply to secondary public transfers of loss corporation stock (that is, transfers of loss corporation stock from 5-percent shareholders or first tier entities to public shareholders). Section 1.382–2T(j)(3) of the current regulations further provides that the "principles" of the foregoing rule apply to "transactions in which an ownership interest in a higher tier entity that owns five percent or more of the loss corporation (determined without regard to [§1.382–2T(h)(i)(A)]) or a first tier entity is transferred to a public owner or a 5-percent owner who is not a 5-percent shareholder." The IRS and the Treasury Department became aware that it is unclear whether the secondary transfer segregation rule applies to transfers of higher tier entity stock by a transferor that does not indirectly own five percent or more in the relevant loss corporation. New §1.382–3(i) of the proposed regulations would clarify that the secondary transfer segregation rule applies to a transfer of higher tier entity stock only if the seller indirectly owns five percent or more of the loss corporation.

After further considering the interaction between §1.382–3(i) and the secondary transfer exception of §1.382–3(j)(13) of the proposed regulations, the IRS and the Treasury Department have concluded that it is not necessary to retain a stand-alone rule clarifying the operation of the secondary transfer segregation rule in the final regulations because the secondary transfer exception eliminates all of the segregation rules of §1.382–2T(j)(3) with respect to all secondary

transfers occurring after the regulations are published as final regulations. However, the substance of the clarification contained in §1.382–3(i) of the proposed regulations has been incorporated into the final version of the secondary transfer exception of §1.382–3(j)(13) to confirm that the segregation rules, and therefore the secondary transfer exception, apply to secondary transfers of stock of a loss corporation or 5-Percent Entity only if the transferor indirectly owns 5 percent of the loss corporation. In addition, the IRS will not challenge application of the clarification contained in §1.382–3(i) of the proposed regulations to transfers occurring on dates before October 22, 2013.

B. *Small Redemption Exception*

Two commenters requested that the small redemption exception be expanded to exempt redemptions of up to 25 percent of the total value of stock or number of shares of a class of stock. The commenters argued that, because redemptions do not inject new capital into a loss corporation but rather contract the corporation's capital, the regulations should allow a more generous exemption from the segregation rules for redemptions than for stock issuances.

After consideration of the comments, the IRS and the Treasury Department have determined that the ceiling on the small redemption exception should remain at 10 percent. As discussed in greater detail in the preamble to the proposed regulations, the provisions of the proposed regulations were intended to reduce tax administration and compliance burdens with respect to transactions that do not implicate the policies of section 382. To that end, occasional redemptions of stock, which, in the aggregate, represent a small percentage of the issuer's equity, are unlikely to be used as a device to shift the ownership of a loss corporation. Accordingly, relief from application of the segregation rules is appropriate. Raising the ceiling on the size of redemptions to which the small redemption exception applies to 25 percent could be used to effectuate significant shifts in ownership contrary to the policies of section 382.

C. *Application of Small Issuance and Small Redemption Exceptions to 5-Percent Entities*

Commenters requested that the small redemption exception be extended to exempt redemptions of the stock of 5-Percent Entities from the segregation rules. These commenters noted that the secondary transfer exception provided in the proposed regulations exempts certain transfers of the stock of 5-Percent Entities from the segregation rules, as does the small issuance exception in the current regulations. Additionally, one commenter noted that if the small redemption exception were extended to redemptions by 5-Percent Entities, guidance should be provided to supply the baseline against which to measure the 10-percent limitation of the small redemption exception in such cases. Specifically, the commenter asked for clarification regarding whether the limitation would be calculated by reference to the stock of the redeeming corporation, or, alternatively, by reference to the stock of the loss corporation.

In response to these comments, the final regulations extend the small redemption exception to exempt redemptions of the stock of 5-Percent Entities from the segregation rules. Further, the IRS and the Treasury Department have concluded that the 10-percent limitation of the small redemption exception should be measured by reference to the stock of the entity engaging in the redemption. Calculating the 10-percent limitation by reference to the stock of the redeeming entity will ensure that this exception, consistent with its intended purpose, applies only to redemptions that are "small." For example, assume that a first tier entity, the stock of which has a value of $150, owns an 8-percent stake in a loss corporation, the stock of which has an aggregate value of $750. If the 10-percent limitation were applied by reference to the value of the loss corporation's stock, then the first tier entity would be permitted to redeem an amount of stock equal to 50 percent of its pre-existing stock (that is, 10 percent of $750 ($75)/$150) without application of the segregation rules. This result is inappropriate. Accordingly, these final regulations provide that the 10-percent limitation of the small redemption exception applies by reference to the value of the entity (or to the classes of stock of the entity, as the case may be) that is engaging in the redemption.

In the preamble to the proposed regulations, the IRS and the Treasury Department requested comments as to whether further refinement of the small issuance exception in the current regulations might be warranted in the context of any potential expansion of the additional exceptions proposed therein. As discussed, these final regulations expand the small redemption exception to apply to redemptions of the stock of 5-Percent Entities, and provide that the stock of the 5-Percent Entity engaging in the redemption is the appropriate baseline for computing the 10-percent limitation for the small redemption exception in such cases. In comments received in response to the proposed regulations, one commenter noted that the small issuance exception in the current regulations applies to issuances of stock of 5-Percent Entities and contains a parallel 10-percent limitation on the amount of stock issued that qualifies for this exception. Further, the commenter pointed out that the same question of the appropriate baseline for applying the 10-percent limitation exists with regard to the small issuance redemption. The commenter requested that these final regulations supply clarification with regard to the appropriate baseline for applying the small issuance exception to issuances of stock of 5-Percent Entities.

After consideration of this comment, the IRS and the Treasury Department have determined that the same policy considerations discussed with regard to the application of the small redemption exception to 5-Percent Entities exist with regard to the application of the small issuance exception to 5-Percent Entities. Thus, these final regulations provide that the 10-percent limitation of the small issuance exception in the current regulations is calculated by reference to the same baseline used for the small redemption exception. Accordingly, these final regulations provide that the 10-percent limitation for the application of the small issuance exception to issuances of stock by a 5-Percent Entity is calculated by reference to the value of the stock of the issuing entity (or to the classes of stock of that entity, as the case may be).

D. *General Exception to Segregation Rules for 5-Percent Entities*

Some commenters proposed increasing the ownership limitation for the general exception from 10 percent to a higher percentage (between 15 and 30 percent) to increase the number of 5-Percent Entities that would qualify for the general exception to the segregation rules. After consideration of these comments, the IRS and the Treasury Department have concluded that it is appropriate for the ownership limitation of the general exception to remain at 10 percent in the final regulations. The IRS and the Treasury Department believe that maintaining the ownership limitation at 10 percent represents an appropriate balance between reducing administrative and compliance burdens while protecting against transactions that may raise loss trafficking concerns. Accordingly, the final regulations retain the 10-percent ownership limitation.

Several commenters expressed concern that loss corporations would not be able to verify that a 5-Percent Entity's ownership of loss corporation stock does not exceed the 25-percent asset threshold. Although the loss corporation could request such information from the 5-Percent Entity, there is no requirement that the 5-Percent Entity provide it (and it may be legally obliged not to provide such information). In response to that concern, some commenters suggested that a loss corporation should be able to apply the general exception if it determines in good faith that it has satisfied a duty of inquiry with regard to satisfaction of the asset threshold by a particular 5-Percent Entity. In addition, questions were raised whether the asset threshold could be replaced with an anti-avoidance rule designed to frustrate abuses that could arise in the absence of the asset threshold.

The preamble to the proposed regulations explains that the asset threshold was created to ensure that the segregation rules would continue to apply to transactions in the stock of 5-Percent Entities that were motivated by attempts to exploit the attributes of the loss corporation. In effect, the IRS and the Treasury Department imposed the combination of the ownership limitation and the asset threshold as the equivalent of an anti-avoidance rule, though formulated as an objective test. However, the comments received indicate that the asset threshold, as presented in the proposed regulations, would prevent the general exception to the segregation rules from achieving the goal of reducing complexity while safeguarding section 382 policies.

After consideration of the comments, the IRS and the Treasury Department have decided to replace the asset threshold test with an anti-avoidance rule. The anti-avoidance rule provides that the general exception to the segregation rules does not apply to a transaction involving an ownership interest in a 5-Percent Entity if the loss corporation, directly or through one or more persons, has participated in planning or structuring the transaction with a view to avoid the application of the segregation rules. This anti-avoidance rule will more directly address the tax avoidance concerns underlying the asset threshold included in the proposed regulations while reducing tax compliance burdens with regard to transactions with low tax avoidance potential. The existence of the 10-percent ownership limitation will ensure that the general exception applies only with regard to transactions involving holders who have relatively small ownership interests in the loss corporation and, therefore, are unlikely to be vehicles for avoidance planning. In addition, this anti-avoidance rule would not be violated in the common situation in which the loss corporation seeks and obtains (or seeks and cannot obtain) information about a proposed transaction that would change the ownership of a 5-Percent Entity, but the loss corporation does not take part in planning or structuring the transaction.

E. *Correction of General Exception Example*

Commenters pointed out a technical error in one general exception example (Example 11 in §1.382–3(j)(16) of the proposed regulations) and requested its correction. The commenters pointed out that the example mistakenly treats an entity as a first tier entity although its only interest in the loss corporation is preferred stock meeting the requirements of section 1504(a)(4). The IRS and the Treasury Department agree that the example is technically flawed because section 1504(a)(4) stock is disregarded for purposes of determining ownership shifts. We note that Example 11 assumes a modified version of the facts of Example 10. Therefore, in order to correct the illustration of the general exception by Example 11, these final regulations contain modifications to Examples 10 and 11, which provide that, in addition to the preferred stock, the shareholder entity owns sufficient common stock at the outset of the example to be tracked as a first tier entity.

F. *Effective Dates*

The proposed regulations provide that the proposed exceptions to the segregation rules would apply to testing dates occurring on or after the date the regulations are published as final regulations in the **Federal Register** (the Publication Date). Commenters have requested that the regulations should allow taxpayers to apply the proposed regulations retroactively. One commenter suggested that taxpayers should be permitted to apply the proposed regulations retroactively, regardless of whether such application would reverse a prior ownership change either in a closed or an open year, provided that taxpayers were required to revise carryforward schedules consistently with any such change. (For example, if application of the proposed regulations in a closed year would reverse an ownership change, the taxpayer would be required to adjust its carryforward schedule to the extent net operating losses would have been absorbed in one or more closed years.) This commenter pointed to the small issuance and cash issuance exceptions as provisions with a similar effective date. Another commenter pointed out that the proposed effective date would create inconsistencies in the treatment of Small Shareholders on testing dates within a single testing period when the Publication Date occurs during the testing period. This comment proposed three alternatives that would allow a loss corporation to consistently apply the new rules to (a) testing dates on or after the Publication Date; (b) all testing dates within a testing period that includes the Publication Date; or (c) testing periods for which all of the testing dates occur after the Publication Date.

After consideration of the comments, the final regulations do not permit taxpayers to apply the final regulations to a testing date before October 22, 2013 if the application of the final regulations would result in an ownership change that did not occur, or would reverse an ownership change that did occur, on a date before October 22, 2013 under the regulations then in effect. The IRS and the Treasury Department believe that, in general, ownership change determinations from prior periods should remain fixed, and that the interests of tax administration are not served by permitting taxpayers to choose whether it is more advantageous to retain an ownership change result from a prior period or to reverse that result through the application of new regulations. For this reason, the final regulations retain the general effective date of the proposed regulations. The final regulations do, however, permit taxpayers to apply the provisions of the final regulations in their entirety to all testing dates that are included in a testing period beginning before and ending on or after October 22, 2013, subject to the limitations that (1) the final regulations may not be applied to any date on or before the date of any ownership change that occurred on a date before October 22, 2013 under the regulations in effect before October 22, 2013, and (2) they may not be applied if their application would result in an ownership change occurring on a date before October 22, 2013 that did not occur under the regulations in effect before October 22, 2013.

For example, assume that a loss corporation experienced an ownership change on October 1, 2012, and the current testing period began on October 2, 2012. Following the publication of the final regulations on October 22, 2013, the loss corporation wishes to permissively apply the regulations to all dates of its testing period that begins before and ends on or after October 22, 2013. The regulations may be permissively applied beginning on October 2, 2012, but only if such application does not result in an ownership change occurring on a date before October 22, 2013 that did not occur under the regulations in effect during the period before October 22, 2013. Because the final regulations may not be applied to any date on or before the date of any ownership change that occurred before October 22, 2013 under the regulations in effect before that date, the final regulations may not be permissively applied to October 1, 2012, or any earlier date.

G. *Revisions to the Small Issuance and Cash Issuance Exceptions*

The preamble to the proposed regulations requested comments as to whether further refinement of either or both of the small issuance or cash issuance exceptions might be warranted in the context of any potential expansion of the exceptions contained in the proposed regulations. After consideration of the comments received, the IRS and the Treasury Department believe that no changes to the small issuance or cash issuance exceptions should be made, other than the clarification regarding the calculation of the 10-percent limitation for the small issuance exception.

Comments generally requested increasing the 10-percent limitation of the small issuance exception. Because the final regulations do not increase the 10-percent limitation for the small redemption exception, the IRS and the Treasury Department have determined that the 10-percent limitation of the small issuance exception should also not be increased in order to maintain parity with the small redemption exception. Furthermore, as discussed in the preamble to the proposed regulations, the IRS and the Treasury Department remain concerned that transactions infusing new capital into a loss corporation implicate section 382 policies because the capital infusion can accelerate the use of tax attributes. This is the case even if the new investors are Small Shareholders, especially in light of the dilutive effect of the cash issuance exception on owner shifts attributable to capital-raising transactions. Accordingly, the final regulations do not expand the 10-percent limitation of the small issuance exception.

Comments also suggested that the cash issuance exception should apply to issuances of stock for non-cash property, including debt. One commenter requested that the IRS and the Treasury Department consider expanding the definition of a "cash issuance" to include loss corporation stock issued in connection with the conversion of a convertible debt instrument issued by the loss corporation in exchange for cash. The commenter asserted that no meaningful distinction existed between loss corporation stock acquired by a Small Shareholder directly from the loss corporation in exchange for cash and loss corporation stock acquired as a result of the conversion of a debt instrument that was issued by the loss corporation in exchange for cash.

In general, the cash issuance exception is based upon an assumption that there is overlapping ownership between existing public shareholders and those shareholders who purchase additional stock of a loss corporation. In recognition of the fact that a loss corporation cannot establish this overlapping ownership in many cases, the cash issuance exception mitigates the owner shift that otherwise would result if the segregation rules were to apply in a manner that disregards the overlapping ownership that likely exists.

The IRS and the Treasury Department believe that the assumption of overlapping ownership does not necessarily extend to existing public shareholders and purchasers of convertible debt or transferors of non-cash property for stock. Stated differently, persons who lend money to a loss corporation or persons who transfer non-cash property for stock in many cases may be different from public shareholders of the loss corporation. Furthermore, because infusions of capital into the loss corporation directly implicate the policies of section 382, the IRS and the Treasury Department believe that the cash issuance exception should retain its current scope. Accordingly, these final regulations do not adopt the commenter's proposal.

H. *Coordinated Acquisition Rule*

The preamble to the proposed regulations requested comments as to the scope of §1.382–3(a), which provides, in part, that a group of persons making a coordinated acquisition of stock can constitute an entity for purposes of section 382.

Comments were received requesting guidance that would identify specific situations in which stock purchases would not be treated as a coordinated acquisition. For example, one commenter asked for guidance to provide that a loss corporation

may rely on the presence or absence of a filing with the Securities and Exchange Commission as a "group" to establish the presence or absence of a coordinated acquisition. After considering these comments, the IRS and the Treasury Department believe that further study of this issue is required, and that the development of a companion notice of proposed rulemaking to address this issue would significantly delay issuance of these final regulations. Accordingly, the coordinated acquisition rule is not addressed contemporaneously with these final regulations, but may be addressed in future guidance.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. The certification is based on the fact that this rule would not impose new burdens on small entities and, in fact, may reduce the recordkeeping burden on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Stephen R. Cleary of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoptions 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 * * *

Section 1.382–3 also issued under 26 U.S.C. 382(g)(4)(C) and 26 U.S.C. 382(m). * * *

Par. 2. Section 1.382–3 is amended as follows:

1. Revising the heading of paragraph (j) and introductory text.
2. Revising paragraph (j)(11).
3. Redesignating paragraph (j)(13) and (j)(14) as (j)(16) and (j)(17).
4. Adding new paragraphs (j)(13), (j)(14) and (j)(15).
5. Adding new *Examples 5, 6, 7, 8, 9, 10, 11, 12, and 13* to newly redesignated paragraph (j)(16).
6. Revising newly redesignated paragraph (j)(17).

The revisions and additions read as follows:

§1.382–3 Definitions and rules relating to a 5-percent shareholder.

* * * * *

(j) *Modification of the segregation rules of §1.382–2T(j)(2)(iii) and (3)*—(1) *Introduction*. This paragraph (j) exempts, in whole or in part, certain transfers of stock from the segregation rules of §1.382–2T(j)(2)(iii) and (3). Terms and nomenclature used in this paragraph (j), and not otherwise defined herein, have the same meanings as in section 382 and the regulations issued under section 382.

* * * * *

(11) *Application to first tier and higher tier entities*—(i) *In general*. The principles of paragraphs (j)(1) through (j)(10) and paragraph (j)(12) apply to issuances of stock by a first tier entity or a higher tier entity that owns 5 percent or more of the loss corporation's stock (determined without regard to §1.382–2T(h)(2)(1)(A)).

(ii) *Small issuance limitation*. In applying paragraph (j)(2) of this section to any issuance of stock by a first tier or higher tier entity, the small issuance limitations of paragraph (j)(2)(iii)(A) and (B) of this section are computed by reference to the stock value and the stock classes of the issuing corporation.

* * * * *

(13) *Secondary transfer exception*. The segregation rules of §1.382–2T(j)(3)(i) will not apply to the transfer of a direct ownership interest in the loss corporation by a first tier entity or an individual that owns five percent or more of the loss corporation to public shareholders. Instead, each public group existing at the time of the transfer will be treated under §1.382–2T(j)(3)(i) as acquiring its proportionate share of the stock exempted from the application of §1.382–2T(j)(3)(i). The segregation rules also will not apply if an ownership interest in an entity that owns five percent or more of the loss corporation (determined without regard to the application of §1.382–2T(h)(2)(i)(A)) is transferred to a public owner or a 5-percent owner who is not a 5-percent shareholder of the loss corporation. Instead, provided that the transferor is either a 5-percent owner that is a 5-percent shareholder of the loss corporation or a higher tier entity owning five percent or more of the loss corporation (determined without regard to the application of section 1.382–2T(h)(2)(i)(A)), each public group of the entity existing at the time of the transfer is treated under §1.382–2T(j)(3)(i) as acquiring its proportionate share of the transferred ownership interest. With regard to a transferor that is neither a 5-percent shareholder of the loss corporation nor a higher tier entity owning five percent or more of the loss corporation (determined without regard to the application of §1.382–2T(h)(2)(i)(A)), see generally §1.382–2T(e)(1)(ii) (disregarding these transactions if the transferee is not a 5-percent shareholder).

(14) *Small redemption exception*—(i) *In general*. Section 1.382–2T(j)(2)(iii)(C) does not apply to a small redemption (as defined in paragraph (j)(14)(ii) of this section), except to the extent that the total amount of stock redeemed in that redemption and all other small redemptions previously made in the same taxable year (determined in each case on redemption) exceeds the small redemption limitation. This paragraph (j)(14) does not apply to a redemption of stock that, by itself, exceeds the small redemption limitation.

(ii) *Small redemption defined*. *Small redemption* means a redemption of public shareholders by the loss corporation of an amount of stock not exceeding the small redemption limitation.

(iii) *Small redemption limitation*—(A) *In general*. For each taxable year, the loss corporation may, at its option, apply this paragraph (j)(14)—

(*1*) On a corporation-wide basis, in which case the small redemption limitation is 10 percent of the total value of the loss corporation's stock outstanding at the beginning of the taxable year (excluding the value of stock described in section 1504(a)(4)); or

(*2*) On a class-by-class basis, in which case the small redemption limitation is 10 percent of the number of shares of the class redeemed that are outstanding at the beginning of the taxable year.

(B) *Class of stock defined*. For purposes of this paragraph (j)(14)(iii), a class of stock includes all stock with the same material terms.

(C) *Adjustments for stock splits and similar transactions*. Appropriate adjustments to the number of shares of a class outstanding at the beginning of a taxable year must be made to take into account any stock split, reverse stock split, stock dividend to which section 305(a) applies, recapitalization, or similar transaction occurring during the taxable year.

(D) *Exception*. The loss corporation may not apply this paragraph (j)(14)(iii) on a class-by-class basis if, during the taxable year, more than one class of stock is redeemed in a single redemption (or in two or more redemptions that are treated as a single redemption under paragraph (j)(14)(v) of this section).

(E) *Short taxable years*. In the case of a taxable year that is less than 365 days, the small redemption limitation is reduced by multiplying it by a fraction, the numerator of which is the number of days in the taxable year, and the denominator of which is 365.

(iv) *Proportionate redemption of exempted stock*—(A) *In general*. Each direct public group that exists immediately before a redemption to which this paragraph (j)(14) applies is treated as having been redeemed of its proportionate share of the amount of stock exempted from the application of §1.382–2T(j)(2)(iii)(C) under this paragraph (j)(14).

(B) *Actual knowledge of greater redemption*. Under the last sentence of §1.382–2T(k)(2), the loss corporation may treat direct public groups existing immediately before a redemption to which this paragraph (j)(14) applies as having been redeemed of more stock than the amount determined under paragraph (j)(14)(iv)(A) of this section, but only if the loss corporation actually knows that the amount redeemed from those groups in the redemption exceeds the amount so determined.

(v) *Certain related redemptions*. For purposes of this paragraph (j)(14), two or more redemptions (including redemptions of stock by first tier or higher tier entities) are treated as a single redemption if—

(A) The redemptions occur at approximately the same time pursuant to the same plan or arrangement; or

(B) A principal purpose of redeeming the stock in separate redemptions rather than in a single redemption is to minimize or avoid an owner shift under the rules of this paragraph (j)(14).

(vi) *Certain non-stock ownership interests*. As the context may require, a non-stock ownership interest in an entity other than a corporation is treated as stock for purposes of this paragraph (j)(14).

(vii) *Application to first tier and higher tier entities*—(A) *In general*. The principles of this paragraph (j)(14) apply to redemptions of stock by a first tier entity or a higher tier entity that owns 5 percent of the loss corporation stock (determined without regard to §1.382–2T(h)(2)(i)(A)).

(B) *Small redemption limitation*. In applying this paragraph (j)(14) to any redemption of stock by a first tier or a higher tier entity, the small redemption limitations of paragraph (j)(14)(iii)(A) of this section are computed by reference to the stock value and the stock classes of the redeeming corporation.

(15) *Exception for first tier and higher tier entities*—(i) *In general*. The segregation rules of §1.382–2T(j)(3)(iii) will not apply to a transaction involving stock in a first tier or a higher tier entity if, after taking into account the results of such transaction and all other transactions occurring on that date, the first tier or higher tier entity owns 10 percent or less (by value) of all the outstanding stock (without regard to §1.382–2(a)(3)) of the loss corporation.

(ii) *Anti-avoidance rule*. The rules of paragraph (j)(15)(i) of this section do not apply to a transaction involving an ownership interest in a first tier or higher tier entity if the loss corporation, directly or through one or more persons, has participated in planning or structuring the transaction with a view to avoiding the application of the segregation rules. For this purpose, a transaction includes any event that would result in segregation under §1.382–2T(j)(3)(iii), absent the application of this paragraph (j)(15), and any event (for example, the formation of a holding company) occurring as part of the same plan that includes the event that would result in segregation (without the application of this paragraph (j)(15)). Other anti-avoidance rules continue to be applicable. See, for example, §1.382–2T(k)(4) and §1.382–3(a)(1).

(iii) *Special rules*. If application of paragraph (j)(15)(i) of this section results in the combination of public groups, then—

(A) The amount of increase in the percentage of stock ownership of the continuing public group will be the sum of its increase and a proportionate amount of any increase by any public group that is combined with the continuing public group (the former public group); and

(B) The continuing public group's lowest percentage ownership will be the sum of its lowest percentage ownership and a proportionate amount of the former public group's lowest percentage ownership.

(iv) *Ownership of the loss corporation*. In making the determination under paragraph (j)(15)(i) of this section—

(A) The rules of §1.382–2T(h)(2) will not apply;

(B) The entity will be treated as owning the loss corporation stock that it actually owns, and any other loss corporation stock if that other stock would be attributed to the entity under section 318(a) (without regard to paragraph (4) thereof) unless an option is treated as exercised under §1.382–4(d)); and

(C) The operating rules of paragraph (j)(15)(v) of this section will apply.

(v) *Operating rules*. Subject to the principles of §1.382–2T(k)(4), a loss corporation may establish the ownership limitation of paragraph (j)(15)(i) of this section through either—

(A) Actual knowledge; or

(B) Absent actual knowledge to the contrary, the presumptions regarding stock ownership in §1.382–2T(k)(1).

(16) *Examples*. * * *

* * * * *

Example 5. Secondary transfer exception to segregation rules – no new public group. (i) *Facts*. L is owned 60 percent by one public group (Public L1) and 40 percent by another public group (Public L2). On July 1, 2014, individual A acquires 10 percent of L's stock over a public stock exchange. On December 31, 2014, A sells all of his L stock over a public stock exchange. No individual or entity acquires as much as five percent of L's stock as a result of A's disposition of his L stock. On January 3, 2015, individual B acquires 10 percent of L's stock over a public stock exchange. On June 30, 2015, B sells all of her L stock over a public stock exchange. No individual or entity acquires as much as five percent of L's stock as a result of B's disposition of her L stock.

(ii) *Analysis*. The dispositions of the L stock by A and B are not transactions that cause the segregation of L's direct public groups that exist immediately before the transaction (Public L1 and Public L2). When A and B sell their shares to public shareholders over the public stock exchange, the shares are treated as being reacquired by Public L1 and Public L2. As a result, Public L1's ownership interest is treated as increasing from 54 percent to 60 percent during the testing period, and Public L2's ownership interest is treated as increasing from 36 percent to 40 percent during the testing period.

Example 6. Secondary transfer exception – first tier entity. (i) *Facts*. L has a single class of common stock outstanding that is owned 60 percent by a direct public group (Public L) and 40 percent by P. P is owned 20 percent by individual A and 80 percent by a direct public group (Public P). On October 6, 2014, A sells 50 percent of his interest in P to B, an individual who is, and remains, a member of Public P.

(ii) *Analysis*. P is an entity that owns five percent or more of L. A is a 5-percent owner of P that is a 5-percent shareholder of L. Because A's sale of the P stock is to a member of Public P, the disposition of the P stock by A is not a transaction that causes the segregation of P's direct public group that exists immediately before the transaction (Public P). See paragraph (j)(13) of this section. When A sells his shares to B, the shares are treated as being acquired by Public P. As a result, Public P's ownership interest in L is treated as increasing from 32 percent to 36 percent during the testing period.

Example 7. Small redemption exception. (i) *Facts*. L is a calendar year taxpayer. On January 1, 2014, L has 1,060 shares of a single class of common stock outstanding, all of which are owned by a single direct public group (Public L). On July 1, 2014, L acquires 60 shares of its stock for cash. On December 31, 2014, in an unrelated redemption, L acquires 90 more shares of its stock for cash. Following each redemption, L's stock is owned entirely by public shareholders. No other changes in the ownership of L's stock occur prior to December 31, 2014.

(ii) *Analysis – (A) July redemption*. The July redemption is a small redemption because the number of shares redeemed (60) does not exceed 106, the small redemption limitation (10 percent of the number of common shares outstanding on January 1, 2014). Under paragraph (j)(14) of this section, the segregation rules of §1.382–2T(j)(2)(iii)(C) do not apply to the July redemption. Under paragraph (j)(14)(iv) of this section, Public L is treated as having all 60 shares redeemed.

(*B) December redemption*. The December redemption is a small redemption because the number of shares redeemed (90) does not exceed 106, the small redemption limitation (10 percent of the number of common shares outstanding on January 1, 2014). However, under paragraph (j)(14)(i) of this section, only 46 of the 90 shares redeemed are exempted from the segregation rules of §1.382–2T(j)(2)(iii)(C) because the total number of shares of common stock redeemed in the July and December redemptions exceeds 106, the small redemption limitation, by 44. Accordingly, under paragraph (j)(14)(iv) of this section, Public L is treated as having 46 shares redeemed in the December redemption. Section 1.382–2T(j)(2)(iii)(C) applies to the remaining 44 shares redeemed. Accordingly, Public L is segregated into two different public groups immediately before the transaction (and thereafter) so that the redeemed interests (Public RL) are treated as part of a public group that is separate from the ownership interests that are not redeemed (Public CL). Therefore, as a result of the December redemption, Public CL's interest in L increases by 4.4 percentage points (from 95.6 percent (956/1,000) to 100 percent (910/910)) on the December 31, 2014 testing date. For purposes of determining whether an ownership change occurs on any subsequent testing date having a testing period that includes the December redemption, Public CL is treated as a 5-percent shareholder whose percentage ownership interests in L increased by 4.4 percentage points as a result of such redemption.

Example 8. Segregation rules inapplicable – proportionate amount. (i) *Facts*. P1 is a corporation that owns 8 percent of the stock of L. The remaining L stock (92 percent) is owned by Public L. P1 is entirely owned by Public P1. P2 is a corporation owned 90 percent by individual A and 10 percent by a public group (Public P2). On May 22, 2014, P1 merges into P2 with the shareholders of P1 receiving an amount of P2 stock equal to 25 percent of the value of P2 immediately after the reorganization. L was owned 92 percent by Public L and 8 percent by P1 throughout the testing period ending on the date of the merger.

(ii) *Analysis*. Assuming L can establish that P2 owns 10 percent or less (by value) of L on May 22, 2014 pursuant to the operating rules of paragraph (j)(15)(v) of this section, the segregation rules of §1.382–2T(j)(3)(iii) will not apply to segregate P1's direct public group (Public P1) immediately before the merger from P2's direct public group (Public P2). Thus, following the merger, P2 is owned 67.5 percent (90 percent x 75 percent) by A and 32.5 percent (25 percent + (10 percent x 75 percent)) by Public P2. Pursuant to paragraph (j)(15)(iii)(B) of this section, Public P2's lowest percentage of ownership is the sum of its lowest percentage of ownership (zero) and a proportionate amount of former Public P1's lowest ownership percentage of L of 2.6 percent (32.5 percent x 8 percent). P2 will be treated as having one public group whose ownership interest in L was 2.6 percent before the merger and remains 2.6 percent after the merger. Because Public P2 owns less than 5 percent of L, Public P2 is treated as part of Public L. See §1.382–2T(j)(1)(iv). Thus, pursuant to paragraph (j)(15)(iii)(B) of this section, Public L's lowest ownership percentage of L during the testing period is 94.6 percent.

Example 9. Segregation rules inapplicable – prior increase in ownership by former public group during testing period. (i) *Facts*. The facts are the same as *Example 8*, except that P1 acquired its 8-percent interest in L during the testing period that includes the merger.

(ii) *Analysis*. Pursuant to the rules of paragraph (j)(15)(iii)(A) of this section, the amount of increase in the percentage of stock ownership by Public P2 is the sum of its increase (zero) and a proportionate amount of the increase by former Public P1 of 2.6 percent (32.5 percent x 8 percent). Pursuant to paragraph (j)(15)(iii)(B) of this section, Public P2's lowest percentage of ownership is zero, because both former Public P1 and Public P2 owned no L stock at the beginning of the testing period. Accordingly, Public P2, the continuing public group, is treated as having increased its ownership interest by 2.6 percent. Because Public P2 is treated as part of Public L, Public L is treated as increasing its ownership interest by 2.6 percent.

Example 10. Ownership limitation based upon fair market value. (i) *Facts*. L has one class of common stock and one class of preferred stock outstanding. The preferred stock is stock within the meaning of §1.382–2(a)(3). Before December 23, 2014, a direct public group (Public L) owns all of the common stock of L. On December 23, 2014, P purchases all of the preferred stock of L and a portion of the common stock of L. On the date of purchase, the value of the L common stock held by P was greater than 5 percent of the value of L, and the total value of L common and L preferred stock held by P was less than 10 percent of the value of all stock of L. P has one class of common stock outstanding, all of which is owned by a direct public group (Public P). On October 7, 2015, P redeems 30 percent of its single outstanding class of common stock. On the redemption date of the P stock, due to a decline in the relative value of the common stock of L, the preferred stock of L owned by P represents 40 percent of the value of all the outstanding stock of L. No ownership change of L occurs between December 23, 2014, and October 7, 2015.

(ii) *Analysis*. The rules of paragraph (j)(15) of this section do not apply to the redemption because P owns more than 10 percent of L (by value) on that date.

Example 11. Ownership limitation – fair market value includes preferred stock. The facts are the same as in *Example 10*, except that the preferred stock is not stock within the meaning of §1.382–2(a)(3). Although the preferred stock is not stock for the purpose of determining owner shifts, the value of that stock is taken into account in computing the 10-percent limitation of paragraph (j)(15)(i) of this section. Therefore, the results are the same as in *Example 10*.

Example 12. Ownership limitation – application of attribution rules. (i) *Facts*. Individual A owns all the outstanding stock of X. A also owns preferred stock in Y that is not stock within the meaning §1.382–2(a)(3), which represents 50 percent of the value of Y. All the Y common stock is owned by public owners. Each of X and Y own 6 percent of the

single class of L stock outstanding. On October 6, 2014, Y redeems 15 percent of its common stock.

(ii) *Analysis*. In determining satisfaction of the ownership limitation of paragraph (j)(15)(i) of this section, the attribution rules of section 318(a) apply. Pursuant to section 318(a)(2), A is treated as owning the L stock owned by X. Pursuant to section 318(a)(3), Y is treated as owning the L stock that A indirectly owns. Because Y's ownership of L exceeds the 10-percent ownership limitation of paragraph (j)(15)(i) of this section, the rules of paragraph (j)(15) of this section do not apply.

Example 13. Anti-avoidance rule. (i) *Facts*. P1 is a corporation that owns 10 percent of the stock of L. P1 is owned entirely by a direct public group (Public P). L has had owner shifts of 45 percentage points in its current testing period. P1 is planning to merge into P2, a corporation which has a public group. Advisers to L, upon learning of the proposed merger, asked the management of P1 for details of the proposed merger, including the stock ownership of P2 after P1 merges into P2. After finding out that information, L or L's advisers did not request any changes in the planned transaction.

(ii) *Analysis*. The anti-avoidance rule of paragraph (j)(15)(ii) of this section does not apply because L did not participate in planning or structuring the transaction. Pursuant to paragraph (j)(15)(i) of this section, §1.382–2T(j)(3)(iii) does not apply to cause the segregation of P1's public group from P2's public group.

(17) *Effective/applicability date*. This paragraph (j) generally applies to issuances or deemed issuances of stock in taxable years beginning on or after November 4, 1992. However, paragraphs (j)(11)(ii) and (j)(13) through (j)(15) of this section and Examples 5 through 13 of paragraph (j)(16) of this section apply to testing dates occurring on or after October 22, 2013. Taxpayers may apply paragraphs (j)(11)(ii) and (j)(13) through (j)(15) of this section and Examples 5 through 13 of paragraph (j)(16) of this section in their entirety to all testing dates that are included in a testing period beginning before and ending on or after October 22, 2013. However, the provisions described in the preceding sentence may not be applied to any date on or before the date of any ownership change that occurred before October 22, 2013 under the regulations in effect before October 22, 2013, and they may not be applied as described in the preceding sentence if such application would result in an ownership change occurring on a date before October 22, 2013 that did not occur under the regulations in effect before October 22, 2013. See §1.382–3(j)(14)(ii) and (iii), as contained in 26 CFR part 1 revised as of April 1, 1994, for the application of paragraph (j)(10) to stock issued on the exercise of certain options exercised on or after November 4, 1992 and for an election to apply paragraphs (j)(1) through (12) retroactively to certain issuances and deemed issuances of stock occurring in taxable years prior to November 4, 1992.

Beth Tucker,
Deputy Commissioner for Operations Support.
Approved August 19, 2013

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of

sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2013.

Rev. Rul. 2013–22

This revenue ruling provides various prescribed rates for federal income tax purposes for November 2013 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2013–22 TABLE 1

Applicable Federal Rates (AFR) for November 2013

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.27%	.27%	.27%	.27%
110% AFR	.30%	.30%	.30%	.30%
120% AFR	.32%	.32%	.32%	.32%
130% AFR	.35%	.35%	.35%	.35%
Mid-term				
AFR	1.73%	1.72%	1.72%	1.71%
110% AFR	1.90%	1.89%	1.89%	1.88%
120% AFR	2.07%	2.06%	2.05%	2.05%
130% AFR	2.25%	2.24%	2.23%	2.23%
150% AFR	2.60%	2.58%	2.57%	2.57%
175% AFR	3.03%	3.01%	3.00%	2.99%
Long-term				
AFR	3.37%	3.34%	3.33%	3.32%
110% AFR	3.70%	3.67%	3.65%	3.64%
120% AFR	4.05%	4.01%	3.99%	3.98%
130% AFR	4.39%	4.34%	4.32%	4.30%

REV. RUL. 2013–22 TABLE 2

Adjusted AFR for November 2013

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.27%	.27%	.27%	.27%
Mid-term adjusted AFR	1.73%	1.72%	1.72%	1.71%
Long-term adjusted AFR	3.37%	3.34%	3.33%	3.32%

REV. RUL. 2013–22 TABLE 3	
Rates Under Section 382 for November 2013	
Adjusted federal long-term rate for the current month	3.37%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.50%

REV. RUL. 2013–22 TABLE 4	
Appropriate Percentages Under Section 42(b)(1) for November 2013	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2014, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.59%
Appropriate percentage for the 30% present value low-income housing credit	3.25%

REV. RUL. 2013–22 TABLE 5	
Rate Under Section 7520 for November 2013	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.0%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2013. See Rev. Rul. 2013–22, page 496.

Part III. Administrative, Procedural, and Miscellaneous

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2013–66

This notice provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007. These rates reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP-21). MAP-21 provides that for purposes of § 430(h)(2), the segment rates are limited by the applicable maximum percentage or the applicable minimum percentage based on the average of segment rates over a 25-year period.

YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006, § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from September 2013 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of September 2013 are, respectively, 1.40, 4.66, and 5.62. For plan years beginning on or after January 1, 2012, the 24-month average segment rates determined under § 430(h)(2)(C)(iv) must be adjusted by the applicable percentage of the corresponding 25-year average segment rates. The 25-year average segment rates for plan years beginning in 2012, 2013, and 2014 were published in Notice 2012–55, 2012–36 I.R.B. 332, Notice 2013–11, 2013–11 I.R.B. 610, and Notice 2013–58, 2013–40 I.R.B. 294, respectively. The three 24-month average corporate bond segment rates applicable for October 2013 without adjustment, and the adjusted 24-month average segment rates taking into account the applicable percentages of the corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In	Applicable Month		24-Month Average Segment Rates Not Adjusted			Adjusted 24-Month Average Segment Rates, Based on Applicable Percentage of 25-Year Average Rates		
			First Segment	Second Segment	Third Segment	First Segment	Second Segment	Third Segment
2012	October	2013	1.35	4.05	5.05	5.54	6.85	7.52
2013	October	2013	1.35	4.05	5.05	4.94	6.15	6.76
2014	October	2013	1.35	4.05	5.05	4.43	5.62	6.22

30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for September 2013 is 3.79 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2043. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	*Year*		90%	to	105%
October	2013	3.44	3.10		3.62

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for September 2013 are as follows:

First Segment	Second Segment	Third Segment
1.40	4.66	5.62

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I
Monthly Yield Curve for September 2013
Derived from September 2013 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.31	20.5	5.42	40.5	5.65	60.5	5.73	80.5	5.77
1.0	0.53	21.0	5.43	41.0	5.65	61.0	5.73	81.0	5.78
1.5	0.76	21.5	5.44	41.5	5.65	61.5	5.73	81.5	5.78
2.0	1.00	22.0	5.45	42.0	5.65	62.0	5.74	82.0	5.78
2.5	1.25	22.5	5.46	42.5	5.66	62.5	5.74	82.5	5.78
3.0	1.52	23.0	5.46	43.0	5.66	63.0	5.74	83.0	5.78
3.5	1.78	23.5	5.47	43.5	5.66	63.5	5.74	83.5	5.78
4.0	2.04	24.0	5.48	44.0	5.67	64.0	5.74	84.0	5.78
4.5	2.30	24.5	5.48	44.5	5.67	64.5	5.74	84.5	5.78
5.0	2.55	25.0	5.49	45.0	5.67	65.0	5.74	85.0	5.78
5.5	2.80	25.5	5.50	45.5	5.67	65.5	5.74	85.5	5.78
6.0	3.03	26.0	5.50	46.0	5.68	66.0	5.75	86.0	5.78
6.5	3.25	26.5	5.51	46.5	5.68	66.5	5.75	86.5	5.78
7.0	3.46	27.0	5.52	47.0	5.68	67.0	5.75	87.0	5.78
7.5	3.65	27.5	5.52	47.5	5.68	67.5	5.75	87.5	5.78
8.0	3.84	28.0	5.53	48.0	5.69	68.0	5.75	88.0	5.79
8.5	4.01	28.5	5.54	48.5	5.69	68.5	5.75	88.5	5.79
9.0	4.17	29.0	5.54	49.0	5.69	69.0	5.75	89.0	5.79
9.5	4.31	29.5	5.55	49.5	5.69	69.5	5.75	89.5	5.79
10.0	4.45	30.0	5.55	50.0	5.69	70.0	5.75	90.0	5.79
10.5	4.57	30.5	5.56	50.5	5.70	70.5	5.76	90.5	5.79
11.0	4.67	31.0	5.57	51.0	5.70	71.0	5.76	91.0	5.79
11.5	4.77	31.5	5.57	51.5	5.70	71.5	5.76	91.5	5.79
12.0	4.86	32.0	5.58	52.0	5.70	72.0	5.76	92.0	5.79
12.5	4.94	32.5	5.58	52.5	5.70	72.5	5.76	92.5	5.79
13.0	5.01	33.0	5.59	53.0	5.71	73.0	5.76	93.0	5.79
13.5	5.07	33.5	5.59	53.5	5.71	73.5	5.76	93.5	5.79
14.0	5.12	34.0	5.60	54.0	5.71	74.0	5.76	94.0	5.79
14.5	5.16	34.5	5.60	54.5	5.71	74.5	5.76	94.5	5.79
15.0	5.20	35.0	5.60	55.0	5.71	75.0	5.76	95.0	5.79
15.5	5.24	35.5	5.61	55.5	5.72	75.5	5.77	95.5	5.79
16.0	5.27	36.0	5.61	56.0	5.72	76.0	5.77	96.0	5.80
16.5	5.30	36.5	5.62	56.5	5.72	76.5	5.77	96.5	5.80
17.0	5.32	37.0	5.62	57.0	5.72	77.0	5.77	97.0	5.80
17.5	5.34	37.5	5.62	57.5	5.72	77.5	5.77	97.5	5.80
18.0	5.36	38.0	5.63	58.0	5.72	78.0	5.77	98.0	5.80
18.5	5.37	38.5	5.63	58.5	5.73	78.5	5.77	98.5	5.80
19.0	5.39	39.0	5.64	59.0	5.73	79.0	5.77	99.0	5.80
19.5	5.40	39.5	5.64	59.5	5.73	79.5	5.77	99.5	5.80
20.0	5.41	40.0	5.64	60.0	5.73	80.0	5.77	100.0	5.80

Credit for Production from Advanced Nuclear Facilities

Notice 2013–68

SECTION 1. PURPOSE

This Notice sets forth guidance relating to the credit under § 45J of the Internal Revenue Code for production of electricity at advanced nuclear power facilities. On May 1, 2006, the Internal Revenue Service (Service) and the Treasury Department published Notice 2006–40, 2006–1 C.B. 855, which specifies the method that will be used to allocate the national megawatt capacity limitation on the allowable credit and prescribes the application process by which taxpayers may request an allocation of the national megawatt capacity limitation. Notice 2006–40 also provides guidance on the requirement that the electricity be sold to an unrelated person and on the effect of grants, tax-exempt bonds, subsidized energy financing, and other credits. This Notice supersedes Notice 2006–40 by republishing the guidance contained in that notice with the following modifications: (1) the application process is streamlined so that the applicant submits the application only to the Service and the Service will obtain necessary certification from the U.S. Department of Energy (DOE); (2) the guidance is modified to provide allocation rules for facilities that are directly or indirectly owned by more than one person; and (3) additional guidance is provided concerning the time for filing an application with the Nuclear Regulatory Commission.

SECTION 2. BACKGROUND

.01 Section 45J was enacted by section 1306 of the Energy Policy Act of 2005, Pub. L. No. 109–58 (199 Stat. 594). Section 45J permits a taxpayer to claim a credit for electricity that the taxpayer (1) produces at an advanced nuclear power facility during the eight-year period beginning when the facility is placed in service and (2) sells to an unrelated person (qualifying electricity).

.02 Under § 45J(d), an advanced nuclear power facility is a nuclear facility that meets all of the following requirements:

(1) The facility consists of a nuclear power reactor that uses nuclear energy to produce electricity. For purposes of this Notice, each nuclear power reactor located on a multi-reactor site is a separate facility.

(2) The facility is owned by the taxpayer.

(3) The reactor design for the facility is approved by the Nuclear Regulatory Commission after December 31, 1993 (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

(4) The facility is placed in service before January 1, 2021.

.03 Under § 45J(b)(1), a taxpayer may claim a credit for qualifying electricity produced at an advanced nuclear power facility only if part of the national megawatt capacity limitation has been allocated to the facility (the facility limitation). See Section 4.04(3), (4), and (5) of this Notice for allocation rules in the case of a facility owned by more than one taxpayer, or owned by a partnership or an S corporation.

SECTION 3. COMPUTATION OF CREDIT

Under § 45J(b)(1) and (c), the credit allowed for a taxable year with respect to the qualified electricity produced at an advanced nuclear power facility is computed under the following rules:

(1) A tentative credit for the taxable year is computed for the facility. The facility's tentative credit for the taxable year is equal to 1.8 cents multiplied by the kilowatt hours of qualified electricity produced at the facility and sold during the taxable year to an unrelated person.

(2) The credit percentage is computed for each taxpayer that has been allocated all or part of the facility limitation. Each taxpayer's credit percentage is determined by dividing the facility limitation that is allocated to the taxpayer under Section 4.04(3), (4), or (5) of this Notice by the nameplate capacity of the facility.

(3) The credit allowed to a taxpayer is the lesser of (a) the tentative credit for the facility multiplied by the taxpayer's credit percentage, or (b) $125,000,000 per 1000 megawatts of the facility limitation that is allocated to the taxpayer.

SECTION 4. ALLOCATION OF NATIONAL MEGAWATT CAPACITY LIMITATION

.01 *In General*. Section 45J(b)(2) provides that the national megawatt capacity limitation is 6,000 megawatts. Section 45J(b)(3) requires the Secretary to allocate this national megawatt capacity limitation in such manner as the Secretary may prescribe. Section 45J(b)(4) requires the Secretary to provide a certification process under which the Secretary, after consultation with the Secretary of Energy, shall approve and allocate the national megawatt capacity limitation.

.02 *Allocation Limited to Qualifying Facilities*. The Service will allocate the national megawatt capacity limitation only to advanced nuclear facilities (within the meaning of § 45J(d)(2)) that satisfy the requirements of this Section 4.02 (qualifying facilities). An advanced nuclear facility is a qualifying facility only if each of the following requirements is satisfied:

(1) Construction on the facility begins before January 1, 2014. For this purpose, construction begins when a person who has applied for or been granted a construction permit or a combined license from the Nuclear Regulatory Commission for an advanced nuclear facility initiates the pouring of safety-related concrete for the reactor building.

(2) The DOE provides a certification to the Service that the facility qualifies as an advanced nuclear facility. See Section 4.05 of this Notice.

.03 *Application Required.*

The Service will allocate the national megawatt capacity limitation only to qualifying facilities for which the applications are submitted in accordance with Section 5 of this Notice.

.04 *Allocation Method.*

The national megawatt capacity limitation will be allocated as follows:

(1) If the total nameplate capacity of all qualifying facilities for which applications are submitted does not exceed the national megawatt capacity limitation, each of those facilities will be allocated an

amount of national megawatt capacity limitation equal to its nameplate capacity.

(2) If the total nameplate capacity of all qualifying facilities for which applications are submitted exceeds the national megawatt capacity limitation, the national megawatt capacity limitation will be allocated among the facilities in proportion to their nameplate capacities.

(3) If only one taxpayer owns a direct interest in a facility, the entire facility limitation is allocated to such taxpayer. If more than one taxpayer owns a direct interest in a facility, each taxpayer's undivided ownership share in the facility will be treated for purposes of this Notice as a separate facility owned by such taxpayer. In such cases, a taxpayer's application must identify the portion of the total nameplate capacity of the facility that is equal to its undivided ownership share in the facility.

(4) Except as provided in Section 4.04(5) of this Notice, if a facility is owned by a partnership or S corporation, then the partnership or S corporation, and not the partners or shareholders, will be treated as the taxpayer that owns the facility for the purposes of this Notice. In such cases, the § 45J credit must be allocated to the partners or shareholders in accordance with either § 1.704–1(b)(4)(ii), in the case of partnerships, or § 1.1366–1(a)(2)(v), in the case of S corporations.

(5) If a facility is owned through an organization that has made a valid § 761(a) election, each member's undivided ownership share in the facility will be treated for purposes of this Notice as a separate facility owned by such member. In such cases, a member's application must identify the portion of the total nameplate capacity of the facility that is equal to its undivided ownership share in the facility.

.05 *Service Action*.

Upon receipt of the taxpayer's application, the Service will determine whether the application satisfies the provisions of Section 5 of this Notice. If the application does not satisfy that Section, the Service may advise the applicant regarding how to perfect the application and may request additional information necessary to complete the application. Once an application satisfies Section 5 of this Notice, the Service will forward the application to the DOE for the certification described in Section 4.02(2) of this Notice. Upon receipt of a certification by the DOE that the facility qualifies as an advanced nuclear facility, the Service will accept or reject the taxpayer's application and will notify the taxpayer, by letter, of its decision. If the taxpayer's application is accepted, the acceptance letter will state the facility limitation and the amount of the facility limitation allocated to the taxpayer.

SECTION 5. APPLICATIONS FOR ALLOCATION OF NATIONAL MEGAWATT CAPACITY LIMITATION

.01 A taxpayer must submit (in duplicate), for each facility for which an allocation of the national megawatt capacity limitation is requested, an application to the Service for an allocation under § 45J(b) ("application for § 45J allocation").

.02 Multiple taxpayers owning (or treated as owning) a direct interest in a facility (as described in section 4.04(3) or 4.04(5) of this Notice) may file separate applications for a § 45J allocation with respect to a single facility. See Section 5.05 and Section 5.06 of this Notice.

.03 Applications for § 45J allocation must be filed before February 1, 2014.

.04 The application for § 45J allocation must include all of the following:

(1) The name and taxpayer identification number of the taxpayer who will place the facility in service;

(2) The name and location of the facility;

(3) The nameplate capacity of the facility;

(4) The date on which the application for a construction permit or a combined license for the facility was filed with the Nuclear Regulatory Commission;

(5) A statement demonstrating that the facility is an "advanced nuclear facility" within the meaning of § 45J(d)(2); such statement should include when the reactor design for the facility was approved by the Nuclear Regulatory Commission, as well as a detailed explanation demonstrating that such design (or a substantially similar design of comparable capacity) had not been approved on or before December 31, 1993; and

(6) The date on which construction on the facility, as defined in Section 4.02(1) of this Notice, began.

.05 If a taxpayer's application relates to a facility in which more than one person owns (or is treated as owning) a direct interest (as described in section 4.04(3) or 4.04(5) of this Notice), the taxpayer must submit documentation of its undivided ownership share in the facility.

.06 If the facility is owned by an organization that has made a valid § 761(a) election, then, in addition to the documentation described in Section 5.05, any application pertaining to the facility must contain a copy of the valid § 761(a) election.

.07 Applications for § 45J allocation should be marked: SECTION 45J APPLICATION FOR ALLOCATION. There is no user fee for the § 45J application.

(1) The § 45J application should be sent to the following address:

Internal Revenue Service
Attn: CC:PSI:6, Room 5114
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

If a private delivery service is used, the address is:

Internal Revenue Service
Attn: CC:PSI:6, Room 5114
1111 Constitution Ave., N.W.
Washington, DC 20224

(2) The § 45J applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PSI:6, Room 5114
1111 Constitution Avenue N.W.
Washington, DC 20224

SECTION 6. REALLOCATION OF NATIONAL MEGAWATT CAPACITY LIMITATION IN CERTAIN CASES

If an amount of national megawatt capacity limitation is allocated to a facility and the facility is not placed in service before January 1, 2021, or the DOE informs the Service that the DOE certification for the facility has been withdrawn, the amount of the national megawatt capacity limitation allocated to that facility will be withdrawn and the national megawatt capacity limitation will be reallocated under the rules of Section 4.04 of

this Notice among the remaining qualifying facilities.

SECTION 7. ADDITIONAL ISSUES

.01 *Sale to Unrelated Person*. The credit under § 45J is allowed only for electricity that the taxpayer produces and sells to an unrelated person. Electricity will be treated as sold to an unrelated person for this purpose if the ultimate purchaser of the electricity is not related to the person that produces the electricity. For purposes of § 45J only, the requirement of a sale to an unrelated person will be treated as satisfied in these circumstances even if the producer sells the electricity to a related person for resale by the related person to a person that is not related to the producer. For rules for determining whether a person is related to the producer of the electricity, see § 45(e)(4).

.02 *Effect of Grants, Tax-Exempt Bonds, Subsidized Energy Financing, and Other Credits*. The amount of the credit under § 45J is not reduced on account of any grants, tax-exempt bonds, subsidized energy financing, or other credits described in § 45(b)(3).

SECTION 8. PAPERWORK REDUCTION ACT

The collection of information contained in this Notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2000.

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 OMB control number.

The collections of information in this Notice are in Section 5. This information is required to be collected and retained in order for taxpayers to claim the credit for the production of electricity from advanced nuclear power facilities under § 45J. The information will be used to determine the portion of the national megawatt capacity limitation to which a taxpayer is entitled. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 600 hours.

The estimated annual burden per respondent varies from 10 to 60 hours, depending on individual circumstances, with an estimated average of 40 hours. The estimated number of respondents is 15.

The estimated frequency of responses is on occasion.

Books or 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 section 6103.

SECTION 9. DISCLOSURE OF INFORMATION

.01 *In general*. An application for an allocation of the national megawatt capacity limitation, any documentation submitted by the taxpayer in support of that application, and any documentation generated by the Service as part of this process are return information subject to § 6103. This material remains the applicant's confidential return information, which is exempt from disclosure under the Freedom of Information Act (FOIA), 5 USC § 552(b)(3), in conjunction with § 6103. Other FOIA exemptions may also apply.

.02 *FOIA Requests*. Anyone interested in submitting a request for records under the FOIA with respect to the national megawatt capacity program under § 45J should direct a request that conforms to the agency's FOIA regulations, found at 26 C.F.R. § 601.702, to the following address:

IRS FOIA Request
Baltimore Disclosure Office
Room 940
31 Hopkins Plaza
Baltimore, MD 21201

.03 *Consultation with DOE*. Section 45J(b)(4) requires that the Secretary consult with the Secretary of Energy prior to allocating the national megawatt capacity limitation. As stated in Section 4.05 of this Notice, the Service intends to forward applications for an allocation of the national megawatt capacity limitation to the DOE so that DOE may certify whether the facility is an advanced nuclear power facility.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Notice 2006–40, 2006–1 C.B. 855, is superseded.

SECTION 11. DRAFTING INFORMATION

The principal author of this Notice is Patrick S. Kirwan of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this Notice contact Mr. Kirwan at (202) 622–3110 (not a toll-free call).

FFI agreement for Participating FFI and Reporting Model 2 FFI

Notice 2013–69

SECTION I. Purpose.

This notice provides guidance to foreign financial institutions (FFIs) entering into an FFI agreement with the Internal Revenue Service (IRS) under section 1471(b) of the Internal Revenue Code and § 1.1471–4 of the Treasury Regulations[1] (the FFI agreement) to be treated as participating FFIs. This notice also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of an FFI agreement, as modified by the IGA.

Section II of this notice provides background on the statutory and regulatory requirements for FFIs to be exempt from withholding under chapter 4 of the Internal Revenue Code (Code). Section III of this notice provides a description of the general responsibilities of participating FFIs and reporting Model 2 FFIs and some of the intended updates to the regulations under chapters 4 and 61 and related forms. Section IV of this notice de-

[1]Unless otherwise provided, all citations in this notice and the draft FFI agreement are to the Internal Revenue Code of 1986 and to the income tax regulations thereunder.

scribes the procedures for FFIs to register for participating FFI or reporting Model 2 FFI status.

Section V of this notice provides the draft FFI agreement, which substantially incorporates the provisions set forth in §1.1471–4. The FFI agreement will be finalized by December 31, 2013.

SECTION II. Background and Scope.

.01 *Background*. On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111–147 (H.R. 2847) (the Act) was enacted into law. Section 501(a) of the Act added chapter 4 (sections 1471–1474) to Subtitle A of the Code. Section 1471(a) generally requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an FFI, unless the FFI has an agreement requiring such FFI to satisfy the obligations specified in section 1471(b). An FFI that has entered into, and has in effect with the IRS, an FFI agreement is treated as a participating FFI and is not subject to withholding under section 1471.

On January 28, 2013, the Treasury Department and the IRS issued final regulations under chapter 4 (sections 1471–1474) in T.D. 9610 (78 FR 5874). The general requirements of an FFI agreement are described in §1.1471–4, which provides the substantive requirements applicable to a participating FFI under the FFI agreement. The withholding, due diligence, reporting of U.S. accounts, and expanded affiliate group requirements of a participating FFI are described in §1.1471–4(a) through (e). A participating FFI's procedures for complying with the FFI agreement, remediating an event of default, addressing legal prohibitions against reporting U.S. accounts or withholding, and filing refund claims for account holders are described in §1.1471–4(f) through (i). The draft FFI agreement provided in section V of this notice incorporates the requirements in §1.1471–4.

In cases in which foreign law would prevent an FFI from complying with the terms of an FFI agreement, the Treasury Department has collaborated with other governments to develop two alternative model intergovernmental agreements (IGAs) that facilitate FATCA implementation and further reduce burdens on FFIs in partner jurisdictions. Under a Model 1 IGA, reporting financial institutions under an applicable Model 1 IGA (reporting Model 1 FFIs) would satisfy their chapter 4 requirements by reporting specified information about U.S. accounts to their government, followed by the automatic exchange of that information on a government-to-government basis with the United States. Under a Model 2 IGA, reporting Model 2 FFIs would report specified information about U.S. accounts directly to the IRS in a manner consistent with the final regulations (as modified by the applicable Model 2 IGA), supplemented by a government-to-government exchange of information on request. Accordingly, an FFI, or branch of an FFI, that is a reporting Model 2 FFI will apply §1.1471–4, as well as the terms of the FFI agreement, as modified by the applicable Model 2 IGA.

.02 *Covered Entities*. An FFI that has one or more branches (including its home office or a U.S. branch) that can comply with the terms of the FFI agreement is eligible to enter into an FFI agreement. A branch of such an FFI that cannot, under the laws of the jurisdiction in which such branch is located, satisfy all of the terms of the FFI agreement will be treated as a limited branch (as defined in the FFI agreement) and will be subject to withholding under section 1471 as a nonparticipating FFI. A reporting Model 1 or 2 FFI that has a branch located outside of a Model 1 or 2 IGA jurisdiction may enter into an FFI agreement with respect to such branch in order for the branch to be treated as a participating FFI.

A reporting Model 2 FFI that registers with the IRS to obtain a global intermediary identification number (GIIN) and complies with the terms of the FFI agreement, as modified by the applicable Model 2 IGA, will be treated as complying with the requirements of, and not subject to withholding under, section 1471. The FFI agreement provided in section V of this notice incorporates the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI.

The qualified intermediary (QI), withholding foreign partnership (WP), and withholding foreign trust (WT) agreements are being modified to address new requirements under chapter 4 in addition to chapter 3, and these requirements will be incorporated into all QI, WP, and WT agreements that are in effect on or after June 30, 2014. The updated QI agreement will incorporate by reference the requirements of the FFI agreement (including the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI) and shall apply to any foreign branch of the QI that is treated as a participating FFI or reporting Model 2 FFI. In the case of an FFI that is a participating FFI or reporting Model 2 FFI and is also a WP or WT, the updated WP or WT agreement, as applicable, will incorporate by reference the requirements of the FFI agreement (including the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI).

In general, the FFI agreement does not apply to a reporting Model 1 FFI, or any branch of such an FFI, unless the reporting Model 1 FFI has a branch located outside of a Model 1 IGA jurisdiction that is treated as a participating FFI or reporting Model 2 FFI. In such a case, the terms of an FFI agreement apply to the operations of the branch treated as a participating FFI or reporting Model 2 FFI.

SECTION III. General Responsibilities and Related Updates to Regulations and Forms.

.01 *General Responsibilities*.

(A) Participating FFIs. A participating FFI agrees to satisfy the obligations as generally described in this section III(01) and as further described in the FFI agreement. Pursuant to section 1471(b) and §1.1471–4, a participating FFI must comply with certain due diligence, reporting, and other requirements with respect to its financial accounts. It must also withhold and deposit tax with respect to withholdable payments made to recalcitrant account holders (as defined in § 1.1471–5(g)) and nonparticipating FFIs (as defined in § 1.1471–1(b)(75)). A participating FFI is also required to verify its compliance with the requirements of the FFI agreement by periodically certifying to the IRS about its satisfaction of the requirements. For an FFI to maintain its status as a participating FFI, the FFI agreement requires that each member of the FFI group other than an exempt ben-

eficial owner maintains one of the following chapter 4 statuses: participating FFI (including a reporting Model 2 FFI), limited FFI, registered deemed-compliant FFI (including a reporting Model 1 FFI), or nonreporting Model 1 or 2 FFI.

(B) Reporting Model 2 FFIs. Unless modified by the terms of an applicable Model 2 IGA, a reporting Model 2 FFI must comply with the terms of the FFI agreement by fulfilling the responsibilities of a participating FFI provided in the FFI agreement (as generally described in section III(01)(A) of this notice), which includes, for example, the requirement to withhold on withholdable payments made to recalcitrant account holders and nonparticipating FFIs. The FFI agreement incorporates into each relevant section of the FFI agreement the modifications that apply to a reporting Model 2 FFI under the applicable Model 2 IGA, which include, for example, the suspension of withholding on non-consenting U.S. accounts. Therefore, in the absence of any modification to the terms of the FFI agreement for a reporting Model 2 FFI, a reporting Model 2 FFI may substitute "reporting Model 2 FFI" with the term "participating FFI" to determine its requirements to comply with the FFI agreement.

.02 *Related Updates to Regulations*.

(A) Coordination with Chapter 61 (Form 1099 Reporting). The Treasury Department and the IRS intend to issue regulations under chapter 61 to provide that a payor other than a U.S. payor or U.S. middleman as defined in §1.6049–5(c)(5) (i.e., a non-U.S. payor) that is a participating FFI (including a reporting Model 2 FFI) or reporting Model 1 FFI will satisfy its reporting obligations under chapter 61 with respect to a U.S. payee (or presumed U.S. payee) that is a non-exempt recipient if such FFI reports such account holder pursuant to the FFI agreement or the applicable Model 1 IGA (including if the FFI reports an account, such as a depository account with a balance or value that does not exceed $50,000, as a U.S. account). Notwithstanding the preceding sentence, an FFI is required to report on Form 1099 to the extent the FFI is required to apply backup withholding to the payment.

(B) Coordination with Section 3406 (Backup Withholding). The Treasury Department and the IRS intend to issue regulations to provide that withholding under section 3406 (backup withholding) will not apply to a reportable payment if a participating FFI (including a reporting Model 2 FFI) has withheld on the payment under §1.1471–4(b). A reportable payment that is not subject to withholding under chapter 4 remains subject to withholding under section 3406. Alternatively, a participating FFI may elect to satisfy its withholding obligations under §1.1471–4(b) with respect to accounts held by recalcitrant account holders that are known U.S. persons by withholding pursuant to section 3406 at the backup withholding rate. For example, Custodian A, a reporting Model 2 FFI that is also a nonqualified intermediary and non-U.S. payor, receives a reportable payment subject to backup withholding under section 3406 as an intermediary on behalf of its account holder, X. The reportable payment is also a withholdable payment under chapter 4. X, a known U.S. person, refuses to provide consent for Custodian A to report the account as a specified U.S. account. Therefore, Custodian A reports X's account as a non-consenting U.S. account and does not have to withhold on the account pursuant to the terms of the applicable Model 2 IGA. Even though Custodian A is not required to withhold on the withholdable payment made to the account under §1.1471–4(b) as modified by the applicable Model 2 IGA, Custodian A must, however, provide its withholding agent with sufficient information for such agent to backup withhold and report on the reportable payment to the extent required under §31.3406(g)–1(e). If, later, the conditions under the applicable Model 2 IGA for suspending withholding are not met, and Custodian A is required to start withholding on withholdable payments made to X as a recalcitrant account holder, Custodian A may elect to continue to backup withhold on reportable payments made to X. Such backup withholding will satisfy the obligation that Custodian A would otherwise have to withhold on withholdable payments at the 30-percent rate under §1.1471–4(b), as modified by the applicable Model 2 IGA. If Custodian A does not elect to apply section 3406 backup withholding, it must withhold on withholdable payments made to X under §1.1471–4(b) as modified under the applicable Model 2 IGA, and such withholding will satisfy its obligations to backup withhold under section 3406 with respect to such payments. Custodian A is still required to backup withhold under section 3406, however, to the extent a reportable payment that is not a withholdable payment (for example, broker proceeds paid inside the U.S. by a non-U.S. payor) is made to X.

(C) Transitional Reporting of Foreign Reportable Amounts Paid to Nonparticipating FFIs. The Treasury Department and the IRS intend to modify the transitional reporting requirements under the chapter 4 regulations for calendar years 2015 and 2016 with respect to payments of foreign reportable amounts made to nonparticipating FFIs. The current rules provide that a participating FFI is required to report the aggregate amount of foreign reportable amounts paid to each payee that is a nonparticipating FFI, even where such payments are not associated with a financial account. The modified rules will provide that a participating FFI is only required to report foreign reportable amounts paid with respect to a financial account that it maintains for a nonparticipating FFI. Such reporting will be required on Form 8966 instead of Form 1042-S. Additionally, a participating FFI will be permitted to report all payments made to the account if it does not want to distinguish foreign reportable amounts from other amounts paid to the account. The modified rules will further provide that if the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder, and the participating FFI is unable to obtain consent, the participating FFI may report the aggregate number of accounts held by all such nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid to such accounts.

(D) Direct Reporting NFFEs or Sponsored Direct Reporting NFFEs. The Treasury Department and the IRS intend to issue regulations under chapter 4 to provide that a passive nonfinancial foreign entity (NFFE) will not include an NFFE that is a direct reporting NFFE or sponsored direct reporting NFFE. A direct reporting NFFE will mean an NFFE that elects to report on Form 8966 directly to the IRS certain information about its direct or indirect substantial U.S. owners, in

lieu of providing such information to withholding agents or participating FFIs with which the NFFE holds a financial account. The chapter 4 regulations will be modified to provide that a direct reporting NFFE will be treated as an excepted NFFE. A direct reporting NFFE will be required to register with the IRS to obtain a GIIN and to agree to comply with the provisions to be provided in the modified chapter 4 regulations on reporting information about its substantial U.S. owners directly to the IRS on Form 8966. Instructions to the FATCA registration website will be modified to provide instructions to direct reporting NFFEs on how to register. In general, withholding agents and participating FFIs will identify and document a direct reporting NFFE in a manner similar to how withholding agents and participating FFIs will document a participating FFI, including by verifying that the GIIN of the direct reporting NFFE is listed on the IRS FFI List. Notwithstanding that a direct reporting NFFE will document itself to withholding agents and participating FFIs in a manner similar to a participating FFI, it will not be treated as a participating FFI and will not enter into an FFI agreement. Therefore, since the definition of a passive NFFE will be updated to exclude a direct reporting NFFE, an account held by a direct reporting NFFE will not be treated as a U.S. account and will not be reported by a participating FFI with which the direct reporting NFFE has a financial account to the IRS. The Treasury Department and the IRS intend to modify the regulations under chapter 4 to allow an entity to sponsor one or more direct reporting NFFEs (sponsored direct reporting NFFEs), which will require the sponsoring entity to report on Form 8966 directly to the IRS (on the sponsored direct reporting NFFE's behalf) information about each sponsored direct reporting NFFE's direct or indirect substantial U.S. owners.

(E) NFFEs that are QIs, WPs, and WTs. The Treasury Department and the IRS intend to modify the chapter 4 regulations to provide that a passive NFFE does not include an NFFE that is acting as a QI or that is a WP or WT. An NFFE that is acting as a QI and receiving a withholdable payment on behalf of a passive NFFE will be required pursuant to the updated QI agreement to report directly to the IRS information about the passive NFFE and its substantial U.S. owners, in addition to the QI's other obligations as a withholding agent under chapters 3 and 4. An NFFE that is a WP or WT will be required pursuant to the updated WP or WT agreement, as applicable, to report directly to the IRS information about its direct or indirect substantial U.S. owners, in addition to its other obligations as a withholding agent under chapters 3 and 4.

(F) Section 953(d) Entities. The Treasury Department and the IRS intend to modify the definition of U.S. person in the chapter 4 regulations to include a foreign insurance company that is not a specified insurance company and that elects pursuant to section 953(d) to be subject to U.S. income tax as if it were a U.S. insurance company.

.03 *Update to Relevant Forms*. The IRS intends to update all relevant IRS forms to the extent necessary to incorporate and implement the changes described above in this section III. This includes, for example, Form W-8BEN-E which has been posted as a draft on the IRS.gov website and does not currently include a chapter 4 status for direct reporting NFFEs.

SECTION IV. Registration for Participating FFIs and Reporting Model 2 FFIs.

.01 *In General*. An FFI may register on Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, via the FATCA registration website available at *http://www.irs.gov/fatca* to enter into an FFI agreement on behalf of its branches (including its home office) so that each of such branches may be treated as a participating FFI. A reporting Model 2 FFI may also register on the FATCA registration website, on behalf of one or more of its branches (including its home office), to obtain a GIIN and to agree to comply with the terms of an FFI agreement, as modified by an applicable Model 2 IGA. See the FATCA registration user guide for more information about the FATCA registration process. Each branch of a participating FFI or reporting Model 2 FFI that is registered, other than a limited branch, will be issued a GIIN to be used in connection with complying with the FFI agreement and to identify itself to withholding agents.

.02 *Registration for Sponsoring Entities*. An entity that agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to §1.1471–5(f)(1)(i)(F) or §1.1471–5(f)(2)(iii) may register with the IRS via the FATCA registration website to be treated as a sponsoring entity. If a sponsoring entity also seeks to obtain status as a participating FFI or reporting Model 2 FFI, the entity must separately register for participating FFI or reporting Model 2 FFI status and may do so via the FATCA registration website. The IRS intends to update the FATCA registration user guide to the FATCA registration website to provide information on the registration process for sponsored entities.

SECTION V. Draft FFI Agreement.

The text of the draft FFI agreement is set forth below. The IRS will not provide signed copies of the FFI agreement.

Section 1. PURPOSE AND SCOPE

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Section 11. FFI GROUP

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Section 13. MISCELLLANEOUS PROVISIONS

Section 1. PURPOSE AND SCOPE.

.01 Purpose. THIS AGREEMENT is made under, and in pursuance of, section 1471(b) and §1.1471–4:

WHEREAS, an FFI has completed and submitted a FATCA registration form in accordance with its instructions, which registration indicated that one or more of its branches seeks to be treated as a participating FFI, and has represented that such branches are eligible to, and will comply with, the terms of the FFI agreement;

WHEREAS, this agreement establishes the FFI's due diligence, withholding, information reporting, tax return filing, and other obligations as a participating FFI under sections 1471 through 1474 and §§1.1471–1 through 1.1474–6;

NOW THEREFORE, the terms of this agreement are as follows:

.02 General Obligations. An FFI that agrees to comply with the terms of this agreement applicable to one or more of its branches will be treated as a participating FFI with respect to such branches, and such participating FFI branches will not be subject to withholding under section 1471. An FFI (or branch of an FFI) must act in its capacity as a participating FFI with respect to all the accounts that it maintains for purposes of reporting such accounts and must act as a withholding agent to the extent required under this agreement. A branch of an FFI that cannot satisfy all of the terms of this agreement under the laws of the jurisdiction in which such branch is located will be treated as a limited branch (as defined in this agreement) and will be subject to withholding under section 1471 as a nonparticipating FFI.

Section 2. DEFINITIONS

01. Scope of Definitions.

(A) In General. Unless specifically modified in this agreement, all terms used in this agreement have the same meaning as provided in sections 1471 through 1474, including the final regulations thereunder. See § 1.1471–1(b) for a comprehensive list of chapter 4 terms and definitions.

(B) Reporting Model 2 FFIs. A reporting Model 2 FFI must use the definitions set forth in the applicable Model 2 IGA with respect to the accounts that it maintains in the Model 2 IGA jurisdiction, unless the Model 2 IGA jurisdiction permits the use of a definition provided in this agreement or §1.1471–1(b) in lieu of a definition set forth in the applicable Model 2 IGA, and such application does not frustrate the purposes of the Model 2 IGA.

.02 Account/Financial account. "Account" or "financial account" means a financial account described in §1.1471–5(b).

.03 Account holder. "Account holder" means the person who holds an account, as determined under §1.1471–5(a)(3).

.04 Account maintained by a participating FFI. "Account maintained by a participating FFI" means an account that a participating FFI is treated as maintaining under §1.1471–5(b)(5).

.05 Active NFFE. In the case of a reporting Model 2 FFI, "active NFFE" means an active NFFE as defined in the applicable Model 2 IGA.

.06 Backup withholding. "Backup withholding" means the withholding required under section 3406.

.07 Branch. "Branch" means a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the FFI, and includes a disregarded entity of an FFI. The term "branch" also means a unit, business, or office of an FFI that is located in a jurisdiction in which it is a resident, and a unit, business, or office in the jurisdiction in which it is created or organized. All units, businesses, and offices of a participating FFI in a single jurisdiction must be treated as a single branch.

.08 Branch that maintains the account. A branch maintains an account if the rights and obligations of the participating FFI and the account holder with regard to such account (including any assets held in the account) are governed by the laws of the jurisdiction in which the branch is located. See §1.1471–5(b)(5) for when an FFI is treated as maintaining an account.

.09 Certified deemed-compliant FFI. "Certified deemed-compliant FFI" means an FFI described in §1.1471–5(f)(2) and includes a nonreporting FFI under a Model 1 IGA and a nonreporting FFI treated as a certified deemed-compliant FFI under a Model 2 IGA.

.10 Chapter 4 reportable amount. "Chapter 4 reportable amount" means an amount described in §1.1474–1(d)(2)(i).

.11 Chapter 4 status. "Chapter 4 status" means the status of a person as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a certified or registered deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE (or, in the case of a reporting Model 2 FFI, an active NFFE), a direct reporting NFFE, a sponsored direct reporting NFFE, or a passive NFFE.

.12 Compliance FI. "Compliance FI" means a financial institution described in §1.1471–4(f)(2)(ii)(A).

.13 Custodial institution. "Custodial institution" means an entity described in §1.1471–5(e)(1)(ii).

.14 Deemed-compliant FFI. "Deemed-compliant FFI" means an FFI that is treated, pursuant to section 1471(b)(2) and §1.1471–5(f), as meeting the requirements of section 1471(b).

.15 Depository institution. "Depository institution" means an entity described in §1.1471–5(e)(1)(i).

.16 Effective date of the FFI agreement. The effective date of the FFI agreement with respect to an FFI or a branch of an FFI that is a participating FFI is the date on which the IRS issues a GIIN to the FFI or branch. For a participating FFI that receives a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

.17 Entity account. "Entity account" means an account held by one or more entities.

.18 Excepted NFFE. "Excepted NFFE" means an NFFE that is described in §1.1472–1(c)(1).

.19 Exempt beneficial owner. "Exempt beneficial owner" means any person described in §1.1471–6(b) through (g) and

includes any person treated as an exempt beneficial owner under an applicable Model 1 or Model 2 IGA.

.20 Exempt recipient. "Exempt recipient" means a person described in §1.6049–5(c)(1)(ii) (for interest, dividends, and royalties), a person described in §1.6045–2(b)(2)(i) (for broker proceeds), and a person described in §1.6041–3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income).

.21 Financial institution (FI). "Financial institution" or "FI" means an entity described in §1.1471–5(e)(1) and includes a financial institution as defined in an applicable Model 1 or Model 2 IGA.

.22 FFI group. "FFI group" means an expanded affiliated group (as defined in §1.1471–5(i)) that includes one or more participating FFIs or, in the case of a reporting Model 2 FFI, a group of related entities as defined in an applicable Model 2 IGA.

.23 FFI member. "FFI member" means an FFI that is a member of an FFI group.

.24 Foreign financial institution (FFI). "Foreign financial institution" or "FFI" means an entity described in §1.1471–5(d).

.25 Foreign reportable amount. "Foreign reportable amount" means a payment of FDAP income as defined in §1.1473–1(a)(2)(i)(A) that would be a withholdable payment if paid by a U.S. person.

.26 Form 945. "Form 945" means IRS Form 945, *Annual Return of Withheld Federal Income Tax.*

.27 Form 1042. "Form 1042" means IRS Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

.28 Form 1042-S. "Form 1042-S" means IRS Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.

.29 Form 1099. "Form 1099" means IRS Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*; IRS Form 1099-DIV, *Dividends and Distributions*; IRS Form 1099-INT, *Interest Income*; IRS Form 1099-MISC, *Miscellaneous Income*; IRS Form 1099-OID, *Original Issue Discount*, and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

.30 Form 8957. "Form 8957" means IRS Form 8957, *Foreign Account Tax Compliance Act (FATCA) Registration*, and includes the online version of the form on the FATCA registration website available at *http://www.irs.gov/fatca.*

.31 Form 8966. "Form 8966" means IRS Form 8966, *FATCA Report*, and includes the FATCA Report XML.

.32 Individual account. "Individual account" means an account held by one or more individuals.

.33 Intergovernmental Agreement (IGA). "Intergovernmental Agreement" or "IGA" means any applicable Model 1 or Model 2 IGA.

(A) Model 1 IGA. "Model 1 IGA" means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS.

(B) Model 2 IGA. "Model 2 IGA" means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the terms of this agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS.

.34 Lead FI. "Lead FI" means an FFI or U.S. financial institution that is designated by members of the FFI group to initiate and manage FATCA registration via the FATCA registration website for such FFI members of the FFI group and that agrees to the responsibilities described in section 11.02 of this agreement.

.35 Limited branch. "Limited branch" means a branch of a participating FFI described in §1.1471–4(e)(2)(iii) and section 7.04 of this agreement. With respect to a reporting Model 2 FFI, a limited branch is another branch of the reporting Model 2 FFI that operates in a jurisdiction that prevents such branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI, or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited branches under §1.1471–4(e)(2)(v), and for which the reporting Model 2 FFI meets the terms of the applicable Model 2 IGA with respect to the branch.

.36 Limited FFI. "Limited FFI" means an FFI described in §1.1471–4(e)(3)(ii). With respect to a reporting Model 2 FFI, a limited FFI is a related entity that operates in a jurisdiction that prevents the entity from fulfilling the requirements of a participating FFI or deemed-compliant FFI or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited FFIs under §1.1471–4(e)(3)(iv), and for which the reporting Model 2 FFI meets the requirements of the applicable Model 2 IGA with respect to the entity.

.37 New account. "New account" means an account other than a preexisting account.

.38 Non-consenting U.S. account. For purposes of a reporting Model 2 FFI, a "non-consenting U.S. account" has the meaning that such term has under an applicable Model 2 IGA.

.39 Non-exempt recipient. "Non-exempt recipient" means a person that is not an exempt recipient.

.40 Non-financial foreign entity (NFFE). "Non-financial foreign entity" or "NFFE" means a foreign entity that is not a financial institution (including a territory NFFE as defined in §1.1471–1(b)(123)). The term also means a foreign entity treated as an NFFE under an applicable Model 1 or 2 IGA.

.41 Nonparticipating FFI. "Nonparticipating FFI" means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

.42 Nonqualified intermediary (NQI). "Nonqualified intermediary" or an "NQI" means an entity described in §1.1441–1(c)(14).

.43 Non-U.S. account. "Non-U.S. account" means an account that is not a U.S. account and that does not have an account holder that is a nonparticipating FFI or recalcitrant account holder.

.44 Non-U.S. payor. "Non-U.S. payor" means a payor other than a U.S. payor.

.45 Nonwithholding foreign partnership (NWP). "Nonwithholding foreign partnership" or "NWP" means a foreign

partnership other than a withholding foreign partnership.

.46 Nonwithholding foreign trust (NWT). "Nonwithholding foreign trust" or "NWT" means a foreign trust other than a withholding foreign trust.

.47 Obligation. "Obligation" means an account, instrument, contract, debt, or equity interest.

.48 Offshore obligation. "Offshore obligation" means an obligation described in §1.1471–1(b)(82).

.49 Owner-documented FFI. "Owner-documented FFI" means an FFI described in §1.1471–5(f)(3).

.50 Participating FFI. "Participating FFI" means an FFI, or branch of an FFI, that has registered with the IRS to comply with the terms of, and to enter into, this agreement with the IRS, and to obtain a GIIN. See also the definition of reporting Model 2 FFI.

.51 Passive NFFE. "Passive NFFE" means an NFFE other than an excepted NFFE (or, in the case of a reporting Model 2 FFI, an active NFFE), a qualified intermediary, a withholding foreign partnership, a withholding foreign trust, or an exempt beneficial owner.

.52 Payee. "Payee" means a person described in §1.1471–3(a).

.53 Preexisting account. "Preexisting account" means any account maintained by the participating FFI that is outstanding on or before the effective date of the FFI agreement and includes an account described in §1.1471–1(b)(98)(ii).

.54 Recalcitrant account holder. "Recalcitrant account holder" means an account holder described in §1.1471–5(g).

.55 Registered deemed-compliant FFI. "Registered deemed-compliant FFI" means an FFI described in §1.1471–5(f)(1), and includes a reporting Model 1 FFI, a QI branch of a U.S. financial institution that is a reporting Model 1 FFI, and a nonreporting FFI treated as a registered deemed-compliant FFI under a Model 2 IGA.

.56 Reporting Model 1 FFI. "Reporting Model 1 FFI" means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 1 IGA and that has registered with the IRS to obtain a GIIN.

.57 Reporting Model 2 FFI. "Reporting Model 2 FFI" means an FFI or branch of an FFI treated as a reporting financial institution under an applicable Model 2 IGA and that has registered with the IRS to comply with the terms of this agreement, as modified by an applicable Model 2 IGA, and to obtain a GIIN.

.58 Reportable payment. "Reportable payment" means a payment of interest or dividends (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)).

.59 Responsible officer. "Responsible officer" means a person described in §1.1471–1(b)(108).

.60 Specified insurance company. "Specified insurance company" means an insurance company described in §1.1471–5(e)(1)(iv).

.61 Sponsoring entity. "Sponsoring entity" means an entity that has registered with the IRS and agrees to perform the obligations of one or more sponsored entities pursuant to §1.1471–5(f) or §1.1472–1 and includes a sponsoring entity described in an applicable Model 1 or 2 IGA.

.62 Territory FI. "Territory FI" means a financial institution that is incorporated or organized under the laws of any U.S. territory, excluding a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company.

.63 U.S. account. "U.S. account" means an account described in §1.1471–5(a).

.64 U.S. branch treated as a U.S. person. "U.S. branch treated as a U.S. person" means a U.S. branch of a participating FFI, reporting Model 1 or 2 FFI, or registered deemed-compliant FFI that is treated as a U.S. person under §1.1441–1(b)(2)(iv)(A).

.65 U.S. source FDAP income. "U.S. source FDAP income" means income described in §1.1473–1(a)(2).

.66 U.S. payor. "U.S. payor" means a U.S. payor or U.S. middleman as defined in §1.6049–5(c)(5).

.67 Withholding agent. "Withholding agent" means a person described in §1.1473–1(d).

.68 Withholdable payment. "Withholdable payment" means a payment described in §1.1473–1(a).

Section 3. DUE DILIGENCE REQUIREMENTS FOR DOCUMENTATION AND IDENTIFICATION OF ACCOUNT HOLDERS AND NONPARTICIPATING FFI PAYEES

.01 In General. The due diligence procedures described in this section 3 generally apply to a participating FFI (other than a U.S. branch treated as a U.S. person). The participating FFI must perform the due diligence procedures described in this section 3 to determine which of the accounts that it maintains are (i) U.S. accounts, (ii) accounts held by recalcitrant account holders, or (iii) accounts held by nonparticipating FFIs. If the participating FFI makes a withholdable payment to a payee other than an account holder, the participating FFI must also perform due diligence procedures to determine if withholding is required under section 4 of this agreement.

(A) Reporting Model 2 FFIs. A reporting Model 2 FFI must apply the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to all accounts that such reporting Model 2 FFI maintains within the Model 2 IGA jurisdiction unless the Model 2 IGA jurisdiction permits the reporting Model 2 FFI to apply the due diligence procedures of this agreement, as described in this section 3. A reporting Model 2 FFI may apply the due diligence procedures described in section 3.02 of this agreement separately for each section of Annex I (for example, preexisting entity accounts) with respect to all accounts or with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained). A reporting Model 2 FFI that applies the due diligence procedures of section 3.02 of this agreement must continue to apply these procedures consistently in all subsequent years unless there has been a material modification to section 3.02 of this agreement or §1.1471–4(c). A reporting Model 2 FFI must apply the due diligence procedures of section 3.02(B) of this agreement with respect to an entity payee that is not an account holder and that is receiving a withholdable payment.

(B) U.S. Branch of a Participating FFI treated as a U.S. Person. A U.S. branch of a participating FFI that is

treated as a U.S. person is required to apply the due diligence requirements described in §1.1471–3 to determine the chapter 4 status of account holders and entity payees and must apply the due diligence requirements of chapter 3 or chapter 61 (as applicable) with respect to individual account holders. See section 4.02(C) of this agreement for special withholding rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

.02 Due Diligence Procedures.

(A) Identification and Documentation of Account Holders. A participating FFI is required to determine the chapter 4 status of each holder of an account maintained by the participating FFI and to identify each account that is a U.S. account, non-U.S. account, account held by a recalcitrant account holder, or account held by a nonparticipating FFI. For this purpose, the participating FFI is required to apply the due diligence procedures for accounts to the extent, and in the manner, required under §1.1471–4(c) within the applicable time periods described in §1.1471–4(c)(3), (c)(4), and (c)(5). A participating FFI that is unable to reliably associate valid documentation with an account holder to determine the chapter 4 status of such account holder must apply the presumption rules of section 3.04 of this agreement. See §1.1471–4(d)(2) for other account holders to which a participating FFI's due diligence requirements apply.

(B) Identification and Documentation of Certain Payees other than Account Holders. For determining when withholding is required under section 4 of this agreement, the participating FFI is required to reliably associate the payment with documentation that meets the requirements of section 3.03(B) of this agreement when making a withholdable payment to an entity payee with respect to an obligation that is not an account. If an account holder receives a withholdable payment and is not treated as the payee of the payment, in addition to documenting the chapter 4 status of the account holder, the participating FFI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding is required. See, however, §1.1471–3(e)(4)(vi) for when the participating FFI may rely on the chapter 4 status determination of a payee provided by a participating FFI or registered deemed-compliant FFI that is acting as an intermediary or that is a flow-through entity. A participating FFI must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee if, prior to the time of payment, it cannot reliably associate the payment with documentation meeting the requirements of section 3.03(B) of this agreement. See, however, §1.1471–3(c)(7) for requirements that apply for documentation received after the date of a payment. With respect to a preexisting account, a participating FFI must, to the extent required under §1.1471–4(c), determine the chapter 4 status of the payee within the applicable time period described in §1.1471–4(c)(3) or, if unable to do so, must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee.

.03 Additional Requirements for Identification and Documentation of Account Holders and Payees.

(A) In General. To the extent that the participating FFI is required to retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee, the participating FFI must do so in accordance with the requirements of §1.1471–4(c)(2). The participating FFI must also institute procedures that meet the requirements of §1.1471–4(c)(2) to ensure that any change in circumstances is identified with respect to an account. For the definition of a change in circumstances, see §1.1471–4(c)(2)(iii). In the case of a reporting Model 2 FFI that applies the procedures of Annex I of the applicable Model 2 IGA with respect to an account, a change of circumstance has the meaning that such term has under Annex I of the applicable Model 2 IGA.

(B) Requirements for Documentation.

(1) In General. To the extent the participating FFI obtains withholding certificates, substitute certification forms, written statements, or documentary evidence, such documentation must meet the requirements set forth in §1.1471–3(c). Sections 1.1471–3(c)(3) through (5) provide the requirements of valid withholding certificates, written statements, and documentary evidence. Section 1.1471–3(c)(6) provides other applicable rules for withholding certificates, written statements, and documentary evidence, including their periods of validity and electronic transmission requirements. Sections 1.1471–3(c)(8) and (9) provide requirements related to the sharing of documentation and reliance by a participating FFI on documentation collected by another person. A participating FFI must obtain the documentation specified in §1.1471–3(d) to establish the chapter 4 status of an entity account holder or an entity payee other than an account holder. A participating FFI may rely on documentation that meets the requirements of §1.1471–3(c) until the expiration date of such documentation or until there is a change in circumstances (as defined in §1.1471–4(c)(2)(iii)) that affects the account holder or payee's claim of chapter 4 status. If the participating FFI is unable to obtain the required documentation within 90 days of the expiration date of the documentation or a change in circumstances, the participating FFI must apply the presumption rules of section 3.04 of this agreement with respect to the account or payee until valid documentation is obtained upon which the FFI is permitted to rely.

(2) Requirements for Reporting Model 2 FFIs. To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to an account, such documentation must meet the requirements described in the applicable Model 2 IGA, and the reporting Model 2 FFI may rely on such documentation until the expiration date of such documentation or until there is a change in circumstances (as defined in Annex I of the applicable Model 2 IGA) that affects the account holder or payee's claim of chapter 4 status. Upon the expiration of the documentation or a change in circumstances, the reporting Model 2 FFI must obtain new or additional documentation or must redetermine the status of the account in accordance with the due diligence procedures set forth in Annex I of the applicable Model 2 IGA. If an account holder of a new account (as defined in the applicable Model 2 IGA) has a change in circumstances that would cause such account to

be treated as a U.S. account and the account holder refuses to provide consent for such account to be reported, the reporting Model 2 FFI must report the account as a non-consenting U.S. account as described in section 6.03(B) of this agreement.

04. Presumption Rules in Absence of Valid Documentation. If the participating FFI is required to, but is unable to, obtain a record of the documentation that meets the requirements of this section 3 within the applicable time period as referenced in section 3.02 of this agreement, or if the participating FFI knows or has reason to know that documentation provided for an account holder or payee is unreliable or incorrect (as determined applying the standards of knowledge referenced in §1.1471–4(c)(2), or as determined under Annex I of the applicable Model 2 IGA in the case of a reporting Model 2 FFI that applies such procedures with respect to an account), the FFI is required to apply the presumption rules described in this section 3.04 until valid documentation is provided for the account holder or payee upon which the FFI is permitted to rely. However, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely on such documentation until the earlier of 30 days following the change in circumstances or the date new documentation is obtained upon which the participating FFI may rely to document the chapter 4 status of the account holder or payee. Additionally, a participating FFI may choose to escrow amounts withheld (in lieu of depositing such amounts as tax withheld) with respect to an account holder or payee after the date of a change in circumstances until the earlier of the date that is 90 days after the date the first withholdable payment is made to the account following the change in circumstances or the end of the calendar year in which such withholdable payment is made.

(A) Payee or Account Held by an Entity. With respect to a withholdable payment made to a payee other than an account holder, a participating FFI must apply the presumption rules of §1.1471–3(f) (as applicable to entities). The presumption rules of §1.1471–3(f) (as applicable to entities) also apply to an account held by an entity. However, in the case of an account held by a passive NFFE that provides the documentation described in §1.1471–3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners required under §1.1471–3(d)(12)(iii), the participating FFI must treat the account as held by a recalcitrant account holder in accordance with §1.1471–5(g)(2)(iv).

(B) Account Held by an Individual. With respect to an account held by an individual, the participating FFI must treat the account as held by a recalcitrant account holder in accordance with §1.1471–5(g) and classify the type of recalcitrant account holder in accordance with the chapter 4 reporting pools described in §1.1471–4(d)(6)(i).

(C) Presumption Rules for Reporting Model 2 FFIs. To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, such FFI must apply the procedures of the Annex I of the applicable Model 2 IGA to treat the account as held by a nonparticipating FFI or non-consenting U.S. account. A reporting Model 2 FFI that applies the due diligence procedures described in section 3.02 of this agreement with respect to an account must treat an account that would otherwise be treated as held by a recalcitrant account holder as a non-consenting U.S. account to the extent required under the applicable Model 2 IGA. With respect to a withholdable payment made to a payee other than an account holder, a reporting Model 2 FFI must apply the presumption rules of §1.1471–3(f) (as applicable to entities).

Section 4. WITHHOLDING REQUIREMENTS.

.01 Withholding Requirements.

(A) In General. A participating FFI is generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to an account maintained by such participating FFI that is held by a recalcitrant account holder or a nonparticipating FFI. A participating FFI is also generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to a payee that is (or is presumed to be) a nonparticipating FFI with respect to an obligation that is not an account. There is no requirement to withhold on foreign passthru payments for payments made before January 1, 2017 and, therefore, no such requirement is addressed in this agreement. See section 7.03 of this agreement for the requirements of a participating FFI that is prohibited by law from withholding as required under this section 4.02.

(B) Modification of Withholding Requirements for a Reporting Model 2 FFI. Notwithstanding the withholding requirements described in section 4.01(A) of this agreement, a reporting Model 2 FFI is not required to deduct and withhold tax on any withholdable payment made to its non-consenting U.S. accounts, provided that the conditions under the applicable Model 2 IGA regarding the suspension of withholding relating to non-consenting U.S. accounts are met. If such conditions are not met, the reporting Model 2 FFI is required to treat its non-consenting U.S. accounts as held by recalcitrant account holders and is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to such accounts in accordance with section 4.02 of this agreement. In addition, a reporting Model 2 FFI is required to withhold in accordance with section 4.02 of this agreement on any withholdable payment made to a nonparticipating FFI that is an account holder or a payee other than an account holder.

(C) Special Withholding Requirements of U.S. Branch of a Participating FFI treated as a U.S. Person. A U.S. branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts it maintains that are held by U.S. nonexempt recipients (or presumed U.S. nonexempt recipients) will be treated as satisfying its withholding requirements under this section 4 and §1.1471–4(b) with respect to such account holders. For all other payees of a withholdable payment, a U.S. branch of a participating FFI must withhold to the extent required under sections 1471(a) and 1472. See section 3.01(B) of this agreement for special due diligence rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

(D) Election to Withhold under Section 3406 on Recalcitrant Account Holders that are Known U.S. Persons. With respect to recalcitrant account holders that are known U.S. persons and that receive withholdable payments, to the extent that the payment also constitutes a reportable payment, a participating FFI (including its U.S. branch that is not treated as a U.S. person) may elect to satisfy its withholding obligation under this section 4 and §1.1471–4(b) by applying backup withholding under section 3406 to such withholdable payments. Nothing in this section 4 or §1.1471–4(b) relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not also withholdable payments. See section 4.04(D) of this agreement for the coordination of backup withholding for a participating FFI that does not make the election described in this section 4.01(D) and that withholds under section 1471(b) with respect to a withholdable payment that is also a reportable payment that is made to a recalcitrant account holder that is a known U.S. person.

.02 General Rules for Withholding.

(A) Withholding Determination in General. A participating FFI is required to determine whether withholding applies at the time a withholdable payment is made by such participating FFI by applying the requirements of §1.1471–4(b) for determining the payee of the payment and reliably associating the payment with valid documentation for the payee. The exceptions to withholding described in §1.1471–2, including the exception for payments made under a grandfathered obligation and payments made to certain excepted accounts apply for purposes of determining whether withholding is required under this section 4. A participating FFI is not required to withhold on payments made to an account holder of a preexisting account until the expiration of the applicable time period referenced in the due diligence procedures of section 3.02(A) of this agreement for identifying (or presuming) the account as held by a nonparticipating FFI or recalcitrant account holder.

(B) Withholding Requirements for a Participating FFI that is an NQI, NWP, or NWT. A participating FFI that is an NQI, NWP, or NWT is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary, provided that it provides its withholding agent with sufficient information for such withholding agent to establish the portion of the payment (if any) that is allocable to recalcitrant account holders (in each of the chapter 4 withholding rate pools described in section 9.02(B) of this agreement), to payees that are nonparticipating FFIs, and to payees that are U.S. persons in accordance with §1.1471–4(b)(3). If a participating FFI elects to withhold under section 3406 with respect to recalcitrant account holders that are known U.S. persons as described in section 4.01(D) of this agreement, the participating FFI must provide its withholding agent with sufficient information for such withholding agent to establish the portion of the payment allocable to such account holders and to apply backup withholding. See §1.1471–3(c)(iii) and section 9 of this agreement for the requirements applicable to a participating FFI's withholding certificate, withholding statement, and associated documentation. If the payment is exempt from chapter 4 withholding, the information provided by the participating FFI to the withholding agent must also include the payee's chapter 4 status when specific payee information is required for purposes of chapter 3. A participating FFI must also provide the withholding agent with information regarding any account holders or payees of an intermediary or flow-through entity that holds an account with the participating FFI.

A participating FFI is required to withhold under §1.1471–4(b)(3) when it fails to provide sufficient information to its withholding agent or when it knows or has reason to know that the withholding agent has not withheld to the extent required under §1.1471–2(a)(i) with respect to its account holders. For example, if a participating FFI provides the documentation described in §1.1471–3(c)(3)(iii) to its withholding agent and, based on the amount of the payment that it receives from the withholding agent, it knows or has reason to know that the withholding agent has underwithheld on the payment, it is required to deduct and withhold tax from the payment to the extent of the underwithheld tax. A participating FFI is also required to withhold when it applies the dormant account procedures described in section 5.02 of this agreement.

(C) Withholding Requirements with Respect to Limited Branches and Limited FFIs. A participating FFI is required to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI to the extent required under §1.1471–4(b)(5). A participating FFI will have reason to know that an FFI is a limited branch if it makes a withholdable payment to an address in a jurisdiction other than the jurisdiction of the branch designated by the participating FFI as the branch that will receive payment. For example, if a participating FFI has designated Branch A, located in Jurisdiction A, as the branch that will be receiving a withholdable payment, and USFI, the withholding agent, makes a payment to Branch A at an address in Jurisdiction B, then USFI will have reason to know that the payment is made to an FFI that is a limited branch. See §1.1471–3(e)(3)(i).

.03 Liability for Failure to Withhold. A participating FFI that fails to withhold any tax under chapter 4 as required under section 4.02 of this agreement is liable for the amount of tax not withheld and any interest, additions to tax, and penalties that may apply under a relevant provision of the Code.

.04 Coordination with Other Withholding Provisions.

(A) In General. A participating FFI is a withholding agent for purposes of chapter 4, a withholding agent under chapter 3 with respect to a payment subject to withholding under §1.1441–2(a) or under sections 1445 or 1446, and a payor for purposes of withholding under section 3406. Except to the extent provided in this section 4.04, no provision of this agreement otherwise limits the requirement of a participating FFI to withhold as a withholding agent for purposes of chapters 3 and 4 or backup withhold as a payor for purposes of section 3406 to the extent required.

(B) Coordination of Withholding under Sections 1471(a) and 1472(a). A participating FFI that complies with the withholding requirements of this agreement is deemed to satisfy its chapter 4 withhold-

ing obligations under sections 1471(a) and 1472(a) with respect to its account holders and payees that are nonparticipating FFIs.

(C) Coordination with Withholding under Chapter 3. In the case of a withholdable payment that is also subject to withholding under section 1441, 1442, or 1443, a participating FFI may credit the tax withheld under section 4.02 of this agreement against its liability under section 1441, 1442, or 1443 as described in §1.1474–6(b). In the case of a withholdable payment that is also subject to withholding under section 1445, withholding under section 1445 applies to the payment to the extent described under §1.1474–4(6)(c), and withholding is not required under section 4.02 of this agreement. In the case of a withholdable payment that is also subject to withholding under section 1446, withholding under section 1446 applies to the extent described under §1.1474–6(d), and withholding is not required under section 4.02 of this agreement.

(D) Coordination with Backup Withholding. In the case of a withholdable payment that is also a reportable payment made by the participating FFI to a recalcitrant account holder, withholding under section 3406 will not apply to the reportable payment if tax is withheld on the payment under section 4.02 of this agreement, unless the participating FFI elects to apply backup withholding under section 3406 to known U.S. persons that are recalcitrant account holders as described in section 4.01(D) of this agreement.

Section 5. DEPOSIT REQUIREMENTS.

.01 In General. A participating FFI that withholds tax as required under this agreement must deposit amounts withheld within the time provided in §1.1474–1(b)(1). See §1.1471–2(a)(5)(ii) for an optional escrow procedure if a withholding agent is unable to determine at the time of payment whether such payment is a withholdable payment.

.02 Dormant Accounts. If a participating FFI receives a withholdable payment not otherwise subject to backup withholding under §31.3406(g)–1(e), or withholding under §1.1441–2(a), on behalf of a dormant account held by a recalcitrant account holder, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. See section 6.05(C) of this agreement for the reporting requirements and section 9 of this agreement for the requirements of an FFI withholding statement when the participating FFI applies the escrow rule for dormant accounts described in this section 5.02. Sections 1.1471–4(d)(6)(ii) and (iii) provide the rules for determining when the participating FFI must treat an account as dormant and when an account will no longer be treated as a dormant account.

Section 6. INFORMATION REPORTING AND TAX RETURN OBLIGATIONS.

.01 In General. Under section 1471(c) and §1.1471–4(d), a participating FFI is required to report annually certain specific payee information with respect to U.S. accounts that it maintains. A participating FFI is also required to report certain aggregate account information described in section 6.03 of this agreement with respect to specified chapter 4 reporting pools (as described in §1.1471–4(d)(6)(i)) of its recalcitrant account holders and, in the case of a reporting Model 2 FFI, its non-consenting U.S. accounts. A participating FFI has a transitional reporting obligation for payments of foreign reportable amounts made to account holders that are nonparticipating FFIs as described in section 6.04 of this agreement. A participating FFI may also be required under section 6.05 of this agreement to report certain aggregate information with respect to chapter 4 reportable amounts paid to its recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons. If a participating FFI is required to file information returns under section 6.05 of this agreement, the participating FFI is also required under 6.06(A) of this agreement to file Form 1042 to report chapter 4 reportable amounts and any tax withheld on such payments. A participating FFI must file information about its account holders or payees for purposes of chapter 4 (Forms 8966, 1099, 1042-S) on magnetic media (as defined in §301.1474–1(d)(1)). See section 6.06(B) of this agreement for the income tax return filing requirements of a U.S. branch of a participating FFI that makes withholdable payments. See also section 7 of this agreement for the requirements of a participating FFI that is prohibited by law from reporting its U.S. accounts as required under this section 6. In the case of a reporting Model 2 FFI, in applying this section with respect to a passive NFFE, the term "substantial U.S. owner" means a "controlling person" as defined in the applicable model 2 IGA that is identified as a specified U.S. person.

.02 U.S. Account Reporting.

(A) Accounts for which Reporting is Required.

(1) In General. On a calendar-year basis, a participating FFI must report each U.S. account that it maintains in the manner described in section 6.02(B) of this agreement. The participating FFI is also required to report accounts held by an FFI that it has agreed to treat as an owner-documented FFI under §1.1471–3(d)(6) to the extent required under this section 6.02.

(2) Special Reporting of Account Holders of Territory FIs. If a participating FFI maintains an account held by a territory FI that acts as an intermediary with respect to a withholdable payment, and the territory FI does not agree to be treated as a U.S. person with respect to the payment, the participating FFI is required to report each substantial U.S. owner of an entity treated as a passive NFFE with respect to which the territory FI acts as an intermediary to the extent that the territory FI provides the participating FFI with sufficient information to report such account. With respect to each entity treated as a passive NFFE, the participating FFI must report on Form 8966 the information described in §1.1474–1(i)(2)(i) and the accompanying instructions to the form.

(3) Additional U.S. Account Reporting Requirement for a Trustee of a Trustee-Documented Trust. In addition to the accounts required to be reported under section 6.02(A)(1) of this agreement, a participating FFI that is the trustee of a trustee-documented trust (as defined in an applicable Model 1 or 2 IGA) must report each U.S. account maintained by the trust as if the participating FFI maintained the account.

(B) General Reporting Requirements of a Participating FFI (other than its U.S. Branch treated as a U.S.

Person). A participating FFI (other than its U.S. branch treated as a U.S. person) may report its U.S. accounts on Form 8966 in the manner described in §1.1471–4(d)(3). Alternatively, to the extent allowed under §1.1471–4(d)(5), a participating FFI may elect to perform chapter 61 reporting as modified in section 4.02(C) of this agreement, in lieu of reporting in the manner described in §1.1471–4(d)(3). A participating FFI may elect to perform chapter 61 reporting with respect to all its U.S. accounts or with respect to any clearly identified group of U.S. accounts (such as by line of business or the location where the account is maintained) in the manner described in section 6.02(B)(1) of this agreement. With respect to a cash value insurance contract or annuity contract held by a specified U.S. person, a participating FFI may also elect to report under section 6047(d) in the manner described in §1.1471–4(d)(4)(i)(B).

(1) Modified Chapter 61 Reporting. A participating FFI (including a U.S. branch that is not treated as a U.S. person) that elects to perform chapter 61 reporting must report the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049 and must report payments made to an account subject to reporting under the applicable section. A participating FFI that is a non-U.S. payor, however, must determine the payments subject to reporting under the applicable section by reporting as if it were a U.S. payor.

A participating FFI that elects to perform chapter 61 reporting must treat each account holder that is a specified U.S. person, U.S.-owned foreign entity, or owner-documented FFI as if it were an account holder who is an individual and citizen of the United States and must report each such account regardless of whether the account holder of such account qualifies as a recipient exempt from reporting under sections 6041, 6042, 6045, or 6049. With respect to each account holder of a U.S. account that is a specified U.S. person, the participating FFI must report on the appropriate Form 1099 the information described in §1.1471–4(d)(5)(ii) and the accompanying instructions to the form. With respect to an account held by an entity treated as a passive NFFE with substantial U.S. owners or held by an owner-documented FFI with specified U.S. persons identified in §1.1471–3(d)(6)(iv)(A)(1) and (2), the participating FFI must report on Form 8966 the U.S. owner information described in §1.1471–4(d)(5)(ii) and (iii) and the accompanying instructions to the form.

A participating FFI that reports an account under this section 6.02(B)(1) must report such account for the calendar year regardless of whether the participating FFI makes a reportable payment to the account during the calendar year. In such a case and with respect to a specified U.S. person, the appropriate form is Form 1099-MISC, *Miscellaneous Income*. For example, with respect to a custodial account, the participating FFI is required to file a Form 1099-MISC even if no reportable payments were paid or credited to the account with respect to any financial instrument, investment, or contract held in such account. A participating FFI that reports accounts under this section 6.02(B)(1) may decide at a later time to report the accounts in the manner described in §1.1471–4(d)(3) beginning on the first reporting date following the calendar year for which it last reports an account under this section 6.02(B)(1).

(2) Transitional Reporting Rules. For calendar years 2014 and 2015, a participating FFI that reports under §1.1471–4(d)(3) is only required to report the account information specified in §1.1471–4(d)(7)(ii) for its U.S. accounts. For calendar years 2014 and 2015, a participating FFI that reports under §1.1471–4(d)(5) is only required to report the account information specified in §1.1471–4(d)(7)(iii) with respect to its U.S. accounts.

(3) Time and Manner of Filing. The participating FFI must file Form 8966 or Form 1099 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

(C) Special Reporting Rules for U.S. Branches treated as U.S. Persons. In the case of a U.S. branch of a participating FFI that is treated as a U.S. person, such branch must report under chapter 61 with respect to account holders that are U.S. non-exempt recipients (or presumed U.S. non-exempt recipients), including any account holders subject to backup withholding under section 3406, and under §1.1474–1(i) with respect to entities treated as passive NFFEs with substantial U.S. owners and owner-documented FFIs with specified U.S. persons identified in §1.1471–3(d)(6)(iv)(A)(1) and (2).

.03 Recalcitrant Account Holders.

(A) In General. A participating FFI is required to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966 and in the manner described in §1.1471–4(d)(6). Such reporting is required regardless of whether the participating FFI makes a withholdable payment to the account during the calendar year. The participating FFI must file Form 8966 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

(B) Reporting Model 2 FFIs' Reporting of Non-Consenting U.S. Accounts. Instead of the reporting described in section 6.03(A) of this agreement, a reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting U.S. accounts as described in §1.1471–4(d)(6) and the accompanying instructions to the form. Such reporting is required regardless of whether the reporting Model 2 FFI makes a withholdable payment to the account during the calendar year. A reporting Model 2 FFI must file Form 8966 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates (unless otherwise specified in the applicable Model 2 IGA) in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

.04 Special Transitional Reporting of Payments to Nonparticipating FFIs. For calendar years 2015 and 2016, the participating FFI must report on a specific payee basis on Form 8966 the aggregate amount of foreign reportable amounts paid with respect to an account held by a nonparticipating FFI (including a limited

branch and limited FFI treated as a nonparticipating FFI) that the participating FFI maintains. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the account holder and the participating FFI has not obtained such consent (i.e., the account holder is a non-consenting nonparticipating FFI), the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid to such nonconsenting nonparticipating FFIs. In either case, the participating FFI may report all income, gross proceeds, and redemptions paid to the nonparticipating FFI's account by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. The participating FFI must file Form 8966 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

.05 Withholdable Payment Reporting and Reporting of Tax Withheld.

(A) In General. Except as otherwise provided in this section 6.05(A) and section 6.05(B) of this agreement, a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts made during the year to payees that are recalcitrant account holders, nonparticipating FFIs, and U.S. persons that hold a U.S. account which is reported by the participating FFI under section 6.02 of this agreement. Forms 1042-S must identify the foreign branch of the FFI maintaining the payee's account using the GIIN assigned to such branch and the employer identification number (EIN) of the legal entity covered by this agreement. A U.S. branch of a participating FFI is required to file separate Forms 1042-S using the EIN assigned to such U.S. branch to report chapter 4 reportable amounts that it paid to its account holders and payees.

(1) Allowance for Specific Payee or Pooled Reporting. A participating FFI may report chapter 4 reportable amounts made to a specific recipient in a chapter 4 reporting pool to the extent permitted or required under section 6.05(A)(1)(i) of this agreement. A chapter 4 reporting pool is a chapter 4 withholding rate pool with respect to the account holders and payees described in section 6.05(A)(1)(i) of this agreement of a payment that is within a particular income code (as provided in the instructions to Form 1042-S) and for which a separate Form 1042-S is required to be filed. Section 1.1474–1(d) provides additional reporting requirements for chapter 4 reportable amounts. A participating FFI that fails to file returns or furnish statements required by this agreement may be subject to penalties in accordance with sections 6721 through 6724.

(i) Pooled Reporting. A participating FFI may report with respect to chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs in a chapter 4 reporting pool. With respect to recalcitrant account holders, a separate chapter 4 reporting pool is required for each class of recalcitrant account holders described in §1.1471–4(d)(6). Additionally, a participating FFI must report payees of U.S. accounts that it reports under section 6.02 of this agreement in a chapter 4 reporting pool. Section 1.1474–1(d) provides additional reporting requirements for chapter 4 reportable amounts. See also Form 1042-S and its accompanying instructions for the chapter 4 reporting pool codes for recipients and income codes.

(ii) Pooled Reporting for Reporting Model 2 FFI. In addition to the reporting requirements described in section 6.05(A)(1)(i) of this agreement, for a reporting Model 2 FFI, the chapter 4 reporting pool of payees that are U.S. persons also consists of account holders of nonconsenting U.S. accounts that are not subject to chapter 4 withholding under the applicable Model 2 IGA but only to the extent such account holders do not receive payments subject to withholding under chapter 3 and are not known U.S. persons subject to backup withholding under section 3406. A reporting Model 2 FFI must report these non-consenting U.S. accounts in accordance with the chapter 4 reporting pools shown on Form 1042-S instructions.

(iii) Specific Recipient Reporting. As an alternative to chapter 4 pooled reporting of chapter 4 reportable amounts paid to recalcitrant account holders and nonparticipating FFIs as described in section 6.05(A)(1)(i) of this agreement, a participating FFI may issue a Form 1042-S to a recalcitrant account holder or a nonparticipating FFI on a specific payee basis when withholding was applied to the payment. Section 1.1474–1(d)(1)(i) specifies the information that is required to be included on Form 1042-S. See also section 10.04 of this agreement for the limitation on filing a collective refund claim on behalf of account holders or payees that are reported on a specific payee basis.

(2) Reporting Required when Electing to Withhold under Section 3406 on Recalcitrant Account Holders that are Known U.S. Persons. A participating FFI that elects to satisfy its obligation to withhold on withholdable payments with respect to recalcitrant account holders that are known U.S. persons by backup withholding under section 3406 with respect to such payments as described in section 4.01(D) of this agreement must report on the applicable Form 1099 reportable amounts made during the year to such known U.S. persons. Forms 1099 must be filed by the legal entity covered by this agreement and must exclude payments made by its U.S. branch, if any. A U.S. branch of a participating FFI that has not agreed to be treated as a U.S. person and makes the election described in section 4.01(D) of this agreement is required to file separate Forms 1099 using the EIN assigned to such U.S. branch.

(3) U.S. Branch of a Participating FFI. A U.S. branch of a participating FFI (regardless of whether it is treated as a U.S. person) must report separately on Form 1042-S or 1099 with respect to amounts paid or received by the U.S. branch during the year on behalf of its account holders. A U.S. branch of a participating FFI that is not treated as a U.S. person is only required to report on Form 1042-S or Form 1099, however, to the extent described in section 6.05(B) of this agreement. See section 6.06(B) of this agreement for the requirement for a U.S. branch to file a separate Form 1042 or Form 945.

(B) Special Reporting Rules when Withholding Agent Reports on Behalf of Participating FFI. A participating FFI is not required to report on Form 1042-S

or Form 1099 as described in section 6.05(A) of this agreement amounts that the participating FFI receives on behalf of a recalcitrant account holder, nonparticipating FFI, or chapter 4 reporting pool of payees that are U.S. persons to the extent that its withholding agent has correctly reported on a Form 1042-S or Form 1099 and withheld the correct amount of tax on such amounts. The participating FFI is required to report, however, when the participating FFI knows, or has reason to know, that the payment is not correctly reported on Form 1042-S or Form 1099, that less than the required amount has been withheld on the payment, or that the amount of tax withheld is not correctly reported on Form 1042-S or Form 1099. In such a case, the participating FFI must report the payment on Form 1042-S or Form 1099 to the extent required under section 6.05(A) of this agreement. See section 9 of this agreement for the information that the participating FFI must include on its withholding statement to enable its withholding agent to report.

(C) Dormant Accounts. Notwithstanding section 6.05(B) of this agreement**,** a participating FFI is required to report a chapter 4 reportable amount made to a recalcitrant account holder that holds a dormant account for which the participating FFI sets aside the amount withheld in escrow, in lieu of depositing the tax withheld. See section 5.02 of this agreement for the requirements of the escrow procedure for dormant accounts. See also section 9 for the withholding statement requirements with respect to dormant accounts and the instructions to Form 1042-S for reporting under this procedure.

(D) U.S. Source FDAP Income Subject to Reporting under Chapter 3. In a case in which a participating FFI reports under section 6.05(A) of this agreement a withholdable payment of U.S. source FDAP income subject to withholding under section 4 of this agreement, a separate Form 1042-S is not required to be filed for the same payment for chapter 3 reporting purposes under §1.1461–1(c)(2). A participating FFI that is reporting U.S. source FDAP income that is a chapter 4 reportable amount that is not subject to withholding under section 4 of this agreement must include in its reporting an exemption code for chapter 4 purposes to the extent the participating FFI is required to report the amount under §1.1461–1(c)(2).

(E) Reporting of Withholdable Payments to Limited Branches and Limited FFIs. A participating FFI must report (or provide sufficient information to its withholding agent, as described in section 6.05(B) of this agreement, to report) withholdable payments that it receives on behalf of a limited branch or limited FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a limited branch or limited FFI. See Form 1042-S and its accompanying instructions for the other information that a participating FFI is required to report in such a case.

(F) Time and Manner of Filing. A participating FFI must file Forms 1042-S on magnetic media with the IRS on or before March 15 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions. A participating FFI must file the relevant Forms 1099, if applicable, on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

.06 Tax Return Filing Requirements.

(A) In General. If a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts, it must also file an income tax return on Form 1042 to report the chapter 4 reportable amounts paid to account holders and payees that the participating FFI is required to report on Form 1042-S. A participating FFI will also be required to report on Form 1042 the amount of tax withheld and the amount of tax deposited with respect to such payments for the calendar year, in addition to any other information required by the form and its accompanying instructions. If a participating FFI applies backup withholding, instead of withholding under chapter 4, with respect to recalcitrant account holders that are known U.S. persons as described in section 4.01(D) of this agreement, the participating FFI must also file an income tax return on Form 945 to the extent the participating FFI withheld tax on withholdable payments that are reportable amounts paid to its account holders. See section 6.05(B) of this agreement for the rules on when Form 1042-S and Form 1099 are required to be filed.

Form 1042 or Form 945 must be filed by the legal entity covered by this agreement, and it must exclude payments made by any U.S. branch of such entity. Withholding certificates and other statements or information provided to the participating FFI should not be attached to the return. With respect to Form 1042, the information required for purposes of chapter 4 is in addition to the information required to be provided on Form 1042 for purposes of chapter 3. A participating FFI must file Form 1042 with the IRS on or before March 15 of the year following the calendar year to which the form relates. A participating FFI must file Form 945 with the IRS on or before January 31 of the year following the calendar year to which the form relates.

(B) U.S. Branch of a Participating FFI. A U.S. branch of a participating FFI that is required to report on Form 1042-S chapter 4 reportable amounts must file a separate Form 1042 to report the chapter 4 reportable amounts that it paid to account holders and payees. Form 1042 should include the information described in section 6.06(A) of this agreement. A U.S. branch of a participating FFI that is treated as a U.S. person may also be required to file an income tax return on Form 945 if such branch backup withheld under section 3406(a) with respect to reportable amounts paid to accounts held by U.S. non-exempt recipients (as defined under chapter 61). See section 4.02(C) of this agreement for the withholding requirements of a U.S. branch of a participating FFI that is treated as a U.S. person.

.07 Coordination with Chapter 61 Reporting. A non-U.S. payor that is a participating FFI will satisfy its reporting obligations under chapter 61 (Form 1099 reporting) with respect to a payee that is a non-exempt recipient (or presumed U.S. non-exempt recipient) if such participating FFI reports such an account holder pursuant to this section 6. Notwithstanding the preceding sentence, a participating FFI is required to report on Form 1099 to the extent the participating FFI applies backup withholding to the payment.

.08 Retention Requirements.

(A) Account Statements. A participating FFI is required to retain information that summarizes the account activity of its U.S. accounts and accounts held by recalcitrant account holders and nonparticipating FFIs to the extent required in §1.1471–4(d).

(B) Forms 1042-S. A participating FFI must retain a copy of each Form 1042-S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042-S relates.

Section 7. LEGAL PROHIBITIONS ON REPORTING U.S. ACCOUNTS AND ON WITHHOLDING.

.01 In General. If a participating FFI (or branch thereof) is prohibited by law from reporting its U.S. accounts as required under section 6.02 of this agreement or from withholding to the extent required under section 4 of this agreement, the participating FFI (or branch thereof) must comply with the requirements of section 7.02 or 7.03 of this agreement.

.02 Prohibitions on Reporting U.S. Accounts. A participating FFI that is prohibited under domestic law from reporting a U.S. account as required under section 6.02 of this agreement must satisfy the requirements of §1.1471–4(i)(2) to request a valid and effective waiver of such law or otherwise close or transfer the account.

(A) Reporting Model 2 FFI. A reporting Model 2 FFI that is prohibited under domestic law from reporting a preexisting U.S. account as required under section 6.02 of this agreement must request consent to report such account and, if consent is not provided, must report certain aggregate information about such account with other non-consenting U.S. accounts in accordance with section 6.03 of this agreement. With respect to a new account (as defined in the applicable Model 2 IGA), a reporting Model 2 FFI must obtain from each account holder of a U.S. account, as a condition of account opening, the consent required under domestic law in order for such reporting Model 2 FFI to report the account as required under section 6.02 of this agreement. Additionally, a reporting Model 2 FFI must request the account holder's consent to report, if required by domestic law, after account opening for any new account that is not identified as a U.S. account at account opening and that must subsequently be treated as a U.S. account due to a change in circumstances. If consent is not provided by the account holder, the reporting Model 2 FFI must treat the account as a non-consenting U.S. account and report the account as described in section 6.03(B) of this agreement.

.03 Legal Prohibitions Preventing Withholding with Respect to Recalcitrant Account Holders and Nonparticipating FFIs. To the extent a participating FFI is prohibited under domestic law from withholding with respect to recalcitrant account holders and nonparticipating FFIs as required under section 4 of this agreement, the participating FFI is required to satisfy the requirements of §1.1471–4(i)(3) to block or transfer each account or obligation held by such persons.

.04 Limited Branches.

(A) In General. If a participating FFI maintains one or more limited branches, the participating FFI must meet the requirements described in §1.1471–4(e)(2)(iii). Such requirements include withholding on payments made or received on behalf of a limited branch as described in section 4.03(C) of this agreement and reporting such payments as described in section 6.05(E) of this agreement. After the expiration of the transitional rule for limited branches under §1.1471–4(e)(2)(v), a participating FFI with one or more limited branches will cease to be a participating FFI. If a limited branch maintained by a participating FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, the participating FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following the date that the branch ceases to be a limited branch.

(B) Limited Branch of a Reporting Model 2 FFI. If a reporting Model 2 FFI maintains one or more limited branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each limited branch, which includes the requirements to withhold on payments made or received on behalf of such branch as described in section 4.03(C) of this agreement and to report such payments as described in section 6.05(E) of this agreement. If a branch maintained by the FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, a reporting Model 2 FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following such date that the branch will cease to be a limited branch. A reporting Model 2 FFI with one or more limited branches will continue to be a reporting Model 2 FFI after the expiration of the transitional rule for limited branches under §1.1471–4(e)(2)(v), provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such branches.

SECTION 8. COMPLIANCE PROCEDURES.

.01 In General. A participating FFI is required to adopt a compliance program under the authority of the responsible officer of the participating FFI or, in the case of a participating FFI that adopts a consolidated compliance program under the requirements of §1.1471–4(f)(2)(ii), under the authority of the responsible officer of a compliance FI. A participating FFI's compliance program must include policies, procedures, and processes sufficient for the participating FFI to satisfy the due diligence, reporting, and withholding requirements of this agreement. A participating FFI must also perform, or have performed on its behalf, a review of its compliance with this agreement for the certification period (described in §1.1471–4(f)(3)). The results of such review must be considered by the responsible officer in making the periodic certifications described in section 8.03 of this agreement. A participating FFI must also comply with the IRS review of compliance described in section 8.04 of this agreement.

.02 Responsible Officer. A participating FFI must appoint a responsible officer to establish, or to appoint one or more designees to establish, a compliance program that meets the requirements of section 8.01 of this agreement and to periodically

review the sufficiency of such compliance program. The responsible officer must make the certifications described in section 8.03 of this agreement to the IRS regarding the FFI's compliance with this agreement.

.03 Certifications of Compliance by Responsible Officer.

(A) Certification Regarding the Due Diligence Procedures. No later than 60 days following the date that is two years after the effective date of this agreement, the responsible officer of the participating FFI must make the certification described in §1.1471–4(c)(7) regarding the FFI's completion of the due diligence procedures for preexisting accounts required under section 3 of this agreement and regarding the absence of any formal or informal practices or procedures to assist account holders in the avoidance of chapter 4 as described in §1.1471–4(c)(7).

(B) Periodic Certification of Compliance. On or before July 1 of the calendar year following the certification period defined in §1.1471–4(f)(3)(i), the responsible officer of the participating FFI must make either the certification of effective internal controls described in §1.1471–4(f)(3)(ii) or, when required, make the qualified certification under §1.1471–4(f)(3)(iii). The responsible officer must consider the results of the participating FFI's periodic review in making the periodic certification of compliance.

(C) Method of Making Certifications. The participating FFI (or the compliance FI with respect to such FFI) must make the certifications of compliance in such manner as the IRS may prescribe in future guidance or other instructions.

.04 Review of Compliance.

(A) General Inquiries of FFI and Account Holder Compliance. Based upon the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, 1099) filed with the IRS for each calendar year, the IRS may request additional information with respect to the information reported or required to be reported on such forms or on the account statements described in section 6.07 of this agreement as described in §1.1471–4(f)(4)(i).

(B) Inquiries of Reporting Model 2 FFIs. In the case of a reporting Model 2 FFI, subject to the terms set forth in an applicable competent authority arrangement under the applicable Model 2 IGA, the U.S. Competent Authority may make an inquiry directly to a reporting Model 2 FFI regarding the information described in section 8.04(A) of this agreement. When the U.S. Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting, the U.S. Competent Authority may make such an inquiry directly to a reporting Model 2 FFI. Additionally, if a reporting Model 2 FFI reports aggregate information regarding its non-consenting U.S. accounts and accounts held by nonparticipating FFIs as described in sections 6.03 and 6.04 of this agreement, the U.S. Competent Authority, consistent with the terms of the applicable competent authority arrangement under the applicable Model 2 IGA, may request information regarding the accounts underlying the aggregate information returns filed with respect to such accounts.

(C) Inquiries regarding Substantial Non-Compliance. Based on the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, 1099) filed with the IRS for each calendar year, the certifications made by the responsible officer, or any other information related to a participating FFI's compliance with this agreement, the IRS may determine in its discretion that the participating FFI may not have substantially complied with the requirements of this agreement. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with this agreement or the performance of specified review procedures as described in §1.1471–4(f)(4)(ii). If the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement, the IRS will notify the participating FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

(D) Inquiries regarding Significant Non-Compliance for Reporting Model 2 FFIs. Consistent with the terms of the applicable competent authority arrangement under the Model 2 IGA, the U.S. Competent Authority may request information necessary to verify a reporting Model 2 FFI's compliance with this agreement as described in §1.1471–4(f)(4)(ii). If the U.S. Competent Authority determines that a reporting Model 2 FFI has failed to significantly comply with the requirements of this agreement, as modified by the applicable Model 2 IGA, the U.S. Competent Authority will notify the Competent Authority of the jurisdiction in which the reporting Model 2 FFI is located, and will also notify the reporting Model 2 FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

SECTION 9. PARTICIPATING FFI WITHHOLDING CERTIFICATE.

.01. Participating FFI Withholding Certificate. A participating FFI agrees to furnish a valid withholding certificate to each withholding agent from which it receives a withholdable payment and to each participating FFI or deemed-compliant FFI with whom the participating FFI holds an account. When a participating FFI receives a withholdable payment as a beneficial owner of the payment (as defined in §1.1471–1(b)(7)) or otherwise holds an obligation or account for its own benefit, the withholding certificate to be furnished is a Form W-8BEN-E (or acceptable substitute form under §1.1471–3(c)(6)(v)) that certifies that the participating FFI is the beneficial owner and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place or organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI that is receiving the payment and the branch's GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and all of the other information required by §1.1471–3(c)(3)(ii), the form, and its accompanying instructions. Alternatively, with respect to a payment made prior to January 1, 2017, or made with respect to an offshore obligation, the participating FFI may provide its GIIN or other documentation as described in §1.1471–3(d)(4)(ii) or (iii). In such a case, the participating FFI will not be subject to withholding and will not be reported as a nonparticipating FFI for purposes of chapter 4 with respect to withholdable payments it receives from a withholding

agent to whom the participating FFI provided such documentation. If, however, the branch receiving the withholdable payment is a limited branch, the participating FFI must identify itself as a nonparticipating FFI on the Form W-8BEN-E that it provides to the withholding agent, and such payment will be subject to withholding and reporting for purposes of chapter 4. See §1.1471–4(e)(2)(iv)(E) for rules applicable to a limited branch of a participating FFI.

When a participating FFI receives a withholdable payment of U.S. source FDAP income as an intermediary, holds an account with a participating or registered deemed-compliant FFI as an intermediary, or is a flow-through entity, the withholding certificate that the participating FFI must furnish to the withholding agent is a Form W-8IMY (or acceptable substitute form under §1.1471–3(c)(6)(v)) that certifies that the participating FFI is a flow-through entity or is acting as an intermediary (as applicable) and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI receiving the payment and its GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and includes all of the other information required by §1.1471–3(c)(3)(iii), section 4.03(B) of this agreement, the form, and its accompanying instructions. Alternatively, with respect to an offshore obligation, the participating FFI (or the branch of the participating FFI receiving the payment) may provide the branch's GIIN and the documentation described in §1.1471–3(d)(4)(iii). In such a case, the participating FFI will not be subject to withholding (or reporting as a nonparticipating FFI) for purposes of chapter 4 that would otherwise apply based on its status as a participating FFI, though withholding for purposes of chapter 3 with respect to payments of U.S. source FDAP income may apply based on the status of persons for whom the participating FFI receives the payment. For the requirements of a withholding certificate provided by a foreign partnership or foreign trust receiving a chapter 3 reportable amount, see §1.1441–5(c)(2) or §1.1441–5(e)(5), respectively. For the requirements of a withholding certificate provided by a foreign intermediary that receives a chapter 3 reportable amount, see §1.1441–1(e)(3).

.02. Withholding Statement.

(A) In General. A participating FFI agrees to provide an FFI withholding statement that includes the information described in section 9.02(B) of this agreement to each withholding agent from which it receives a withholdable payment of U.S. source FDAP income on behalf of its account holders or other persons (including its partners, beneficiaries, or owners for a participating FFI that is a flow-through entity). See section §1.1471–3(c)(iii)(B)(1) and (2) for the requirements of an FFI withholding statement. The withholding statement must be updated as often as necessary for the participating FFI to meet its withholding and reporting obligations under sections 4 and 6 of this agreement.

(B) Allocation of Payment on Withholding Statement. A participating FFI must allocate a withholdable payment of U.S. source FDAP income to each payee of the payment on its withholding statement. A participating FFI may include, however, on the withholding statement information that indicates the portion of such withholdable payment that is allocated to each of its chapter 4 withholding rate pools (consisting of separate pools for classes of recalcitrant account holders, nonparticipating FFIs, and U.S. payees). If a participating FFI applies the escrow procedure for dormant accounts described in section 5.02 of this agreement, the participating FFI must indicate the portion of such payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts that the participating FFI (and not the withholding agent) will hold in escrow. A participating FFI must identify its pools of recalcitrant account holders in accordance with the chapter 4 withholding rate pools provided on Form 1042-S and its accompanying instructions. If, however, a participating FFI elects to apply backup withholding instead of withholding under chapter 4 with respect to recalcitrant account holders that are known U.S. persons as described in section 4.01(D) of this agreement, the withholding statement provided to the withholding agent must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to the chapter 4 withholding rate pool of recalcitrant account holders that are known U.S. persons. A chapter 4 withholding rate pool of U.S. payees should include only those holders of U.S. accounts that the participating FFI reports under chapter 4. See Form 1042-S and its accompanying instructions for information on the chapter 4 withholding rate pools applicable to recalcitrant account holders, nonparticipating FFIs, and U.S. payees.

If any portion of a withholdable payment is attributable to payees not subject to withholding or reporting under chapter 4, but the payment is subject to withholding or reporting under chapters 3 or 61, see §§1.1441–1(e)(3)(iv), 1.1441–5(c)(3)(iv), and 1.6049–5(d) for the applicable requirements (including the requirements applicable to the withholding statement and the appropriate documentation to be provided with respect to each such payee). In addition to allocating the portion of the payment to each such recipient, the withholding statement must include the information necessary for the withholding agent to report the payment on Form 1042-S or Form 1099.

If a participating FFI has an account holder that is a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), territory FI, or QI (including a QI branch of a U.S. financial institution) that is acting as an intermediary or is a flow-through entity and that has provided the information described in §1.1471–3(c)(2) necessary for the withholding agent to report on the payment, the participating FFI must provide to its withholding agent the account holder information or pool reporting information provided to it by such other entity for determining the amount of withholding or the reporting required under chapter 4. See §1.1471–3(e)(4)(vi)(B) providing that the participating FFI may rely on the determination of a payee's chapter 4 status that is provided by another participating FFI or registered deemed-compliant FFI unless the first-mentioned participating FFI knows or has reason to know that

such information is incorrect or unreliable.

(C) Allocation of Payment on Withholding Statement for Reporting Model 2 FFIs. In addition to the information described in section 9.02(B) of this agreement, a withholding statement provided by a reporting Model 2 FFI must include in its chapter 4 withholding rate pool of U.S. payees any account holder of a nonconsenting U.S. account that is not subject to chapter 4 withholding under an applicable Model 2 IGA (described in section 4.02(B)(2) of this agreement), but only to the extent that the payment is not subject to withholding under chapter 3 or backup withholding under section 3406.

(D) Procedure for Specific Recipient Reporting. For payments that a participating FFI receives as an intermediary and that are subject to withholding under chapter 4 or backup withholding under section 3406 (described in section 4.01(D) of this agreement), that participating FFI may provide specific recipient information instead of pooled chapter 4 withholding rate information on the withholding statement regarding any (or all) recipients that are recalcitrant account holders or nonparticipating FFIs. In such a case, the withholding statement must include the information necessary to enable the withholding agent to report the payment in accordance with the requirements described in §1.1474–1(d) and the requirements of Form 1042-S or Form 1099 and its accompanying instructions. The participating FFI is not required to provide the withholding agent with the withholding certificate or other documentation for each recipient.

SECTION 10. ADJUSTMENTS FOR OVERWITHHOLDING AND UNDERWITHHOLDING AND REFUNDS.

.01 Adjustments for Overwithholding by Withholding Agent. A participating FFI may request a withholding agent to make an adjustment for amounts paid to the participating FFI on which the withholding agent has overwithheld (as defined in §1.1474–2(a)(2)) under chapter 4 by applying either the reimbursement procedure or the set-off procedure described in this section 10.01. Nothing in this section 10 requires a withholding agent to apply these procedures.

(A) Reimbursement Procedure. A participating FFI may request a withholding agent to repay the participating FFI for any amount overwithheld under chapter 4, and for the withholding agent to reimburse itself under the reimbursement procedures under § 1.1474–2(a)(3), by making a request to the withholding agent prior to the earlier of the due date for filing Form 1042 and Form 1042-S (without regard to extensions), or the actual filing of Form 1042-S, for the calendar year of overwithholding. In such a case, the participating FFI must provide the withholding agent with sufficient information to determine the correct amount of withholding and to correctly report the payment as required under §1.1474–1(d)(4). See section 4.03 of this agreement for the circumstances in which a withholding agent may withhold on behalf of the participating FFI with respect to its account holders or payees.

(B) Set-off Procedure. A participating FFI may request a withholding agent repay the participating FFI by applying the amount overwithheld under chapter 4 against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to the participating FFI under the set-off procedures of §1.1474–2(a)(4). A participating FFI must make the request before the earlier of the due date for filing Form 1042-S (without regard to extensions), or the actual filing of Form 1042-S, for the calendar year of overwithholding.

.02 Adjustments for Overwithholding by Participating FFI. A participating FFI may make an adjustment for amounts paid to its account holders and payees for which it has overwithheld tax under chapter 4 (as defined in §1.1474–2(a)) by applying either the reimbursement procedures or the set-off procedures described in §1.1474–2(a)(3) or (4), respectively.

.03 Repayment of Backup Withholding. If a U.S. branch of a participating FFI treated as a U.S. person erroneously withholds (as defined in §31.6413(a)–3) an amount under section 3406 from an account holder or payee, such branch may refund to such person the amount erroneously withheld as provided in §31.6413(a)–3.

.04 Collective Credit or Refund Procedures for Overpayments. If there has been an overpayment of tax with respect to an account holder or a payee of a participating FFI resulting from tax withheld under chapter 4 on a payment made to such account holder or payee during a calendar year, and the amount withheld has not been recovered under the reimbursement or set-off procedures described under section 10.01 or 10.02 of this agreement, the participating FFI may request a credit or refund of the amount of tax overwithheld to the extent permitted under §1.1471–4(h). The participating FFI must follow the procedures set forth under §1.1471–4(h)(4) to request the credit or refund on behalf of its account holders. No credit or refund will be allowed after the expiration of the statutory period of limitations for refunds under section 6511 with regard to the account holder or payee for whom refund or credit is sought.

.05 Adjustments for Underwithholding. If a participating FFI knows that an amount should have been withheld under chapter 4 from a previous payment to an account holder or a payee but was not withheld, the participating FFI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property of such person over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of Form 1042 (without regard to extensions) for the calendar year in which the underwithholding occurred. A participating FFI's responsibilities will be met under this section 10.05 if it informs the withholding agent from whom the participating FFI received the payment of the underwithholding, and the withholding agent satisfies the underwithholding.

.06 Underwithholding after Form 1042 Filed. If, after Form 1042 has been filed for a calendar year (or the due date for filing Form 1042 if no Form 1042 was filed), a participating FFI or the IRS determines that the participating FFI has underwithheld tax for such year, the participating FFI must file an amended Form 1042 (or original Form 1042 if no Form

1042 was filed) to report and pay the underwithheld tax. A participating FFI must pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing such amended (or original) Form 1042. If a participating FFI fails to file a return (if required under section 6.06 of this agreement or this section 10.06), the IRS will make such return under section 6020 and assess such tax under the procedures set forth in the Code.

SECTION 11. FFI GROUP.

.01 FFI Group.

(A) In General. Each FFI that is a member of an FFI group, other than an exempt beneficial owner, must obtain its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI. In addition, the participating FFI and each FFI that is a member of the participating FFI's FFI group must comply with the requirements of a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. If the participating FFI is a member of an FFI group, the participating FFI will cease to be a participating FFI after the expiration of the transitional rule for limited FFIs and limited branches under §1.1471–4(e)(3)(iv), unless each limited FFI in the group becomes a participating or registered deemed-compliant FFI and no member of the FFI group (including the participating FFI) maintains a limited branch. An FFI and its FFI Group may register on the FATCA registration website.

(B) Special Rule for a Reporting Model 2 FFI. A reporting Model 2 FFI that has a limited branch or is a member of an expanded affiliated group that includes a limited FFI or FFI member with a limited branch will not cease to be a reporting Model 2 FFI solely due to the expiration of the transitional rule for limited branches or limited FFIs under §1.1471–4(e)(2) or (3), respectively, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such limited branches and limited FFIs.

(C) Limited FFIs. A participating FFI that is a member of an FFI group that includes one or more limited FFIs must treat such FFIs as nonparticipating FFIs for withholding and reporting purposes. See sections 4.03(C), 6.04, and 6.05(E) of this agreement for the participating FFI's requirements with respect to limited FFIs under this agreement.

.02 Lead FI.

(A) Designation of the Lead FI. If the participating FFI designates a lead FI to initiate its FATCA registration, the participating FFI must authorize the lead FI to fulfill the responsibilities described in section 11.02(B) of this agreement.

(B) Responsibilities of the Lead FI. A participating FFI that is designated as the lead FI by one or more FFIs that are members of an FFI group agrees to meet the following responsibilities with respect to such FFIs in addition to its other obligations under this agreement:

(1) Identify itself as the lead FI as part of the registration process and to delete its status as lead FI upon termination of such status;

(2) Identify all FFIs that have designated the participating FFI as their lead FI as part of the participating FFI's registration process;

(3) Monitor the FFI group information by accessing the FATCA registration website every six months to review the information provided and, if needed, update the information provided with respect to any members of the FFI group;

(4) Inform the IRS within 90 days of an acquisition or sale of a member of the FFI group by updating the FFI group information on the FATCA registration website to add or delete such member;

(5) Inform the IRS within 90 days of a change affecting the chapter 4 status of any member of the FFI group, including when any member of the FFI group ceases to comply with (or that does not otherwise comply with) the requirements of either a participating FFI or a registered deemed compliant FFI by updating the member FFI's chapter 4 status on the FATCA registration website; and

(6) Inform the IRS within the time period prescribed under §1.1471–4(e)(3)(iv) that a member of the FFI group ceases to be a limited FFI and designate on the FATCA registration website the status for which such FFI will register.

SECTION 12. EXPIRATION, MODIFICATION, TERMINATION, DEFAULT, AND RENEWAL OF THIS AGREEMENT.

.01 Term of Agreement. This agreement begins on its effective date and expires on December 31, 2016, unless terminated under section 12.03 of this agreement. This agreement may be renewed as provided in section 12.08 of this agreement.

.02 Modification. This agreement may be modified by the IRS before the expiration date indicated in section 12.01 of this agreement. This agreement will only be modified through published guidance. Any such modification will in no event become effective until the later of 120 days after the IRS issues published guidance of such modification or the beginning of the next calendar year following such published guidance. In no event will the IRS modify this agreement for any year before 2017 to expand the class of payments for which withholding or reporting is required under this agreement or to include additional requirements for a participating FFI.

.03 Termination of Agreement. This agreement may be terminated by either the IRS or the participating FFI prior to the end of its term by delivery of a notice of termination to the other party in accordance with section 12.06 of this agreement.

(A) In General. The IRS will not terminate this agreement unless there has been a significant change in circumstances (as defined in section 12.04 of this agreement) or an event of default (as defined in section 12.05 of this agreement), and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this agreement. The IRS will not terminate this agreement in the event of default if the participating FFI can establish to the satisfaction of the IRS that all events of default for which it has received a notice (described in section 12.06 of this agreement) have been cured within the specified time period agreed to with the IRS.

(B) Reporting Model 2 FFI. In the case of a reporting Model 2 FFI, the reporting Model 2 FFI will not be treated as

a nonparticipating FFI unless the U.S. Competent Authority has provided the Competent Authority of a Model 2 IGA jurisdiction in which the reporting Model 2 FFI is located notice of significant non-compliance with the terms of this agreement, as modified by the applicable Model 2 IGA, and the matter is not resolved within the 12-month period following the notice of significant non-compliance.

.04 Significant Change in Circumstances. For purposes of this agreement, a significant change in circumstances includes--

(A) An acquisition of all, or substantially all, of a participating FFI's assets in any transaction in which the participating FFI is not the surviving legal entity;

(B) A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this agreement, materially affects the provisions contained in this agreement, or materially affects the participating FFI's ability to perform its obligations under this agreement;

(C) A ruling of any court that materially affects the validity of any provision of this agreement;

(D) A case in which a participating FFI (other than a reporting Model 2 FFI) maintains a limited branch that cannot fulfill the requirements for participating FFI or deemed-compliant FFI status after the expiration of the transitional rule for limited FFIs and limited branches under §1.1471–4(e)(2)(v) or a participating FFI (other than a reporting Model 2 FFI) is a member of an expanded affiliated group that includes a limited FFI after the expiration of the transitional rule for limited FFIs and limited branches under §1.1471–4(e)(3)(iv); and

(E) A significant change in a participating FFI's business practices that materially affects the participating FFI's ability to meet its obligations under this agreement.

.05 Event of Default. For purposes of this agreement, an event of default occurs if a participating FFI fails to perform any material duty or obligation required under this agreement or if the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement. In addition to the occurrences enumerated in §1.1471–4(g)(1), an event of default also includes the occurrence of the following:

(A) The participating FFI fails to inform the IRS within 90 days of any significant change in circumstances; or

(B) If the participating FFI is designated by one or more FFIs that are members of an FFI group as a lead FI, the FFI fails, without reasonable cause, to inform the IRS within 90 days of an acquisition, sale, or change affecting the chapter 4 status of an FFI in the FFI group for which it is acting as lead FI, including that such FFI ceases to comply with (or does not otherwise comply with) the requirements to maintain its status as a participating or registered deemed-compliant FFI.

.06 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 and requesting that the participating FFI remediate the event of default as described in §1.1471–4(g)(2). See §1.1471–4(g)(3) for the remediation process for an event of default.

.07 Termination Procedures.

(A) Procedure to Appeal Notice of Termination. If a participating FFI receives a notice of termination of this agreement from the IRS, the participating FFI may appeal the determination within 90 days by sending to the address specified in section 13.05 of this agreement a written notice explaining why this agreement should not be terminated. If a participating FFI appeals the notice of termination, this agreement will not terminate until the appeal is decided. If a participating FFI does not provide a notice of appeal within 90 days, this agreement will terminate on the date specified in the notice of termination.

(B) Termination of Agreement. If the participating FFI seeks to terminate this agreement, it is required to provide notice to the IRS through the FATCA registration website. If the FFI's status as a participating FFI is terminated, the FFI must send notice of the termination within 30 days after the date of termination to all withholding agents and FFIs to which it has provided a withholding certificate pursuant to section 9.01 of this agreement. Shortly after receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List (defined in §1.1471–1(b)(87)).

(C) Termination of Status as Compliance FI or Lead FI.

(1) If a participating FFI seeks to terminate its status as either a compliance FI or lead FI, it is required to provide notice of termination on the FATCA registration website in accordance with its instructions or in later published guidance. A lead FFI's notice of termination of its lead FI status will require members of the FFI group to designate a new lead FI on the FATCA registration website in accordance with its instructions or in later published guidance.

(2) A compliance FI that terminates its status as a compliance FI will still be required to serve as the point of contact for the IRS with respect to the certification periods (as defined in §1.1471–4(f)(3)(i)) during which the FFI acted as a compliance FI unless the FFI designates another FI that will act as the compliance FI for such periods and that has full access to the information that relates to such periods.

.08 Renewal. If a participating FFI intends to renew this agreement, it may do so via the FATCA registration website available at *www.irs.gov/fatca* in accordance with its instructions or as otherwise provided in later published guidance. This agreement will be renewed only upon the agreement of both the participating FFI and the IRS and is subject to modifications to this agreement as the IRS prescribes pursuant to procedures described in section 12.02 of this agreement.

.09 Treatment of Reporting Model 2 FFIs. Notwithstanding anything to the contrary in this agreement, a reporting Model 2 FFI is not entering into a binding agreement by agreeing to comply with the terms of this agreement, except to the extent that such an FFI is entering into an agreement on behalf of one or more of its branches in order for each such branch to be treated as a participating FFI. For the avoidance of doubt, compliance with the terms of this agreement requires compliance with the requirement to recertify on the FATCA registration website that the reporting Model 2 FFI shall comply with the terms of any renewed agreement, including any modified terms pursuant to section 12.02 of this agreement.

SECTION 13. MISCELLANEOUS PROVISIONS.

.01 Waiver. Any waiver of a provision of this agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this agreement or the same provision at a later date.

.02 Governing Law. This agreement is governed by the laws of the United States. Any legal action brought under this agreement will be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, the participating FFI agrees to submit to the jurisdiction of such United States court.

.03 Notices. Except as otherwise provided on the FATCA registration website, notices provided under this agreement are to be mailed via registered, first class airmail. All notices sent to the IRS must include the participating FFI's name and GIIN and the name of the participating FFI's responsible officer. Such notices should be directed as follows:

To the IRS:
Internal Revenue Service
Office of Foreign Payments
290 Broadway
New York, New York 10007

To the participating FFI:
The participating FFI's responsible officer (or the responsible officer of the compliance FI for issues related to the participating FFI's compliance with this agreement). Such notices should be sent to the address indicated in the FFI's registration (as may be amended).

SECTION VI. DRAFTING INFORMATION

The principal author of this notice is Tara. N. Ferris of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact John J. Sweeney on (202) 622-3840 (not a toll free call).

Part IV. Items of General Interest

Announcement of the Results of the 2012–2013 Phase III Allocation Round of the Qualifying Advanced Coal Project Program

Announcement 2013–43

This announcement discloses the results of the 2012–13 allocation round under the qualifying advanced coal project program of § 48A of the Internal Revenue Code.

SECTION 1. QUALIFYING ADVANCED COAL PROJECT PROGRAM

Pursuant to § 48A(d)(4), on July 19, 2012, the Internal Revenue Service (the "Service") issued Notice 2012–51, 2012–33 I.R.B. 150 (the "Notice") to establish the § 48A Phase III qualifying advanced coal project program (the "Phase III program") and to allocate § 48A credits (the "Phase III credits") in the total amount of $658,500,000. The Notice provides that the credit for a taxable year under the Phase III program is an amount equal to 30 percent of the qualified investment for that taxable year in a qualifying advanced coal project that uses integrated gasification combined cycle technology or other advanced coal-based generation technology. To receive an allocation of the Phase III credits, a qualifying advanced coal project must include equipment that separates and sequesters at least 70 percent of such project's total carbon dioxide emissions.

Section 48A(d)(5) provides that the Secretary shall, upon making a certification under § 48A(d) or § 48B(d), publicly disclose the identity of the applicant and the amount of the credit certified with respect to such applicant. Section 10.01 of the Notice further provides that the Service intends to publish the results of the Phase III allocation round, and disclose the following information in the event the Phase III credit is allocated to the taxpayer's project: (a) the name of the taxpayer and (b) the amount of the Phase III credit allocated to the project.

Accordingly, the results of the 2012–13 allocation round under the Phase III program are as follows:

Program	Taxpayer	Amount of Credit Awarded	Total Credit Awarded
Phase III			
	STCE Holdings, LLC	$324,000,000	
	SCS Energy California, LLC	$334,500,000	
			$658,500,000

The 2012–2013 allocation round is the only allocation round under the Phase III program.

SECTION 2. DRAFTING INFORMATION

The principal author of this announcement is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this announcement, contact Ms. Bernardini at (202) 622–3110 (not a toll-free call).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1]A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013-1 through 2013-26 is in Internal Revenue Bulletin 2013-26, dated June 24, 2013.

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