

26 CFR 1.1441-1(e)(5) and (6). Proposed Amendments to the Qualified Intermediary Agreement in Rev. Proc. 2017-15.

Notice 2022-23

SECTION 1. PURPOSE AND SCOPE

This Notice sets forth proposed changes to the qualified intermediary (QI) withholding agreement (QI agreement) described in §1.1441-1(e)(5) and (6) that will permit a QI to assume withholding and reporting responsibilities for purposes of sections 1446(a) and (f). In general, the QI agreement allows foreign persons to enter into an agreement with the Internal Revenue Service (IRS) to simplify certain of their obligations as a withholding agent under chapters 3 and 4 and as a payor under chapter 61 and section 3406 for amounts paid to their account holders. The QI agreement currently in effect, as provided in Rev. Proc. 2017-15, 2017-3 I.R.B. 437 (the QI agreement), expires on December 31, 2022. This Notice sets forth proposed changes to the QI agreement that apply to a QI effecting a transfer of an interest in a publicly traded partnership (PTP) or receiving a distribution made by a PTP on behalf of an account holder of the QI. The Treasury Department and the IRS anticipate that the proposed changes to the QI agreement described in this Notice, subject to any modifications based on comments received, will be included in a revenue procedure containing the final QI agreement. The final QI agreement will apply to QI agreements that are in effect on or after January 1, 2023, to correspond with both the applicability

date of final regulations relating to withholding under sections 1446(a) and (f) and the expiration of the QI agreement.

Section 2 of this Notice provides background on the QI agreement and sections 1446(a) and (f). Section 3 of this Notice describes the highlights of the proposed changes to the QI agreement. Section 4 of this Notice contains the text of the proposed changes to the QI agreement. Section 5 of this Notice provides information on how to submit comments. Section 6 of this Notice provides drafting information.

SECTION 2. BACKGROUND

.01 Section 1446(f) Final Regulations.

Sections 864(c)(8) and 1446(f) were added to the Internal Revenue Code (the Code) by the Tax Cuts and Jobs Act, Pub. L. 115-97 on December 22, 2017. Section 864(c)(8) generally provides that gain or loss derived by a foreign person on the sale or exchange of an interest in a partnership engaged in a trade or business within the United States is treated as effectively connected gain or loss to the extent provided in that section. Section 1446(f)(1) generally provides that if any portion of the gain on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, then the transferee of the interest must withhold a tax equal to 10 percent of the amount realized on the disposition.

On November 30, 2020, final regulations (TD 9926) were published in the Federal Register (85 FR 76910) to implement the withholding requirements of section 1446(f) (the final regulations). The final regulations include withholding and reporting

requirements applicable to brokers that pay amounts realized on transfers made by foreign partners of interests in PTPs that are publicly traded on an established securities market or readily tradable on a secondary market (or the substantial equivalent thereof) (PTP interests). The final regulations allow brokers an exception from withholding on amounts realized paid to QIs that assume primary withholding responsibility for these amounts and provide guidance for brokers paying amounts realized to QIs that do not assume primary withholding responsibility (generally allowing the broker to accept from the QI either payee specific or withholding rate pool information). The final regulations provide brokers other exceptions to the withholding requirements, including for a foreign partner's valid claim for exemption based on an income tax treaty or partner's claim of status as a U.S. person. The final regulations also allow an exception to withholding (applicable to any partner) when the PTP publishes a qualified notice stating the applicability of a "10-percent exception." A 10-percent exception applies when either (i) a PTP's net gain from a deemed sale of its assets under section 864(c)(8) that would be effectively connected with a trade or business in the United States is less than 10% of the total net gain as of a designation date applicable to a partner's transfer of an interest in the PTP, or (ii) the PTP is not engaged in a trade or business in the United States. See §1.1446(f)-4(b) for these exceptions to withholding. The final regulations generally define an amount realized as the gross proceeds (as defined in §1.6045-1(d)(5)) from a sale of a PTP interest and the amount of a PTP distribution that is in excess of the cumulative net income of the PTP. They also allow a broker to rely on a certification of a modified amount realized when a transferor that is a foreign partnership provides

certain information with respect to its partners that are allocated gain from the transfer of a PTP interest. See §1.1446(f)-4(c)(2)(ii).

The final regulations also amend regulations under section 1446(a) relating to distributions by PTPs, which include an allowance for a QI to act as a nominee for purposes of assuming primary withholding responsibilities on a distribution from a PTP for purposes of section 1446(a) by assuming primary withholding responsibility for the entire distribution. Similar to an amount realized paid to a QI that does not assume primary withholding responsibility, the final regulations generally permit a PTP or a nominee to rely on either withholding rate pool information or specific payee information from a QI for purposes of section 1446(a) when the QI does not act as a nominee for a PTP distribution. The final regulations further provide a withholding default rule that applies to a nominee when a PTP either does not issue a qualified notice for a distribution or issues a qualified notice that lacks information necessary to determine all withholding required on the distribution. Under Notice 2021-51, 2021-36 IRB 1, the provisions of the final regulations related to withholding on transfers of PTP interests and withholding on PTP distributions apply to transfers and distributions that occur on or after January 1, 2023.

As a result of the allowances in the final regulations for QIs to assume withholding and reporting responsibilities for purposes of sections 1446(a) and (f), this Notice proposes modifications to the QI agreement to incorporate the requirements for QIs with respect to sections 1446(a) and 1446(f). Highlights of the proposed modifications to the QI agreement are described in Section 3 of this Notice.

.02 Overview of QI Agreement.

The QI agreement provides that a QI may assume primary withholding responsibility under chapters 3 and 4 for certain payments of U.S. source FDAP income made to its foreign account holders or the foreign account holders of another intermediary by providing a valid qualified intermediary withholding certificate to its withholding agent and designating the account(s) for which the QI assumes primary withholding responsibility. A QI is not required to assume primary chapter 3 and chapter 4 withholding responsibility for all accounts it holds with a withholding agent. A QI that does not assume primary chapter 3 and chapter 4 withholding responsibility for an account provides to its withholding agent a valid QI withholding certificate that indicates that the QI does not assume primary withholding responsibilities under chapters 3 and 4 and attaches a withholding statement that includes withholding rate pool information (i.e., aggregate information about the account holders and the withholding rate applicable to each pool). Notwithstanding a QI's allowance not to assume primary withholding responsibilities, a QI is still required to withhold if it knows that the appropriate amount has not been withheld by another withholding agent or if the QI made an error that results in withholding at less than the correct amount. For determining the amount to withhold, a QI may generally document account holders by obtaining either withholding certificates or documentary evidence under a country's approved "know your customer" rules. In a case in which overwithholding is applied on a payment, a QI is generally permitted to file a collective refund on behalf of its foreign account holders that are entitled to a refund of the tax withheld. Finally, a QI is

generally permitted to report on Forms 1042-S on a pooled basis rather than file and furnish a Form 1042-S with respect to each account holder.

Withholding under section 1446(a) is not currently within the scope of a QI's requirements under the QI agreement. As a result, a QI is not currently permitted to act as a QI with respect to an amount subject to withholding under section 1446(a) on a PTP distribution received on behalf of an account holder. The proposed modifications set forth in Section 4 of this Notice would extend the scope of the QI agreement to include sections 1446(a) and 1446(f).

SECTION 3. HIGHLIGHTS OF THE PROPOSED MODIFICATIONS TO THE QI AGREEMENT

.01 Withholding under sections 1446(a) and (f).

The proposed modifications to section 3 of the QI agreement provide general requirements for QIs with respect to withholding under sections 1446(a) and (f). QIs are permitted to assume primary withholding responsibility under sections 1446(a) and (f) on a payment-by-payment basis based on a valid withholding certificate permitted under the modifications to section 6 of the QI Agreement and without regard to whether the QI assumes withholding under chapters 3 and 4 for payments other than PTP distributions. The modifications to section 3 of the QI agreement specifically provide that a QI that assumes primary withholding responsibility on any portion of a PTP distribution will be required to assume withholding responsibilities for the entire distribution. The modifications also reference each of the amounts subject to withholding on a PTP distribution and how a QI is to determine each amount for purposes of withholding. For

cases in which a QI does not assume primary withholding under section 1446(a) or (f) for a payment, a QI is permitted to provide to its withholding agent the withholding statements and other information described in the modifications to section 6 of the QI agreement and is subject to the same residual withholding requirement that applies to its withholding under chapter 3 or 4 when another withholding agent withholds less than the required amount.

.02 Documentation for purposes of sections 1446(a) and (f).

Under the modifications to section 5 of the QI agreement, a QI is permitted to document the status of an account holder that is a partner in a PTP as a foreign or U.S. person for purposes of sections 1446(a) and (f) under requirements generally similar to those for payments subject to chapter 3 or 4 withholding (that is, using either documentary evidence or withholding certificates). However, when a QI acts as a disclosing QI by providing specific partner documentation to a withholding agent for withholding under the final regulations, the QI is permitted to document the status of an account holder based on only a withholding certificate. See section 3.03 of this Notice. A QI must also document an account holder using only a withholding certificate for purposes of applying an exception to withholding under section 1446(a) or (f) based on an account holder's claim under an income tax treaty or for applying an exception to withholding under section 1446(a) for an entity described in section 501(c). The modifications also include requirements for QIs to document nonqualified intermediaries, flow-through entities, and other QIs to which a QI pays amounts realized or PTP distributions and describe how a QI reliably associates the documentation with payments made to account holders or

interest holders in those entities. A limitation rule is added, however, that a QI may not reliably associate a payment of an amount realized under section 1446(f) with the account holders of a nonqualified intermediary regardless of whether specific information about the account holders of the nonqualified intermediary is provided to the QI. If a QI is unable to reliably associate a payment of an amount realized or an amount subject to withholding under section 1446(a) on a PTP distribution with valid documentation, the QI must treat the account holder as a foreign person under the presumption rule added to section 5.13(C)(5) of the QI agreement and withhold at the applicable rate under section 1446(a) or (f) except when backup withholding under section 3406 would apply to an amount realized. See §1.1446(f)-4(b)(4) for coordinating withholding under sections 3406 and 1446(f).

.03 QI withholding certificates and withholding statements.

The modifications to section 6 of the QI agreement allow a QI to furnish a qualified intermediary withholding certificate when paid an amount realized or PTP distribution. When a QI does not assume primary withholding responsibility under section 1446(a) or (f), the QI must also provide to its withholding agent a withholding statement that includes either withholding rate pools or specific payee information (and associated payee documentation) in lieu of withholding rate pool information when acting as a disclosing QI. If a QI provides withholding rate pool information to a withholding agent with respect to an amount realized, however, the QI may combine the withholding rate pool information for its account holders with the account holders of another intermediary only if the intermediary is a QI. In the case of a PTP distribution, a QI must determine its withholding

rate pools based on each amount subject to withholding on the distribution as determined by the QI's withholding agent.

.04 Reporting on Form 1042-S.

Under the modifications to section 8 of the QI Agreement, a QI may file Forms 1042-S on a pooled basis to report amounts realized and amounts subject to withholding on PTP distributions to the same extent generally permitted for other payments covered by the QI agreement. If a QI acts as a disclosing QI, however, the withholding agent or broker for the QI is required to file Forms 1042-S with respect to the account holders of the QI that are partners in a PTP, and the QI is not required to file a Form 1042-S unless it knows or has reason to know that a correct Form 1042-S was not issued to a partner. If a QI is provided account holder documentation from another QI acting as a disclosing QI, the QI is also required to report on Form 1042-S with respect to the account holder when the QI assumes primary withholding responsibility. In cases in which a QI does not act as a disclosing QI it must also issue a separate Form 1042-S when requested by an account holder under the conditions specified in the modifications. The modifications also include the conditions for a QI to issue a separate Form 1042-S to report an amount realized paid to an account holder of a nonqualified intermediary rather than to an unknown recipient (despite that reliance on account holder documentation is not permitted for the withholding) and require a QI to issue a separate Form 1042-S to an account holder of a nonqualified intermediary to which the QI pays a PTP distribution.

.05 Requirements under §1.6031(c)-1T.

In general, under §1.6031(c)-1T(a), a nominee holding an interest in a partnership

directly or indirectly on behalf of another person is required to provide to the partnership (or agent designated by the partnership or another nominee) certain information about the nominee and the person on whose behalf the nominee holds an interest (including the name, address, taxpayer identification number of the nominee and such other person, and a description of any interest in the partnership that the nominee holds, acquires, or transfers on behalf of such other person during the partnership taxable year). If a nominee does not provide the information described in the preceding sentence with respect to such other person, under §1.6031(c)-1T(h) the nominee is in general required to provide to the person a statement covering the person's distributive share of partnership income, gain, loss, deduction, or credit required to be shown on the partnership return, and any additional information as required under the Code with respect to items related to the person's interest in the partnership.

The provisions of §1.6031(c)-1T are incorporated into the QI agreement in new section 8.07 to facilitate the U.S. tax filings of foreign partners required to report effectively connected income from their holdings and sales of PTP interests (which apply regardless of whether the tax due is withheld). The modifications require a QI acting as a disclosing QI to provide to the PTP or QI's nominee the statement described in §1.6031(c)-1T(a) with respect to an account holder holding a PTP interest (including an account holder that is an intermediary in certain cases). In other cases, a QI may provide the statement described in the preceding sentence to the PTP or may instead provide the statement to the account holder that is described in §1.6031(c)-1T(h) with respect to the account holder's PTP interest. The QI must also facilitate the account holder's receipt of

deemed sale information for purposes of section 864(c)(8) when requested.

.06 Private arrangement intermediaries and agency and joint account options for partnerships and trusts.

The modifications add to the procedures under section 4 of the QI agreement for QIs that maintain arrangements with private arrangement intermediaries (PAIs) that hold PTP interests for account holders and provide the cases for which a QI may use the agency and joint options when paying a PTP distribution or amount realized to a partnership or trust. A QI is permitted to withhold on payments of amounts realized and PTP distributions made to a PAI under requirements similar to those that apply in the case of a disclosing QI that is an account holder of a QI (rather than allow the PAI to assume primary withholding or provide withholding rate pools). As a result of this treatment, a QI may determine its withholding on an amount realized paid to a PAI by reference to the statuses of the PAI's account holders (rather than treat the PAI as a nonqualified intermediary as described in section 3.02 of this Notice) and must provide to the PAI the statement described in §1.6031(c)-1T(a) with respect to each PAI account holder to which a QI pays an amount realized or PTP distribution during the year. A QI may apply the agency option with respect to a foreign partnership providing a certification for a modified amount realized or for an amount subject to withholding under section 1446(a) on a PTP distribution unless the partnership is a PTP (as an upper-tier PTP is not permitted to provide partner information to a lower-tier PTP for section 1446(a) withholding). With respect to a trust, a QI may apply the agency option only for a trust that is a grantor trust given that a simple trust is not permitted to provide beneficiary

information for section 1446(a) or (f) withholding. In cases for which the agency option is not specifically permitted, a QI is not otherwise required to provide information to a withholding agent or report with respect to the interest holders in a partnership or trust under the regulations to sections 1446(a) and (f) (such that the agency option has no application). However, the modifications do not permit a QI to use the joint account option for payments of PTP distributions or amounts realized. As the use of this option is not otherwise permitted when a partnership or trust has a U.S. partner, owner or beneficiary, its use would be of limited application if applied to those payments.

.07 Refunds and underwithholding.

Given the filing requirements of foreign partners for reporting their effectively connected income referenced in section 3.05 of this Notice, a QI is not permitted to file a collective refund with respect to withholding under section 1446(a) or (f). If a QI overwithholds under section 1446(a) or (f), the QI may apply the reimbursement and set-off procedures to the same extent permitted for chapters 3 and 4 purposes. If a QI does not withhold at the rate required under section 1446(a) or (f), the QI may apply the procedures for underwithholding that apply for purposes of chapters 3 and 4.

.08 Events of default and material failures.

The modifications include material failures for cases in which a QI fails to withhold as required under sections 1446(a) and (f) or fails to comply with the reporting requirements of new section 8.07. The modifications include similar events of default for when a QI fails to comply materially with either of those requirements.

SECTION 4. TEXT OF PROPOSED CHANGES TO THE QI AGREEMENT

The text of the proposed changes to the QI agreement is set forth below and includes each section of the QI agreement that is proposed to be modified by this Notice (adding as applicable new sections and revising certain section headings). The Treasury Department and the IRS intend to incorporate the provisions of this Section 4 and additional requirements for QIs under sections 1446(a) and (f) (such as the periodic review requirements of QIs relevant to those sections) into the revised QI agreement that is to apply beginning with the 2023 calendar year. Comments relating to this Section 4 are requested, in particular with respect to the procedures of proposed section 8.07. Comments are further requested with respect to additional compliance procedures that should be added to section 10 of the QI agreement for purposes of sections 1446(a) and (f) and to Appendices I and II to the QI agreement for this purpose. See Section 5 of this Notice.

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SECTION 2. DEFINITIONS

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Sec. 2.04. Amount Subject to Chapter 3 Withholding. An “amount subject to chapter 3 withholding” is an amount described in §1.1441-2(a) regardless of whether such amount is withheld upon. Unless indicated otherwise in this Agreement, an amount subject to chapter 3 withholding includes an amount subject to chapter 3 withholding on a PTP distribution. See section 2.92(C) of this Agreement.

Sec. 2.05. Amount Subject to Chapter 4 Withholding. An “amount subject to chapter 4 withholding” is a withholdable payment (as defined in §1.1473-1(a)) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4. Unless indicated otherwise in this Agreement, an amount subject to chapter 4 withholding includes such an amount subject to chapter 4 withholding on a PTP distribution. See section 2.92(C) of this Agreement

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Sec. 2.08. Beneficial Owner. A “beneficial owner” has the meaning given to that term in §1.1441-1(c)(6) with respect to a payment subject to withholding under chapter 3.

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Sec. 2.31. Flow-Through Entity. * * * For an amount realized or amount subject to withholding under section 1446(a) on a PTP distribution, a flow-through entity includes a U.S. grantor trust.

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Sec. 2.92. Terms applicable to section 1446(a) and (f) requirements. The following terms apply in connection with QI’s requirements with respect to QI’s account holders holding PTP interests:

(A) Amount realized. For purposes of section 1446(f), an amount realized on a sale of a PTP interest is the amount of gross proceeds (as defined in §1.6045-1(d)(5)) paid or credited to the partner or broker that is the transferor of the interest. The amount realized on a PTP distribution is the amount of the distribution reduced by the portion of the distribution that is attributable to the cumulative net income of the partnership (as determined under §1.1446(f)-4(c)(2)(iii)).

(B) Amount subject to reporting under section 1446(f). An amount subject to reporting under section 1446(f) is the amount realized on the transfer of a PTP interest paid to a foreign partner (including a partner presumed to be foreign) unless an exception to withholding applies under §1.1446(f)-4(b)(2) through (4). See §1.1461-1(c)(2)(i)(Q).

(C) Amount subject to withholding on a PTP distribution. An amount subject to withholding on a PTP distribution is the amount of the distribution subject to withholding under chapter 3 or 4 and/or under section 1446(a) or (f).

(D) Broker. The term broker has the meaning described in §1.1446(f)-1(b)(1), when referenced in connection with the transfer of a PTP interest.

(E) Disclosing QI. For purposes of section 1446(a) or (f), a disclosing QI is a QI that does not assume the primary withholding obligation under section 1446(a) or (f) for a payment and that provides with its withholding statement the specific payee documentation referenced in §1.1446(f)-4(a)(7)(iii) (for an amount realized) or §1.1446-4(e)(4) (for withholding on a PTP distribution under section 1446(a)) instead of the chapter 3 withholding rate pool information otherwise permitted to be included on the withholding statement and, for an amount realized, a chapter 4 withholding rate pool of U.S. payees when permitted for chapter 4 purposes in lieu of specific payee documentation for those payees. A QI that acts as a disclosing QI for a payment must act as a disclosing QI for the entire payment.

(F) Modified amount realized. In the case of an amount realized paid to a transferor of a PTP interest that is a foreign partnership, the modified amount realized is the amount determined under §1.1446(f)-4(c)(2)(ii), as modified by section 4.06 or 5 of this Agreement with respect to the partner information required for determining the amount.

(G) Nominee. The term nominee means a person that, under §1.1446-4(b)(3), holds an interest in a PTP on behalf of a foreign person and that is either a U.S. person or QI that assumes primary withholding responsibility for a PTP distribution, or a U.S. branch of a foreign person (or territory financial institution) that agrees to be treated as a U.S. person with respect to the distribution.

(H) Partner. When referenced in connection with sections 1446(a) and (f), a partner is a person holding a PTP interest, including a partnership or trust but excluding a grantor trust and including the trust's grantors or owners to the extent of their respective interests in the trust, and excluding an intermediary. When referenced in connection with §1.6031(c)-1T, a partner is a person to whom a partnership is required to issue a statement under section 6031(b). See section 8.07 of this Agreement.

(I) PTP interest. A PTP interest is an interest in a publicly traded partnership if the interest is publicly traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof).

(J) PTP distribution. A PTP distribution is a distribution made by a publicly traded partnership.

(K) Publicly traded partnership (PTP). The term publicly traded partnership (PTP) has the same meaning as in section 7704 and §§1.7704-1 through 1.7704-4 but does not include a publicly traded partnership treated as a corporation under that section.

(L) Qualified notice. A qualified notice is a notice issued by a PTP for a PTP distribution as described in §1.1446-4(b)(4).

(M) Transfer. A transfer is a sale, exchange, or other disposition of a PTP interest, and includes a distribution from a partnership to a partner, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B). With respect to a PTP distribution, however, see sections 2.92(A) and 3.01(C)(2) of this Agreement for the extent of an amount realized on the distribution for purposes of QI's requirement to withhold under section 1446(f).

(N) Transferor. A transferor is any person, foreign or domestic, that transfers a PTP interest. In the case of a trust, to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679, the term transferor means the grantor or other person.

SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY

Sec. 3.01. Withholding Responsibilities under Chapters 3 and 4 and Withholding with respect to PTP Interests.

* * *

(C) Withholding under section 1446(f) and on PTP Distributions.

(1) Withholding on Amount Realized. If QI acts as a broker with respect to a payment of an amount realized from a transfer of a PTP interest, QI is required to withhold under section 1446(f) 10-percent of the amount realized paid to an account holder of QI that is the transferor and is (or is presumed to be) a foreign partner when QI assumes primary withholding responsibility for the payment under section 3.03(C)(1) of this Agreement. QI is further required to withhold on a payment of an amount realized made to a foreign broker to the extent provided in §1.1446(f)-4(a)(2). QI is not required to withhold on a payment of an amount realized when an exception to withholding under §1.1446(f)-4(b)

applies. Thus, for example, QI is not required to withhold under section 1446(f) when it may rely on a qualified notice that states the applicability of the exception under §1.1446(f)-4(b)(3). See section 5 of this Agreement regarding documentation requirements for other exceptions to withhold under §1.1446(f)-4(b).

(2) Withholding under chapter 3, chapter 4, section 1446(a), and section 1446(f) on PTP distribution. If QI acts as a nominee for a PTP distribution under section 3.03(C)(2) of this Agreement, QI is a withholding agent for purposes of the distribution and is required to withhold as described in this section 3.01(C)(2). For an amount subject to withholding under section 1446(a) identified on a qualified notice for a PTP distribution, QI is required to withhold on the amount paid to an account holder that is (or is presumed to be) a foreign partner except when an exception to withholding applies to an account holder that is a foreign entity described in section 501(c)(3) or that claims an exemption from withholding under an income tax treaty. See sections 5.03 and 5.06(A) of this Agreement for documentation requirements for these exceptions and section 1446(b) for the rate of withholding that applies under section 1446(a). For an amount subject to withholding under chapter 3 and 4 on a PTP distribution, QI is required to withhold under sections 3.01(A) and (B) of this Agreement to the extent such amounts are identified on a qualified notice for the distribution. For an amount realized on a PTP distribution, QI's requirement to withhold under section 1446(f) is limited to the amount identified on a qualified notice as in excess of the PTP's cumulative net income. If QI does not receive a qualified notice for a distribution or to the extent the qualified notice for the distribution does not specify an amount subject to withholding, QI is required to withhold only to the extent provided in the default rules in §1.1446-4(d)(1).

Sec. 3.02. Primary Withholding Responsibility Not Assumed under Chapters 3 and 4 or with respect to PTP interests. Notwithstanding anything in sections 1.01 and 3.01 of this Agreement to the contrary, QI is not required to withhold to the extent provided in this section 3.02.

(A) Withholding under Chapters 3 and 4. QI is not required to withhold with respect to a payment of U.S. source FDAP income if it: (a) does not assume primary withholding responsibility under section 3.03(A) of this Agreement by electing to be withheld upon under §1.1471-2(a)(2)(iii) for purposes of chapter 4, (b) provides the withholding agent from which QI receives the payment with a valid withholding certificate that indicates that QI does not assume primary withholding responsibility for chapters 3 and 4 purposes, and (c) provides correct withholding statements (including information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI, other than a QI that assumes primary withholding responsibility, or a WP or WT) as described in section 6.02 of this Agreement.

(B) Withholding with respect to PTP interest. QI is not required to withhold on a payment of a PTP distribution or an amount realized from the sale of a PTP interest

except when QI assumes primary withholding responsibility for either of those payments under section 3.03(C)(1) or (2) of this Agreement. QI does not assume primary withholding responsibility for a payment of a PTP distribution or amount realized from the sale of a PTP interest by providing to its withholding agent or broker a valid withholding certificate indicating that it is a QI that does not assume primary withholding responsibility for the payment and provides correct withholding statements as described in section 6.02 of this Agreement. See section 3.05(C) of this Agreement for when QI is not responsible for primary Form 1099 reporting and backup withholding for broker proceeds that are an amount realized.

(C) Residual Withholding Requirement. Notwithstanding its election not to assume primary withholding responsibility for a payment as described in section 3.02(A) or (B) of this Agreement, QI shall, however, withhold the difference between the amount of withholding required and the amount actually withheld by another withholding agent if QI—

(1) Actually knows that the appropriate amount has not been withheld by another withholding agent or broker; or

(2) Made an error which results in the withholding agent or broker's failure to withhold the correct amount due (e.g., QI fails to provide an accurate withholding statement with respect to the payment, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement), and QI has not corrected the underwithholding under section 9.05 of this Agreement.

Sec. 3.03. Assumption of Primary Withholding Responsibilities under chapters 3 and 4 (including by QDDs) or with respect to PTP interest.

(A) Withholding Assumed under Chapters 3 and 4. QI may assume primary withholding responsibility for purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility (if required). QI is not required to assume primary withholding responsibility for all accounts it holds with a withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account. Notwithstanding the preceding sentence, QI assumes primary withholding responsibility on a PTP distribution (which includes an amount subject to withholding under chapter 3 or 4 on the distribution) only as provided in section 3.03(C)(2) of this Agreement.

* * *

To the extent that QI assumes primary withholding responsibility under this section 3.03(A), QI shall withhold as described in section 3.01(A) and (B) of this Agreement. QI is not required to withhold on amounts it pays to another QI that has assumed primary withholding responsibility with respect to the payment under chapters 3 and 4 (including a QI acting as a QDD except for all payments with respect to underlying securities, other than dividend equivalents, paid to a QDD for which withholding is required) or to a WP or a WT.

* * *

(C) Withholding Assumed with respect to PTP Interest.

(1) Withholding Assumed on Amount Realized. QI may assume primary withholding responsibility for a payment of an amount realized from the sale of a PTP interest only when the QI provides to the broker making the payment to QI a valid withholding certificate described in section 6 of this Agreement stating that it assumes primary responsibility for the payment. In such a case, QI is required to withhold on the payment as described in section 3.01(C)(1) of this Agreement, excluding an amount realized paid to another QI that has assumed primary withholding responsibility with respect to the amount realized.

(2) Withholding Assumed on PTP Distribution. QI may assume primary withholding responsibility for a payment of a PTP distribution only when the QI provides to the PTP or nominee paying the distribution to QI a valid withholding certificate described in section 6 of this Agreement stating that QI assumes primary responsibility by acting as a nominee for the distribution under §1.1446-4(b)(3). QI may act as a nominee for a PTP distribution only when QI assumes primary withholding responsibility for all of the amounts subject to withholding on the PTP distribution under sections 1446(a) and (f) and chapters 3 and 4. When acting as a nominee, QI is required to withhold on a PTP distribution as required under section 3.01(C)(2) of this Agreement, excluding a PTP distribution paid to another QI that has assumed primary withholding responsibility as a nominee with respect to the distribution or to a WP or WT with respect to an amount subject to withholding under chapter 3 or 4 on the distribution.

* * *

Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts.

* * *

(C) Special Procedure for Broker Proceeds.

* * *

Notwithstanding the preceding provisions, for a payment of broker proceeds that is an amount realized from the sale of a PTP interest, QI will not be excepted from responsibility for primary Form 1099 reporting and backup withholding (as otherwise permitted in this section 3.05(C)) if QI also provides a valid withholding certificate to the broker paying the proceeds to QI that indicates that QI assumes primary withholding responsibility for the amount realized.

* * *

Sec. 3.08. Deposit Requirements.

* * *

The deposit requirements of this section 3.08 that apply to amounts that QI withholds under chapter 3 and 4 also apply to the extent that QI assumes primary withholding responsibility for a payment of a PTP distribution or amount realized from the sale of a PTP interest.

SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES AND CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 4.01. Private Arrangement Intermediaries—In General.

* * *

(G) * * * The limitations on a PAI's disclosure of its direct account holders to QI described in this section 4.01(G) do not, however, apply with respect to the PAI's direct account holders' receipt of payments of PTP distributions or amounts realized from sales of PTP interests. For either such payment, a PAI is required to disclose to QI its direct account holders and provide any information requested by QI for QI to meet its withholding and reporting requirements specified in section 4.02(D) of this Agreement.

Sec. 4.02. Modification of Obligations for PAI Agreements.

(A) Payments Reportable under Chapters 3 and 4. * * *

(2) A direct foreign account holder of the PAI for which no withholding is required under chapter 4 (other than an intermediary, custodian, nominee, agent, or flow-through entity described below), QI shall, except as otherwise provided in section 4.02(D) of this Agreement, report an amount subject to chapter 3 withholding using the chapter 3 reporting pools as described in section 8.03 of this Agreement with the PAI reported as the recipient.

* * *

(D) Payments of Amounts Realized or PTP Distributions. The agreement between QI and a PAI must provide that QI will satisfy the requirements of §1.6031(c)-1T as set forth in section 8.07 of this Agreement with respect to each account holder of PAI that is a partner receiving from QI a PTP distribution or amount realized from the sale of a PTP interest for which a statement under section 6031(b) is required for the taxable year (and for which the PAI will provide QI the necessary partner information). The agreement between QI and a PAI must further provide that QI shall treat PAI as if PAI were a disclosing QI with respect to both of the following—

(1) QI's reporting on Forms 1042 and 1042-S of an amount realized from the sale of a PTP interest or an amount subject to withholding on a PTP distribution paid to a direct account holder of PAI (as further described in section 8 of this Agreement), and

(2) QI's determination of the withholding required on any such amount.

Sec. 4.03. Other Requirements of PAI Agreements

* * *

Finally, nothing in the agreement between QI and a PAI shall permit the PAI to assume primary withholding responsibility for a PTP distribution or an amount realized from the sale of a PTP interest.

* * *

Sec. 4.05. Joint Account Treatment for Certain Partnerships and Trusts

* * *

(B) Modification of Obligations for QI.

(1) * * * QI may not, however, rely on a Form W-8IMY that is associated with a PTP distribution or amount realized from the sale of a PTP interest for purposes of this section 4.05.

Sec. 4.06. Agency Option for Certain Partnerships and Trusts.

(A) In General.

* * *

(6) For a partnership or trust to which QI pays an amount subject to withholding under section 1446(a) on a PTP distribution, the partnership is not a PTP, and the trust is a grantor trust (with the partnership or trust providing its U.S. TIN to QI). For a partnership or trust to which QI pays an amount realized, the partnership is a partnership providing a certification for a modified amount realized, and the trust is a grantor trust (with the partnership or trust providing its U.S. TIN to QI).

* * *

SECTION 5. DOCUMENTATION REQUIREMENTS

Sec. 5.01. Documentation Requirements.

(A) General Documentation Requirements.

* * *

If QI makes a payment of an amount realized on a sale of a PTP interest or a PTP distribution, QI also agrees to use its best efforts to obtain the documentation from a partner that is described in section 5.02 of this Agreement. QI further agrees to treat a partner as a foreign partner and a broker as a foreign broker when required under section 5.13(C)(5) of this Agreement for a payment of an amount realized or the amount of a PTP distribution subject to withholding under section 1446(a).

* * *

Sec. 5.02. Documentation for Foreign Account Holders. (A) Documentation for chapters 3 and 4. QI may treat an account holder as a foreign beneficial owner of an amount for purposes of chapter 3 or 4 if the account holder provides a valid Form W-8 (other than Form W-8IMY unless provided by a QI that is acting as a QDD or assuming primary withholding responsibility for a substitute interest payment) or valid documentary evidence that supports the account holder's status as a foreign person.

* * *

(B) Documentation for Section 1446(a). QI must treat an account holder that is a partner receiving a payment of a PTP distribution subject to withholding under section 1446(a) as a foreign partner if the account holder provides a valid Form W-8 other than a Form W-8IMY provided by an intermediary, grantor trust, or partnership (excluding a PTP) that includes the account holder's U.S. TIN. Alternatively, QI must treat an account holder described in the preceding sentence as a foreign partner when QI has both valid documentary evidence that supports the account holder's status as a foreign person and the account holder's U.S. TIN. See, however, §1.1446-4(e)(4) for QI's requirement to provide withholding certificates for the amount of a PTP distribution subject to withholding under section 1446(a) when acting as a disclosing QI.

(C) Documentation for Section 1446(f). QI must treat an account holder receiving a payment of an amount realized as a foreign partner if the account holder provides a valid Form W-8 (other than a Form W-8IMY provided by a grantor trust, broker, or a partnership providing the certification on Form W-8IMY for a modified amount realized) that includes the account holder's U.S. TIN. Alternatively, QI must treat an account holder described in the preceding sentence as a foreign partner when QI has both valid documentary evidence that supports the account holder's status as a foreign person and the account holder's U.S. TIN. See, however, §1.1446(f)-4(a)(7)(iii) for QI's requirement to provide withholding certificates when acting as a disclosing QI for an amount realized. With respect to an amount realized QI pays to a broker, QI may rely on documentation that is permitted under §1.1446(f)-4(a)(5) for treating the broker as a foreign person.

* * *

Sec. 5.03. Beneficial Owner's or Partner's Claim of Treaty Benefits.

* * *

If an account holder that is a foreign partner receives an amount subject to withholding under section 1446(a) on a PTP distribution or an amount realized, the documentation described in section 5.03(A)(1) of this Agreement shall be permitted for the partner's claim of treaty benefits and sections 5.03(A)(2) and (3) of this Agreement shall not apply. See, however, section 5.07 of this Agreement in the case of an amount realized paid to a nonqualified intermediary.

* * *

Sec. 5.04. Documentation for International Organizations. * * *

For example, an international organization may not claim benefits under this section 5.04 with respect to QI's requirement to withhold under section 1446(a) or (f).

Sec. 5.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.

(A) Documentation From a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption from Withholding Under Section 892 or Section 895. To the extent an account holder receives a payment subject to withholding under chapter 3 that is not subject to withholding under chapter 4, * * *

* * *

(C) * * * For example, a foreign government or foreign central bank of issue may not claim benefits under section 892 with respect to QI's requirement to withhold under section 1446(a) or (f).

Sec. 5.06. Documentation for Foreign Tax-Exempt Organizations. To the extent an account holder receives a payment that is subject to withholding under chapter 3 or section 1446(a) on a PTP distribution but not under chapter 4, QI may not treat an account holder as a foreign tax-exempt organization and reduce the rate of or exempt the account holder from withholding unless it satisfies the requirements provided in section 5.06(A), (B), or (C) of this Agreement.

* * *

Sec. 5.07. Documentation from Intermediaries or Flow-Through Entities.

* * *

Notwithstanding the previous provisions of this section 5.07, for an amount realized paid to a nonqualified intermediary, QI is required to apply the presumption rule provided in section 5.13(C)(5) of this Agreement regardless of whether the nonqualified intermediary provides a valid Form W-8IMY and documentation with respect to the account holders receiving the amount realized.

* * *

(B) Reportable Payments Other than Withholdable Payments or Payments with respect to PTP interests Made to Nonqualified Intermediaries and Flow-Through Entities. With respect to a reportable payment that is not a withholdable payment or an amount realized made to a nonqualified intermediary or flow-through entity— * * *.

(C) Payments with respect to PTP Interests Made to Nonqualified Intermediaries and Flow-Through Entities.

(1) Amount Realized. With respect to a payment by QI of an amount realized from the sale of a PTP interest made to a flow-through entity or nonqualified intermediary, the documentation that QI receives is a valid Form W-8IMY from the entity except for a foreign simple trust (for which a Form W-8BEN-E may instead be received) and a U.S. grantor trust (for which a document similar to Form W-8IMY may be received). In the case of a foreign partnership providing the certification on Form W-8IMY for a modified amount realized, QI is required to obtain from the partnership the documentation described in this section 5 with respect to the partners that QI can reliably associate with the payment. For a grantor trust to which QI pays an amount realized, QI is further required to obtain valid documentation described in this section 5 that QI can reliably associate with each grantor or owner of the trust.

(2) PTP distribution. With respect to a payment by QI of a PTP distribution to a nonqualified intermediary, the documentation that QI receives from the intermediary is a valid Form W-8IMY (including its chapter 4 status for an amount of a distribution attributable to a withholdable payment) and documentation for each of the account holders of the nonqualified intermediary that are partners in the PTP that QI can reliably associate with each amount subject to withholding on the distribution (including by applying section 5.13(B)(1) of this Agreement for any amount realized on the distribution). With respect to a payment by QI of a PTP distribution to a flow-through entity, the documentation that QI receives from the flow-through entity is as follows—

(i) For the amount of the distribution subject to withholding under section 1446(a) made to a foreign partnership, QI receives a valid Form W-8IMY from the partnership and, for a foreign partnership other than a PTP, valid documentation described in this section 5 on each of the partners in the partnership that QI can reliably associate with the distribution. See §§1.1446-4 and 1.1446-5(c). For the portion of the distribution subject to withholding under section 1446(a) made to a trust, QI receives a valid Form W-8BEN-E or W-8IMY from a simple trust or, in the case of a foreign grantor trust, a valid Form W-8IMY from the trust (or similar document from a U.S. grantor trust) and valid documentation on each grantor or owner of the trust permitted under this section 5 for a payment subject to section 1446(a) withholding that QI can reliably associate with the distribution.

(ii) For the amount of the distribution subject to withholding under chapter 3 or 4, QI receives a valid Form W-8IMY from the flow-through entity (which includes the entity's chapter 4 status with respect to any amount of a distribution attributable to a withholdable payment) and valid documentation on the interest holders in the entity (other than nonqualified intermediaries or flow-through entities) permitted under this section 5 for a payment subject to chapter 3 or 4 withholding that QI can reliably associate with the distribution.

(iii) For the amount realized on the distribution, QI receives from the flow-through entity valid documentation specified in section 5.07(C)(1) of this Agreement applicable to a flow-through entity that QI can reliably associate with the distribution.

(D) Reportable Payments and Payments with respect to PTP Interests Made to QIs, WPs, and WTs.

* * *

With respect to a payment of an amount realized on the sale of a PTP interest made by QI to a QI, QI receives a valid Form W-8IMY provided by the other QI that includes the QI's chapter 4 status if the QI provides a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees. Additionally, for an amount realized for which the other QI does not assume primary withholding responsibility nor act as a disclosing QI, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for a U.S. partner not includible in a chapter 4 withholding rate pool of U.S. payees under chapter 4. See §1.1446(f)-4(a)(7)(iv). For an amount realized described in the preceding sentence that QI pays to a QI acting as a disclosing QI, QI receives valid documentation permitted under section 5.02(C) of this Agreement with respect to the account holders of the other QI, including a valid Form W-9 for a U.S. partner not includible in a chapter 4 withholding rate pool of U.S. payees permitted under chapter 4.

With respect to a PTP distribution paid by QI to a QI, QI receives a valid Form W-8IMY provided by the other QI that includes the QI's chapter 4 status for any portion of the PTP distribution attributable to a withholdable payment. Additionally, for a PTP distribution for which the other QI does not assume primary withholding responsibility nor act as a disclosing QI, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for each partner that is a U.S. person. For a PTP distribution that QI pays to a QI acting as a disclosing QI, QI receives with respect to the account holders of the other QI valid documentation required of a disclosing QI under section 5.02(B) of this Agreement for an amount subject to withholding under section 1446(a) on the distribution, valid documentation permitted under the preceding paragraph of this section 5.07(D) for an amount realized on the distribution and, for an amount subject to withholding under chapter 3 or 4 on the distribution, valid documentation described in section 5.07(A) or (B) of this Agreement.

With respect to a PTP distribution paid to a WP or WT, QI receives a valid Form W-8IMY provided by the WP or WT that QI can reliably associate with an amount subject to withholding under chapter 3 or 4 on the distribution.

* * *

(E) Payments Made to QIs Acting as QDDs. * * *

(F) Private Arrangement Intermediaries. * * * QI must also reliably associate a payment made to a PAI with valid documentation with respect to the account holders of the PAI for a payment of a PTP distribution or amount realized from the sale of a PTP interest as described in section 5.07(D) of this Agreement.

* * *

(G) Partnerships or Trusts to which QI Applies the Agency Option. * * *

Sec. 5.10. Documentation Validity.

(A) In General. QI may not rely on documentation if QI has actual knowledge or, for a payment other than an amount realized, reason to know that the information or certifications contained in the documentation are unreliable or incorrect, or that there is a change in circumstances with respect to the information or statements contained in the documentation or account information that affects the reliability of the account holder's claim. See §1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances and a withholding agent's obligation with respect to a change in circumstances for purposes of withholding under chapters 3 and 4 and section 1446(a). * * *

* * *

Sec. 5.13. Application of Presumption Rules.

(A) * * *

(B) Reliably Associating a Payment with Documentation.

* * * See also §1.1471-3(e)(4)(vi)(B) for when a QI that is an FFI may rely on documentation and information permitted in an applicable IGA to document an account holder's chapter 4 status. For documentation reliance rules for purposes of sections 1446(a) and (f), see §§1.1446-1(c)(2)(iii) and 1.1446(f)-4(b). * * *

(1) Reliably Associating a Payment with Documentation Provided by a Nonqualified Intermediary or Flow-Through Entity.

* * *

With respect to a payment of an amount realized from the sale of a PTP interest, QI can reliably associate the payment with documentation when QI can associate the payment with a valid Form W-8IMY provided by a flow-through entity except for a trust that is a simple trust (for which a valid Form W-8BEN-E may instead be provided). Additionally, QI can reliably associate the payment with documentation to permit a modified amount realized paid to a foreign partnership to the extent that QI can reliably associate the payment with a valid Form W-8IMY provided by the partnership that includes the certification for a modified amount realized and the partnership provides valid documentation for each partner allocated an amount of gain (if any) arising from the sale. For a payment of an amount realized made to a grantor trust, QI can reliably associate the payment with documentation when it can reliably associate the payment with a valid Form W-8IMY from the trust indicating its status as a foreign grantor trust (or similar document from a U.S. trust) and can determine the percentage of the amount realized that is associated with valid documentation provided by each grantor or owner of the trust.

With respect to QI's payment of an amount realized from the sale of a PTP interest made to a nonqualified intermediary, QI cannot reliably associate the payment with documentation regardless of whether a valid Form W-8IMY is provided by the nonqualified intermediary together with valid documentation for its account holders that QI can associate with the payment. See section 8.02(N) of this Agreement, however, for when a QI may rely on account holder documentation provided by a nonqualified intermediary for purposes of reporting under this Agreement.

With respect to a PTP distribution QI pays to a nonqualified intermediary, QI can reliably associate the distribution with documentation when QI can reliably associate the payment with a valid Form W-8IMY provided by the nonqualified intermediary (including its chapter 4 status for an amount of a distribution attributable to a withholdable payment) and can determine the portion of each amount subject to withholding on the distribution (as determined under section 3.01(C)(2) of this Agreement) that is associated with valid documentation for each partner or beneficial owner with respect to the distribution that is an account holder of the nonqualified intermediary (as applicable, depending on the amount subject to withholding on the distribution and taking into account the preceding paragraph of this section 5.13(B)(1) for an amount realized on the distribution).

With respect to a PTP distribution QI pays to a flow-through entity, QI can reliably associate the distribution with documentation to the extent it reliably associates with documentation each amount subject to withholding on the distribution as follows—

- (i) For an amount subject to withholding under section 1446(a), QI can determine the portion of the amount associated with—

(a) A valid Form W-8IMY from a partnership and, for a partnership other than a PTP, when QI can determine the amount associated with valid documentation provided by each of the partners of the partnership;

(b) A valid Form W-8BEN-E or Form W-8IMY from a simple trust; or

(c) A valid Form W-8IMY from a trust that identifies itself as a foreign grantor trust (or similar document from a U.S. grantor trust), when QI can associate the portion of the amount with valid documentation provided by each grantor or owner of the trust.

(ii) For an amount subject to withholding under chapter 3 or 4 that QI can determine is reliably associated with a valid Form W-8IMY provided by the flow-through entity (which includes the entity's chapter 4 status with respect to an amount of a distribution attributable to a withholdable payment) and the portion of the amount associated with valid documentation provided by each interest holder in the flow-through entity other than an intermediary or flow-through entity.

(iii) For an amount realized that QI can determine is reliably associated with valid documentation provided by the flow-through entity and the portion of the amount associated with an interest holder in the entity to the extent specified in this section 5.13(B)(1) for an amount realized paid to a flow-through entity.

* * *

(7) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Primary Withholding Responsibility for a PTP Distribution or Amount Realized from the Sale of a PTP Interest.

QI can reliably associate with documentation a payment of a PTP distribution or amount realized from the sale of a PTP interest made to another QI that assumes withholding responsibility for the payment when QI can reliably associate the payment with a valid Form W-8IMY provided by the QI that indicates that the QI assumes primary responsibility for the amount realized or PTP distribution.

(8) Reliably Associating a Payment with Documentation Provided by a QI that Does not Assume Primary Withholding Responsibility for a PTP Distribution or Amount Realized from the Sale of a PTP Interest.

QI can reliably associate with documentation a payment of an amount realized from the sale of a PTP interest made to a QI that does not assume primary withholding responsibility for the payment when QI reliably associates the payment with a valid Form W-8IMY provided by the other QI and can determine the portion of the payment

associated with a valid Form W-9 for the U.S. partner (or a chapter 4 withholding rate pool of U.S. payees when permitted under chapter 4) and, with respect to other partners, either withholding rate pools, as described in section 6.03(C) of this Agreement or, for a disclosing QI, when QI can determine the portion of the payment that is associated with valid documentation for each of the account holders of the other QI not includible in a chapter 4 withholding rate pool of U.S. payees under chapter 4.

QI can reliably associate with documentation a payment of a PTP distribution made to another QI that does not assume primary withholding responsibility for the payment when QI can reliably associate the payment with a valid Form W-8IMY provided by the QI and can determine the portion of the distribution associated with withholding rate pools, as described in section 6.03(C) of this Agreement, or a valid Form W-9 for a U.S. partner, or, for a disclosing QI, when QI can determine the portion of each amount subject to withholding on the distribution that is associated with valid documentation for each of the account holders of the other QI as described in section 5.07(D) of this Agreement.

(C) Presumption Rules.

* * *

(5) Other Payments.

* * * In the case of a payment of an amount realized, an account holder that is the partner or a broker receiving the payment shall be presumed a foreign person for which a reduced rate of withholding under section 1446(f) shall not apply. See, however, §1.1446(f)-4(b)(4) in the case of an amount realized for which withholding under section 3406 is required. In the case of an amount subject to withholding under section 1446(a) on a PTP distribution, an account holder that is a partner in the PTP receiving the distribution shall be presumed a foreign person, with the rate of withholding determined under §1.1446-4(d)(1)(iii).

SECTION 6. QUALIFIED INTERMEDIARY WITHHOLDING CERTIFICATE AND DISCLOSURE OF ACCOUNT HOLDERS TO WITHHOLDING AGENT

Sec. 6.01. Qualified Intermediary Withholding Certificate.

QI agrees to furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a QI or to each withholding agent or broker from which QI receives a PTP distribution or amount realized from the sale of a PTP interest (including when QI acts as a disclosing QI for the distribution or amount realized). The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a QI, contains QI's QI-EIN,

and provides all other information required by the form. If QI receives a withholdable payment (including on a PTP distribution), QI must certify to its chapter 4 status and provide its GIIN (if applicable). QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI when QI provides a Form W-8IMY that certifies that it meets the requirements of §1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains that is included in a chapter 4 withholding rate pool of U.S. payees on QI's withholding statement for a payment subject to withholding under chapter 3 or 4 or an amount realized from the sale of a PTP interest.

* * *

Sec. 6.02. Withholding Statement.

(A) In General.

* * * Notwithstanding the preceding provisions of this section 6.02(A) for a payment received by QI of a PTP distribution or an amount realized from the sale of a PTP interest, QI agrees to provide a withholding statement described in this section 6.02 when QI does not assume primary withholding responsibility for the payment.

(B) Content of Withholding Statement.

* * *

(5) Designate an account for which QI assumes primary withholding responsibility for a PTP distribution or an amount realized from the sale of a PTP interest, and

(6) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement, when necessary, except that section 6.03(C) of this Agreement shall not apply when QI acts as a disclosing QI for a payment, and references to a chapter 4 withholding rate pool of U.S. payees in section 6.03(B) of this Agreement shall not apply to an amount subject to withholding under section 1446(a) on a PTP distribution. See also section 2.92(E) of this Agreement for the extent of a disclosing QI's requirement to provide specific payee information on a withholding statement.

Sec. 6.03. Chapters 3 and 4 Withholding Rate Pools and Specific Payee Information.

(A) In General. QI shall provide as part of its withholding statement withholding rate pool information in a manner sufficient for the withholding agent to meet its chapters 3 and 4 and backup withholding responsibilities and its Form 1042-S and Form 1099 reporting responsibilities. QI's requirement for its withholding statement described in the preceding sentence also applies to a withholding statement QI provides to the

withholding agent or broker for a payment of a PTP distribution or amount realized from the sale of a PTP interest. Additionally, for a PTP distribution, the withholding rate pool information provided by QI on its withholding statement must take into account each amount subject to withholding on the distribution as determined by the withholding agent that pays the distribution to QI.

* * *

(C) Chapter 3 Withholding Rate Pools.

* * * For a payment of an amount realized, however, QI may combine its account holder information with the account holder information provided by an intermediary only if the intermediary is a QI other than a disclosing QI.

* * *

SECTION 8. INFORMATION REPORTING OBLIGATIONS

Sec. 8.01. Form 1042-S Reporting.

* * *

Sec. 8.02. Recipient Specific Reporting.

* * *

(J) If QI acts as a disclosing QI with respect to a payment of a PTP distribution or an amount subject to reporting under section 1446(f) made to an account holder that is a foreign partner, QI must file a Form 1042-S to report the payment when QI knows or has reason to know that the Form 1042-S has not been filed with respect to the partner. In the case of a PTP distribution for which a QI must report in accordance with the preceding sentence, QI must file a separate Form 1042-S for each amount paid to the foreign partner that is subject to withholding on the distribution to the extent required in the instructions to Form 1042-S. Notwithstanding the preceding provisions of this section 8.02(J), see section 8.02(M) of this Agreement for the reporting of an amount subject to reporting under section 1446(f) paid to a nonqualified intermediary.

(K) If a QI makes a payment of a PTP distribution or an amount subject to reporting under section 1446(f) to an account holder that is a QI not acting as a disclosing QI for the payment, QI must file a Form 1042-S for the other QI. If QI instead receives information on a foreign partner from a QI that is an account holder and that acts as a disclosing QI for either such payment, QI must file a separate Form 1042-S to report the payment when QI assumes primary withholding responsibility for the payment or knows

or has reason to know that the Form 1042-S has not been issued with respect to the foreign partner. In such a case, QI must file the Form 1042-S reporting the disclosing QI as an intermediary, with the foreign partner reported as the recipient. In the case of a payment of a PTP distribution made to a QI that acts as a disclosing QI for the distribution and that QI is required to report in accordance with this Section 8.02(K), QI must file a separate Form 1042-S to the extent required in the instructions to Form 1042-S.

(L) If QI receives specific information on a foreign partner that is a direct account holder of a PAI that receives from QI a payment of an amount subject to withholding on a PTP distribution or an amount subject to reporting under section 1446(f), QI must file a separate Form 1042-S to report each amount paid to the partner to the extent required in accordance with section 8.02(K) of this Agreement for a QI that is a disclosing QI (but as applied to a PAI instead of a disclosing QI).

(M) If QI acts as a nominee for a payment of a PTP distribution made to a nonqualified intermediary, QI must file a separate Form 1042-S for each foreign partner or beneficial owner of the distribution that is an account holder in the nonqualified intermediary. If QI makes a payment of an amount subject to reporting under section 1446(f) to a nonqualified intermediary for which QI must file Form 1042-S in accordance with section 8.02(J) of this Agreement, QI shall file the Form 1042-S for an unknown recipient except that QI may instead file the Form 1042-S for an account holder of the nonqualified intermediary receiving the payment when—

(1) QI acknowledges to the nonqualified intermediary that it will report under section 1461 with respect to the amount allocated to each of the transferors of the PTP interest (and, if required, under section 6045) and that it will provide the nonqualified intermediary a copy of each Form 1042-S issued as a result of this reporting;

(2) QI can reliably associate the payment with documentation for each transferor under section 5.13 of this Agreement;

(3) QI receives from the nonqualified intermediary the statement described in §1.6031(c)-1T(a)(1) with respect to each partner that is an account holder of the nonqualified intermediary for which a statement under section 6031(b) is required to be issued with respect to the partner's PTP interest for the year in which the payment was made; and

(4) The nonqualified intermediary appoints the QI as its agent for providing the statement to the PTP (or PTP's agent). See §1.6031(c)-1T(f).

(N) QI must file a separate Form 1042-S for a grantor or owner of a grantor trust for purposes of section 1446(a) or (f), except when QI applies the provisions of section 4.06 of this Agreement with respect to the trust.

(O) QI must file a separate Form 1042-S for a partnership holding a PTP interest to the extent that QI determines a modified amount realized with respect to the partnership for purposes of section 1446(f) or, for purposes of section 1446(a), when the partnership is not a PTP, but excluding either case when QI applies the provisions of section 4.06 of this Agreement with respect to the partnership.

(P) QI must file a separate Form 1042-S with respect to a foreign partner that requests such form from QI to report a payment of an amount subject to withholding on a PTP distribution or amount subject to reporting under section 1446(f) when the partner provides its U.S. TIN to QI (or indicates in writing that it has applied for a U.S. TIN) and makes the request to QI within three full calendar years following the year in which QI made the payment for which the Form 1042-S is requested. If QI files a separate Form 1042-S with respect to an amount paid to a foreign partner as described in the preceding sentence, QI must also file a separate Form 1042-S for each other amount paid to the foreign partner for the calendar year with respect to all accounts held by foreign partner with QI.

Sec. 8.03. Reporting Pools for Form 1042-S Reporting.

(A) Chapter 4 Reporting Pools.

* * * If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an account holder that is (or is presumed) a U.S. person and that QI reports as a U.S. account under its applicable FATCA requirements as a participating FFI or registered deemed-compliant FFI provided that QI is excepted from Form 1099 reporting with respect to the payment under section 8.06(A)(1) of this Agreement or section 8.06(A)(2) and (A)(3) of this Agreement if the payment is excepted from Form 1099 reporting, is not subject to withholding under chapter 4, and is not a PTP distribution. * * *

(B) Chapter 3 Reporting Pools. Except for amounts required to be reported under section 8.02 of this Agreement or when QI acts as a disclosing QI for a payment, QI shall report an amount subject to chapter 3 withholding or withholding under section 1446(a) or (f) for which no chapter 4 withholding is required and that is paid to a foreign account holder by reporting pools on a Form 1042-S if paid to a direct account holder of QI or to a direct account holder of a PAI of QI, or to a partnership or trust described in section 4 of this Agreement. * * *

Sec. 8.07. Section 6031 Reporting Responsibility with respect to Partner Holding PTP Interest.

(A) In General. A QI must comply with the requirements of this section 8.07 for each calendar year for purposes of QI's requirement to report under §1.6031(c)-1T with respect to its account holders. An account holder for purposes of this section 8.07 is a partner or intermediary that during a calendar year receives from QI a PTP distribution or sells a PTP interest for which QI pays to it an amount realized and is—

(1) A direct account holder of QI excluding an account holder that is a QI or nonqualified intermediary referenced in section 8.07(A)(2) or (3) of this Agreement;

(2) An account holder of another QI acting as a disclosing QI for the distribution or amount realized (including an account holder of the other QI that is itself a QI but not acting as a disclosing QI); or

(3) An account holder of a nonqualified intermediary when QI either receives the information required for reporting under this section 8.07 with respect to an account holder receiving the distribution or, for the amount realized paid to the account holder, satisfies the conditions of section 8.02(M) of this Agreement (or is otherwise a PAI).

(B) QI not Acting as Disclosing QI. A QI that does not act as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest may provide the statement with respect to the account holder specified in §1.6031(c)-1T(a) to the PTP in which the interest is held (or PTP's agent). If QI does not provide the statement specified in §1.6031(c)-1T(a) as described in the preceding sentence, QI must issue to each account holder receiving the distribution or amount realized the statement that is described in §1.6031(c)-1T(h) for the calendar year with respect to the PTP interest for which the distribution or amount realized was paid. In such a case, QI is also required to request from the PTP the PTP's deemed sale information for purposes of §1.864(c)(8)-2(b)(2) with respect to an account holder requesting (directly or through another intermediary) this information from QI (which, in turn, QI must provide to the account holder).

(C) QI Acting as Disclosing QI. A QI that acts as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest is required to provide the statement with respect to the account holder specified in §1.6031(c)-1T(a) to the PTP in which the interest is held (or PTP's agent) or QI's nominee for the payment. Additionally, in a case in which QI provides the statement to QI's nominee, QI must obtain from the nominee a written representation that the nominee is acting as an agent of the PTP for purposes of the statement unless QI otherwise appoints the nominee as its agent for providing the statement to the PTP (or the PTP's agent). See §1.6031(c)-1T(f).

SECTION 9. ADJUSTMENTS FOR OVER- AND UNDER- WITHHOLDING; REFUNDS

Sec. 9.01. Adjustments for Overwithholding by Withholding Agent When QI Does not Assume Primary Withholding Responsibility.

* * *

The reimbursement and set-off procedures that apply to an amount overwithheld by QI's withholding agent under chapter 3 and 4 also apply to an amount overwithheld on an amount realized or on an amount subject to withholding under section 1446(a) on a PTP distribution by QI's broker (for an amount realized), or a nominee or PTP (for a PTP distribution).

Sec. 9.02. Adjustments for Overwithholding by QI Assuming Primary Withholding Responsibility.

* * *

The reimbursement and set-off procedures that apply to an amount QI overwithheld under chapter 3 and 4 also apply to an amount QI overwithheld on an amount realized or an amount subject to withholding under section 1446(a) on a PTP distribution.

Sec. 9.05. Adjustments for Underwithholding.

* * *

QI may withhold from future payments in a case in which QI underwithheld on an amount realized or PTP distribution to the same extent applicable to an amount QI underwithheld on under chapter 3 or 4.

Sec. 9.04. Collective Credit or Refund Procedures for Overwithholding.

* * *

(A) Payments for which a Collective Refund is Permitted.

* * *

QI is not permitted to use the collective refund procedures with respect to an amount withheld on an amount realized on a sale of a PTP interest or on a PTP distribution. * * *

* * *

SECTION 10. COMPLIANCE PROCEDURES

* * *

10.03. Certification of Internal Controls by Responsible Officer.

* * *

(B) Material Failures.

(1) Material Failures Defined.

* * *

(iv) * * *

(i) Withhold an amount that QI was required to withhold on a payment of an amount realized from the sale of a PTP interest or on a PTP distribution as required under section 3 of this Agreement or provide correct information to a withholding agent or broker when QI does not assume primary withholding responsibility for either payment under section 3.02 of this Agreement; or

(j) Comply with the requirements of section 8.07 of this Agreement with respect to one or more account holders that are partners holding PTP interests (including account holders of another intermediary when QI acts as an agent for meeting these requirements).

* * *

SECTION 11. EXPIRATION, TERMINATION, MERGER AND DEFAULT

* * *

Sec. 11.06. Event of Default. * * *

(B) QI underwithholds a material amount of tax that QI is required to withhold under chapter 3, section 1446(a), section 1446(f), or chapter 4, or backup withhold under section 3406 and fails to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;

* * *

(E) QI files Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent, or fails to comply materially with the requirements of section 8.07 of this Agreement with respect to account holders that are partners holding PTP interests (including account holders of another intermediary when QI acts as an agent for meeting these requirements).

SECTION 5. SUBMISSION OF PUBLIC COMMENTS

Written comments may be submitted by May 31, 2022. Comments should include a reference to Notice 2022-23. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0010 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-23), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

All commenters are strongly encouraged to submit comments electronically, as access to mail may be limited. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

SECTION 6. DRAFTING INFORMATION

The principal author of this Notice is W. Shawver Adams of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact John Sweeney at (202) 317-3800 (not a toll-free call).