



Draft FATCA certifications and possible extension of certification submission deadline

Closing the distance

On March 16, 2018, the IRS [released](#) FATCA certifications in the draft form and announced an extension of the certification submission due date for at least three months.

Draft FATCA Certifications

Under the Foreign Account Tax Compliance Act (FATCA) regulations, Foreign Financial Institutions (FFIs) located in Model 2 and non-IGA countries are required to appoint a Responsible Officer ("RO") who must submit a certification of compliance with the FATCA requirements regarding the certification of pre-existing accounts ("COPA") as well as the FFI's compliance with various FATCA Requirements ("Periodic Certification"). In order to assist ROs in completing the FATCA Certifications, the IRS has released the draft certification forms. These forms set out the questions that the RO will be prompted to answer in completing their certification through the FATCA Registration Portal.

It is important to note that the RO must certify that he/she has conducted a periodic review of the sufficiency of the program and the FFI's compliance with the requirements of the FFI agreement during the certification period.

Certification of Compliance with the Due Diligence Requirements for Pre-Existing Accounts

With respect to the COPA, the IRS released the following forms:

- [Participating Foreign Financial Institution \(Including Reporting Model 2 FFIs\)](#)
- [Consolidated Compliance Group](#)
- [Registered Deemed-Compliant FFIs – Local FFI](#)
- [Registered Deemed-Compliant FFIs – Restricted Funds](#)
- [Sponsoring Entity of Sponsored FFIs](#)

The forms relating to the COPA are comprised of three major sections. The first section contains identifying information; the second section lists applicable options for the pre-existing account certification; and the third section contains the certification language relating to the due diligence requirements for pre-existing accounts. Each of these sections is briefly described below.

Identifying Information:

In each of the forms, the RO confirms the information (e.g., RO name, address, and other contact information) submitted to the IRS previously or the RO updates this information, if needed. Any such update will be saved to the FFI's registration account. The section also requires a brief description of the underlying FFI's line(s) of business.

The Participating Foreign Financial Institution (PFFI) and Consolidated Compliance Group forms additionally require identification of the type of the underlying FFI. (i.e., Depository institution, Custodial institution, Investment entity, Specified insurance company, or Holding company or treasury center)

Options for COPA:

Each certification form additionally includes a section where the RO must select one of the following options regarding whether it is able to make the certification of compliance due diligence of the pre-existing account:

- certification of compliance with the due diligence requirements for pre-existing accounts;
- declaration that the RO is unable to complete the certification for compliance with the due diligence requirements for pre-existing accounts at the time of the form completion; and
- declaration that the RO is not required to complete the certification of compliance with the due diligence requirements for pre-existing accounts.

If the RO selects the first option, then he/she will be required to continue with the questions in the next section. If, however, the RO selects the second or the third options above, the filer will need to provide explanation as to why he/she is selecting such option.

The COPA:

The content of the certification of compliance with the due diligence requirements for pre-existing accounts varies depending on the type of FFI that is completing it. The certification for Restricted Funds and Local FFIs (both Registered Deemed-Compliant FFIs) are substantially similar and include two major RO certifications. First, the RO certifies that the FFI has reviewed relevant pre-existing accounts in accordance with the applicable procedures with the goal of identifying any US account or an account held by a non-participating FFI. Second, the RO certifies that it will take or has already taken relevant remedial measures with respect to any account identified as a US account or an account held by a non-participating FFI. Such remedial measures are listed in the certification itself. For instance, one of such remedial measures under the Local FFI certification is a closure of the identified US accounts or the accounts held by non-participating FFIs.

The certifications for a Consolidated Compliance Group, PFFIs, or a Sponsoring Entity of Sponsored FFIs are more extensive and include certifications that:

- the FFI has completed the review of its high-value pre-existing individual accounts;
- the FFI treats the high-value pre-existing individual accounts as held by recalcitrant account holders or non-consenting US accounts under an applicable Model 2 IGA if the FFI has not retained a record of any required documentation for these accounts;
- the FFI has completed the account identification procedures required for all pre-existing accounts other than high-value individual accounts;
- the FFI treats any pre-existing account, other than a high-value individual account, as held by a recalcitrant account holder or non-consenting US account under the applicable Model 2 IGA or a non-participating FFI (as applicable) if the FFI has not retained documentation on such accounts;
- to the best of the filer's knowledge (subject to having conducted reasonable inquiry), none of the FFIs had any formal or informal practices or procedures put in place to assist account holders in the avoidance of FATCA during the certification period; the certification period in this context means the period starting on August 6, 2011 through the date that is two years after the effective date of the corresponding FFI's agreement or the date on which the FFI first claimed status as a sponsored FFI (as applicable).

Notably, if due to the underlying factual circumstances, the RO cannot provide any of the above certifications, the FATCA Registration Portal will prompt the RO to answer additional questions and to provide additional information, e.g.

the RO will be asked whether the FFI will take corrective actions to complete the procedures required to make the certification.

Periodic Certification

For the Periodic Certification, the IRS released the following forms:

- [Participating Foreign Financial Institution \(Including Reporting Model 2 FFIs\)](#)
- [Consolidated Compliance Group](#)
- [Registered Deemed-Compliant FFIs – Local FFI](#)
- [Registered Deemed-Compliant FFIs – Non-reporting Member of PFFI](#)
- [Registered Deemed-Compliant FFIs – Qualified Collective Investment Vehicle](#)
- [Registered Deemed-Compliant FFIs – Qualified Credit Card Issuer or Servicer](#)
- [Registered Deemed-Compliant FFIs – Restricted Funds](#)
- [Sponsoring Entity of Sponsored FFI](#)
- [Sponsoring Entity of Sponsored Direct Reporting NFFEs](#)
- [Sponsoring Entity of Sponsored FFI and Sponsored Direct Reporting NFFEs](#)
- [Trustee Documented Trusts](#)
- [Direct Reporting NFFEs](#)

The above certifications also have three major sections. The first section includes identifying information; the second section lists applicable options for the periodic certification; the third section sets out certification of compliance with the requirements of the underlying FFI. Each of these sections is briefly described below.

Identifying Information:

Each Periodic Certification includes an “Identifying Information” section. In this section, the RO confirms the information (e.g. RO name, address, and other contact information) submitted to the IRS previously or the RO updates this information, if needed. Any such update will be saved to the FFI’s registration account. The same section in nearly all of the forms also requires a brief description of each line of business.

In addition to the above information, the Periodic Certification forms for certain types of FFIs (e.g., PFFIs, Consolidated Compliance Group) require the FFI to identify itself as a Depository institution, Custodial institution, Investment entity, Specified insurance company, or Holding company or treasury center.

Some Periodic Certification forms (e.g., Forms for Sponsoring Entity of Sponsored FFIs and Sponsored Direct Reporting NFFEs, PFFIs, Consolidated Compliance Group), also require the disclosure of whether the underlying FFI acquired any accounts in a merger or bulk acquisition during the certification period.

The Periodic Certification form for the Trustee of a Trustee-documented Trust additionally inquires whether there were any trustee-documented trusts that were subject to a Model 2 IGA during the certification period and if so, the legal name and jurisdiction of each such Trustee-documented Trust.

Options for Periodic Certifications:

The Periodic Certifications include a section under which the RO is prompted to choose one of the following certification options:

- the RO is completing the periodic certification of compliance;
- the RO is unable to complete a period certification at this time; or
- the RO is not required to complete a periodic certification for this certification period.

If the RO selects the first option, then he/she will be required to continue with the questions in the next section. If, however, the RO selects the second or the third option above, the RO will need to provide an explanation as to why he/she is selecting such option.

The Periodic Certification:

The final section of the Periodic Certification form contains the actual RO certifications. These certifications reflect the major obligations that different types of FFIs have under FATCA regulations. Accordingly, these certifications substantially vary from form to form. Mostly, the forms require Yes/No answers to the certification related questions; depending on the answer to the question, the system may request the RO to provide additional information or answer a specific set of questions. For instance, under the form for Sponsoring Entities of Sponsored FFIs, the filer is asked whether there were any events of default during the certification period. If the RO responds "Yes", then the system will display a question set for a qualified certification that includes up to 26 questions. If, however, the filer answers "No", the system will display a question set for certification of effective internal controls that include up to 15 questions.

Extension of the Certification Due Date

Generally, the due date for the submission of the COPA and the Periodic Certification is July 1, following the third full calendar year after the date the entity registered and received a GIIN. The RO must submit the certification to the IRS through the FATCA Registration Portal that will not be available for certifications before July 2018. For this reason, the IRS has indicated that FFIs that have certifications due by July 1, 2018, will have at least 3 months from the opening of the certification process on the FATCA Registration Portal to submit their certifications.

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