



## IRS Issued Draft Forms and Instructions in W-8 Series

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Over the past week, the Internal Revenue Service (IRS) has issued draft versions for its Form W-8 series, in particular Forms W-8ECI, W-8IMY, and W-8BEN and related instructions. The updates were necessary, in part, due to the Tax Cuts and Jobs Act of 2017 (TCJA). Specifically, the TCJA added Section 1446(f), which generally requires a transferee purchasing an interest in a partnership from a non-U.S. transferor to withhold 10% of the amount realized if a portion of the gain must be treated as effectively connected gain, unless an exception to withholding applies.

Included below are the pertinent updates to each of the forms.

### Form W-8ECI Updates

- Part I: Line 4: Type of Entity: The draft form separated the “government” box in the entity type field (Line 4) into two boxes, one for integral parts of foreign governments and one for controlled entities of foreign governments. The IRS advises taxpayers to review Temp. Reg. § 1.892-2T for assistance if they are unsure which box applies.
- Part I: Line 8b: FTIN: The draft form bifurcated the Foreign Tax Identifying Number (FTIN) line (Line 8) into Lines 8a and 8b to allow taxpayers to certify when an FTIN is not legally required.
- Part I: Line 12: Section 1446(f) checkbox for dealers: The draft form added a checkbox for a dealer in securities that is transferring an interest in a publicly traded partnership (PTP) and is claiming an exemption from withholding under Section 1446(f) to certify this status. The certification also requires the dealer to certify that any gain from the transfer is effectively connected with the conduct of a trade or business in the U.S. without regard to Section 864(c)(8).
- Signature: Certification of Capacity Checkbox: Due to the addition of Line 12, the spacing on Line 11 has been significantly reduced. Persons completing the form are instructed to write in items of income that have been received, or are expected to be received, that are effectively connected to the beneficial owner’s U.S. trade or business. To the extent that more space is required, a separate attachment may be used. The IRS also moved the signature checkbox, certifying that the signor has the capacity to sign,

ensuring that authorized representatives do not miss this final requirement when filling out the form.

### **Form W-8IMY Updates**

- Part I: Line 9b: FTIN: The draft form now includes a line to include a Foreign Taxpayer Identification Number (FTIN), if required.
- Part III: Qualified Intermediary (QI) Certifications:
- The certifications generally contain updated language clarifying that the certifications apply to all accounts identified on the withholding statement or, if no withholding statement is provided, then to all accounts.
- Line 14a: Contains the general certification of QI status. The draft form has been updated to state that the QI will also provide documentation required for Sections 1446(a) and 1446(f), as required.
- Added Line 15b: Allows a QI to certify that it is assuming all withholding responsibilities for transfers of PTP interests for Section 1446(f) purposes.
- Added Line 15c: Allows a QI to certify that it is acting as a nominee for Section 1446 purposes for a distribution by a PTP.
- Moved 15f to 15d: Former Line 15f, addressing a QSL that is assuming withholding and reporting for substitute dividend payments, was moved to Line 15d. The IRS also modified the certification to make clear that the QSL is assuming primary withholding and reporting for the substituted dividend payment (whereas previous language merely stated that the entity was acting as a QSL).
- Moved 15g to 15e: Former Line 15g, which addresses the assumption of withholding and reporting for substitute interest, was moved to Line 15e.
- Part IV: Nonqualified Intermediary (NQI) Certifications:
- Added Line 17e: The draft form includes a checkbox for an NQI to make the required certification when providing an alternative withholding statement (i.e., a certification that the NQI does not have information in its files that conflicts with the information provided on the withholding certificates).
- Part V: Territory Financial Institution (FI) Certifications:
- Added Line 18d: Certification that the Territory FI agrees to be treated as a US

person under Section 1446(f) for amounts received on sales of interest in PTPs.

- Added Line 18e: Certification that the Territory FI agrees to be treated as a US person under Section 1441 and as a nominee with respect to distributions by PTPs.
- Added Line 18f: Certification that the Territory FI is not acting as nominee for distributions from PTPs and is providing a withholding statement for the distributions.
- Part VI: Certain US Branch Certifications:
- Updated Line 19a: Certification was updated to address distributions from PTPs and amounts realized on sales of interests in PTPs.
- Added Line 19d: The US branch certifies that it is acting as a US person under Section 1446(f) for amounts received on sales of interest in PTPs.
- Added Line 19e: The US branch is acting as a US person under Section 1441 and as a nominee with respect to distributions by PTPs.
- Added Line 19f: The US branch is not acting as a nominee for distributions from PTPs and is provided a withholding statement for the distributions.
- Part VIII: Nonwithholding Foreign Partnership (NWP) Certifications:
- Updated Line 21b: Certification was updated to apply to foreign grantor trusts that are partners in lower tier partnerships and are providing the form for Section 1446 purposes.
- Added Line 21c: Certification that the entity is a foreign partnership receiving an amount realized on a transfer of an interest in a partnership for Section 1446(f) purposes.
- Added Line 21d: Certification that the entity is a foreign partnership providing a withholding statement for a modified amount realized from the transfer. This box should only be checked if Line 21c is also checked.
- Added Line 21e: Certification that the entity is a foreign grantor trust providing the form for each grantor or other owner of the trust to allocate the amount realized by each owner for Section 1446(f) purposes.

### **Form W-8BEN Updates**

- Part I: Line 6b: FTIN: The draft form bifurcated the Foreign Tax Identifying Number (FTIN) line (Line 6) into Lines 6a and 6b to allow taxpayers to certify when an FTIN is not legally required.

- Signature: Certification of Capacity: The current form requires authorized individuals to write in the capacity in which they are acting, when signing on behalf of the beneficial owner. The draft form eliminated the write-in box and now includes a checkbox for the authorized individual signing the form to certify that they have the legal capacity to sign on behalf of the beneficial owner.

## Reference

For further information, see:

- Draft Form W-8ECI, [here](#), and instructions, [here](#).
- Draft Form W-8IMY, [here](#), and instructions, [here](#).
- Draft Form W-8BEN, [here](#), and instructions, [here](#).

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