



BNY MELLON



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Foreign Account Tax Compliance Act (FATCA)

Legislative Response to Tax Avoidance by U.S. Taxpayers

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I. Introduction and Overview

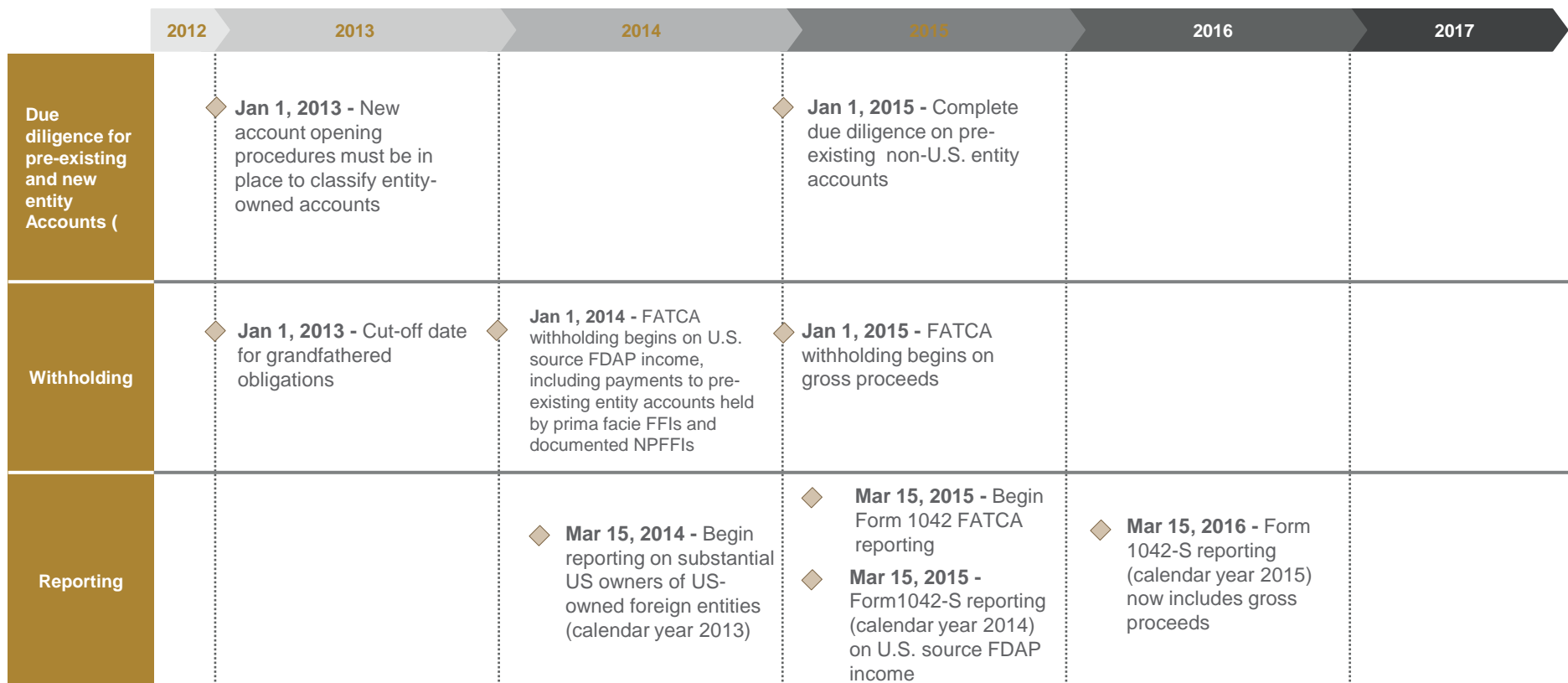
- **FATCA is an acronym for The Foreign Account Tax Compliance Act (FATCA) which was introduced in October 2009, but ultimately enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act on March 18, 2010.**
- **FATCA is an effort by the U.S. Congress to discover U.S. persons who have attempted to hide their income from U.S. taxation.**
- **It is intended to increase transparency for the Internal Revenue Service (IRS) with respect to US persons that may be investing and earning income through non-US institutions.**
- **While the primary goal of FATCA is to gain information about US persons, FATCA imposes a withholding tax where the applicable documentation and reporting requirements are not met.**
 - **FATCA's purpose is to use withholding taxes to encourage specific foreign entities (i.e., any entity that is not a U.S. person), especially foreign financial institutions, to report information relating to the accounts of certain U.S. taxpayers to the IRS.**
- **FATCA requires that Foreign Financial Institutions enter in to an agreement with the IRS that they are FATCA compliant, or be subject to withholding**

I. Introduction and Overview (continued)

- **FATCA provisions become effective for payments made after December 31, 2012. The effective dates for withholding and reporting will be phased in between 2013 and 2017.**
- **FATCA requires foreign financial institutions (FFIs) to enter an agreement with the IRS requiring:**
 - Due diligence on pre-existing and new accounts
 - Identification of US customers and substantial US owners of entity account holder,
 - Increased reporting to the IRS
 - Withholding on recalcitrant account holders and non-participating FFIs
- **Nonfinancial foreign entities (NFFEs) must disclose their substantial US owners to US withholding agents**
- **Noncompliant FFIs and NFFEs will be subject to 30% withholding tax**
 - An FFI that complies with the IRS requirements will be considered a participating FFI (PFFI)
- **Similarly, these provisions require withholding agents (including US Financial Institutions (USFIs)) to withhold 30% tax on any “withholdable payment” made to a noncompliant FFI or NFFE**
- **FATCA withholding also does not apply to FFIs that are considered deemed compliant FFIs (DCFFIs)**

II. Timeline

For US Withholding Agents (including USFIs)



II. Timeline (continued)

For FFIs (for Agreements effective July 1, 2013)

	2012	2013	2014	2015	2016	2017
FFI Governance		<p>Jan 1, 2013 – FFI can enter into FFI Agreement online</p> <p>Jul 1, 2013 – IRS encourages FFIs to sign up by July 1 to ensure readiness by Jan 1, 2014</p>	<p>Jul 1, 2014 – Certify completion of review of pre-existing high value individual accounts</p>	<p>Jul 1, 2015 – Certify completion of account identification procedures and documentation requirements for all other pre-existing individual accounts</p>		
Due diligence for pre-existing accounts			<p>Jul 1, 2014 – Complete due diligence for any pre-existing account holder that is a prima facie FFI</p> <p>Jul 1, 2014 – Complete due diligence for high value accounts</p>	<p>Jul 1, 2015 – Complete due diligence for other pre-existing accounts</p>		
Due diligence for new accounts		<p>Jul 1, 2013 – New account opening procedures must be in place to identify US accounts</p>				
Withholding	<p>Jan 1, 2013 – Cut-off date for grandfathered obligations</p>		<p>Jan 1, 2014 – FATCA withholding begins on US source FDAP income</p>	<p>Jan 1, 2015 – FATCA withholding begins on gross proceeds</p>		<p>Jan 1, 2017 – FATCA withholding expected to begin for foreign passthru payments</p>
Reporting			<p>Sept 30, 2014 – Begin limited reporting for US accounts and aggregate reporting for recalcitrant accounts (calendar year 2013) with respect to accounts identified as of June 30, 2014</p>	<p>Mar 15, 2015 – Begin Form 1042 FATCA reporting</p> <p>Mar 15, 2015 – Begin Form 1042-S FATCA reporting (calendar year 2014) for US source FDAP income</p>	<p>Mar 15, 2016 – Form 1042-S reporting (calendar year 2015) now includes gross proceeds; as well as foreign reportable amounts paid to NPFFIs</p> <p>Mar 31, 2016 – Reporting on US accounts (calendar year 2015) required to include income associated with the US account</p>	<p>Mar 15, 2017 – Form 1042-S reporting (calendar year 2016) expected to include foreign passthru payments</p> <p>Mar 31, 2017 – Reporting for US accounts (calendar year 2016) required to include proceeds paid to US accounts</p>

III. Key Terms and Concepts

■ **Financial Institution:**

- Accepts deposits in the ordinary course of a banking or similar business;
- As a substantial portion of its business, holds financial assets for the account of others;
- Is engaged (or holding itself out as being engaged primarily in the business of investing, reinvesting or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts or any interest in such securities, partnership interests or commodities; or
- Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account

■ **Financial account:**

- A commercial, checking, savings, time or thrift account, or an account which is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar instrument
- An account for the benefit of another person that holds any financial instrument or contract held for investment
- Any equity or debt interest (exceptions)
- Any amount held by an insurance company under an agreement to pay or credit interest thereon; and cash value insurance contracts and annuity contracts issued or maintained by an FFI

III. Key Terms and Concepts (continued)

■ **U.S. Withholding Agent**

- Any US person, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment.
- The term encompasses an individual, corporation, partnership, trust, association, or any other entity

■ **FFI Agreement**

- Treasury and the IRS intend to publish a draft model FFI agreement in early 2012 and a final model FFI agreement in Fall 2012
- The IRS indicated that it will start accepting electronic registration applications for FFI agreements by January 1, 2013 (at the latest). More information about the online registration process will be provided in future guidance and instructions to the registration form

■ **Deemed-Compliant FFIs**

- FFIs that qualify as deemed compliant are not required to enter into an FFI agreement and will not have FATCA withholding and reporting responsibilities
- The two types of deemed-compliant FFIs are:
 - “certified”
 - “registered”

III. Key Terms and Concepts (continued)

- Certified deemed-compliant FFIs: are not required to register with the IRS. It must certify to the withholding agent that they are a certified deemed-compliant FFI. The categories include:
 - Non-registering local banks
 - Non-profit organizations: organized for charitable and other permitted purposes and no income or assets may be used for the benefit of a private person or non-charitable FFI
 - Retirement plans
 - Organized under local law to provide retirement or pension benefits and must meet certain requirements
 - Contributions must be made by employers or governments, or limited by reference to earned income
 - FFIs with only low-value accounts
 - Owner documented FFI: includes family trusts and small investment vehicles that provide owner information to withholding agents which agree to do the owner reporting

III. Key Terms and Concepts (continued)

- Registered deemed-compliant FFIs: must register with the IRS, provide certification from an officer that they have met all deemed compliant FFI requirements, obtain an FFI-EIN and renew its certification every 3 years. The categories include:
 - FFIs that comply with the requirements under an agreement between the U.S. and a foreign government
 - Local FFIs
 - Non-reporting members of participating FFI groups
 - Qualified collective investment vehicles (i.e., only those FFIs primarily engaged in the business of investing qualify for this category)
 - Interests in these vehicles may generally be held by PFFIs, other registered deemed-compliant FFIs, and U.S. persons excluded from the definition of specified U.S. persons
 - Restricted Funds
 - Must be regulated investment funds under the law of their country (which must be an FATF compliant country)
 - The distribution of these funds, their distributors and distribution agreements are subject to restrictions ensuring that fund interest cannot be held by U.S. persons, non-participating FFIs, or U.S. owned passive NFFEs
 - Fund interests may be sold only by PFFIs, registered deemed-compliant FFIs, non-registering local banks, or “restricted distributors”

III. Key Terms and Concepts (continued)

- **Intermediaries and Flow Thru Entities**

- **FFIs as intermediary vs. FFIs as beneficial owners:**

- If the FFI that is acting as an intermediary, then it must provide the withholding agent with an intermediary withholding certificate and withholding statement.
 - If the FFI is the beneficial owner of the income, then it must provide a beneficial owner withholding certificate

- **FFIs receiving payments of US source FDAP as an intermediary or a flow thru entity must withhold on the payment to the beneficial owner if the withholding agent has not done the withholding.**

- **If the FFI provides the withholding agent with a withholding certificate and statement, then the withholding agent must treat the underlying beneficial owners or partners as the payees.**

III. Key Terms and Concepts (continued)

- **Payments of U.S. source FDAP income to a nonqualified intermediary (NQI) after December 31, 2013 will be subject to 30% withholding unless the withholding agent receives a valid intermediary or flow-through withholding certificate (e.g., IRS Form W-8IMY) and a withholding statement**
 - If provided, the withholding agent is not required to withhold on any portion of the payment that is allocated to a class of payees that are not subject to FATCA withholding
 - The withholding statement can:
 - Provide pooled information that breaks down the payment between recalcitrant account holders, NPFFIs, and each class of payee that is not subject to FATCA withholding, or
 - Allocate the payment to each payee and include all information necessary for the withholding agent to properly report the payment

IV. Identifying and Documenting the Payee

The FATCA regulations place the focus on

- **Generally, the payee is the person to whom the payment is made, unless the recipient is an intermediary (other than a QI who has assumed withholding responsibility)**
- **The ultimate partners, beneficiaries and owners of flow through entities (including disregarded entities) are the payees, unless such flow through entities are:**
 - An FFI (other than a participating FFI receiving U.S. source FDAP);
 - An active NFFE;
 - An excepted FFI;
 - A withholding foreign partnership (WFP) or withholding foreign trust (WFT); or
 - An entity receiving a payment to which FATCA does not apply
- **General requirements for documentation of the payee**
 - W-9 withholding certificate for US persons
 - W-8 series withholding certificates for non-US persons (new versions of forms are anticipated from the IRS to accommodate the documentation under FATCA)
 - Transitional “Documentary Evidence” is provided for those accounts that exist prior to the effective date(s) of FATCA
- **Payors are generally required to perform “Due Diligence” procedures on the documentation provided by payees using the KYC/AML information collected during normal course of business**

IV. Identifying and Documenting the Payee (continued)

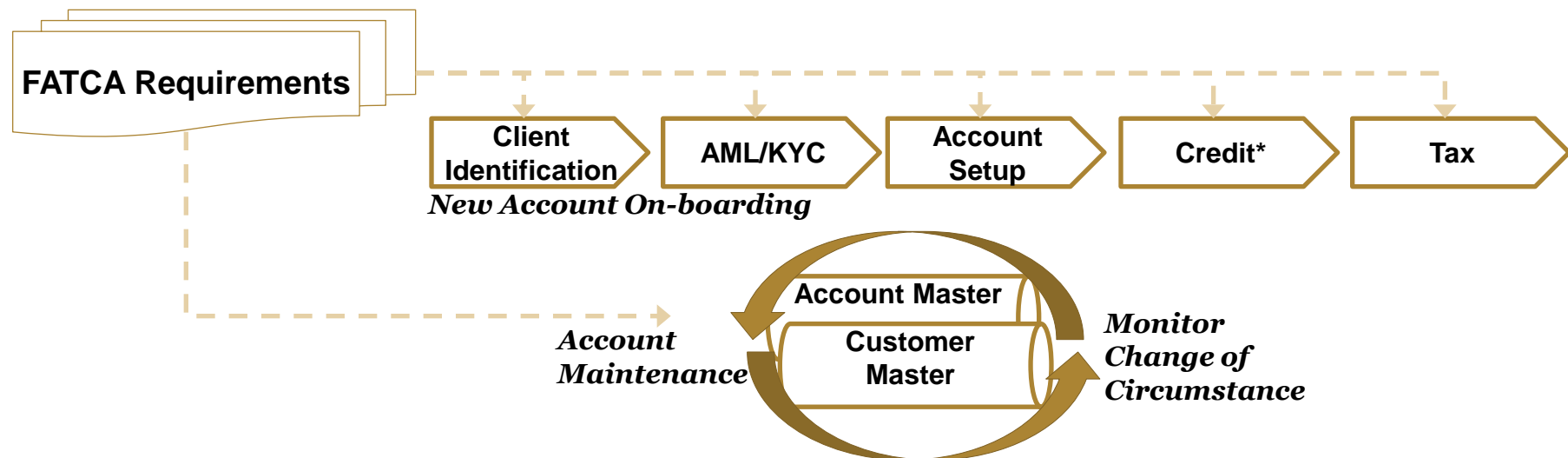
There is a distinct set of due diligence requirements related to each account type

Payor FATCA Class	Type of Account		Account Holder Analysis – General Rule
FFI	Individual*	New	<ul style="list-style-type: none"> Review information provided at account opening (generally rely on information collected through the existing AML/KYC process) Additional information required if US indicia identified
		Pre-existing	<ul style="list-style-type: none"> Primarily rely on electronic review of existing Account Master data Enhanced review required for “high value accounts” (i.e. balance > \$1 million) of current paper files
USFI and FFI	Entity	New	<ul style="list-style-type: none"> Request and obtain withholding certificates, documentary evidence, and additional statements from entity account holders (e.g., letters of counsel, withholding statements, statements made in account opening documents, etc.) Generally a review is only required for entities not covered in exceptions (applicable to FFIs only)
		Pre-existing	<ul style="list-style-type: none"> Generally rely on information collected through existing AML/KYC process and other existing information For FATCA purposes, entities are defined using one of the several classifications or sub-classifications (See Appendix: Account Documentation Rules)

* USFIs do not have to perform FATCA due diligence on accounts classified as Individuals(natural persons).

IV. Identifying and Documenting the Payee (continued)

Key considerations for Account Identification and Due diligence



Key Considerations

- Monitoring change in circumstance
- Where / how to store new attributes
- Reason to know
- Treatment of recalcitrant accountholders
- Jurisdictional differences in KYC

Relevant Technologies

- Account opening technologies
- Account maintenance technologies
- Monitoring
- Workflow
- Digitizing unstructured data

V. Withholding

- **Proposed regulations provide guidance on the withholding U.S. tax on certain payments made by U.S. withholding agents or USFIs.**
 - From 12/31/2013: withhold on the portion of a withholdable payment that is U.S. sourced FDAP.
 - From 12/31/2014: withholding on all withholdable payments, including gross proceeds
- **Determining Withholdable Payments:**
 - U.S. sourced FDAP (Based on existing U.S. tax principles with respect to the source of income.
 - Gross proceeds (Generally from the sale or other disposition of any instrument that could produce U.S. source dividends or interest)
- **Certain beneficial owners are statutorily exempt from withholding under FATCA; including:**
 - A foreign government, its political subdivision, or a wholly owned agency or instrumentality
 - An international organization or a wholly owned agency or instrumentality
 - A foreign central bank of issue and Governments of U.S. possessions
 - Certain foreign retirement funds
 - Entities wholly owned by one or more exempt beneficial owners
- **Although payments may not be subject to withholding under FATCA, they may still be subject to Chapter 3 withholding (NRA rules).**

V. Withholding (continued)

What is not a Withholdable Payment?

<i>Withholding agent lacks control, custody or knowledge</i>	Payments where the withholding agent has no control over or custody of money or property owned by a payee or beneficial owner of a payment, or lacks knowledge of the facts giving rise to such payments (e.g. wire transfers out of deposit accounts)
<i>Certain short-term obligations</i>	Payments of interest on short-term obligations (183 days or less)
<i>Effectively connected income</i>	Certain income effectively connected with the conduct of a trade or business in the US
<i>Ordinary course of business payments</i>	Payments made in the ordinary course of the withholding agent's business for non-financial services, goods and the use of property
<i>Gross proceeds from sales of excluded property</i>	Gross proceeds from the sale (or other disposition) of certain short-term obligations, and of any property that produces ECI payments or ordinary course of business payments
<i>Sales of Fractional Shares</i>	Sales of fractional share of stock with gross proceeds less than \$20
<i>Certain accrued interest</i>	Part of Gross Proceeds – withholding in 2015

V. Withholding (continued)

Withholding Requirements: Comparison of FFIs and USFIs

- **The following table compares and contrasts the withholding requirements relating to FFIs and USFIs:**

Applicable to	Withholding Requirements	Start Date
USFI and FFI	FATCA withholding on US source FDAP income	January 1, 2014
	FATCA withholding on gross proceeds	January 1, 2015
FFI	FATCA withholding on foreign passthru payments	January 1, 2017

VI. Reporting

For US Account Holders

- **In 2014 and 2015** (for calendar years 2013 and 2014), a participating FFI is only required to report the following with respect to US accounts:
 - Name, address, TIN of US account holder, account number, and account balance or value (in local currency or US dollars); or
 - If the account is held by an NFFE which is a US owned foreign entity, the name, address and TIN of the entity and each substantial US owner that owns 10% or more of the entity
 - Reporting for calendar year 2013 is due on September 30, 2014.
 - After the first filing, reporting is due on March 31 of the following year; i.e. March 2015 for year 2014.
- **In 2016** (for calendar year 2015), the payments of income must be reporting; i.e. gross interest and dividends, gross amounts paid in the case of income from investment vehicles
- **In 2017** (for calendar year 2016), report information on the gross proceeds from sales and/or redemptions

For Recalcitrant Account Holders

- **Required to report annually the aggregate account information for recalcitrant account holders divided into those accounts that (1) have US indicia, (2) do not have US indicia, and (3) are dormant.**
 - Reporting for tax year 2013 is due on September 30, 2014

VI. Reporting (continued)

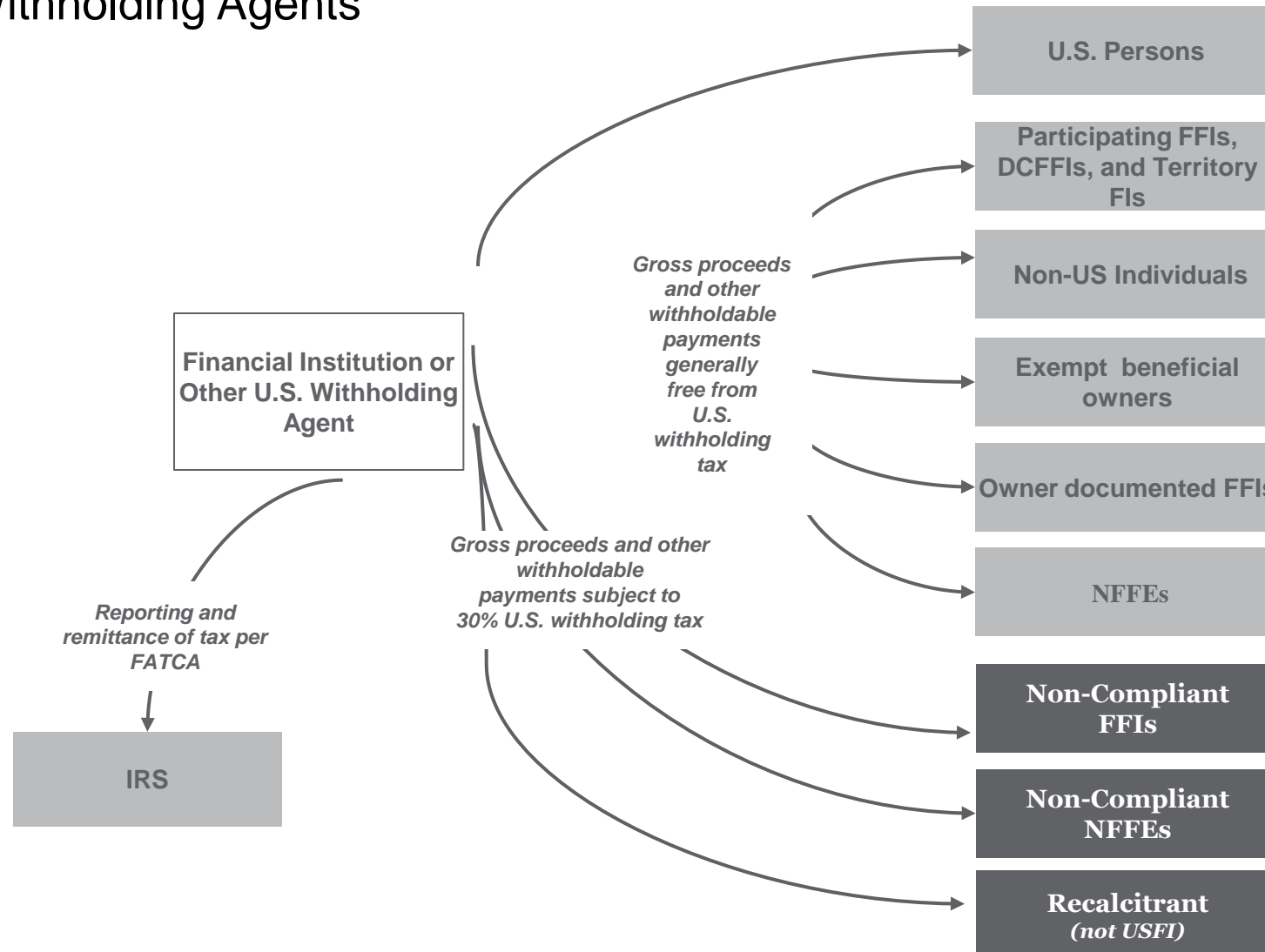
Reporting Requirements: Comparison of FFIs and USFIs

- **The following table compares and contrasts the reporting requirements relating to FFIs and USFIs:**

Applicable to	Reporting Requirements	Start Date
USFI	Reporting on substantial US owners of US owned foreign entities	March 15, 2014
FFI	Limited reporting for US accounts and aggregate reporting for recalcitrant accounts	September 30, 2014
	Form 1042-S reporting to include foreign reportable amounts paid to NPFFIs	March 15, 2016
	Reporting to US accounts required to include FDAP income paid to those accounts	March 31, 2016
	Form 1042-S reporting to include foreign passthru payments	March 15, 2017
	Reporting to US accounts required to include gross proceeds paid to those accounts	March 31, 2017
USFI and FFI	Form 1042 and Form 1042-S reporting on US source FDAP income	March 15, 2015
	Form 1042-S reporting includes gross proceeds	March 15, 2016

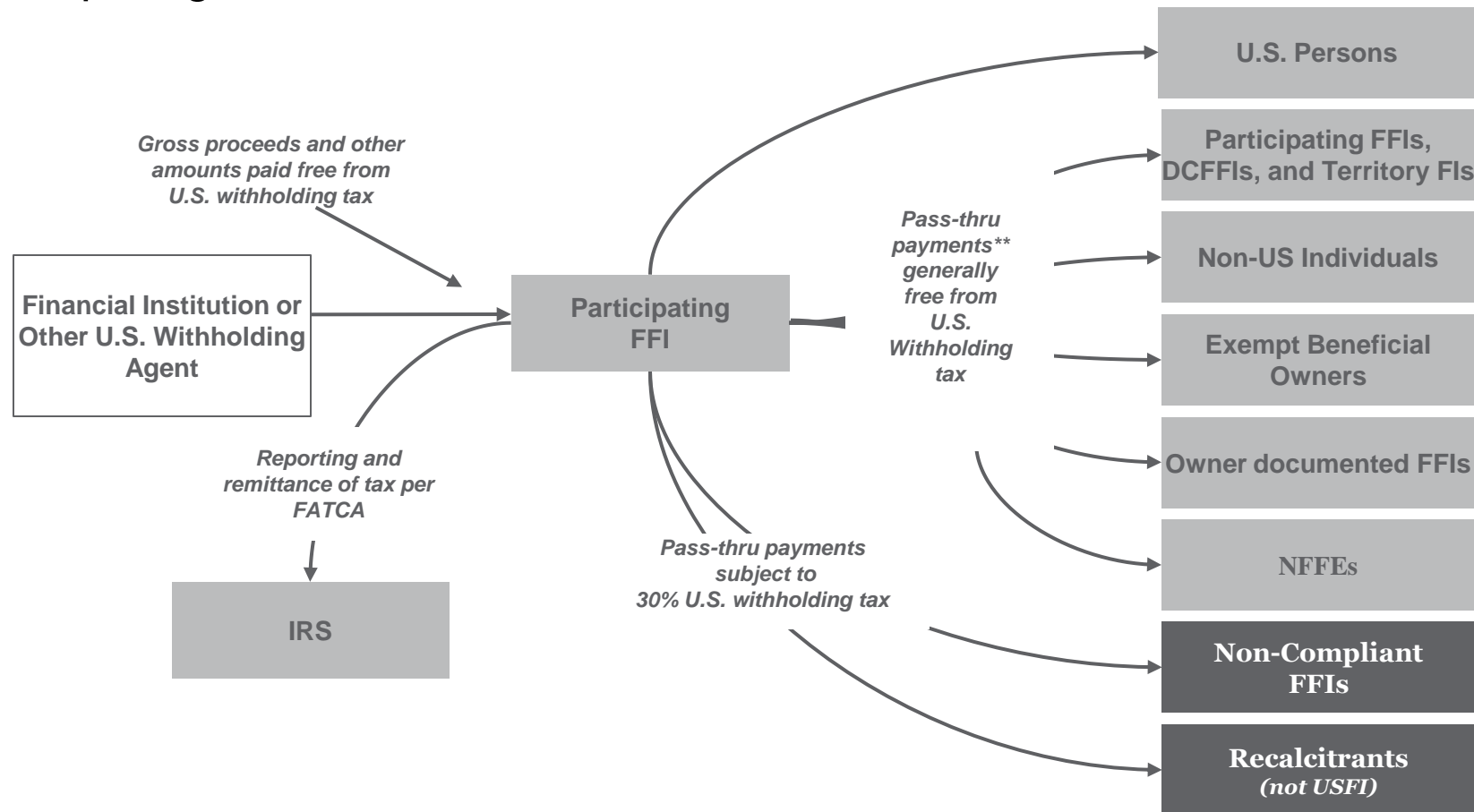
VII. Withholding & Reporting Requirements Relating to Payees

US Withholding Agents



VII. Withholding & Reporting Requirements Relating to Payees

Participating FFIs

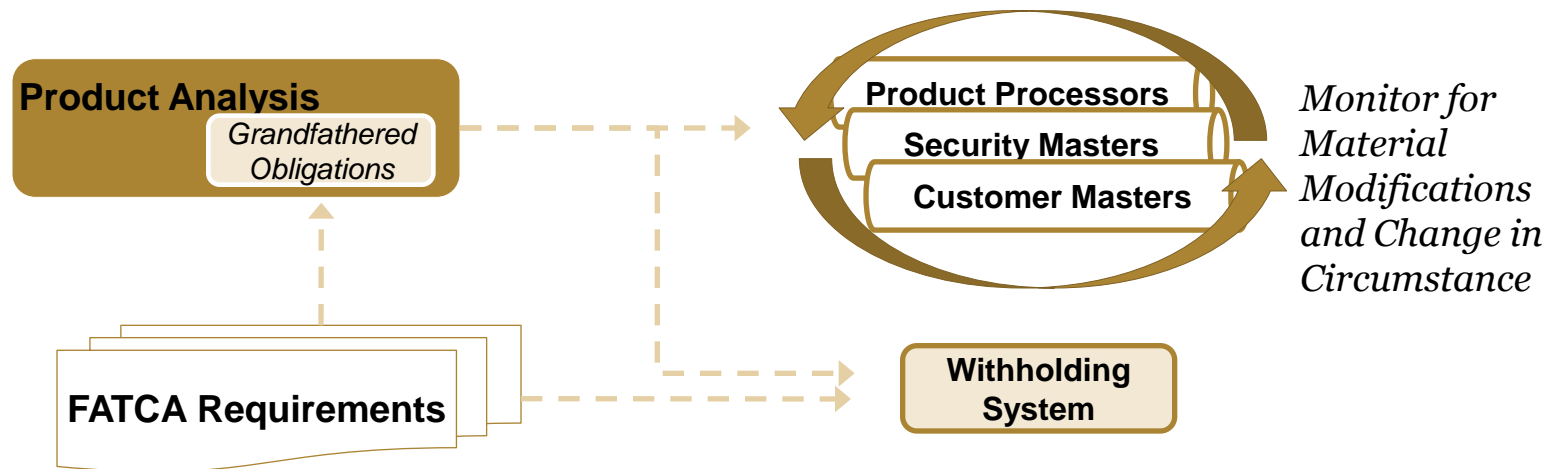


** The term passthru payment means any withholdable payment and any foreign passthru payment.

Please note that in the case of a PFFI acting in a nonqualified intermediary (NQI) capacity, it should be providing information to the US withholding agent regarding the beneficial owners for the US withholding agent to withhold (See Key Terms and Concepts)

VII. Withholding & Reporting

Key considerations for the Withholding & Reporting



Key Considerations

- Grandfathered obligations – Monitoring for material changes
- Track new withholdable payments
- Leveraging current capabilities
- Handling of limited FFIs

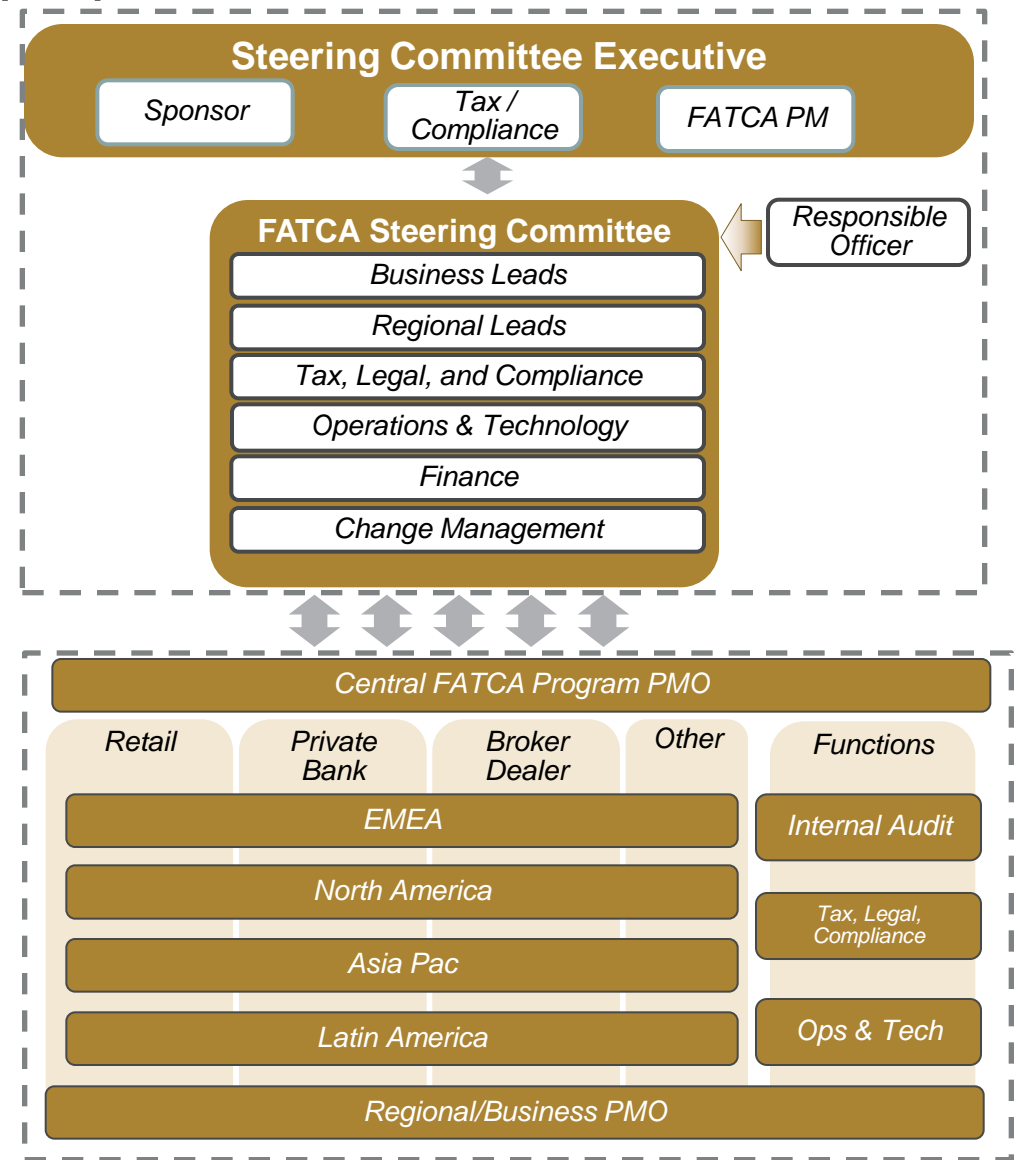
Relevant Technologies

- Monitoring
- Matching and data quality
- Notification / workflow
- Withholding calculations engine

VIII. How would you organize to prepare for FATCA?

A strong governance structure for FATCA will:

- Represent relevant viewpoints
- Leverage existing initiatives
- **Drive consistency**
- **Coordinate common solutions**
- Provide support and quality assurance
- Provide baseline requirements and guidance
- Share relevant knowledge and expertise



IX. What are the key business and technology areas impacted by FATCA?

There are 12 key areas impacted for FATCA

Customer / Account Profile	Documentation	Withholding & Deposits	Reporting
<div>Pre-Existing Accounts Analysis and Remediation</div>	<div>FATCA Document Management</div>	<div>Product Analysis (Including Grandfathered)</div>	<div>IRS and Client Reporting</div>
<div>New Accounts Technology (On-boarding)</div>		<div>Payee Classification</div>	
<div>Account Maintenance and Monitoring</div>		<div>Withholding Calculations, Deposits and Refunds</div>	
		<div>Passthru Payments Percentage*</div>	
Legal Entity and FFI Management			
<div>Legal Entity Classification & Maintenance</div>	<div>Periodic Retesting</div>	<div>FFI Certification and Management</div>	

*FATCA Technology area requires further regulatory clarification

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