SPECIAL REPORTS

An Overview of the 2014 OVDP and Enhanced Streamlined Filing Compliance Procedures

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On June 18, 2014, the IRS released significant changes to its offshore voluntary disclosure program and enhancements to the streamlined filing compliance procedures (SFCP).[1] Along with the new rules, the IRS offered transitional treatment to those taxpayers who are participating in the OVDP and meet certain requirements.[2] Unfortunately, the IRS allowed only limited time for those taxpayers to qualify for the transitional treatment. The transitional treatment is extended only to those taxpayers who were ''participating'' in the OVDP (managed to file their OVDP submission and did not enter into a closing agreement with the IRS) on or before June 30, 2014. The benefit of the transitional treatment is in applying the reduced and more favorable penalty structure of the enhanced SFCP for those taxpayers who, even though participating in the OVDP, are qualifying under the terms of the enhanced SFCP. Another benefit of qualifying for the transitional treatment is in the taxpayers' ability to elect the processing of their OVDP cases under the old rules, in existence before the new rules became effective on July 1, 2014 (see the discussion of significant OVDP changes below).

Taxpayers who may face increased penalties under the new OVDP rules may still benefit from the old 2012 OVDP penalty structure if they filed their preclearance OVDP submissions with the IRS offshore voluntary disclosure coordinator on or before August 4, 2014.

For the first time since the IRS released its OVDP initiative in 2009, the IRS clarified options available to U.S. taxpayers with undisclosed foreign financial assets

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[1] OVDP and SFCP are each referred to as ''program'' and collectively as ''programs.'' IR-2014-73, ''IRS Makes Changes to Offshore Programs, Revisions Ease Burden and Help More Taxpayers Come Into Compliance'' (June 18, 2014), *available at* http://www.irs.gov/uac/Newsroom/IRS-Makes-Changes-to-Offshore-Programs;-Revisions-Ease-Burden-and-Help-More-Taxpayers-Come-into-Compliance. *See also* Statement of IRS Commissioner John Koskinen, *available at* http://www.irs.gov/uac/Newsroom/Statement-of-IRS-Commissioner-John-Koskinen. (All URLs are up to date as of July 6, 2014.)

(Footnote continued in next column.)

[2] *See* Transition Rules: Frequently Asked Questions (FAQs), *available at* http://www.irs.gov/Individuals/International-Taxpayers/Transition-Rules-Frequently-Asked-Questions-FAQs.

and accounts to come into compliance with their U.S. tax obligations and foreign bank account report filing obligations. These options are as follows:

- OVDP;
- SFCP (for U.S. taxpayers residing outside the United States and U.S. taxpayers residing in the United States);
- delinquent FBAR filing procedures; and
- delinquent international information return filing procedures.

This article summarizes significant changes made by the IRS to the two programs, comments on a few areas that remained unaddressed, and shares the author's views and recommendations on aspects of the new rules that may present increased challenges and complexities for taxpayers.

Practical Tools

Attached to this article are two practical tools. One is a set of decision-making trees on options available to taxpayers to become tax compliant under the new rules announced by the IRS on June 18, 2014.[3] The purpose of the tool is to assist taxpayers in evaluating the options available to them under the new rules and to allow taxpayers, based on their facts and circumstances, to more easily navigate the new rules.

Another tool is the table containing a side-by-side comparison of frequently asked questions (FAQs) under the 2012 IRS OVDP[4] and the recently announced (on June 18, 2014) FAQs[5] under the 2014 IRS OVDP. The purpose of the table is to serve as a practical tool for tax practitioners to evaluate the changes to the OVDP announced by the IRS in evaluating procedural alternatives available to taxpayers in resolving their U.S. tax compliance issues. The table will be of particular interest to those taxpayers and tax advisers who currently participate in the 2012 OVDP or whose facts and circumstances may warrant a more favorable penalty structure under the SFCP. Although the value of the side-by-side comparison is now limited because of the passed June 30, 2014, deadline for applying for the transitional treatment, the side-by-side comparison may still be of use to some practitioners and U.S. taxpayers who want to have a quick and easy reference identifying the changes to the programs.

Treasury and the IRS should be commended for their efforts to simplify and enhance options available to U.S. taxpayers with undisclosed foreign financial assets, both residing outside the United States and in the United States, to become U.S. tax compliant. Unfortunately, some of the new rules may, whether by design or inadvertently, prevent many U.S. taxpayers residing overseas from qualifying for the enhanced SFCP, even though they would have qualified under the 2012 SFCP terms.

The Good and Bad

The good news is that the new rules:

- provide more clarity on options available to U.S. taxpayers to become tax compliant;
- reduce penalties when taxpayers do not willfully fail to report their foreign financial assets, to pay tax, or to file their delinquent U.S. tax returns and required information returns;
- expand the SFCP to eliminate the low-compliance-risk threshold and to open the program to U.S. taxpayers residing in the United States; and
- invite U.S. taxpayers who previously made ''quiet disclosures'' to come forward under the SFCP, with some limitations.

However, in several areas the new rules are more restrictive than the old rules (some of the discussed changes below are understandable, while too restrictive nonetheless):

- the nonresidency test, as drafted, whether by design or inadvertently, would prevent many U.S. taxpayers residing overseas from qualifying for the enhanced SFCP, even though they would have qualified under the 2012 SFCP (please see the discussion on the new nonresidency test below for a detailed analysis of this requirement);
- the increased information and documentation requirements at the time of applying for the OVDP would be an additional burden for taxpayers;
- the requirement to pay the full amount of any tax owed, penalties, and interest at the time of applying for the OVDP or SFCP, as applicable, would also be an additional burden for taxpayers;
- the requirement to certify that the failure to pay tax or file requisite U.S. tax returns or forms was due to non-willful conduct would be an additional burden for taxpayers because they will have to make the respective determination before making the applicable submission; and
- the limited time provided to taxpayers to qualify for the transitional treatment.

In many instances in the newly issued guidance, the IRS emphasized possible examination of the taxpayer's

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[3] *See* ''Options Available for U.S. Taxpayers With Undisclosed Foreign Financial Assets,'' *available at* http://www.irs.gov/Individuals/International-Taxpayers/Options-Available-For-U-S—Taxpayers-with-Undisclosed-Foreign-Financial-Assets.

[4] The 2012 OVDP FAQs are available at http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers.

[5] The 2014 OVDP FAQs are available at http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised.

returns. Although this is not a new requirement per se, the IRS did not include it in its prior guidance. Accordingly, applying for the enhanced SFCP (as opposed to, for example, resolving outstanding U.S. tax issues with the IRS directly under the existing IRS assessment, examination, and collection process) will not provide taxpayers with any guarantee that their returns would not be subject to a possible examination.[6]

What Got In

Summarized below are some of the notable changes to the OVDP and the SFCP.

Overview of OVDP Changes

- Introduction of an increased 50 percent (compared with the previous 27.5 percent) miscellaneous offshore penalty on all undisclosed foreign financial assets when, at the time of submitting the pre-clearance letter to the IRS Criminal Investigation division:
  - — foreign financial institution in which the taxpayer has or had an account or another facilitator who assisted the taxpayer in establishing or maintaining the taxpayer's offshore arrangement has been publicly identified as being under U.S. government investigation (by the IRS or the Justice Department) in connection with accounts that are beneficially owned by a U.S. person;[7]
  - — FFI or other facilitator is cooperating with the IRS or the DOJ in connection with accounts that are beneficially owned by a U.S. person; or
  - — FFI (or other facilitator) has been identified in a court-approved issuance of a summons seeking information about U.S. taxpayers who may hold financial accounts (a John Doe summons — a summons issued to compel the financial institution to identify its U.S. account holders) at the FFI or have accounts established or maintained by the facilitator.[8]

  Penalty applies beginning on August 4, 2014, if, at the time of submitting the pre-clearance OVDP letter to the IRS CI, a ''public disclosure'' event discussed above has already occurred.
- The undisclosed assets must have come from legal sources.[9]
- Reduced 5 percent and 12.5 percent penalties are no longer available under the OVDP.[10]
- Taxpayers who opt out of the OVDP after July 1, 2014, will be subject to the IRS examination process.[11]
- Additional criminal conspiracy charges added to the OVDP FAQs as criminal charges that a taxpayer may be subject to if he does not participate in the OVDP and the IRS examines the taxpayer:[12]
  - — Conspiracy to defraud the government with respect to claims (18 U.S.C. section 286). If convicted, a prison term of not more than 10 years or a fine of up to $250,000.
  - — Conspiracy to commit offense or to defraud the United States (18 U.S.C. section 371). If convicted, a prison term of not more than five years and a fine of up to $250,000.
- Significantly more information is required, including during the pre-clearance process:
  - — All account statements must be submitted at the time of the OVDP submission filing.[13]
  - — Electronic submission is encouraged (such as on a CD or USB flash drive).[14]
- Requirement to pay the tax, interest, offshore penalty, accuracy-related penalty, and failure-to-file and failure-to-pay penalties at the time of the OVDP submission filing.[15]
- Taxpayers who are unable to pay the full amount must include with their OVDP submission a proposal on payment arrangements and complete the collection information statements (on Form 433-A, ''Collection Information Statement for Wage Earners and Self-Employed Individuals,'' or Form 433-B, ''Collection Information Statement for Businesses,'' as applicable).[16]

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[6] Although being subject to IRS examination, as a general matter, is not desirable for any taxpayer (for example, because of a lengthy process), any taxpayer applying for the procedural alternative available to them under the new rules should keep all relevant records and documentation, as well as be prepared to have relevant support for the position(s) taken as part of the submission.

[7] The IRS published a list of these FFIs or facilitators (currently, the list has 10 entries, but the IRS will update it on an ongoing basis), *available at* http://www.irs.gov/Businesses/International-Businesses/Foreign-Financial-Institutions-or-Facilitators.

[8] 2014 OVDP FAQ 7.2.

[9] 2014 OVDP FAQ 12.

[10] 2014 OVDP FAQ 1.1 (see 2012 OVDP FAQs 52 and 53).

[11] 2014 OVDP FAQs 49 and 51.

[12] 2014 OVDP FAQ 6.

[13] 2014 OVDP FAQ 25.

[14] 2014 OVDP FAQ 25.2.

[15] 2014 OVDP FAQ 25.

[16] *Id.*

Overview of SFCP Changes

- Significant penalty relief provided to U.S. taxpayers qualifying for the SFCP. The following penalties will not apply to U.S. taxpayers residing outside the United States (the IRS clarified that even if a taxpayer's returns are ''subsequently selected for audit, no penalties would apply, unless the examination results in a determination that the original tax noncompliance was fraudulent and/or that the FBAR violation was willful'')[17]:
  - — FBAR penalties;
  - — failure-to-file tax return penalties;
  - — failure-to-pay tax penalties;
  - — accuracy-related penalties; and
  - — information return filing penalties.
- U.S. taxpayers residing in the United States, however, will be subject to a 5 percent penalty based on the individual's highest aggregate balance/value of the foreign financial asset[18]:
  - — 5 percent miscellaneous offshore penalty applies for failure to report the asset on an FBAR;
  - — 5 percent miscellaneous offshore penalty applies for failure to report the asset on IRS Form 8938, ''Statement of Foreign Financial Assets''; and
  - — 5 percent miscellaneous offshore penalty applies if the asset was properly reported on a tax return, but gross income regarding that asset was not reported.
- SFCP is now open to some delinquent U.S. taxpayers residing in the United States.[19]
- Taxpayers must provide a certification under penalties of perjury that their failure to report foreign financial assets and pay all tax due regarding those assets was not due to willful conduct.[20]
- The low compliance risk threshold of $1,500 was removed.
- The requirement to complete a risk questionnaire was removed.
- The IRS provided coordination rules for taxpayers currently participating in the OVDP (including those who apply to the OVDP before July 1, 2014). Such taxpayers may be eligible to transition to the SFCP, provided they qualify under the SFCP requirements and:
  - — contact the assigned OVDP examiner; and
  - — submit a request and any additional documents according to the SFCP requirements (including ''non-willful'' certification) to the Austin OVDP Unit.[21]

What Did Not Make It

Although the IRS made significant progress on clarifying and enhancing the two programs, there are several areas that have not been addressed and, as such, are left for taxpayers to figure out. Unfortunately, the figuring out part is likely to continue being a challenge for many taxpayers.

Passive Foreign Investment Companies

A comprehensive discussion of passive foreign investment company issues is outside the scope of this article, but a few points are worth mentioning.

A PFIC is a foreign corporation if (1) 75 percent or more of its gross income for the tax year is passive income or (2) at least 50 percent of its assets produce passive income.[22] Passive income for PFIC purposes generally means ''foreign personal holding company income'' under subpart F (part of the U.S. anti-deferral regime) rules and generally includes dividends, interest, royalties, rents, annuities, certain gains, and other similar income.[23] As part of the U.S. anti-deferral regime, PFIC rules were designed to discourage U.S. persons from deferring their U.S. tax by subjecting to tax income derived from investments in foreign corporations on a current basis and effectively penalizing those U.S. taxpayers who chose to defer that income by imposing the highest ordinary income tax rate and an interest charge.[24] The rules do not require a U.S. tax avoidance motive before they apply and catch any U.S. person who makes an investment in a foreign corporation, no matter how minimal it may be and regardless of the person's common investment strategy, driven in many cases by investment advisers and financial planners who often recommend investing in foreign mutual funds[25] (especially when they are not aware of the punitive PFIC regime).

The PFIC rules contain a general ''excess distribution'' penalty regime[26] (triggered by a distribution or a disposition of stock) and elective regimes (qualified

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[17] *See* the IRS guidance for U.S. taxpayers residing outside the United States, *available at* http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States.

[18] *See* the IRS guidance for U.S. taxpayers residing in the United States, *available at* http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States.

[19] *Id.*

[20] *Id. See also supra* note 17.

[21] *See* Transition Rules: Frequently Asked Questions (FAQs), *supra* note 2, at FAQ 6.

[22] Section 1279(a).

[23] Sections 1297(b)(1) and 954(c).

[24] Section 1291(c)(1).

[25] Mutual and hedge funds are typically PFICs.

[26] Section 1291(a)(1).

electing fund (QEF)[27] and mark-to-market rules).[28] The elections, if done properly, may allow U.S. shareholders to ''purge'' PFIC taint and thus avoid the punitive excess distribution regime.[29] If elected to be treated as a QEF, the U.S. taxpayer is required to include currently in each year's taxable income a pro rata share of the PFIC's ordinary earnings and net capital gains. Although the taxpayer is subject to current U.S. taxation as a result of the QEF election, he would not be subject to the general excess distribution penalty regime.[30] The common challenge under this election is obtaining the necessary information from the PFIC. The mark-to-market election is another way for the U.S. taxpayer to elect current U.S. taxation by marking the foreign stock to market each tax year and to avoid being subject to the general excess distribution penalty regime. However, under the statute, that method is limited to those assets that are regularly traded on a qualified exchange or other market (not all PFIC investments may meet that requirement).[31]

As a general matter, obtaining the information from PFICs to determine a U.S. taxpayer's tax liability may be very challenging. It also depends on how substantial a particular PFIC investment is (some PFICs would go out of their way to simplify the lives of their significant U.S. shareholders). Also, there is no de minimis safe harbor that would exempt insignificant investments from the application of the PFIC regime.[32] Although these issues are unlikely to be resolved without congressional action, there must be a way to provide relief to those U.S. taxpayers who reside overseas, come forward voluntarily, and whose noncompliance was not due to willful conduct. Accordingly, providing some PFIC relief as part of a practical approach under the OVDP or the SFCP would be a welcome development.

Indeed, Treasury and the IRS have previously recognized U.S. taxpayers' challenges in identifying PFIC investments and making complex calculations of U.S. tax liability arising from their holdings in PFICs. As an alternative method, the IRS in its 2012 OVDP guidance provided the modified mark-to-market method.[33] Although the calculations required under the mark-to-market method and the information required to make the calculations are somewhat manageable, the mark-to-market method raised several issues in practice. For example, one issue is how to apply it to PFICs with shares that do not meet the ''marketable'' standard. Another issue relates to the availability of the mark-to-market method outside the OVDP or SFCP (once the taxpayer has resolved his past noncompliance issues under one of the programs and is current in his U.S. tax obligations).

U.S. taxpayers residing overseas for legitimate reasons, in many cases dual citizens, are frequently ill advised by financial planners and investment advisers who do not always fully understand the U.S. tax connection to make investments in foreign mutual funds that are generally treated as PFICs for U.S. federal income tax purposes. Such investments are made in most cases for wealth preservation and net wealth accumulation purposes, and U.S. taxpayers who receive investment recommendations do not necessarily attempt to avoid current U.S. taxation of their PFIC investments. In fact, many U.S. taxpayers were and still may be unaware of the PFIC status of mutual funds in which they invest. Even worse, someone who has not even been exposed to U.S. tax and has PFIC investments may be unsuspecting of their U.S. tax ''luggage'' when moving to the United States. Consider, for example, Canadians who move to the U.S. In some cases, the amount of time and resources used to collect the information from PFICs necessary to calculate potential U.S. tax liability and the amount of professional fees of tax advisers by far outweigh the amount of any U.S. tax liability arising from PFIC investments.

The author believes that at least in cases when the U.S. taxpayer's failure to comply with the U.S. tax law was due to non-willful conduct and when the taxpayer participates in the OVDP or the SFCP, Treasury and the IRS should provide relief or additional alternatives for dealing with PFIC issues. As part of potential relief, the IRS may consider weighing the administrative burden imposed on taxpayers and the best way to protect the fisc before requiring the taxpayer to file delinquent PFIC filings or engage in complex calculations.

Willful Conduct Guidance

To qualify for the SFCP or to file delinquent FBARs under the delinquent FBAR filing procedures, U.S. taxpayers are now required to complete a certification that the failure to file the requisite returns was not due to willful conduct. The IRS clarified that non-willful conduct is ''due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.''[34] A willful conduct determination is also important later in the process if the taxpayer's case has been selected for IRS examination.

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[27] Section 1295.

[28] Section 1296.

[29] *See* reg. section 1.1297-3; temp. reg. section 1.1291-1T.

[30] The election is made on Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.''

[31] Section 1296; *see also* reg. section 1.1296-2(a).

[32] Treasury and the IRS issued final and temporary regulations that provided certain limited exceptions from PFIC reporting. *See* T.D. 9650 (Dec 31, 2013); temp. reg. section 1.1298-1T(c).

[33] 2012 OVDP FAQ 10. *See also* 2014 OVDP FAQ 10.

[34] *See supra* note 17.

There is limited guidance on what constitutes willful conduct or willful violation for FBAR penalty purposes, and a determination is highly factual.[35] Two recently decided cases that addressed the issue of willful violations for FBAR purposes are *United States v. Williams*[36] and *United States v. McBride*.[37] Previously, the IRS also issued chief counsel advice.[38]

The IRS does not plan on providing any additional guidance for taxpayers, and it suggested they make a determination of willfulness under the existing tax authorities and talk to their tax advisers to determine if they meet the non-willful conduct requirement.[39]

The standard of willfulness under the existing law appears to be stricter than the standard the IRS seems to be using for purposes of the SFCP.[40] The requirement to make a non-willful conduct certification at the time of the SFCP submission (the IRS intends on reviewing all such certifications) and the need to make the respective willfulness determination before filing their submission with the IRS will no doubt lead to increased due diligence by taxpayers and their tax advisers. Taxpayers who are able to establish non-willful conduct may still need to carefully review their situation and determine if they can claim a reasonable cause defense for purposes of both filing delinquent FBARs and international information forms. It appears that the IRS left the door open to potential non-willful FBAR violation penalties ($10,000 per violation) as opposed to providing full relief from penalties under the SFCP.[41]

U.S. taxpayers making the non-willful conduct certifications should carefully review their facts and circumstances and consult with their U.S. tax advisers to make the respective determination before they file their submission with the IRS.

Timing and Certainty of Resolution

In this area, predicting how long the process would take is close to impossible. It is reasonable, therefore, for the IRS to not provide specific deadlines or timeline considerations as part of the process. By the same token, taxpayers would benefit from understanding, at least generally, the commitment of time that they should expect from going through the process that would be applicable to the respective option pursued to become U.S. tax compliant. In this respect, some time frame notice would be very helpful. For example, the IRS could publish general statistics on case processing times under the OVDP based on its previous and current practice.

Another area that remains to be clarified is the resolution of the taxpayer's case under the applicable procedural alternatives to become U.S. tax compliant. The OVDP provides such resolution by requiring the IRS and the taxpayer to conclude a closing agreement. The SFCP, however, is silent in this respect. Granted, under the enhanced SFCP, the IRS indicated that the taxpayer's delinquent returns filed under the SFCP would be processed in the ordinary course of business (under regular tax return processing procedures) and may be subject to an IRS examination. It would be helpful if the IRS provided more certainty about the resolution of taxpayers' issues under all options available to U.S. taxpayers under the June 18, 2014, guidance, not limiting it only to OVDP cases.

Options to Become Tax Compliant

Along with the changes and enhancements to the two programs, the IRS also explained four options available to taxpayers who want to become U.S. tax compliant.[42] Although, for ease of reference, those options are discussed at a high-level below, please refer to decision-making trees in Appendix A to this article for a more detailed overview.

OVDP

Taxpayers who may be concerned about potential criminal prosecution or who failed to disclose their foreign bank accounts or assets due to willful conduct should seriously consider OVDP as a forum for resolving their non-compliance-related tax issues. Because of the increased penalty regime, taxpayers who are otherwise eligible for the OVDP should file their preclearance requests before August 4, 2014, to the extent possible, to still be eligible for the lower 27.5 percent penalty threshold.[43] Taxpayers who file their OVDP

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[35] For a discussion of the ''willful'' standard in the FBAR context, see Rufus Rhoades, *Rufus Rhoades on An Analysis of the Meaning of ''Willful'' in the FBAR Context*, 2013 Emerging Issues 7044 (LexisNexis Emerging Issues Analysis, Sept. 2013).

[36] 110 AFTR 2d 2012-5298 (4th Cir. 2012).

[37] 110 AFTR 2d 2012-6600 (DC Utah 2012).

[38] ILM 200603026, Jan. 20, 2006.

[39] *See, e.g.*, Alison Bennett, ''IRS Expands Relief for Some Foreign Account Disclosures, Tightens Rules for Willful Neglect,'' 33 *TMWR* 815 (June 23, 2014) (comments by Michael Danilack, IRS Large Business and International Division deputy commissioner (international)).

[40] The IRS defined ''non-willful conduct'' in its June 18, 2014, guidance as ''conduct that is due to negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law.'' *See supra* notes 17 and 18.

[41] For a willful violation penalty structure, see Rhoades, *supra* note 35.

[42] There may be other procedural alternatives for becoming U.S. tax compliant that may be available to taxpayers depending on their facts and circumstances. However, a discussion of such other options is outside the scope of this article. Taxpayers should consult their tax advisers to determine what procedural alternative best suits the taxpayers' facts.

[43] Ideally, such taxpayers would have filed their OVDP requests on or before June 30, 2014, to qualify for the transitional

(Footnote continued on next page.)

pre-clearance requests after August 4, 2014, should expect to pay a 50 percent miscellaneous offshore penalty.

To qualify for the OVDP, U.S. taxpayers should have funds invested in undisclosed foreign assets and bank accounts from legal sources and should meet other requirements of the OVDP.[44]

As part of the eligibility criteria for the OVDP, U.S. taxpayers must agree to provide information about financial institutions and other facilitators that helped the taxpayer establish or maintain an offshore arrangement. Notably, facilitators or individuals who assisted taxpayers in their tax noncompliance are ineligible to participate in the OVDP. Also, U.S. taxpayers who apply for the SFCP are ineligible to participate in the OVDP.

The OVDP option is open to both individual taxpayers and businesses.

SFCP

The SFCP is not available to businesses. Only individuals or estates of individual U.S. taxpayers may participate in the program. Further, to be eligible for this option, taxpayers must certify that the failure to comply was due to non-willful conduct and must outline in accordance with the certification the reasons for not filing, and if not, add a statement to provide the necessary explanation.

Importantly, for a taxpayer to be eligible for the SFCP, the IRS must not have started a civil examination of the taxpayer's returns for any tax years.

The IRS extended this procedural alternative to those U.S. taxpayers who made a ''quiet disclosure'' — filed delinquent returns in the ordinary course of business, without drawing the IRS's attention to their file. The IRS stated that such taxpayers can still use this option, but will continue to be liable for any penalties already due.

Significantly, the IRS clarified that the delinquent tax returns submitted under SFCP can be selected for an audit if the IRS decides that civil or criminal liability is appropriate.

As noted above, the IRS clarified that the delinquent returns submitted under this option will be processed like any other return submitted to the IRS.

As a welcome enhancement of the program, the IRS opened the SFCP to some U.S. taxpayers residing in the United States (although not without a cost — see the discussion of penalties in the overview of significant SFCP changes discussed above). Accordingly, the SFCP now is offered to U.S. taxpayers residing outside the United States and U.S. taxpayers residing in the United States. Although the IRS provided more clarity on options available to U.S. taxpayers for becoming tax compliant, many important questions remain unanswered. For example, the IRS did not address the issue of what happens to those U.S. taxpayers (whether residing outside or in the U.S.) whose noncompliance was not due to willful conduct, but who may not meet some of the eligibility requirements of the relevant option (see, for instance, the no-man's-land discussion below).

U.S. Taxpayers Residing Outside the U.S.

To be eligible for this option, in addition to the above requirements, U.S. taxpayers residing overseas must meet the nonresidency test and meet other requirements, including those that have not changed since the 2012 SFCP was introduced.[45]

The discussion below focuses on the nonresidency test that if applied as currently in effect, would effectively create a ''no-man's land'' — a category of U.S. noncompliant taxpayers residing overseas who want to come into U.S. tax compliance and whose noncompliance was due to non-willful conduct, but who would be ineligible for the SFCP because they cannot meet the nonresidency test.

Nonresidency Test

As one of the new requirements for the SFCP, U.S. taxpayers residing outside the United States must meet a nonresidency test. The IRS stated in its guidance that section 911 (foreign income exclusion) and its regulations apply in making this determination.

Section 911 generally provides a mechanism for U.S. persons to avoid double taxation by allowing them to exclude from their U.S. taxable income the income earned in a foreign country (up to an applicable threshold), provided that various requirements are met. Section 911 contains two residency requirements: (1) the bona fide residence test,[46] and (2) the physical presence test.[47] In addition to meeting either of the two residence requirements, an individual must have a tax

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treatment that under certain facts provides a more favorable penalty structure. Unless the IRS extended the deadline for transitional treatment relief, the July 1, 2014, deadline is no longer relevant for the purposes of this article as the article will be published well beyond that deadline.

[44] A detailed list of requirements for the OVDP is outside the scope of this article, but all requirements are listed in Appendix B that contains a table with a side-by-side comparison of the 2012 and 2014 OVDP FAQs.

[45] A detailed discussion of all requirements of the SFCP is outside the scope of this article. However, we discuss some challenges presented by the nonresidency test in some situations below.

[46] Section 911(d)(1)(A).

[47] Section 911(d)(1)(B).

home in a foreign country.[48] Under the bona fide residence test, a U.S. citizen[49] must establish to the satisfaction of the Treasury secretary that he has been a bona fide resident of a foreign country (or countries) for an uninterrupted period that includes an entire year.[50] Under the physical presence test, a U.S. citizen or U.S. resident must have been present in a foreign country during any period of 12 consecutive months during at least 330 full days in such period.[51]

Under the nonresidency test of the SFCP, U.S. taxpayers residing overseas are eligible to participate in the SFCP if:

- *U.S. citizens or lawful permanent residents (that is, ''green card holders'').* In any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual did not have a U.S. abode *and* the individual was physically outside the United States for at least 330 full days.
- *Non-U.S. citizens or lawful permanent residents.* In any one or more of the last three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual did not meet the substantial presence test under section 7701(b)(3).

The IRS gives two examples under the first requirement discussed above that focus on whether the U.S. taxpayer had his home of abode in the United States for purposes of the nonresidency test. Interestingly, in both examples, the IRS failed to consider the second prong of the test — the 330 full-day presence requirement.

Although the IRS explicitly stated that section 911 and its regulations apply for purposes of the SFCP, the bona fide residence test is not part of the current nonresidency test of the SFCP. As the discussion below will demonstrate, this may be a significant oversight of the enhanced SFCP.

For purposes of section 911, when determining whether a U.S. citizen established bona fide residence in a foreign country, the courts used the following factors:

- intention of the taxpayer;
- establishment of his home temporarily in the foreign country for an indefinite period;
- participation in the activities of his chosen community on social and cultural levels, identification with the daily lives of the people, and in general, assimilation into the foreign environment;
- physical presence in the foreign country consistent with his employment;
- nature, extent, and reasons for temporary absences from his temporary foreign home;
- assumption of economic burdens and payment of taxes to the foreign country;
- status of resident contrasted to that of transient or sojourner;
- treatment accorded his income tax status by his employer;
- marital status and residence of his family;
- nature and duration of his employment — whether his assignment abroad could be promptly accomplished within a definite or specified time; and
- good faith in making his trip abroad — whether for purpose of tax evasion.[52]

The fact that the taxpayer temporarily leaves his home country for work, family visits, or vacation, in the absence of tax evasion motives and in view of all other applicable facts and circumstances, does not in itself preclude the taxpayer from meeting the bona fide residence test.[53]

The regulations under section 911 also provide that whether an individual is a bona fide resident of a foreign country will be determined by applying, to the extent practical, the principles of section 871 and its regulations.[54] The regulations provide that:

> Bona fide residence in a foreign country or countries for an uninterrupted period may be established, even if temporary visits are made during the period to the United States or elsewhere on vacation or business.[55]

As a general matter, there is nothing wrong with applying the section 911 standard for determining if a U.S. taxpayer residing outside the United States should qualify for the SFCP. However, the IRS borrowed only

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[48] Section 911(d)(1).

[49] Although the statute seems to limit the bona fide residence test to U.S. citizens, U.S. residents who are citizens of foreign countries that have in effect an applicable U.S. income tax treaty may also qualify under the bona fide residence test even though they are not U.S. citizens under the nondiscrimination article. For example, for Canadian citizens, the applicable treaty provision would be Article XXV of the Canada-U.S. tax treaty, signed on September 26, 1980 (as amended by protocols). *See also* Rev. Rul. 91-58, 1991-2 C.B. 340.

[50] Section 911(d)(1)(A).

[51] Section 911(d)(1)(B).

[52] *Sochurek v. Commissioner*, 9 AFTR 2d 883, 886 (7th Cir. 1962), *rev'g* 36 T.C. 131 (1961).

[53] *Id.* at 887. *See also Rose v. Commissioner*, 16 T.C. 232 (1951); *Schoneberger v. Commissioner*, 74 T.C. 1016, 1026 (1980).

[54] *See* reg. section 1.871-2(b) (''an alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay.'').

[55] Reg. section 1.911-2(c).

one of the tests under section 911 — the physical presence test — composed of the 330 full-day physical absence rule and home of abode requirement.

To demonstrate the intended or unintended result under the nonresidency test as currently drafted, let us consider a few examples (in all the examples we assume that no tax evasion motive existed):

- *Example 1:* Danny is a dual Canadian and U.S. citizen who has been living and working in Canada for the last 10 years. In at least one of the most recent three years, Danny did not have a U.S. abode and was physically outside the United States for at least 330 full days. Danny earned $80,000 in 2013. He paid taxes in Canada and timely filed a Canadian income tax return. Canadian individual income tax rates are generally higher than, or at least as high as, in the United States. Danny did not file U.S. income tax returns and would like to become U.S. tax compliant and take advantage of the SFCP. Danny's noncompliance is not due to willful conduct. If Danny were to file his delinquent U.S. tax returns under the SFCP, he would not owe any U.S. tax because the section 911 foreign income exclusion ($99,200 for the 2014 tax year)[56] would exclude the whole amount of Danny's income earned in Canada from U.S. tax.
- *Example 2:* The same facts as above apply, except that Danny does not meet the 330 full-day requirement. For instance, he may have spent vacation in the United States, is a snowbird, visited his family, or traveled for work to the United States and as such was physically present outside the United States 310 full days in each of the most recent three years. If Danny were to file a U.S. tax return and claim the foreign income exclusion under section 911, he would not be eligible for the section 911 relief under the physical presence test because he would not meet the physical absence requirement. However, Danny would still meet the bona fide residence test and as such qualify for the section 911 foreign income exclusion. Even if the section 911 relief was unavailable, Danny could claim a foreign tax credit regarding Canadian taxes paid to avoid double taxation. Danny, again, is unlikely to owe any U.S. tax (in excess of Canadian taxes paid).
- *Example 3:* Assume the same facts as in Example 2, but now Danny earns $150,000 and frequently travels to the United States, mainly for work. As a result, in the most recent three years, Danny was physically present in Canada for only 320, 310, and 290 full days. Assume that while on business in the United States, Danny's employment income includes U.S.-source income (Danny is performing personal services on behalf of his Canadian employer while physically present in the United States). Again, Danny pays all Canadian taxes and is tax compliant in Canada. Danny does not meet the physical presence test under section 911, but he still meets the bona fide residence test. Also, Danny's income exceeds the foreign income exclusion amount. While Danny can claim the foreign income exclusion up to $99,200, the Canadian tax paid on the remaining balance of $50,800 should be eligible for the FTC. Danny is eligible to claim the FTC for taxes paid in Canada, even though a portion of his employment income technically has U.S. source.[57] Even if Danny was able to claim only a partial FTC for the employment taxes paid in Canada, his U.S. tax liability would be quite limited. More importantly, Danny should be able to claim a refund for the portion of the tax paid in Canada as attributable to the U.S.-source income and claim a credit in Canada for the U.S. tax paid in the United States as a result of the FTC recalculation. In any event, any U.S. tax liability of Danny under these facts is likely to be low or nonexistent.

Under the current expanded SFCP rules, Danny would meet only the nonresidency test in Example 1. Danny will fail the nonresidency test in examples 2 and 3 and as such would not be eligible for the SFCP. Importantly, Danny would not qualify for the SFCP for U.S. taxpayers residing in the United States (at a minimum, Danny did not file his U.S. tax returns and as such would not meet the tax return filing requirement under the program).

Although the reasoning of the IRS may make sense overall and using only the physical presence test may allow the IRS to achieve administrative simplicity by avoiding making complex and time-consuming factual determinations, it does not appear to make sense from a perspective of sound tax administration. A large group of noncompliant U.S. citizens or green card holders residing overseas who would be eligible for the SFCP, other than for the nonresidency test (and who would have been eligible under the 2012 SFCP terms), will now be excluded from qualifying for the SFCP (this is especially true for U.S. taxpayers who are Canadian citizens or residents; because of close economic and family ties as well as border proximity between the

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[56] Rev. Proc. 2013-35, 2013-47 IRB 537.

[57] In Danny's case, under the Canada-U.S. tax treaty, Danny's employment income would be sourced to Canada (assume Danny's portion of employment income potentially attributable to the United States would exceed $10,000) since his presence in the United States did not exceed in the aggregate 183 days in any 12-month period (we assume that the Canadian employer of Danny did not have a permanent establishment in the United States and that Danny's remuneration was not borne by that PE). *See* Article XV.2(b) of the Canada-U.S. tax treaty. Also, Danny, as a Canadian citizen, may benefit from Article XXV of the Canada-U.S. tax treaty (nondiscrimination).

United States and Canada, Canadians regularly cross the U.S. border and spend lots of time in the United States, thus in some cases easily triggering the 330 full-day threshold).

There is a hope that the IRS made a mistake or a drafting oversight when the nonresidency test for purposes of the SFCP was being designed. An argument for an inadvertent mistake by the IRS is supported by the following:

- The two examples that the IRS provided to illustrate the application of the nonresidency test under the SFCP do not discuss the 330 full-day requirement. They focus only on the home of abode.
- In view of intended enhancement of the SFCP, narrowing the program is inconsistent with the vision that the IRS had when announcing the changes. IRS Commissioner John Koskinen stated when announcing the enhanced SFCP on June 18, 2014, that ''we [are] expanding the streamlined procedures to cover a much broader group of U.S. taxpayers we believe are out there who have failed to disclose their foreign accounts but who aren't willfully evading their tax obligations. To encourage these taxpayers to come forward, we're expanding the eligibility criteria, eliminating a cap on the amount of tax owed to qualify for the program, and doing away with a questionnaire that applicants were required to complete.''[58]
- The IRS specifically refers to section 911 and its regulations as applying for purposes of the SFCP. Section 911 uses an alternative bona fide residence test in determining whether a U.S. taxpayer should be treated as a ''qualified individual'' for foreign income exclusion purposes.
- There does not seem to be a good policy reason for limiting the nonresidency test solely to the physical presence test. Even if it was intended, the IRS should distinguish situations when individual income tax rates in the applicable foreign country are higher or equal to the U.S. individual income tax rates or when an applicable U.S. income tax treaty provides relief from sourcing partial employment income to U.S. source when a person has not met a specific physical presence threshold (as discussed above, in case of Canada, for example, it is 182 days). If at all, the IRS should distinguish the qualification for the SFCP versus the issue of determining any outstanding U.S. tax liability. Even if, as a result of disallowing the foreign income exclusion or limiting FTC, the U.S. taxpayer ends up with a U.S. tax bill, he still should be eligible to participate in the SFCP as long as he meets all other program requirements.

Recommendation

The IRS should take a closer look at the nonresidency test and either add the bona fide residence requirement (also extending it to U.S. residents who have U.S. income tax treaty protection) under section 911(d)(1)(A) or, in the alternative, provide a clarification that the nonresidency test should be based on all facts and circumstances and that depending on applicable facts, even if the U.S. taxpayer did not meet the 330 full-day test, he may still qualify for the SFCP. The former solution seems to be most effective and would provide for an easy fix. The second solution would be less efficient, but at least would allow some flexibility in applying the new rules. Again, we are talking about U.S. taxpayers whose noncompliance was not due to willful conduct and who have been and are legitimate residents of foreign countries where they have been living and working for a long time.

U.S. Taxpayers Residing in the U.S.

Some U.S. taxpayers residing outside the United States who failed to meet the requirements applicable under the above option may still qualify for the SFCP if they meet the requirements applicable to U.S. taxpayers residing in the United States. In such case the taxpayers would be subject to a 5 percent miscellaneous offshore penalty, if applicable. However, under the new rules, the U.S. taxpayers would not be subject to accuracy-related penalties, information return penalties, or FBAR penalties. Even if the return is selected for audit later, the U.S. taxpayer will not be subject to those penalties, unless the examination results in a determination that the return was fraudulent or FBAR violation was willful. Retroactive relief is available for deferral of specific retirement and savings plans.[59]

Delinquent FBARs

This option is available to U.S. taxpayers who do not need to use the OVDP or SFCP, but have delinquent FBARs. To qualify for this procedural alternative, the U.S. taxpayer may not have been contacted by the IRS regarding an income tax examination or delinquent FBARs for the applicable tax years.

Importantly, the IRS will not impose penalties for the failure to file delinquent FBARs on those U.S. taxpayers who properly reported on their U.S. tax returns and paid their tax liability arising from the income from undisclosed foreign financial accounts.

FBARs may be selected for audit under regular audit selection procedures.

Delinquent International Information Returns

This option was available to U.S. taxpayers before the June 18 changes. However, the IRS, for the first

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[58] Statement of IRS Commissioner John Koskinen, *supra* note 1.

[59] A detailed discussion of all requirements of SFCP is outside the scope of this article. However, we discuss some challenges presented by the nonresidency test in some situations below.

time, posted the relevant information on its OVDP website that clarified this procedural alternative and removed some mystery from the process.

Taxpayers are still expected to show reasonable cause to qualify for no-penalty treatment. Furthermore, U.S. taxpayers applying for this procedural alternative to become U.S. tax compliant must also certify that any entity for which the information returns are being filed was not engaged in tax evasion. No guidance is provided as to the reasonable cause standard that the IRS would be using in this respect, but it should not differ from a general reasonable cause standard under the existing tax law.

Delinquent forms 3520 and 3520-A should be filed according to the forms' instructions. Taxpayers must attach a reasonable cause statement to each delinquent information return filed for which the reasonable cause defense is raised.

Taxpayers should consult their U.S. tax adviser on whether they may meet the reasonable cause exception and to develop arguments applicable under their facts and circumstances.

Conclusion

The changes brought to the two programs are important and are generally favorable to U.S. taxpayers residing overseas and in the United States. However, the new IRS guidance fails to address some areas. Taxpayers would greatly benefit from additional IRS guidance and, possibly, additional relief in areas such as PFIC reporting and non-willful conduct determination.

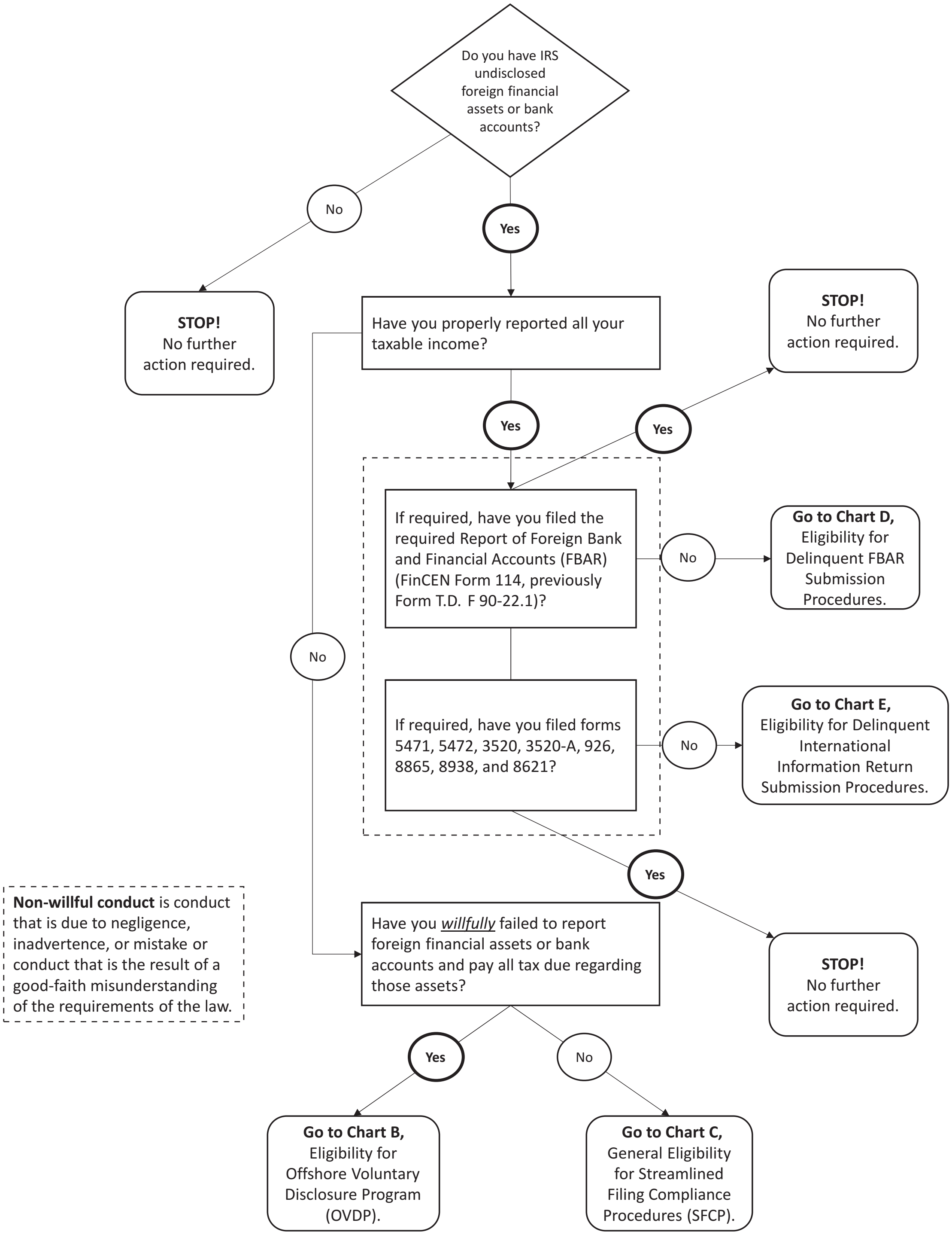
The nonresidency test for U.S. taxpayers residing outside the United States under the SFCP should be fixed. Either the complete section 911 standard should be applied, with potential application of the bona fide residence requirement to treaty-protected U.S. residents, or the determination of whether a U.S. taxpayer qualifies for the nonresidency test should be based on all facts and circumstances.

Although the modified programs are overall favorable to U.S. taxpayers, they are going to add to a taxpayer's administrative burden and compliance costs. Taxpayers will need to make a determination of whether their conduct was non-willful and to determine, as applicable, if they can show reasonable cause for failure to comply with their U.S. tax obligations.

U.S. taxpayers would be well advised to closely review the new rules and the program eligibility requirements, consult with their U.S. tax advisers, and seriously consider coming forward voluntarily now, when they still can. ◆

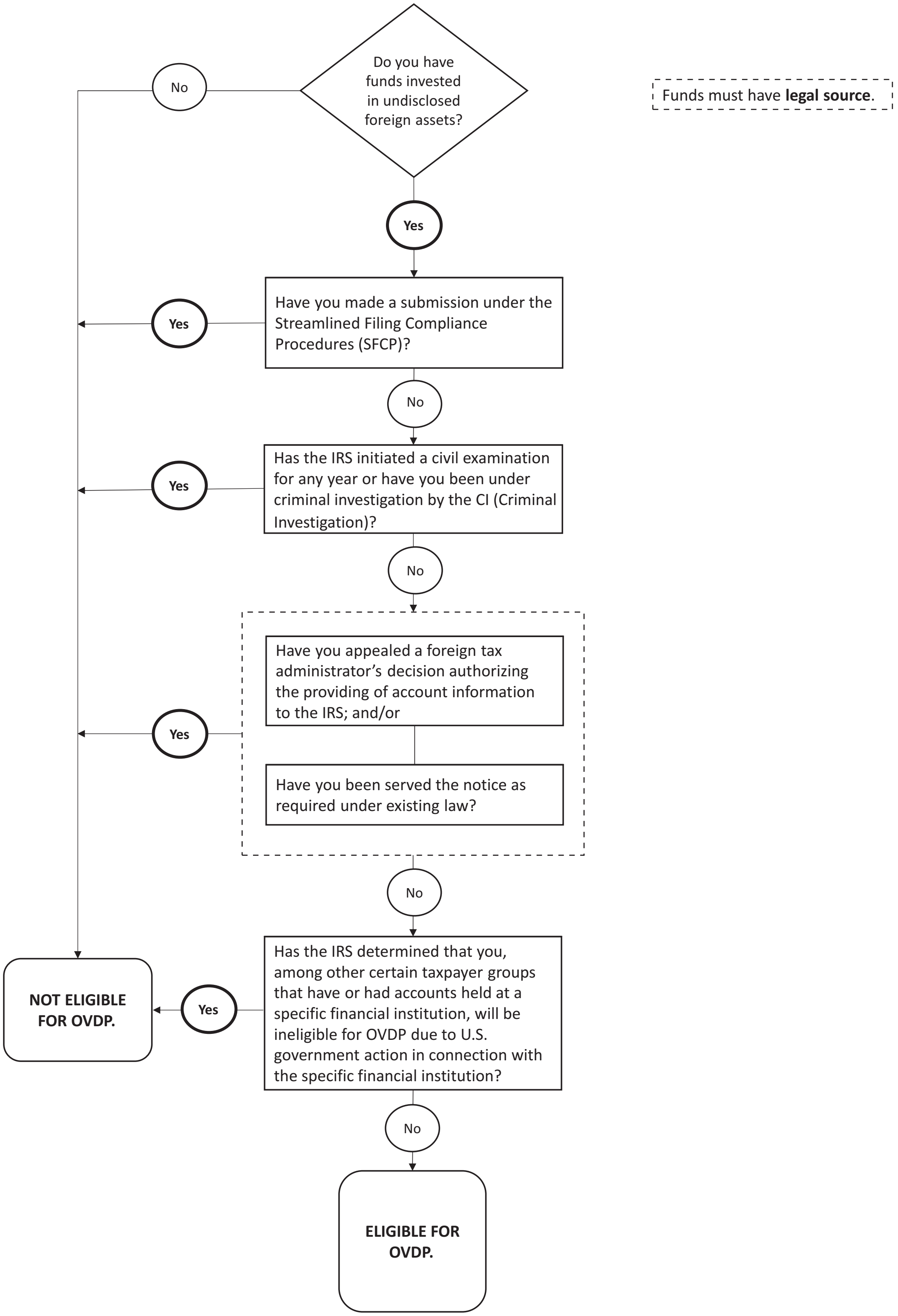
Appendix A. Flowcharts for Options Available to U.S. Taxpayers to Become Tax Compliant Under June 18, 2014, Guidance

Chart A. Options Available to U.S. Taxpayers With Undisclosed Foreign Financial Assets or Bank Accounts Under June 18, 2014, Guidance



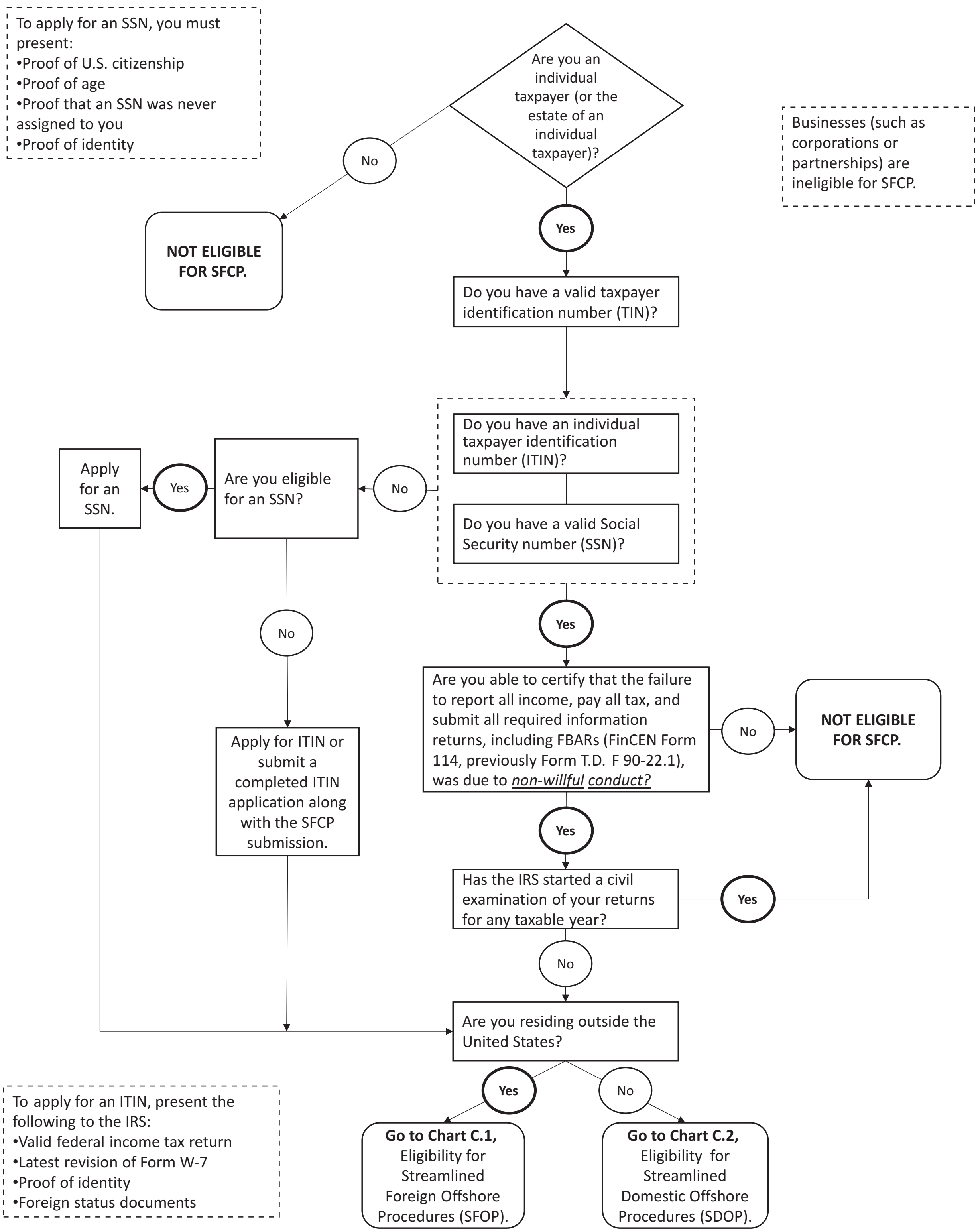
Source: http://www.irs.gov/Individuals/International-Taxpayers/Options-Available-For-U-S--Taxpayers-with-Undisclosed-Foreign-Financial-Assets.

Chart B. Eligibility for Offshore Voluntary Disclosure Program (OVDP)



Source: http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program and http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised.

Chart C. General Eligibility for Streamlined Filing Compliance Procedures (SFCP)



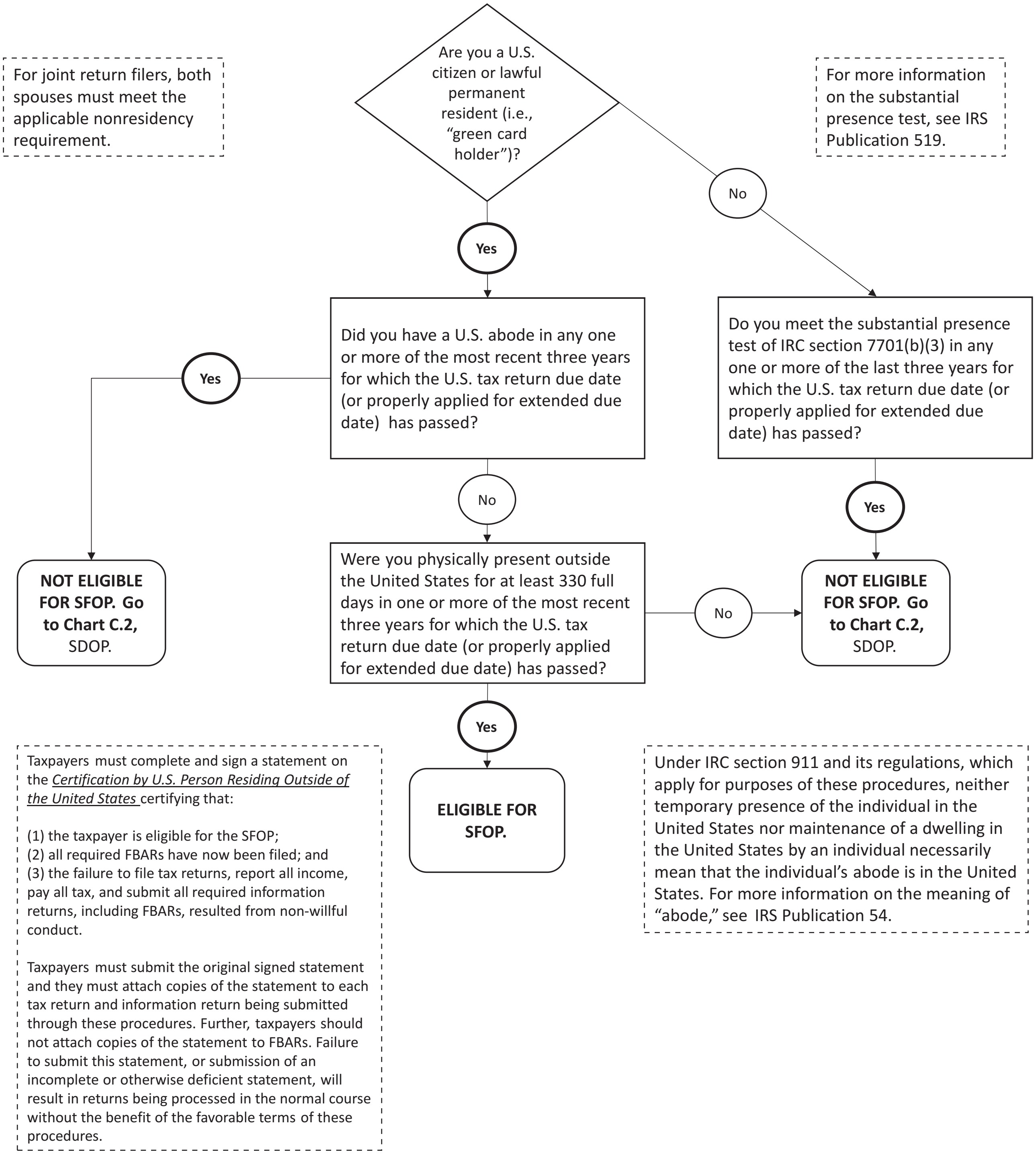
To apply for an SSN, you must present:
- Proof of U.S. citizenship
- Proof of age
- Proof that an SSN was never assigned to you
- Proof of identity

Businesses (such as corporations or partnerships) are ineligible for SFCP.

To apply for an ITIN, present the following to the IRS:
- Valid federal income tax return
- Latest revision of Form W-7
- Proof of identity
- Foreign status documents

Source: http://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures.

Chart C.1. Eligibility for Streamlined Foreign Offshore Procedures (SFOP)



For joint return filers, both spouses must meet the applicable nonresidency requirement.

For more information on the substantial presence test, see IRS Publication 519.

Taxpayers must complete and sign a statement on the _Certification by U.S. Person Residing Outside of the United States_ certifying that:

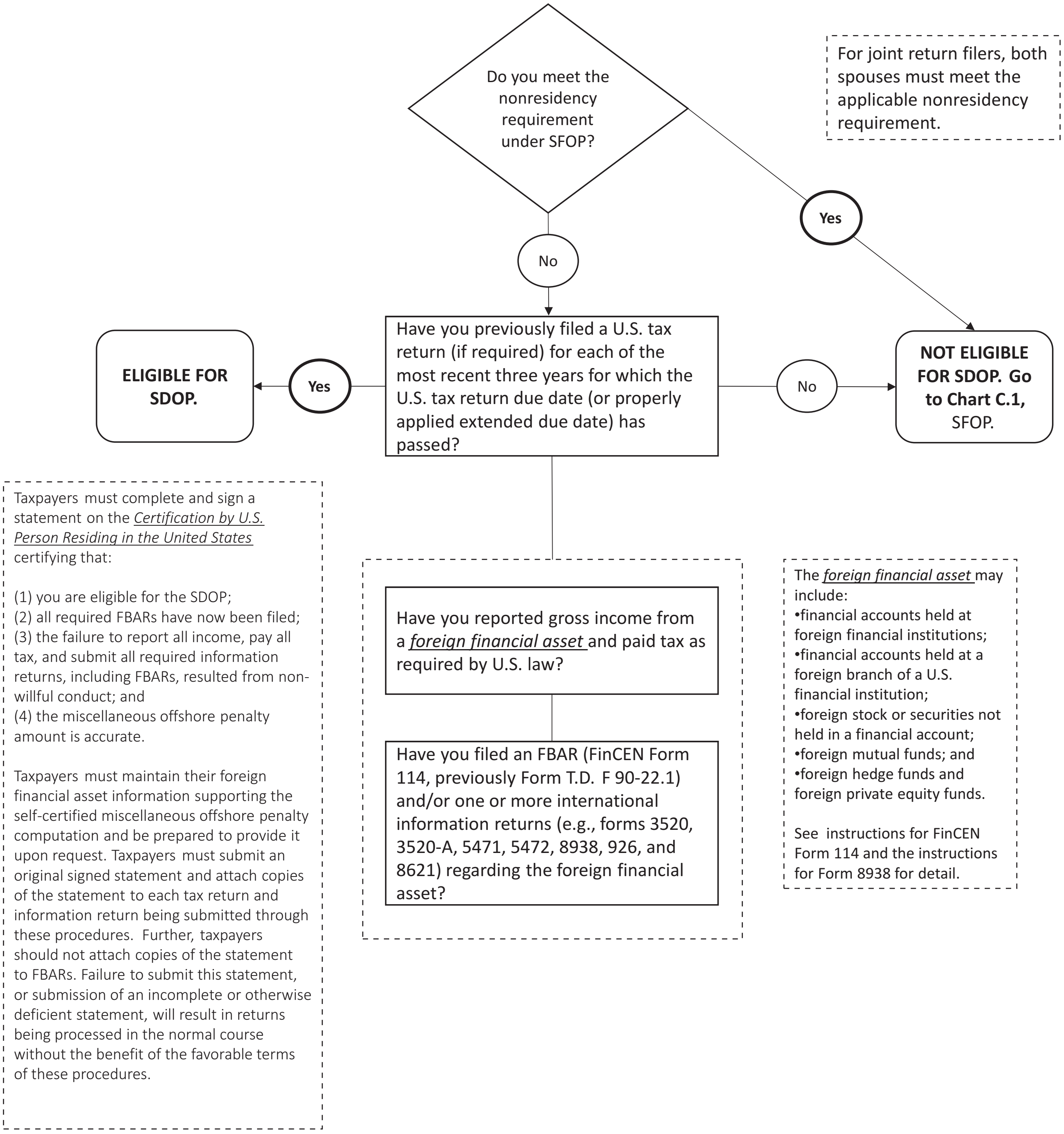
(1) the taxpayer is eligible for the SFOP;
(2) all required FBARs have now been filed; and
(3) the failure to file tax returns, report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct.

Taxpayers must submit the original signed statement and they must attach copies of the statement to each tax return and information return being submitted through these procedures. Further, taxpayers should not attach copies of the statement to FBARs. Failure to submit this statement, or submission of an incomplete or otherwise deficient statement, will result in returns being processed in the normal course without the benefit of the favorable terms of these procedures.

Under IRC section 911 and its regulations, which apply for purposes of these procedures, neither temporary presence of the individual in the United States nor maintenance of a dwelling in the United States by an individual necessarily mean that the individual's abode is in the United States. For more information on the meaning of "abode," see IRS Publication 54.

Source: http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States.

Chart C.2. Eligibility for Streamlined Domestic Offshore Procedures (SDOP)



For joint return filers, both spouses must meet the applicable nonresidency requirement.

Taxpayers must complete and sign a statement on the *Certification by U.S. Person Residing in the United States* certifying that:

(1) you are eligible for the SDOP;
(2) all required FBARs have now been filed;
(3) the failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct; and
(4) the miscellaneous offshore penalty amount is accurate.

Taxpayers must maintain their foreign financial asset information supporting the self-certified miscellaneous offshore penalty computation and be prepared to provide it upon request. Taxpayers must submit an original signed statement and attach copies of the statement to each tax return and information return being submitted through these procedures. Further, taxpayers should not attach copies of the statement to FBARs. Failure to submit this statement, or submission of an incomplete or otherwise deficient statement, will result in returns being processed in the normal course without the benefit of the favorable terms of these procedures.

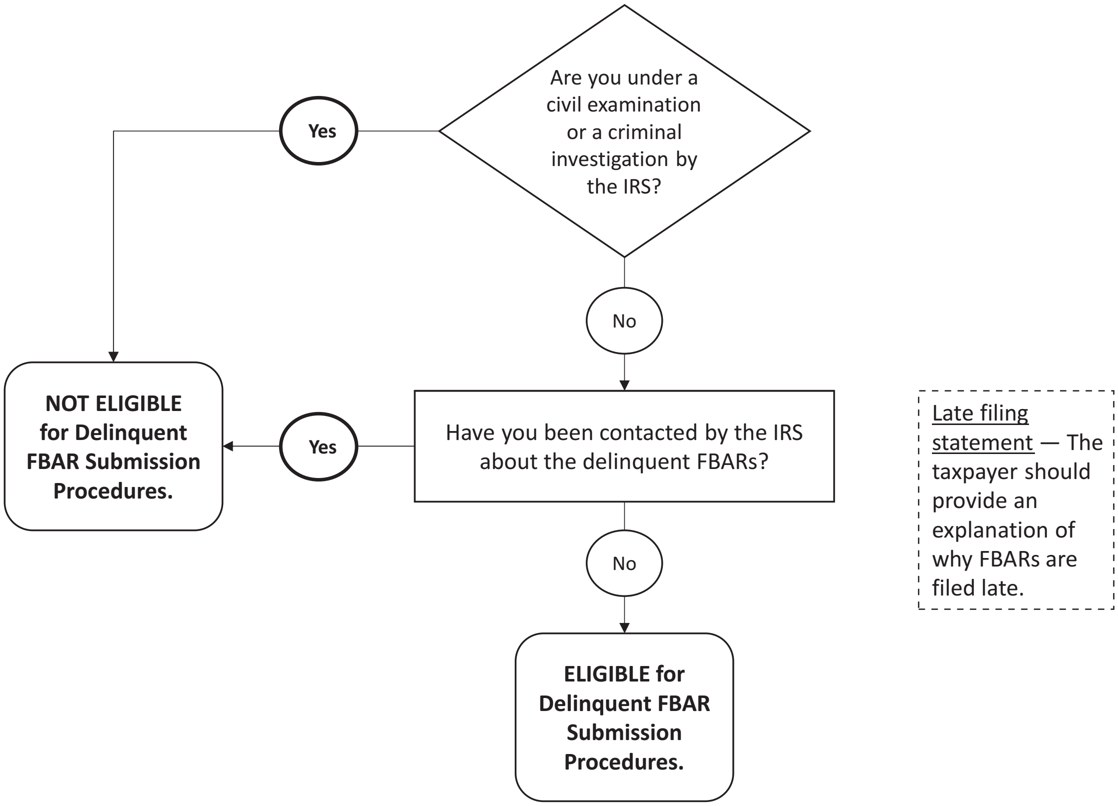
The *foreign financial asset* may include:

- financial accounts held at foreign financial institutions;
- financial accounts held at a foreign branch of a U.S. financial institution;
- foreign stock or securities not held in a financial account;
- foreign mutual funds; and
- foreign hedge funds and foreign private equity funds.

See instructions for FinCEN Form 114 and the instructions for Form 8938 for detail.

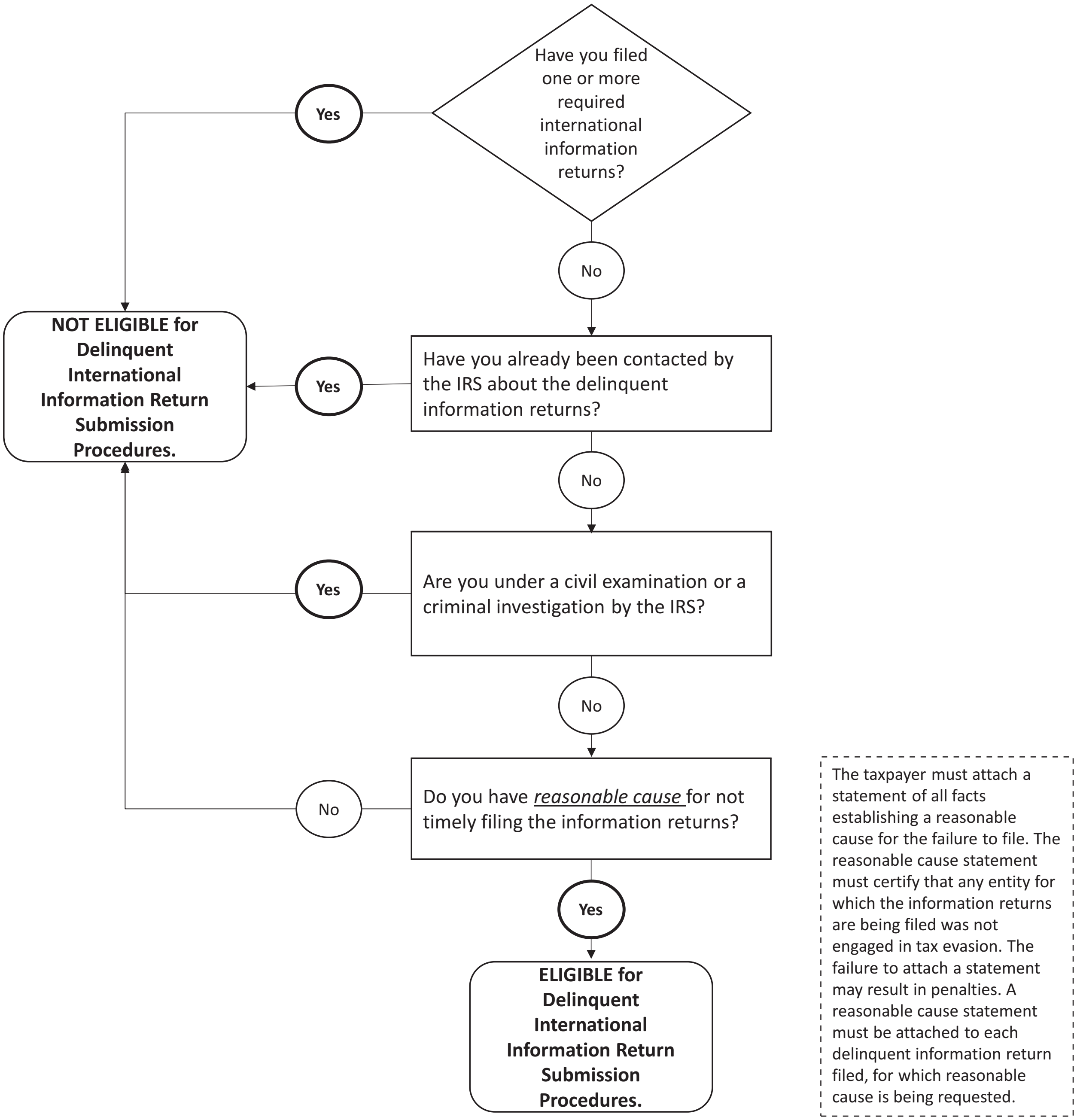
Source: http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States.

Chart D. Eligibility for Delinquent FBAR Submission Procedures



Source: http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-FBAR-Submission-Procedures.

Chart E. Eligibility for Delinquent International Information Return Submission Procedures



The taxpayer must attach a statement of all facts establishing a reasonable cause for the failure to file. The reasonable cause statement must certify that any entity for which the information returns are being filed was not engaged in tax evasion. The failure to attach a statement may result in penalties. A reasonable cause statement must be attached to each delinquent information return filed, for which reasonable cause is being requested.

Source: http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs

Source: 2014 OVDP FAQ, *available at* http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised.

2012 OVDP FAQ, *available at* http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers.

Legend:

Underlined bold — new text.
Underlined italics — deleted text.

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
1	**Is this** a new offshore voluntary disclosure program?	*Why did the IRS announce* a new offshore voluntary disclosure program *at this time*?	**No. This is a continuation of the program introduced in this modified program, it may be referred to as the 2014 OVDP.** The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), and Offshore Voluntary Disclosure Initiative (2011 OVDI), **and the 2012 OVDP have** demonstrated the value of uniform penalty structure**s** for taxpayers who come forward voluntarily and report their previously undisclosed foreign accounts and assets. These initiatives **have** enabled the IRS to centralize the civil processing of offshore voluntary disclosures and to resolve a very large number of cases without examination. Because **the implementation of the Foreign Account Tax Compliance Act (FATCA) and** the IRS and Department of Justice offshore enforcement efforts continue **to** raise the risk of detection of taxpayers with undisclosed foreign **accounts and** assets for the foreseeable future, it has been determined that **2012 OVDP** should be **modified and made** available to taxpayers who wish to voluntarily disclose their offshore accounts and assets to avoid prosecution and limit their exposure to civil penalties but have not yet done so. Unlike the 2009 OVDP and the 2011 OVDI, **the 2014 OVDP has** no set deadline for taxpayers to apply. However, the terms of this program could change at any time. For example, the IRS may increase penalties or limit eligibility in the program for all or some taxpayers or defined classes of taxpayers — or decide to end the program entirely at any **time**.	The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), and Offshore Voluntary Disclosure Initiative (2011 OVDI)*, which closed on September 9, 2011,* demonstrated the value of a uniform penalty structure for taxpayers who came forward voluntarily and report*ed* their previously undisclosed foreign accounts and assets. These initiatives enabled the IRS to centralize the civil processing of offshore voluntary disclosures and to resolve a very large number of cases without examination. Because the IRS and Department of Justice offshore enforcement efforts are *expected to* continue rais*ing* the risk of detection of taxpayers with undisclosed foreign assets for the foreseeable future, it has been determined that *a similar program* should be available to taxpayers who wish to voluntarily disclose their offshore accounts and assets to avoid prosecution and limit their exposure to civil penalties but have not yet done so. Unlike the 2009 OVDP and the 2011 OVDI, *there is* no set deadline for taxpayers to apply. However, the terms of this program could change at any time *going forward*. For example, the IRS may increase penalties or limit eligibility in the program for all or some taxpayers or defined classes of taxpayers — or decide to end the program entirely at any *point*. *This new program, the Offshore Voluntary Disclosure Program (OVDP) will be available until further notice to taxpayers who come forward and complete certain requirements. The terms of the program will also be offered to taxpayers who made offshore voluntary disclosures after the deadline for the 2011 OVDI.*
1.1	**Were any significant changes made to the 2012 OVDP? If so, what are they?**		**Changes have been made to the 2012 OVDP, including some which may be considered significant.** **A 50% offshore penalty applies if either a foreign financial institution at which the taxpayer has or had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement has been publicly identified as being under investigation or as cooperating with a government investigation. See FAQ 7.2.** **As described below, FAQ 17 concerning filing delinquent Report of Foreign Bank and Financial Accounts (commonly known as an FBAR) has been replaced and superseded. See ''Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets''.**	

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			As described below, FAQ 18 concerning filing certain delinquent international information returns has been replaced and superseded. See ''Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets''. The reduced penalty structure under former FAQs 52 and 53 has been eliminated due to the expansion of the Streamlined Filing Compliance Procedures. See ''Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets'' for a discussion of the various options for taxpayers with international tax compliance issues. FAQs 31 through 41 pertaining to the asset base to which the offshore penalty applies have been modified to promote clarity and consistency of application. FAQ 23 has been modified to require additional information for preclearance by Criminal Investigation. The Offshore Voluntary Disclosures Letter and attachment have been modified. FAQ 7 has been modified to require that the offshore penalty be paid at the time of the OVDP submission. FAQ 25 has been modified to require that account statements be provided for all foreign financial accounts regardless of account balance and to provide that voluminous documents not requiring original signatures may be submitted on CD or DVD. The following FAQs have been deleted as moot: 16, 17, 18, 19, 51.1, 51.2, 52, and 53.	
1.2	What is the effective date of these modified FAQs?		These modified FAQs are effective for all new submissions made on or after July 1, 2014.	
1.3	If I applied to OVDP prior to the effective date of these modified FAQs and my case has not yet been resolved by means of a closing agreement (Form 906), may I request consideration under these FAQs?		Yes. A taxpayer who made an OVDP submission prior to July 1, 2014 may elect to have his case considered under these FAQs. A taxpayer or his representative must communicate that request in writing to the examiner assigned his case and provide all documents and information required by these FAQs. See FAQ 25. If no examiner has been assigned, send the documents and information to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 Attn: OVDP Determination	
1.4	If I applied to OVDP prior to the effective date of the		See the separate set of Frequently Asked Questions for information about eligibility and the process for requesting transitional treatment under the terms of the Streamlined Filing Compliance Procedures in your OVDP case.	

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	expanded Streamlined Filing Compliance Procedures, may I request consideration under those procedures?			
2	What is the objective of this program?	What is the objective of this program?	The objective remains the same as the 2009 OVDP, the 2011 OVDI, **and the original 2012 OVDP:** to bring taxpayers that have used undisclosed foreign accounts and **assets**, **including those held through** undisclosed foreign entities**,** to avoid or evade tax into compliance with United States tax **and related** laws.	The objective remains the same as the 2009 OVDP and 2011 OVDI — to bring taxpayers that have used undisclosed foreign accounts and undisclosed foreign entities to avoid or evade tax into compliance with United States tax laws.
3	How does this program differ from the IRS's longstanding voluntary disclosure practice or the 2009 OVDP and 2011 OVDI?	How does this program differ from the IRS's longstanding voluntary disclosure practice or the 2009 OVDP and 2011 OVDI?	The Voluntary Disclosure Practice is a longstanding practice of IRS Criminal Investigation whereby CI takes timely, accurate, and complete voluntary disclosures into account in deciding whether to recommend to the Department of Justice that a taxpayer be criminally prosecuted. It enables noncompliant taxpayers to resolve their tax liabilities and minimize their chance of criminal prosecution. When a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice **for any issue relating to tax noncompliance or failure to file Report of Foreign Bank and Financial Accounts (commonly known as an FBAR reported on FinCEN Form 114, previously Form TD F 90-22.1)**. This current offshore voluntary disclosure program is a counterpart to Criminal Investigation's Voluntary Disclosure Practice. Like its predecessors, the 2009 OVDP, which ran from March 23, 2009 through October 15, 2009, and the 2011 OVDI, which ran from February 8, 2011 through September 9, 2011, it addresses the civil side of a taxpayer's voluntary disclosure of foreign accounts and assets by defining the number of tax years covered and setting the civil penalties that will apply. Unlike the 2009 OVDP and the 2011 OVDI, there is no set deadline for taxpayers to apply. However, the terms of this program **may** change at any time. For example, the IRS may increase penalties or limit eligibility in the program for all or some taxpayers or defined classes of taxpayers or decide to end the program entirely at any **time**.	The Voluntary Disclosure Practice is a longstanding practice of IRS Criminal Investigation whereby CI takes timely, accurate, and complete voluntary disclosures into account in deciding whether to recommend to the Department of Justice that a taxpayer be criminally prosecuted. It enables noncompliant taxpayers to resolve their tax liabilities and minimize their chance of criminal prosecution. When a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice. This current offshore voluntary disclosure program is a counter-part to Criminal Investigation's Voluntary Disclosure Practice. Like its predecessors, the 2009 OVDP, which ran from March 23, 2009 through October 15, 2009, and the 2011 OVDI, which ran from February 8, 2011 through September 9, 2011, it addresses the civil side of a taxpayer's voluntary disclosure of foreign accounts and assets by defining the number of tax years covered and setting the civil penalties that will apply. Unlike the 2009 OVDP and the 2011 OVDI, there is no set deadline for taxpayers to apply. However, the terms of this program *could* change at any time *going forward*. For example, the IRS may increase penalties or limit eligibility in the program for all or some taxpayers or defined classes of taxpayers — or decide to end the program entirely at any *point*.
4	Why should I make a voluntary disclosure?	Why should I make a voluntary disclosure?	Taxpayers **holding** undisclosed foreign accounts **and assets, including those held through undisclosed foreign entities,** should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties, and generally eliminate the risk of criminal prosecution **for all issues relating to tax noncompliance and failing to file FBARs. In contrast, taxpayers simply filing amended returns or filing through the Streamlined Filing**	Taxpayers *with* undisclosed foreign accounts *or entities* should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. Making a voluntary disclosure also provides the opportunity to calculate, with a reasonable degree of certainty, the total cost of resolving all offshore tax issues. Taxpayers who do not submit a voluntary disclosure run the risk of detection by the IRS and

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			Compliance Procedures do not eliminate the risk of criminal prosecution. Making a voluntary disclosure also provides the opportunity to calculate, with a reasonable degree of certainty, the total cost of resolving all offshore tax issues. Taxpayers who do not submit a voluntary disclosure run the risk of detection by the IRS and the imposition of substantial penalties, including the fraud penalty and foreign information return penalties, and an increased risk of criminal prosecution. The IRS remains actively engaged in **identifying** those with undisclosed foreign **financial** accounts **and assets**. Moreover, increasingly this information is available to the IRS under tax treaties, through submissions by whistleblowers, **and from other sources** and will become more available under the FATCA and Foreign Financial Asset Reporting (IRC § 6038D).	the imposition of substantial penalties, including the fraud penalty and foreign information return penalties, and an increased risk of criminal prosecution. The IRS remains actively engaged in *ferreting out the identities of* those with undisclosed foreign accounts. Moreover, increasingly this information is available to the IRS under tax treaties, through submissions by whistleblowers, and will become more available under the *Foreign Account Tax Compliance Act (*FATCA*)* and Foreign Financial Asset Reporting (*new* IRC § 6038D).
5	What are some of the civil penalties that might apply if I don't **participate** in the OVPD and the IRS examines me?	What are some of the civil penalties that might apply if I don't *come* in *under* the OVPD and the IRS examines me? *How do they work?*	Depending on a taxpayer's particular facts and circumstances, the following penalties could apply: • A penalty for failing to file FBAR**s**. United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign **financial** accounts exceeded $10,000 at any time during the year. **T**he civil penalty for willfully failing to file an FBAR can be as high as the greater of $100,000 or 50 percent of the total balance of the foreign financial account per violation. See 31 U.S.C. §5321(a)(5). Non-willful violations that the IRS determines were not due to reasonable cause are subject to a $10,000 penalty per violation. • Beginning with the 2011 tax year, a penalty for failing to file Form 8938 reporting the taxpayer's interest in certain foreign financial assets, including financial accounts, certain foreign securities**,** and interests in foreign entities, as required by IRC § 6038D. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return. • A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048. This return also reports the receipt of gifts from foreign entities under **IRC §**6039F. The penalty for failing to file each one of	Depending on a taxpayer's particular facts and circumstances, the following penalties could apply: • A penalty for failing to file *the Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "*FBAR*")*. United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded $10,000 at any time during the year. *Generally,* *t*he civil penalty for willfully failing to file an FBAR can be as high as the greater of $100,000 or 50 percent of the total balance of the foreign account per violation. See 31 U.S.C. § 5321(a)(5). Non-willful violations that the IRS determines were not due to reasonable cause are subject to a $10,000 penalty per violation. • Beginning with the 2011 tax year, a penalty for failing to file form 8938 reporting the taxpayer's interest in certain foreign financial assets, including financial accounts, certain foreign securities and interests in foreign entities, as required by I.R.C. §6038D. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return. • A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048.This return also reports the receipt of

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			these information returns, or for filing an incomplete return, is the greater of $10,000 or 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift. • A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under IRC § 6048(b). The penalty for failing to file each one of these information returns or for filing an incomplete return, is the greater of $10,000 or 5 percent of the gross value of trust assets determined to be owned by the United States person. • A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under IRC §§ 6035, 6038 and 6046. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return. • A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by IRC §§ 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency. • A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under IRC § 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was intentional.	gifts from foreign entities under section 6039F.The penalty for failing to file each one of these information returns, or for filing an incomplete return, is the greater of $10,000 or 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift. • A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under IRC § 6048(b).The penalty for failing to file each one of these information returns or for filing an incomplete return, is the greater of $10,000 or 5 percent of the gross value of trust assets determined to be owned by the United States person. • A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under IRC §§ 6035, 6038 and 6046.The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return. • A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by IRC §§ 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency. • A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under IRC § 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			• A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under IRC §§ 6038, 6038B, and 6046A. Penalties include $10,000 for failure to file each return, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a $100,000 limit. • Fraud penalties imposed under IRC §§ 6651(f) or 6663. Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax. • A penalty for failing to file a tax return imposed under IRC § 6651(a)(1). Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 percent of the balance due, plus an additional 5 percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent. • A penalty for failing to pay the amount of tax shown on the return under IRC § 6651(a)(2). If a taxpayer fails to pay the amount of tax shown on the return, he or she may be liable for a penalty of .5 percent of the amount of tax shown on the return, plus an additional .5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent. • An accuracy-related penalty on underpayments imposed under IRC § 6662. Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20 percent or 40 percent penalty.	intentional. • A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under IRC §§ 6038, 6038B, and 6046A. Penalties include $10,000 for failure to file each return, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a $100,000 limit. • Fraud penalties imposed under IRC §§ 6651(f) or 6663. Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax. • A penalty for failing to file a tax return imposed under IRC § 6651(a)(1). Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 percent of the balance due, plus an additional 5 percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent. • A penalty for failing to pay the amount of tax shown on the return under IRC § 6651(a)(2). If a taxpayer fails to pay the amount of tax shown on the return, he or she may be liable for a penalty of .5 percent of the amount of tax shown on the return, plus an additional .5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent. • An accuracy-related penalty on underpayments imposed under IRC § 6662. Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20 percent or 40 percent penalty.
6	What are some of the criminal charges I might face if I don't **participate** in **the** OVDP and the IRS examines me?	What are some of the criminal charges I might face if I don't *come* in *under* OVDP and the IRS examines me?	Possible criminal charges related to tax **matters** include tax evasion (**IRC** §7201), filing a false return (**IRC** §7206(1)) and failure to file an income tax return (**IRC** §7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. §5322. **Additional possible criminal charges include conspiracy to defraud the government with respect to claims (18 U.S.C. § 286) and conspiracy to commit offense or to defraud the United States (18 U.S.C. §371).**	Possible criminal charges related to tax *returns* include tax evasion (*26 U.S.C.* § 7201), filing a false return (*26 U.S.C.* § 7206(1)) and failure to file an income tax return (*26 U.S.C.* §7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. § 5322. A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to $250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to $250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up to $250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a fine of up to $100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to $500,000. **A person convicted of conspiracy to defraud the government with respect to claims is subject to a prison term of up to not more than 10 years or a fine of up to $250,000. A person convicted of conspiracy to commit offense or to defraud the United States is subject to a prison term of not more than five years and a fine of up to $250,000.**	to $250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a fine of up to $100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to $500,000.
KEY FEATURES OF PROGRAM				
7	What are the requirements of the Offshore Voluntary Disclosure Program?	What are the requirements of the Offshore Voluntary Disclosure Program?	Under the terms of the Offshore Voluntary Disclosure Program, taxpayers must: • **Provide all documents required by FAQ 25;** • Cooperate in the voluntary disclosure process, including providing information on **foreign accounts and assets,** institutions and facilitators, and signing agreements to extend the period of time for assessing Title 26 liabilities and FBAR penalties; • Pay 20**-percent** accuracy-related penalties under IRC § 6662(a) on the full amount of your offshore-related underpayments of tax for all years; • Pay failure**-**to**-**file penalties under IRC § 6651(a)(1), if applicable; • Pay failure-to-pay penalties under IRC § 6651(a)(2), if applicable; • Pay, in lieu of all other penalties that may apply to **the** undisclosed foreign **accounts,** assets and entities, including FBAR and offshore-related information return penalties and tax liabilities for years prior to the voluntary disclosure period, a miscellaneous Title 26 offshore penalty equal to 27.5 **percent (or 50 percent in circumstances described in FAQ 7.2)** of the highest aggregate **value of OVDP** assets **as defined in FAQ 35** during the period covered by the voluntary disclosure **(the 27.5 percent and 50 percent penalties are together referred to in these FAQs as the ''offshore penalty'')**; • Submit full payment of any Title 26 tax liabilities for years included in the offshore disclosure period**, applicable interest, an offshore penalty, accuracy-related penalties for offshore-related underpayments,** and, if applicable, the failure**-**to**-**file and failure**-**to**-**pay penalties **or, if the taxpayer is unable to make full payment,** make good faith arrangements with the IRS to pay in full (see FAQ 20 for more information) (**note**: the suspension of interest provisions of IRC §	Under the terms of the Offshore Voluntary Disclosure Program, taxpayers must: • *Provide copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;* • *Provide complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the account or entity (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts and, for years after 2010, Form 8938, Statement of Specified Foreign Financial Assets).* • *File complete and accurate original or amended offshore-related information returns (see FAQ 29 for certain dissolved entities) and Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an ''FBAR'') for tax years covered by the voluntary disclosure;* • Cooperate in the voluntary disclosure process, including providing information on *offshore financial accounts*, institutions and facilitators, and signing agreements to extend the period of time for assessing Title 26 liabilities and FBAR penalties; • Pay 20% accuracy-related penalties under IRC § 6662(a) on the full amount of your offshore-related underpayments of tax for all years; • Pay failure to file penalties under IRC § 6651 (a)(1), if applicable; • Pay failure to pay penalties under IRC § 6651 (a)(2), if applicable; • Pay, in lieu of all other penalties that may apply to *your* undisclosed foreign assets and entities, including FBAR and offshore-related information return penalties and tax liabilities

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			6404 (g) do not apply to interest due in this program); • Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906; and • Agree to cooperate with IRS **and Department of Justice** offshore enforcement efforts**, if requested,** by providing information about financial institutions and other facilitators **who helped the taxpayer establish or maintain an offshore arrangement**.	for years prior to the voluntary disclosure period, a miscellaneous Title 26 offshore penalty, equal to 27.5*% (or in limited cases 12.5% (see FAQ 53) or 5% (see FAQ 52))* of the highest aggregate *balance in foreign bank accounts/entities or value of foreign* assets during the period covered by the voluntary disclosure; • Submit full payment of any Title 26 tax liabilities for years included in the offshore disclosure period *and all tax, interest, accuracy-related penalties for underpayments related to offshore accounts and entities,* and, if applicable, the failure to file and failure to pay penalties *with the required submissions set forth in FAQ 25 or* make good faith arrangements with the IRS to pay in full*, the tax, interest, and these penalties* (see FAQ 20 for more information *regarding a taxpayer's ability to fully pay)* (the suspension of interest provisions of IRC § 6404(g) do not apply to interest due in this program); *and* • Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906. • Agree to cooperate with IRS offshore enforcement efforts by providing information about *offshore* financial institutions*, offshore service providers*, and other facilitators*, if requested*. • *Provide the information listed in FAQ 54, if the taxpayer has a Canadian registered retirement savings plan (RRSP) or registered retirement income fund (RRIF), did not make a timely election pursuant to Article XVIII(7) of the U.S.-Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed, and would now like to make an election.*
7.1	What if I have unreported income from a domestic source or some other undisclosed income tax liability that is not related to **foreign financial accounts**?	What if I have unreported income from a domestic source or some other undisclosed income tax liability that is not related to *offshore accounts or assets*?	As was the case with the 2009 OVDP and the 2011 OVDI, the OVDP is available to taxpayers who have both **foreign** and domestic issues to disclose. The Voluntary Disclosure Practice requires **a complete, accurate, and truthful** disclosure. Consequently, **in addition to disclosing all items relating to foreign financial accounts, OVDP submissions must correct any previously unreported income from domestic sources, inappropriate deductions or credits claimed, or other incomplete, inaccurate or untruthful items on the originally filed returns. The offshore penalty structure only resolves liabilities and penalties related to offshore noncompliance. Domestic portions of a voluntary disclosure are subject to examination.** See FAQ 24.	As was the case with the 2009 OVDP and the 2011 OVDI, the OVDP is available to taxpayers who have both *offshore* and domestic issues to disclose. The Voluntary Disclosure Practice requires *an accurate and complete* disclosure. Consequently, *if there are undisclosed income tax liabilities from domestic sources in addition to those related to offshore accounts and assets, they must also be disclosed in the OVDP. (*See FAQ 24.*)*
7.2	**What if the government is investigating the foreign financial institution where I hold**		**Beginning on August 4, 2014, any taxpayer who has an undisclosed foreign financial account will be subject to a 50-percent miscellaneous offshore penalty if, at the time of submitting the preclearance letter to IRS Criminal Investigation: an event has already occurred that constitutes a public disclosure that either (a) the foreign financial institution where the account is held, or**	

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	my account or another facilitator who assisted in establishing or maintaining my offshore arrangement?		**another facilitator who assisted in establishing or maintaining the taxpayer's offshore arrangement, is or has been under investigation by the IRS or the Department of Justice in connection with accounts that are beneficially owned by a U.S. person; (b) the foreign financial institution or other facilitator is cooperating with the IRS or the Department of Justice in connection with accounts that are beneficially owned by a U.S. person or (c) the foreign financial institution or other facilitator has been identified in a court-approved issuance of a summons seeking information about U.S. taxpayers who may hold financial accounts (a ''John Doe summons'') at the foreign financial institution or have accounts established or maintained by the facilitator. Examples of a public disclosure include, without limitation: a public filing in a judicial proceeding by any party or judicial officer; or public disclosure by the Department of Justice regarding a Deferred Prosecution Agreement or Non-Prosecution Agreement with a financial institution or other facilitator.** **A list of foreign financial institutions or facilitators meeting this criteria is available.** **Once the 50-percent miscellaneous offshore penalty applies to any of the taxpayer's accounts or assets in accordance with the terms set forth in the paragraph above, the 50-percent miscellaneous offshore penalty will apply to all of the taxpayer's assets subject to the penalty (see FAQ 35), including accounts held at another institution or established through another facilitator for which there have been no events constituting public disclosures of (a) or (b) above.**	
8.	How does the **o**ffshore **p**enalty framework work? Can you **provide** an example?	How does the *O*ffshore *P*enalty framework work? Can you *give us* an example?	**The offshore penalty applies to OVDP assets as defined in FAQ 35.** The values of **OVDP** assets are aggregated for each year and the **offshore** penalty is calculated at **the applicable rate (either** 27.5 percent **or 50 percent)** of the highest year's aggregate value during the period covered by the voluntary disclosure. If the taxpayer has multiple **OVDP** assets where the highest value of some **OVDP** assets is in different years, the values of **OVDP** assets are aggregated for each year and a single **offshore** penalty is calculated at **the applicable rate** of the highest year's aggregate value. For example, assume the taxpayer had the following amounts in a foreign **financial** account over the period covered by his voluntary disclosure. It is assumed for purposes of the example that the $1,000,000 was in the account	The values of *foreign accounts and other foreign* assets are aggregated for each year and the penalty is calculated at 27.5 percent of the highest year's aggregate value during the period covered by the voluntary disclosure. If the taxpayer has multiple *accounts or* assets where the highest value of some *accounts or* assets is in different years, the values of *accounts and other* assets are aggregated for each year and a single penalty is calculated at *27.5 percent* of the highest year's aggregate value. For example, assume the taxpayer has the following amounts in a foreign account over the period covered by his voluntary disclosure. It is assumed for purposes of the example that the $1,000,000 was in the account before *2003* and was not unreported income in *2003*.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

<table>
<tr><th>#</th><th>Questions (2014 OVDP FAQ)</th><th>Questions (2012 OVDP FAQ)</th><th>Answers (2014 OVDP FAQ)</th><th>Answers (2012 OVDP FAQ)</th></tr>
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before **2005** and was not unreported income in **2005**.
<table>
<tr><th>Year</th><th>Amount on Deposit</th><th>Interest Income</th><th>Account Balance</th></tr>
<tr><td>2005</td><td>$1,000,000</td><td>$50,000</td><td>$1,050,000</td></tr>
<tr><td>2006</td><td></td><td>$50,000</td><td>$1,100,000</td></tr>
<tr><td>2007</td><td></td><td>$50,000</td><td>$1,150,000</td></tr>
<tr><td>2008</td><td></td><td>$50,000</td><td>$1,200,000</td></tr>
<tr><td>2009</td><td></td><td>$50,000</td><td>$1,250,000</td></tr>
<tr><td>2010</td><td></td><td>$50,000</td><td>$1,300,000</td></tr>
<tr><td>2011</td><td></td><td>$50,000</td><td>$1,350,000</td></tr>
<tr><td>2012</td><td></td><td>$50,000</td><td>$1,400,000</td></tr>
</table>
(NOTE: This example does not provide for compound interest, and assumes the taxpayer is in the 35-percent tax bracket, does not have an investment in a Passive Foreign Investment Company (PFIC) **and** files a return but does not include the foreign **financial** account or the interest income on the return. **This example further assumes that the taxpayer is subject to a 27.5 percent offshore penalty.**)

If the taxpayer in the above example come**s** forward and **his** voluntary disclosure is accepted by the IRS, **he** face**s** this potential scenario:

He would pay **$553,000** plus interest. This includes:
- Tax of $140,000 (8 years at $17,500) plus interest,
- An accuracy-related penalty of $28,000 (i.e., $140,000 x 20%), and
- **A miscellaneous offshore penalty (see FAQ 7)** of $385,000 (i.e., $1,400,000 x 27.5%).

If the taxpayer didn't come forward, when the IRS discovered **his tax and FBAR noncompliance, he would have to pay substantially more in penalties**. The taxpayer would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution.

The civil liabilities outside the Offshore Voluntary Disclosure Program potentially include:
- The tax, accuracy-related penalties, and, if applicable, the failure-to-file and failure-to-pay penalties, plus interest, as described above,
- FBAR penalties totaling up to $3,825,000 for willful failures to file complete and correct FBARs (**2007** - $575,000, **2008** - $600,000, **2009** - $625,000, **2010** - $650,000, and **2011** - $675,000, and **2012** - $700,000),
</td><td>
<table>
<tr><th>Year</th><th>Amount on Deposit</th><th>Interest Income</th><th>Account Balance</th></tr>
<tr><td>*2003*</td><td>$1,000,000</td><td>$50,000</td><td>$1,050,000</td></tr>
<tr><td>*2004*</td><td></td><td>$50,000</td><td>$1,100,000</td></tr>
<tr><td>*2005*</td><td></td><td>$50,000</td><td>$1,150,000</td></tr>
<tr><td>*2006*</td><td></td><td>$50,000</td><td>$1,200,000</td></tr>
<tr><td>*2007*</td><td></td><td>$50,000</td><td>$1,250,000</td></tr>
<tr><td>*2008*</td><td></td><td>$50,000</td><td>$1,300,000</td></tr>
<tr><td>*2009*</td><td></td><td>$50,000</td><td>$1,350,000</td></tr>
<tr><td>*2010*</td><td></td><td>$50,000</td><td>$1,400,000</td></tr>
</table>
(NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, does not have an investment in a Passive Foreign Investment Company (PFIC)*,* files a return but does not include the foreign account or the interest income on the return*, and the maximum applicable penalties are imposed*.)

If the taxpayer*s* in the above example come forward and *their* voluntary disclosure is accepted by the IRS, *they* face this potential scenario:

They would pay *$518,000* plus interest. This includes:
- Tax of $140,000 (8 years at $17,500) plus interest,
- An accuracy-related penalty of $28,000 (i.e., $140,000 x 20%), and
- *An additional penalty, in lieu of the FBAR and other potential penalties that may apply,* of $385,000 (i.e., $1,400,000 x 27.5%).

If the taxpayers didn't come forward, when the IRS discovered *their offshore activities, they would face up to $4,543,000 in tax, accuracy-related penalty, and FBAR penalty*. The taxpayer*s* would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution.

The civil liabilities outside the Offshore Voluntary Disclosure Program potentially include:
- The tax, accuracy-related penalties, and, if applicable, the failure to file and failure to pay penalties, plus interest, as described above,
- FBAR penalties totaling up to $3,825,000 for willful failures to file complete and correct FBARs (*2005* - $575,000, *2006* - $600,000, *2007* - $625,000, *2008* - $650,000, and *2009* - $675,000, and *2010* - $700,000),
- The potential of having the fraud penalty (75 percent) apply, and
- The potential of substantial additional information return penalties if the foreign account *or assets* is held through a foreign
</td></tr>
</table>

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			• The potential of having the fraud penalty (75 percent) apply, and • The potential of substantial additional information return penalties if the foreign **financial** account is held through a foreign entity such as a trust or corporation and required information returns were not filed. **In addition, if the taxpayer is not in OVDP and the foreign noncompliance** started before **2005**, the Service may examine tax years prior to **2005**.	entity such as a trust or corporation and required information returns were not filed. *Note that if the foreign activity* started before *2003,* the Service may examine tax years prior to *2003 if the taxpayer is not part of the OVDP.*
9.	What years are included in the OVDP disclosure period?	What years are included in the OVDP disclosure period?	The voluntary disclosure period is the most recent eight tax years for which the due date has already passed. Thus, for taxpayers who submit a voluntary disclosure prior to **the due date (or properly extended due date) for the 2013 tax year**, the disclosure must include each of the **tax** years **2005** through **2012** in which they have undisclosed **OVDP assets**. For taxpayers who **submit a voluntary disclosure** after the due date (or **properly** extended due date) for **2013**, the disclosure must include **each of the tax years 2006 through 2013 in which they have undisclosed OVDP assets**. For disclosures made in successive years, any additional years for which the due date has passed must be included, but a corresponding number of years at the beginning of the period will be excluded, so that each disclosure includes an eight year period. **The eight-year voluntary disclosure period does not include fully tax compliant years.** For taxpayers who establish that they began filing timely, original, compliant returns that fully reported previously undisclosed **OVDP** assets **(see FAQ 35)** before making the voluntary disclosure, the voluntary disclosure period will begin with the eighth year preceding the most recent year for which the return filing due date has not yet passed, but will not include the compliant years. For example, **for** a taxpayer who had historically filed income tax returns omitting the income from a securities account in Country A, who began reporting that income on his timely, original tax and information reporting returns for 2009 **through 2012** without making a voluntary disclosure, and who files a voluntary disclosure in January **2014**, the voluntary disclosure period will be **2005** through 2008.	*For calendar year taxpayers* the voluntary disclosure period is the most recent eight tax years for which the due date has already passed. *The eight year period does not include current years for which there has not yet been non-compliance.* Thus, for taxpayers who submit a voluntary disclosure prior to *April 15, 2012 (or other 2011 due date under extension),* the disclosure must include each of the years *2003* through *2010* in which they have undisclosed *foreign accounts and/or undisclosed foreign entities. Fiscal year taxpayers must include fiscal years ending in calendar years 2003 through 2010.* For taxpayers who disclose after the due date (or extended due date) for *2011*, the disclosure must include *2004 through 2011.* For disclosures made in successive years, any additional years for which the due date has passed must be included, but a corresponding number of years at the beginning of the period will be excluded, so that each disclosure includes an eight year period. For taxpayers who establish that they began filing timely, original, compliant returns that fully reported previously undisclosed *offshore accounts or* assets before making the voluntary disclosure, the voluntary disclosure period will begin with the eighth year preceding the most recent year for which the return filing due date has not yet passed, but will not include the compliant years. For example, a taxpayer who had historically filed income tax returns omitting the income from a securities account in Country A, who began reporting that income on his timely, original tax and information reporting returns for 2009 *and 2010* without making a voluntary disclosure, and who files a voluntary disclosure in January *2012*, the voluntary disclosure period will be *2003* through 2008.
10.	What are my options if my **OVDP asset** involves passive foreign investment company (PFIC) issues?	What are my options if my *account* involves passive foreign investment company (PFIC) issues?	A significant number of cases submitted under the 2009 OVDP and 2011 OVDI involve**d** PFIC investments. A lack of historical information on the cost basis and holding period of many PFIC investments makes it difficult for taxpayers to prepare statutory PFIC computations and for the Service to verify them. As a result, resolution of voluntary disclosure cases could be unduly delayed. Therefore, for purposes of this program, the Service is offering taxpayers an alternative to the statutory PFIC computation that will resolve PFIC issues on a basis that is consistent with the Mark to Market (MTM) methodology authorized in **IRC** § 1296 but will not require complete reconstruction of historical data.	*To date,* a significant number of cases submitted under the 2009 OVDP and 2011 OVDI involve PFIC investments. A lack of historical information on the cost basis and holding period of many PFIC investments makes it difficult for taxpayers to prepare statutory PFIC computations and for the Service to verify them. As a result, resolution of voluntary disclosure cases could be unduly delayed. Therefore, for purposes of this program, the Service is offering taxpayers an alternative to the statutory PFIC computation that will resolve PFIC issues on a basis that is consistent with the Mark to Market (MTM) methodology authorized in *Internal Revenue Code* § 1296 but will not require complete reconstruction of historical data.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs ***(continued)***

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			The terms of this alternative resolution are: • If elected, the alternative resolution will apply to all PFIC investments in cases that have been accepted into this program. The initial MTM computation of gain or loss under this methodology will be for the first year of the OVDP application, but could be made after that year depending on when the first PFIC investment was made. For example, for the earliest disclosures under this program, the first year of the OVDP application will be the calendar year ending December 31, **2005**. This will require a determination of the basis for every PFIC investment, which should be agreed between the taxpayer and the Service based on the best available evidence. • A tax rate of 20 **percent** will be applied to the MTM gain(s), MTM net gain(s) and gains from all PFIC dispositions during the voluntary disclosure period under the OVDP, in lieu of the rate contained in IRC §1291(a)(1)(B) for the amount allocable to the current year and IRC §1291(c)(2) for the deferred tax amount(s) allocable to any other taxable year. • A rate of 7 **percent** of the tax computed for PFIC investments marked to market in the first year of the OVDP application will be added to the tax for that year, in lieu of the interest charge mechanism described in IRC §§ 1291(c) and 1296(j). • MTM losses will be limited to unreversed inclusions (generally, previously reported MTM gains less allowed MTM losses) on an investment-by-investment basis in the same manner as IRC § 1296. During the voluntary disclosure period under the OVDP, these MTM losses will be treated as ordinary losses (IRC § 1296(c)(1)(B)) and the tax benefit is limited to the tax rate applicable to the MTM gains derived during the voluntary disclosure period (20%). MTM and/or disposition losses in any subsequent year on PFIC assets with basis that was adjusted upward as a result of the alternate resolution in voluntary disclosure years, will be treated as capital losses. Any unreversed inclusions at the end of the voluntary disclosure period will be reduced to zero and the MTM method will be applied to all subsequent years in accordance with IRC § 1296 as if the taxpayer had acquired the PFIC stock on the last day of the last year of the voluntary disclosure period at its MTM value and made an IRC § 1296 election for the first year beginning after the voluntary disclosure period. Thus, any subsequent year losses on disposition of PFIC stock assets in excess of unreversed inclusions arising after the end of the voluntary disclosure period will be treated as capital losses. • Regular and Alternative Minimum Tax are both to be computed without the PFIC	The terms of this alternative resolution are: • If elected, the alternative resolution will apply to all PFIC investments in cases that have been accepted into this program. The initial MTM computation of gain or loss under this methodology will be for the first year of the OVDP application, but could be made after that year depending on when the first PFIC investment was made. For example, for the earliest disclosures under this program, the first year of the OVDP application will be the calendar year ending December 31, *2003*. This will require a determination of the basis for every PFIC investment, which should be agreed between the taxpayer and the Service based on the best available evidence. • A tax rate of 20% will be applied to the MTM gain(s), MTM net gain(s) and gains from all PFIC dispositions during the voluntary disclosure period under the OVDP, in lieu of the rate contained in IRC § 1291(a)(1)(B) for the amount allocable to the current year and IRC §1291(c)(2) for the deferred tax amount (s) allocable to any other taxable year. • A rate of 7% of the tax computed for PFIC investments marked to market in the first year of the OVDP application will be added to the tax for that year, in lieu of the interest charge mechanism described in IRC §§ 1291(c) and 1296(j). • MTM losses will be limited to unreversed inclusions (generally, previously reported MTM gains less allowed MTM losses) on an investment-by-investment basis in the same manner as IRC § 1296. During the voluntary disclosure period under the OVDP, these MTM losses will be treated as ordinary losses (IRC 1296(c)(1)(B)) and the tax benefit is limited to the tax rate applicable to the MTM gains derived during the voluntary disclosure period (20%). MTM and/or disposition losses in any subsequent year on PFIC assets with basis that was adjusted upward as a result of the alternate resolution in voluntary disclosure years, will be treated as capital losses. Any unreversed inclusions at the end of the voluntary disclosure period will be reduced to zero and the MTM method will be applied to all subsequent years in accordance with IRC § 1296 as if the taxpayer had acquired the PFIC stock on the last day of the last year of the voluntary disclosure period at its MTM value and made an IRC § 1296 election for the first year beginning after the voluntary disclosure period. Thus, any subsequent year losses on disposition of PFIC stock assets in excess of unreversed inclusions arising after the end of the voluntary disclosure period will be treated as capital losses. • Regular and Alternative Minimum Tax are both to be computed without the PFIC

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs ***(continued)***

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			dispositions or MTM gains and losses. The tax from the PFIC transactions (20% plus the 7% for the first year, if applicable) is added to (or subtracted from) the applicable total tax (either regular or AMT, whichever is higher). The tax and interest (i.e., the 7% for the first year of the voluntary disclosure) computed under the OVDP alternative MTM can be added to the applicable total tax (either regular or AMT, whichever is higher) and placed on the amended return in the margin, with a supporting schedule. • Underpayment interest and penalties on the deficiency are computed in accordance with the Internal Revenue Code and the terms of the OVDP. • For any PFIC investment retained beyond the voluntary disclosure period, the taxpayer must continue using the MTM method, but will apply the normal statutory rules of **IRC §** 1296 as well as the provisions of IRC §§ 1291-1298, as applicable. Before electing the alternative PFIC resolution, **a taxpayer** with PFIC investments should consult **his** tax advisors to ensure that the issue is material in **his case** and that the alternative is in fact preferable to the statutory computation in **his** situation. If the taxpayer does not elect to use the alternative PFIC computation, the PFIC provisions of **IRC** §§ 1291-1298 apply.	dispositions or MTM gains and losses. The tax from the PFIC transactions (20% plus the 7% for the first year, if applicable) is added to (or subtracted from) the applicable total tax (either regular or AMT, whichever is higher). The tax and interest (i.e., the 7% for the first year of the voluntary disclosure) computed under the OVDP alternative MTM can be added to the applicable total tax (either regular or AMT, whichever is higher) and placed on the amended return in the margin, with a supporting schedule. • Underpayment interest and penalties on the deficiency are computed in accordance with the Internal Revenue Code and the terms of the OVDP. • For any PFIC investment retained beyond the voluntary disclosure period, the taxpayer must continue using the MTM method, but will apply the normal statutory rules of *section* 1296 as well as the provisions of IRC §§ 1291-1298, as applicable. Before electing the alternative PFIC resolution, *taxpayers* with PFIC investments should consult *their* tax advisors to ensure that the issue is material in *their cases* and that the alternative is in fact preferable to the statutory computation in *their* situation. If the taxpayer does not elect to use the alternative PFIC computation, the PFIC provisions of §§ 1291-1298 apply.
11.	Previously deleted.			
ELIGIBILITY FOR THIS PROGRAM				
12.	Who is eligible to make a voluntary disclosure under this program?	Who is eligible to make a voluntary disclosure under this program?	Taxpayers who have **legal source funds invested in** undisclosed **OVDP** assets **(see FAQ 35)** and meet the requirements of IRM 9.5.11.9 are eligible to apply for IRS Criminal Investigation's Voluntary Disclosure Practice and the OVDP penalty regime. **The OVDP is available only to address the taxpayer's own liability. Individuals who facilitated the tax noncompliance of others are not eligible to participate in OVDP.** **Taxpayers who have made a submission under the Streamlined Filing Compliance Procedures are not eligible to participate in OVDP.** See FAQ 21 for **other** ways a taxpayer may be rendered ineligible **to participate in the OVDP**.	Taxpayers who have undisclosed *offshore accounts or* assets and meet the requirements of IRM 9.5.11.9 are eligible to apply for IRS Criminal Investigation's Voluntary Disclosure Practice and the OVDP penalty regime. But see FAQ 21 for ways *in which* a taxpayer may be rendered ineligible.
13.	Are entities, such as corporations, partnerships and trusts eligible to make voluntary disclosures?	Are entities, such as corporations, partnerships and trusts eligible to make voluntary disclosures?	Yes. Entities are eligible to participate in the OVDP.	Yes, entities are eligible to participate in the OVDP.
14.	I'm currently under	I'm currently under	No. If the IRS has initiated a civil examination **for any year**, regardless of whether it relates to	No. If the IRS has initiated a civil examination, regardless of whether it relates to undisclosed

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	examination. **May** I **participate in the OVDP**?	examination. *Can* I *come in under voluntary disclosure*?	undisclosed **OVDP assets (see FAQ 35),** the taxpayer will not be eligible to **participate in** the OVDP. **A** taxpayer under criminal investigation by CI **is** also ineligible. **In these circumstances**, the taxpayer or the taxpayer's representative should discuss **undisclosed financial accounts and assets** with the agent.	*foreign accounts or undisclosed foreign entities*, the taxpayer will not be eligible to *come in under* the OVDP. *T*axpayers under criminal investigation by CI *are* also ineligible. *T*he taxpayer or the taxpayer's representative should discuss *the offshore accounts* with the agent.
15.	What if **a** taxpayer has already filed amended returns reporting **income from OVDP assets** without making a voluntary disclosure (i.e. **‘‘**quiet disclosure**’’**)?	What if *the* taxpayer has already filed amended returns reporting *the additional unreported offshore income,* without making a voluntary disclosure (i.e. quiet disclosure)?	The IRS is aware that some taxpayers have **made ‘‘**quiet disclosures**’’** by filing amended returns**, by filing delinquent FBARs**, and paying any related tax and interest for previously unreported income **from OVDP assets (see FAQ 35)** without otherwise notifying the IRS. Taxpayers who have already made ‘‘quiet disclosures**’’** are **encouraged to participate in the OVDP** by submitting an application, along with copies of their previously filed returns (original and amended)**, and all other required documents and information (see FAQ 25)** to the IRS's Voluntary Disclosure Coordinator (see FAQ 24). Taxpayers are encouraged to **avail themselves of the protection from criminal prosecution and the favorable penalty structure offered under the OVDP. Unlike a voluntary disclosure through the OVDP, quiet disclosures provide no protection from criminal prosecution and may lead to civil examination and the imposition of all applicable penalties.**	The IRS is aware that some taxpayers have *attempted so-called ‘‘*quiet*’’* disclosures by filing amended returns and paying any related tax and interest for previously unreported *offshore* income without otherwise notifying the IRS. Taxpayers who have already made ‘‘quiet’’ disclosures are *eligible to take advantage of the penalty framework applicable to this program* by submitting an application, along with copies of their previously filed returns (original and amended) to the IRS's Voluntary Disclosure Coordinator (see FAQ 24). Taxpayers are *strongly* encouraged to *come forward under the OVDP to make timely, accurate, and complete disclosures. Those taxpayers making ‘‘quiet’’ disclosures should be aware of the risk of being examined and potentially criminally prosecuted for all applicable years.*
16.	Consolidated into FAQ 15.	*Some taxpayers have made quiet disclosures by filing amended returns. Will the IRS audit these taxpayers? If so, will they be eligible for the 27.5 percent offshore penalty? Is the IRS really going to prosecute someone who filed an amended return and correctly reported all their income?*		*The IRS is reviewing amended returns and could select any amended return for examination. The IRS has identified, and will continue to identify, amended tax returns reporting increases in income. The IRS will closely review these returns to determine whether enforcement action is appropriate. If a return is selected for examination, the 27.5 percent offshore penalty would not be available. When criminal behavior is evident and the disclosure does not meet the requirements of a voluntary disclosure under IRM 9.5.11.9, the IRS may recommend criminal prosecution to the Department of Justice.*
17.	Deleted. FAQ 17 has been replaced and superseded by section 3 in ‘‘Options Available For U.S. Taxpayers with Undisclosed Foreign	*I have properly reported all my taxable income but I only recently learned that I should have been filing FBARs in prior years to report my personal foreign bank account or to report the fact*		*The purpose for the voluntary disclosure practice is to provide a way for taxpayers who did not report taxable income in the past to come forward voluntarily and resolve their tax matters. Thus, if you reported, and paid tax on, all taxable income but did not file FBARs, do not use the voluntary disclosure process.* *For taxpayers who reported, and paid tax on, all their taxable income for prior years but did not file FBARs, you should file the delinquent FBARs according to the FBAR instructions and include a statement explaining why the FBARs are filed late. Through June 30, 2013, you may file electronically or by sending paper forms to Department*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	Assets.'' If you have circumstances covered by former FAQ 17, you should not use OVDP and should see section 3 of the ''Options Available For U.S. Taxpayers with Undisclosed Foreign Accounts.''	*that I have signature authority over bank accounts owned by my employer. May I come forward under this new program to correct this?*		*of Treasury, Post Office Box 32621, Detroit, MI 48232-0621. After June 30, 2013, you must file electronically. If you are unable to file electronically, you may contact FinCEN's Regulatory Helpline at 1-800-949-2732 or (if calling from outside the United States) 1-703-905-3975 to determine possible alternatives for timely reporting. The IRS will not impose a penalty for the failure to file the delinquent FBARs if there are no underreported tax liabilities and you have not previously been contacted regarding an income tax examination or a request for delinquent returns. Non-resident taxpayers should also review the Filing Compliance Procedures for Non-Resident U.S. Taxpayers if they do not qualify for the procedures described in this FAQ.* *NOTE: Taxpayers filing FBARs electronically do not currently have the technological ability to include a statement explaining why the FBARs are filed late. Until such time that they have the ability, it is sufficient to file the FBARs electronically, retain the statement, and submit the statement to the Service upon request.*
18.	Deleted. FAQ 18 has been replaced and superseded by section 4 in ''Options Available For U.S. Taxpayers with Undisclosed Foreign Assets.'' If you have circumstances covered by former FAQ 18, you should not use OVDP and should see section 3 of the ''Options Available For U.S. Taxpayers with Undisclosed Foreign Accounts.''	*Question 17 states that a taxpayer who only failed to file an FBAR should not use this process. What about a taxpayer who only has delinquent Form 5471s or Form 3520s but no tax due? Does that taxpayer fall outside this voluntary disclosure process?*		*A taxpayer who has failed to file tax information returns, such as Form 5471 for controlled foreign corporations (CFCs) or Form 3520 for foreign trusts but who has reported, and paid tax on, all their taxable income with respect to all transactions related to the CFCs or foreign trusts, should file delinquent information returns with the appropriate service center according to the instructions for the form and attach a statement explaining why the information returns are filed late. (The Form 5471 should be submitted with an amended return showing no change to income or tax liability.)* *Include at the top of the first page of each information return ''OVDI — FAQ #18'' to indicate that the returns are being submitted under this procedure. This is very important to ensure your returns are processed through this procedure.* *The IRS will not impose a penalty for the failure to file the delinquent Forms 5471 and 3520 if there are no underreported tax liabilities and you have not previously been contacted regarding an income tax examination or a request for delinquent returns.* *Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers if they do not qualify for the procedures described in this FAQ.*
19.	Deleted.	*Is a taxpayer who previously sought relief under the IRS's traditional Voluntary Disclosure Practice before the OVDP was announced*		*A taxpayer who made a voluntary disclosure after September 9, 2011 but before January 9, 2012 is eligible for the OVDP, provided that he or she otherwise meets the requirements of IRM 9.5.11.9.*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
		eligible for the terms of the OVDP?		
20.	If I don't have the ability to full pay, can I still participate in this program?	If I don't have the ability to full pay can I still participate in this program?	Yes. The terms of this program require the taxpayer to pay **with his submission** the tax, interest, **offshore penalty**, and accuracy-related penalty, and, if applicable, the failure-to-file and failure-to-pay penalties. However, it is possible for a taxpayer who is unable to make full payment of these amounts to request the IRS to consider other payment arrangements. **If you cannot pay the total amount of tax, interest, offshore penalty, and other penalties required, submit your proposed payment arrangement and a completed Collection Information Statement (Form 433-A, Collection Information Statement for Wage Earners and Self-employed Individuals, or Form 433-B, Collection Information Statement for Businesses, Collection Information Statement for Businesses, as appropriate).** The burden will be on the taxpayer to establish inability to pay, to the satisfaction of the IRS, based on full disclosure of all assets and income sources, domestic and **foreign**, under the taxpayer's control. Assuming that the IRS determines that the inability to fully pay is genuine, the taxpayer must work out other financial arrangements, acceptable to the IRS, to resolve all outstanding liabilities to be entitled to the penalty **structure of** this program.	Yes. The terms of this program require the taxpayer to pay the tax, interest, and accuracy-related penalty, and, if applicable the failure to file and failure to pay penalties *with their submission*. However, it is possible for a taxpayer who is unable to make full payment of these amounts to request the IRS to consider other payment arrangements *(see FAQ 25).* The burden will be on the taxpayer to establish inability to pay, to the satisfaction of the IRS, based on full disclosure of all assets and income sources, domestic and *offshore*, under the taxpayer's control. Assuming that the IRS determines that the inability to fully pay is genuine, the taxpayer must work out other financial arrangements, acceptable to the IRS, to resolve all outstanding liabilities*, in order* to be entitled to the penalty *relief under* this program.
21.	If the IRS has served a John Doe summons or made a treaty request seeking information that may identify a taxpayer as holding an undisclosed **OVDP asset,** does that make the taxpayer ineligible to make a voluntary disclosure under this program?	If the IRS has served a John Doe summons or made a treaty request seeking information that may identify a taxpayer as holding an undisclosed *foreign account or undisclosed foreign entity*, does that make the taxpayer ineligible to make a voluntary disclosure under this program?	No. The mere fact that the Service served a John Doe summons, made a treaty request, or has taken similar action does not make every member of the Joe Doe class or group identified in the treaty request or other action ineligible to participate. **But such activity may subject a taxpayer to a higher offshore penalty at the rate of 50 percent. See FAQ 7.2.** **O**nce the Service or the Department of Justice obtains information under a John Doe summons, treaty request, or other similar action that provides evidence of a specific taxpayer's noncompliance with the tax laws or Title 31 reporting requirements, that particular taxpayer will become ineligible for OVDP and Criminal Investigation's Voluntary Disclosure Practice. For this reason, a taxpayer concerned that a party subject to a John Doe summons, treaty request, or similar action will provide information about him to the Service should apply to make a voluntary disclosure as soon as possible. Furthermore, there are two other ways in which **an otherwise eligible** taxpayer will become ineligible. First, if a taxpayer appeals a foreign tax administrator's decision authorizing the providing of account information to the IRS and fails to serve the notice as required under existing law, see 18 U.S.C. 3506, of any such appeal and/or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other document is submitted, the taxpayer will be ineligible to participate. Second, the IRS may **determine** that certain	No. The mere fact that the Service served a John Doe summons, made a treaty request or has taken similar action does not make every member of the Joe Doe class or group identified in the treaty request or other action ineligible to participate. *However, o*nce the Service or the Department of Justice obtains information under a John Doe summons, treaty request or other similar action that provides evidence of a specific taxpayer's noncompliance with the tax laws or Title 31 reporting requirements, that particular taxpayer will become ineligible for OVDP and Criminal Investigation's Voluntary Disclosure Practice. For this reason, a taxpayer concerned that a party subject to a John Doe summons, treaty request or similar action will provide information about him to the Service should apply to make a voluntary disclosure as soon as possible. Furthermore, there are two other ways in which *a* taxpayer will become ineligible. First, if a taxpayer appeals a foreign tax administrator's decision authorizing the providing of account information to the IRS and fails to serve the notice as required under existing law, see 18 U.S.C. 3506, of any such appeal and/or other documents relating to the appeal on the Attorney General of the United States at the time such notice of appeal or other document is submitted, the taxpayer will be ineligible to participate. Second, the IRS may *announce* that certain taxpayer groups that have or had accounts at specific financial institution*s* will be ineligible due to U.S. government actions in connection with the specific financial institution. *Such announcements will provide notice of the prospective*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			taxpayer groups that have or had accounts **held** at **a** specific financial institution will be ineligible due to U.S. government actions in connection with the specific financial institution.	*date upon which eligibility for specific taxpayer groups will be posted to the IRS website.*
OVDP PROCESS				
22.	Can my representative talk to the IRS without revealing my identity?	Can my representative talk to the IRS without revealing my identity?	Yes, but hypothetical situations present **the** potential for **misunderstandings. Hypotheticals rarely contain** all relevant facts. **P**osing a hypothetical does not satisfy the requirements for making a voluntary disclosure. If the IRS receives information relating specifically to the taxpayer's undisclosed **OVDP assets (see FAQ 35)** while the hypothetical question is pending, the taxpayer may become ineligible to make a voluntary disclosure. If practitioners have questions about the terms of the voluntary disclosure program, they should contact the IRS OVDP Hotline at (267) 941-0020 or find more information on the 2012 Offshore Voluntary Disclosure Program page.	Yes, but hypothetical situations present *a* potential for *misunderstanding that exists when there is no assurance that the hypothetical contains* all relevant facts. *In addition,* posing *a situation as* a hypothetical does not satisfy the requirements for making a voluntary disclosure. If the IRS receives information relating specifically to the taxpayer's undisclosed *foreign accounts or undisclosed foreign entities* while the hypothetical question is pending, the taxpayer may become ineligible to make a voluntary disclosure. If practitioners have questions about the terms of the voluntary disclosure program, they should contact the IRS OVDP Hotline at (267) 941-0020 or find more information on the 2012 Offshore Voluntary Disclosure Program page.
23.	How do I request preclearance before I submit my offshore voluntary disclosure?	How do I request pre-clearance before I submit my offshore voluntary disclosure?	For the OVDP, **the** preclearance **process is** as follows: 1. Taxpayers or representatives send a facsimile to the IRS — Criminal Investigation Lead Development Center (LDC) with: **(a)** **Applicant** identifying information **including complete** name**s**, date**s** of birth **(if applicable), tax identification numbers,** address**es, and telephone numbers.** **(b)** **Identifying information of all financial institutions at which undisclosed OVDP assets (see FAQ 35) were held. Identifying information for financial institutions includes complete names (including all DBAs and pseudonyms), addresses, and telephone numbers.** **(c)** **Identifying information of all foreign and domestic entities (e.g., corporations, partnerships, limited liability companies, trusts, foundations) through which the undisclosed OVDP assets (see FAQ 35) were held by the taxpayer seeking to participate in the OVDP; this does not include any entities traded on a public stock exchange. Information must be provided for both current and dissolved entities. Identifying information for entities includes complete names (including all DBAs and pseudonyms), employer identification numbers (if applicable), addresses, and the jurisdiction in which the entities were organized.**	For the OVDP, pre-clearance *may be requested* as follows: 1. Taxpayers or representatives send a facsimile to the IRS — Criminal Investigation Lead Development Center (LDC) with: (a) identifying information (name, date of birth*, social security number and* address) *and* *(b)* *an executed power of attorney (if represented)* *at (267) 941-1115* to request pre-clearance before making an offshore voluntary disclosure. In the case of jointly filed returns, if each spouse intends to apply for OVDP, each spouse should request pre-clearance. 2. Criminal Investigation will *then* notify taxpayers or their representatives via fax whether or not they are *cleared* to make an offshore voluntary disclosure. 3. *Taxpayers deemed cleared should follow the steps outlined below (FAQ 24) within 45 days from receipt of the fax notification to make an offshore voluntary disclosure.* Pre-clearance does not guarantee a taxpayer acceptance into the OVDP. Taxpayers must truthfully, timely, and completely comply with all provisions of the OVDP. Taxpayers or representatives with questions regarding pre-clearance may call the IRS-CI OVDP hotline at (267) 941-1607. For all other offshore voluntary disclosure questions call the IRS OVDP Hotline at (267) 941-0020.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			(d) **Executed power of attorney forms (if represented).** **The LDC fax number** to request preclearance before making an offshore voluntary disclosure **is (267) 941-1115**. In the case of jointly filed returns, if each spouse intends to apply for OVDP, each spouse should request preclearance. 2. Criminal Investigation will notify taxpayers or their representatives via fax whether or not they are **eligible** to make an offshore voluntary disclosure. **It may take up to 30 days for Criminal Investigation to notify taxpayers or their representatives of the decision.** Preclearance does not guarantee a taxpayer acceptance into the OVDP. **Taxpayers pre-cleared for OVDP must follow the steps outlined below (FAQ 24) within 45 days from receipt of the fax notification to make an offshore voluntary disclosure.** Taxpayers must truthfully, timely, and completely comply with all provisions of the OVDP. Taxpayers or representatives with questions regarding preclearance may call the IRS-CI OVDP Hotline at (267) 941-1607. For all other offshore voluntary disclosure questions call the IRS OVDP Hotline at (267) 941-0020.	
24.	How do I make an offshore voluntary disclosure**,** and where should I submit my offshore voluntary disclosure to determine whether I am **conditionally** accepted under this program?	How do I make an offshore voluntary disclosure and where should I submit my offshore voluntary disclosure to determine whether I am *preliminarily* accepted under this program?	For the OVDP, **submit** an offshore voluntary disclosure as follows: 1. Taxpayers or their representatives should mail their Offshore Voluntary Disclosure Letter and attachment to the following address: Internal Revenue Service Voluntary Disclosure Coordinator 1-D04-100 2970 Market Street Philadelphia, PA 19104 2. Criminal Investigation will review the Offshore Voluntary Disclosure **L**etter and notify taxpayers or representatives by mail or facsimile whether their offshore voluntary disclosure**s** have been preliminarily accepted **as timely** or declined. Criminal Investigation **intends to** complete its work within 45 days of receipt of a complete Offshore Voluntary Disclosure **L**etter. **Once a taxpayer's disclosure has been preliminarily accepted by CI as timely, the taxpayer must complete the submission and cooperate with the civil examiner in the resolution of the civil liability before the disclosure is considered complete.** All non-offshore voluntary disclosures not covered under this program should follow the domestic voluntary disclosure instructions at the bottom of the How to make an Offshore Voluntary	For the OVDP, an offshore voluntary disclosure *is submitted* as follows: 1. Taxpayers or their representatives should mail their Offshore Voluntary Disclosure Letter and attachment to the following address: Internal Revenue Service Voluntary Disclosure Coordinator 1-D04-100 2970 Market Street Philadelphia, PA 19104 2. Criminal Investigation will review the Offshore Voluntary Disclosure*s* *l*etter *received* and notify taxpayers or representatives by mail or facsimile whether their offshore voluntary disclosure have been preliminarily accepted or declined. *It is intended that* Criminal Investigation *will* complete its work within 45 days of receipt of a complete Offshore Voluntary Disclosure*s* *l*etter. *Preliminary acceptance into the OVDP is conditioned upon the information provided by the taxpayer being, and remaining, truthful, timely, and complete.* All non-offshore voluntary disclosures not covered under this program should follow the domestic voluntary disclosure instructions at the bottom of the How to make an Offshore Voluntary Disclosure page. Taxpayers who are making both an offshore voluntary disclosure and a domestic voluntary

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			Disclosure page. Taxpayers who are making both an offshore voluntary disclosure and a domestic voluntary disclosure should follow the process for offshore voluntary disclosures, but indicate on the Offshore Voluntary Disclosure Letter that they are also making a domestic voluntary disclosure.	disclosure should follow the process for offshore voluntary disclosures, but indicate on the Offshore Voluntary Disclosure Letter that they are also making a domestic voluntary disclosure.
24.1	What should I do if my spouse also wishes to make a voluntary disclosure under OVDP?	What should I do if my spouse also wishes to make a voluntary disclosure under OVDP?	In situations where spouses both desire to participate in OVDP, they may do so jointly or separately. If **spouses make a joint submission, they must** include all required information and documents for each spouse and clearly indicate the intention to disclose jointly. If **spouses make** separate **submissions**, each spouse **must** complete and submit all required information and documents. See FAQs 22 through 25.	In situations where spouses both desire to participate in OVDP, they may do so jointly or separately. If *the joint approach is chosen, the spouses should be sure to* include all required information and documents for each spouse and clearly indicate the intention to disclose jointly. If *the* separate *approach is chosen*, each spouse *should separately* complete and submit all required information and documents. See FAQs 22 through 25.
25.	After I am notified by CI that my disclosure is preliminarily accepted **as timely**, what other information will I **be required** to provide?	After I am notified by CI that my disclosure is preliminarily accepted, what other information will I *have* to provide?	The letter from CI will instruct the taxpayer or **his** representative to submit the full voluntary disclosure submission to the Austin Campus within 90 days of the date of the **timeliness determination**. The voluntary disclosure submission must be sent in two separate parts. 1. **Payment** to the Department of Treasury in the total amount of tax, interest, **offshore penalty**, accuracy-related penalty, and, if applicable, the failure**-**to**-**file and failure**-**to**-**pay penalties, for the voluntary disclosure period must be sent with information identifying the taxpayer name, taxpayer identification number, and years to which the payment**s** relate. **To ensure payments are properly posted to the taxpayer's account, separate checks should be made for each tax year which would include all applicable tax, interest, accuracy-related penalties, and failure-to-file and failure-to-pay penalties. The offshore penalty should be paid by a separate check. These payments are advance payments; consequently, any credit or refund of the payments is subject to the limitations of IRC § 6511.** If you cannot pay the total amount of tax, interest, **offshore penalty**, and **other** penalties as described above, submit your proposed payment arrangement and a completed Collection Information Statement (Form 433-A, Collection Information Statement for Wage Earners and Self-employed Individuals, or Form 433-B, Collection Information Statement for Businesses, as appropriate) (see FAQ 20). **Send letters containing the taxpayer's identifying information and all checks in a single envelope to:** Internal Revenue Service 3651 S. I H 35 Stop 1919 AUSC Austin, TX 78741	The letter from CI will instruct the taxpayer or *their* representative to submit the full voluntary disclosure submission to the Austin Campus within 90 days of the date of the *letter*. The voluntary disclosure submission must be sent in two separate parts. 1. *A check payable* to the Department of Treasury in the total amount of tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties, for the voluntary disclosure period must be sent *along* with information identifying the taxpayer name, taxpayer identification number, and years to which the payment relate*s to the following address.* If you cannot pay the total amount of tax, interest, and penalties as described above, submit your proposed payment arrange-ment and a completed Collection Information Statement (Form 433-A, Collection Information Statement for Wage Earners and Self-employed Individuals, or Form 433-B, Collection Information Statement for Businesses, as appropriate) (see FAQ 20). Internal Revenue Service 3651 S. I H 35 Stop 1919 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program 2. All other required items listed below must be sent to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program • Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			ATTN: Offshore Voluntary Disclosure Program 2. All other required items listed below must be sent to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program **1. All applicants:** Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure; **2. All applicants:** Complete and accurate amended federal income tax returns (for individuals, Form 1040X**)** or original Form 1040 **(**if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from **foreign financial accounts** or domestic source**s** (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts and, for years after 2010, Form 8938, Statement of Specified Foreign Financial Assets). **For taxpayers who began filing timely, original, compliant returns that fully reported previously undisclosed foreign financial accounts before making the voluntary disclosure for certain years of the offshore disclosure period, copies of the previously filed returns for the compliant years. If you are submitting a copy of a previously filed return, write ''COPY'' on the top of the first page of the return.** **3. All applicants: Copy of your completed and signed Offshore Voluntary Disclosure Letter (including enclosures and attachments) submitted to Criminal Investigation.** **4. All applicants:** A completed Foreign Account or Asset Statement for each previously undisclosed **OVDP** asset during the voluntary disclosure period. **5. All applicants: A** completed and signed Taxpayer Account Summary With Penalty Calculation. **6. All applicants: Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. The agreements to extend the period of time to assess tax and FBAR penalties must follow the instructions provided. Failure to extend the period of time to assess tax and**	• *For taxpayers who began filing timely, original, compliant returns that fully reported previously undisclosed offshore accounts or assets before making the voluntary disclosure for certain years of the offshore disclosure period, copies of the previously filed returns for the compliant years.* • Complete and accurate amended federal income tax returns (for individuals, Form 1040X*,* or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from *the offshore account or entity* or domestic source (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts and, for years after 2010, Form 8938, Statement of Specified Foreign Financial Assets). • A completed Foreign Account or Asset Statement for each previously undisclosed *foreign account or* asset during the voluntary disclosure period*, available on our 2012 Offshore Voluntary Disclosure Program page. Properly* completed and signed Taxpayer Account Summary With Penalty Calculation, *also available at the previous link*. • *For those* applicants disclosing *offshore* financial accounts *with an aggregate highest account balance in any year of $500,000 or more, copies of offshore financial account* statements reflecting all account activity for each of the tax years covered by your voluntary disclosure. *For those applicants disclosing offshore financial accounts with an aggregate highest account balance of less than $500,000, copies of offshore financial account statements reflecting all account activity for each of the tax years covered by your voluntary disclosure must be readily available upon request.* • *Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties.* *Please see the submission requirements on the 2012 Offshore Voluntary Disclosure Program, for a complete description of the forms and other information that must be submitted.* You may also be contacted by an examiner *with a request* for specific additional information *if needed* to process your voluntary disclosure. The examiner will certify that your voluntary disclosure is correct, accurate, and complete by reviewing your records along with your amended or delinquent income tax returns. The examiner will also verify the tax, interest, and civil penalties you owe. A *full and* complete submission is required for acceptance into the program.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			assess FBAR penalties according to the instructions will render your OVDP submission incomplete. 7. **All** applicants disclosing **foreign** financial accounts**: Copies of filed Reports of Foreign Bank and Financial Accounts (commonly known as FBARs reported on FinCEN Form 114, previously Form TD F 90-22.1) for foreign financial accounts maintained during the period of your voluntary disclosure. See FAQs 44-46 for further information on FBAR filing requirements, including the requirement that FBARs be filed electronically.** 8. **All applicants: Copies of** statements **for all financial accounts** reflecting all account activity for each of the tax years covered by your voluntary disclosure. **For OVDP assets (see FAQ 35) other than foreign financial accounts, provide all relevant documents pertaining to the asset. For example, if a taxpayer has foreign issued life insurance with cash value, provide all documents governing the policy and, if any, all legal and tax opinions issued to the taxpayer relating to the policy.** 9. **All applicants disclosing foreign entities: A statement identifying all foreign entities, whether held directly or indirectly, for the tax years included in the voluntary disclosure, and a statement concerning ownership or control of such entities.** 10. **All applicants disclosing foreign entities: If foreign entities held OVDP assets (see FAQ 35), provide complete and accurate information returns (or amended returns, if applicable) required to be filed, including but not limited to Forms 3520, 3520-A, 5471, 5472, 926, 8865, and 8938 for all tax years included in the voluntary disclosure. If the taxpayer requests that the Service waive information reporting requirements, the taxpayer must submit a completed and signed ''Statement on Abandoned Entities'' form. See FAQ 29.** 11. **Applicants with estate and gift tax issues: If the taxpayer is a decedent's estate, or is an individual who participated in the failure to report an OVDP asset (see FAQ 35) in a required gift or estate tax return, either as executor or advisor, provide complete and accurate amended estate or gift tax returns (original estate or gift tax returns if not previously filed) for tax years included in the voluntary disclosure correcting the underreporting or omission of OVDP assets (see FAQ 35).** 12. **Applicants with Passive Foreign Investment Company (PFIC) issues: A statement whether the amended or delinquent returns involve PFIC issues**	

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			during the tax years covered by the OVDP period, and if so, whether the taxpayer chooses to elect the alternative to the statutory PFIC computation that resolves PFIC issues on a basis that is consistent with the mark to market (MTM) methodology authorized in IRC § 1296 but does not require complete reconstruction of historical data. See FAQ 10. **13. Applicants with Canadian registered retirement savings plans (RRSPs) or registered retirement income funds (RRIFs) who wish to make late elections to defer U.S. tax on earnings: Provide the documents required in FAQ 54.** 14. You may also be contacted by an examiner for specific additional information to process your voluntary disclosure. The examiner will certify that your voluntary disclosure is correct, accurate, and complete by reviewing your records along with your amended or delinquent income tax returns. The examiner will also verify the tax, interest, and civil penalties you owe. 15. A complete submission is required for acceptance into the program. **Taxpayers may submit voluminous documents not requiring original taxpayer signatures (e.g., bank statements, entity organization documents, etc.) on a compact disc (CD) or a USB removable storage device (flash drive). See FAQ 25.2.**	
25.1	What if I cannot make a complete submission by the date specified in the letter from Criminal Investigation?	What if I cannot make a complete submission by the date specified in the letter from Criminal Investigation?	A taxpayer may request an extension of the deadline to complete his submission. A taxpayer requesting an extension must submit his name, address, date of birth, social security number**, and telephone number** and should submit as much of the information described in FAQ 25 as possible with his written request for extension, including at a minimum the properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. Requests for up to a 90-day extension must include a statement of those items that are missing, the reasons why they are not included, and the steps taken to secure them. Requests for extensions must be made in writing and sent to the Austin Campus on or before the date specified in the letter from Criminal Investigation for completing the voluntary disclosure: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program	A taxpayer may request an extension of the deadline to complete his *or her* submission. A taxpayer requesting an extension must submit his name, address, date of birth, *and* social security number and should submit as much of the information described in FAQ 25 as possible with his written request for extension, including at a minimum the properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. Requests for up to a 90 day extension must include a statement of those items that are missing, the reasons why they are not included, and the steps taken to secure them. Requests for extensions must be made in writing and sent to the Austin Campus on or before the date specified in the letter from Criminal Investigation for completing the voluntary disclosure: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: Offshore Voluntary Disclosure Program
25.2	**Are there any requirements**		**Yes. These procedures may be used only by professional firms with established record**	

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	or procedures for submitting documents on a compact disc (CD) or a USB removable storage device (flash drive)?		**retention policies.** 1. **The representative must submit an original, signed paper Agreement for Digital Submission of OVDP Documentation. A copy of the Form 2848 must be attached. There must be one signed agreement for each taxpayer. The only exception is that married taxpayers who are submitting joint returns for all years included in the disclosures may submit only one Agreement for Digital Submission of OVDP documentation.** 2. **All other required OVDP documents other than the Agreement for Digital Submission of OVDP documentation may be submitted digitally.** 3. **All required OVDP documents, or as many as possible, should be transferred to a CD or flash drive.** 4. **All required OVDP required OVDP documents being submitted digitally must be submitted in a format that does not permit editing or changing the stored information without warning, e.g. .PDF. The preferred format is .PDF.** 5. **The digital documents should not be password protected. Documents submitted on a CD or flash drive will be handled in the same secure manner as paper documents.** 6. **The digital documents should be arranged in separate folders in the same sequence as a paper submission would be assembled.** 7. **The CD or flash drive must be labeled with the last four digits only of the taxpayer's Taxpayer Identification Number.**	
26.	Who will process my voluntary disclosure after I have submitted the information described in FAQ 25?	Who will process my voluntary disclosure after I have submitted the information described in FAQ 25?	After you send in your full and complete submission as described in FAQ 25, your case will be assigned to a civil examiner to complete the certification of your tax returns for accuracy, **and** completeness. If you have also made a domestic voluntary disclosure as part of your offshore voluntary disclosure, the domestic disclosure will be treated as a disclosure under the Voluntary Disclosure Practice and may be assigned to a different examiner.	After you send in your full and complete submission as described in FAQ 25, your case will be assigned to a civil examiner to complete the certification of your tax returns for accuracy, completeness *and correctness*. If you have also made a domestic voluntary disclosure as part of your offshore voluntary disclosure, the domestic disclosure will be treated as a disclosure under the Voluntary Disclosure Practice and may be assigned to a different examiner.
27.	Will my voluntary disclosure be subject to an examination?	Will my voluntary disclosure be subject to an examination?	Normally, no examination will be conducted with respect to an offshore voluntary disclosure made under this **program**, although the Service reserves the right to conduct an examination. The normal process is to assign the voluntary disclosure to an examiner to certify the accuracy and completeness of the voluntary disclosure. The certification process is less formal than an examination and does not carry with it all the rights and legal consequences of an examination. For example, the examiner will not send the usual taxpayer notices, the certification process will not constitute a	Normally, no examination will be conducted with respect to an offshore voluntary disclosure made under this *initiative*, although the Service reserves the right to conduct an examination. The normal process is to assign the voluntary disclosure to an examiner to certify the accuracy and completeness of the voluntary disclosure. The certification process is less formal than an examination and does not carry with it all the rights and legal consequences of an examination. For example, the examiner will not send the usual taxpayer notices, the certification process will not constitute a

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			''second examination'' if one or more years in the voluntary disclosure has previously been examined, and the taxpayer will not have appeal rights with respect to the Service's determination. However, the examiner has the right to ask any relevant questions, request any relevant documents, and even make third party contacts, if necessary**,** to certify the accuracy of the amended returns, without converting the certification to an examination. If you have also made a domestic voluntary disclosure as part of your offshore voluntary disclosure, the domestic disclosure will be treated as a disclosure under the Voluntary **D**isclosure Practice and an examination may be opened for that part of the disclosure.	''second examination'' if one or more years in the voluntary disclosure has previously been examined, and the taxpayer will not have appeal rights with respect to the Service's determination. However, the examiner has the right to ask any relevant questions, request any relevant documents, and even make third party contacts, if necessary to certify the accuracy of the amended returns, without converting the certification to an examination. If you have also made a domestic voluntary disclosure as part of your offshore voluntary disclosure, the domestic disclosure will be treated as a disclosure under the Voluntary *d*isclosure Practice and an examination may be opened for that part of the disclosure.
28.	How long should the process take before it is completed?	How long should the process take before it is completed?	Because every case is different, there is no way to predict how long the process will take for you. However, the IRS has taken certain steps to improve our efficiency in processing cases. Moreover, there are certain steps you can take to expedite matters. If you have not already done so, you should have delinquent or amended tax returns prepared now because they must be submitted with your package by the date specified in the letter from Criminal Investigation for completing the voluntary disclosure. You should also gather all **other documents and information required for the OVDP. See FAQ 25. Case assignments to specific examiners are delayed when required documents are not timely provided.** Once the **case is assigned to an** examiner to certify your completed voluntary disclosure, most cases should be **resolved** expeditiously. The OVDP **generally** operate**s** on a first-come, first-served basis.	Because every case is different, there is no way to predict how long the process will take for you. However, the IRS has taken certain steps to improve our efficiency in processing cases. Moreover, there are certain steps you can take to expedite matters. If you have not already done so, you should have delinquent or amended tax returns prepared now because they must be submitted with your package by the date specified in the letter from Criminal Investigation for completing the voluntary disclosure. You should also *start* gather*ing* all *of your foreign account statements and other documentation for all of the years covered by your voluntary disclosure.* *You may view a description of the submission requirements necessary to process your voluntary disclosure at irs.gov.* Once the examiner *has all the information needed* to certify your voluntary disclosure, most cases should be *completed* expeditiously. The OVDP *will* operate on a first-come, first-served basis. *As a result, complete submissions are likely to close much faster.*
29.	My **OVDP** assets were held in the name of a foreign entity that I controlled. However, the sole purpose of the entity was to conceal my ownership of the assets, and I intend to **abandon** the entity now that I am making a voluntary disclosure. Do I still have to file the delinquent information returns for the entity?	My *offshore* assets were held in the name of a foreign entity that I controlled. However, the sole purpose of the entity was to conceal my ownership of the assets, and I intend to *dissolve* the entity now that I am making a voluntary disclosure. Do I still have to file the delinquent information returns for the entity?	A taxpayer who holds **OVDP** assets **(see FAQ 35)** through a foreign entity he controls, such as a corporation or a trust, is required to file information returns for that entity (e.g., Form 5471 for a foreign corporation and Forms 3520 and 3520-A for a foreign trust), regardless of whether the taxpayer honored the form of the entity in his dealings with the **OVDP** assets. However, in cases where the taxpayer certifies under penalty of perjury that the entity had no purpose other than to conceal the taxpayer's ownership of assets and **liquidates and abandons** the entity, the Service may agree to waive the requirement that delinquent information returns be filed if it concludes it is in the Service's interest to do so. Taxpayers wishing to request the Service to disregard a foreign entity **will be required to certify under penalty of perjury that the entity had no purpose other than to conceal the taxpayer's ownership of assets and that it has been liquidated and abandoned by filing a Statement on Abandoned Entities.**	A taxpayer who holds assets through a foreign entity he *or she* controls, such as a corporation or a trust, is required to file information returns for that entity (e.g., Form 5471 for a foreign corporation and Forms 3520 and 3520-A for a foreign trust), regardless of whether the taxpayer honored the form of the entity in his *or her* dealings with the assets. However, in cases where the taxpayer certifies under penalty of perjury that the entity had no purpose other than to conceal the taxpayer's ownership of assets, and *where the taxpayer dissolves* the entity, the Service may agree to waive the requirement that delinquent information returns be filed if it concludes it is in the Service's interest to do so. Taxpayers wishing to request the Service to disregard a foreign entity *should submit a Statement on Dissolved Entities.*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
30.	What should I do if I am having difficulty obtaining my records from overseas?	What should I do if I am having difficulty obtaining my records from overseas?	If you are having difficulty **obtaining records, carefully document your attempts. For phone conversations, note the date, time, and duration of the call; note the complete name of the employee of the foreign financial institution with whom you speak. For correspondence, make a photocopy of all correspondence to and from the foreign financial institution. We recommend using a delivery or postal service that provides delivery confirmation or a return receipt for all correspondence sent to foreign financial institutions. Provide your documentation relating to your attempts to obtain records to the examiner handling your case,** or if your case is not yet assigned, contact the IRS OVDP Hotline at (267) 941-0020. Our experience with offshore cases in recent years has shown that taxpayers are ultimately successful in retrieving copies of statements and other records from foreign **financial institutions.**	If you are having difficulty, *speak with your agent* or if your case is not yet assigned, contact the IRS OVDP Hotline at (267) 941-0020. Our experience with offshore cases in recent years has shown that taxpayers are ultimately successful in retrieving copies of statements and other records from foreign *banks*.
CALCULATION OF OFFSHORE PENALTY				
31.	When determining the highest **value of** each **OVDP asset** for each year what exchange rate should be used?	When determining the highest *amount in* each *undisclosed foreign account* for each year *or the highest asset balance of all undisclosed foreign entities for each year,* what exchange rate should be used?	Convert foreign currency by using the foreign currency exchange rate at the end of the year regardless of when during the year the highest **value** was reached. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars at the close of the calendar year. Each **OVDP asset** is to be valued separately.	Convert foreign currency by using the foreign currency exchange rate at the end of the year regardless of when during the year the highest *account balance* was reached. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars at the close of the calendar year. Each *account* is to be valued separately.
32.	If a taxpayer's violation includes unreported foreign individual accounts and business accounts (for an active business), does the offshore penalty include the business accounts?	If a taxpayer's violation includes unreported foreign individual accounts and business accounts (for an active business), does the *27.5 percent* offshore penalty include the business accounts?	Yes. Assuming that there is unreported **gross** income with respect to all the accounts, they all will be included in the penalty base. No distinction is drawn based on whether the account is a business account or a savings or investment account.	Yes. Assuming that there is unreported income with respect to all the accounts, they all will be included in the penalty base. No distinction is drawn based on whether the account is a business account or a savings or investment account.
33.	Is there a de minimis unreported income exception	Is there a de minimis unreported income exception *to*	No. No amount of unreported **gross** income is considered de minimis for purposes of determining whether there has been tax noncompliance with respect to an **OVDP** asset. **Even one dollar of unreported gross income from an OVDP asset will**	No. No amount of unreported income is considered de minimis for purposes of determining whether there has been tax non-compliance with respect to an *account or* asset *and whether the account or asset should be included in the base for the 27.5 percent*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	relating to tax non-compliance and the offshore penalty?	*the 27.5 percent* penalty?	**bring it into the offshore penalty base.**	*penalty.*
34.	If the look back period is eight years, what does the taxpayer do if the taxpayer held foreign real estate, sold it before the voluntary disclosure period, and did not report the gain on his return for the year of sale? Does the taxpayer compute the **offshore penalty** on the highest aggregate balance in the voluntary disclosure period? What, if anything, does **the Service** expect a taxpayer to do with respect to **tax noncompliance in a year prior to the voluntary disclosure period**?	If the look back period is eight years, what does the taxpayer do if the taxpayer held foreign real estate, sold it before the voluntary disclosure period, and did not report the gain on his return for the year of sale? Does the taxpayer compute the *27.5 percent* on the highest aggregate balance in the voluntary disclosure period? What, if anything, does *IRS* expect the taxpayer to do with respect to *the prior year of sale*?	Gain realized on a foreign transaction occurring before the voluntary disclosure period does not need to be included as part of the voluntary disclosure. If the proceeds of the transaction were repatriated and were not offshore during the voluntary disclosure period, they will not be included in the base for the offshore penalty. On the other hand, if the proceeds remained offshore during any part of the voluntary disclosure period, they will be included in the base for the **offshore penalty. The purpose of the OVDP is to bring taxpayers into compliance for the voluntary disclosure period with the expectation that compliance will continue into the future. In exchange for coming forward through OVDP, the taxpayer agrees to pay the tax, interest, and accuracy-related (or delinquency) penalty for the voluntary disclosure period, plus a miscellaneous offshore penalty in lieu of all other liabilities and penalties that may apply.**	Gain realized on a foreign transaction occurring before the voluntary disclosure period does not need to be included as part of the voluntary disclosure. If the proceeds of the transaction were repatriated and were not offshore during the voluntary disclosure period, they will not be included in the base for the *27.5 percent* offshore penalty. On the other hand, if the proceeds remained offshore during any part of the voluntary disclosure period, they will be included in the base for the *penalty.*
35.	What kinds of assets does the offshore penalty apply to?	What kinds of assets does the *27.5 percent* offshore penalty apply to?	The offshore penalty is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset **(''OVDP assets''). OVDP assets include** all assets directly **or indirectly** owned by the taxpayer, including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art; and intangible assets such as patents or stock or other interests in a U.S. or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity or, if the Service determines that the entity is an alter ego or	The offshore penalty is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset. *The penalty applies to* all assets directly owned by the taxpayer, including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art; and intangible assets such as patents or stock or other interests in a U.S. or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity or, if the Service determines that the entity is an alter ego or nominee of the taxpayer, to the taxpayer's

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			nominee of the taxpayer, to the taxpayer's interest in the underlying assets. Tax noncompliance includes failure to report **gross** income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset.	interest in the underlying assets. Tax noncompliance includes failure to report income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset. *See FAQ 52, category 3, for a limited exception to this rule.*
35.1	**If a taxpayer holds OVDP assets through an entity or a series of entities, may the taxpayer apply valuation discounts such as a discount reflecting lack of marketability, a discount for holding a minority interest, or a discount for holding a tenants in common interest?**		**No. The offshore penalty will be applied to the taxpayer's interest in the underlying OVDP assets without regard to valuation discounts.**	
36.	A taxpayer owns valuable land and artwork located in a foreign jurisdiction. This property produces no income and there were no reporting requirements regarding this property. Must the taxpayer report the land and artwork and pay **the offshore** penalty? What if the property produced income that the taxpayer did not report?	A taxpayer owns valuable land and artwork located in a foreign jurisdiction. This property produces no income and there were no reporting requirements regarding this property. Must the taxpayer report the land and artwork and pay *a 27.5 percent* penalty? What if the property produced income that the taxpayer did not report?	The answer to the first question depends on whether the non-income producing assets were acquired with funds improperly non-taxed. The offshore penalty is intended to apply to offshore assets that are related to tax non-compliance. Thus, if offshore assets were acquired with funds that were subject to U.S. tax but on which no such tax was paid, the offshore penalty would apply regardless of whether the assets are producing current income. Assuming that the assets were acquired with after**-**tax funds or from funds that were not subject to U.S. taxation, if the assets have not yet produced any **gross** income, there has been no U.S. taxable event and no reporting obligation to disclose. The taxpayer will be required to report any current income from the property or gain from its sale or other disposition at such time in the future as the income is realized. Because there has not been tax noncompliance, the offshore penalty would not apply to those assets. In answer to the second question, if the assets produced **gross** income subject to U.S. tax during the voluntary disclosure period which was not reported, the assets will be included in the penalty computation regardless of the source of the funds used to acquire the assets. If the foreign assets were held in the name of an entity such as a trust or corporation, there would also have been an information return filing obligation that may need to be disclosed. See FAQ 5.	The answer to the first question depends on whether the non-income producing assets were acquired with funds improperly non-taxed. The offshore penalty is intended to apply to offshore assets that are related to tax non-compliance. Thus, if offshore assets were acquired with funds that were subject to U.S. tax but on which no such tax was paid, the offshore penalty would apply regardless of whether the assets are producing current income. Assuming that the assets were acquired with after tax funds or from funds that were not subject to U.S. taxation, if the assets have not yet produced any income, there has been no U.S. taxable event and no reporting obligation to disclose. The taxpayer will be required to report any current income from the property or gain from its sale or other disposition at such time in the future as the income is realized. Because there has not been tax noncompliance, the *27.5 percent* offshore penalty would not apply to those assets. In answer to the second question, if the assets produced income subject to U.S. tax during the voluntary disclosure period which was not reported, the assets will be included in the penalty computation regardless of the source of the funds used to acquire the assets. If the foreign assets were held in the name of an entity such as a trust or corporation, there would also have been an information return filing obligation that may need to be disclosed. See FAQ 5.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
37.	If a taxpayer transferred funds from one unreported foreign **financial** account to another during the voluntary disclosure period, will he have to pay **the** offshore penalty on both accounts?	If a taxpayer transferred funds from one unreported foreign account to another during the voluntary disclosure period, will he have to pay *a 27.5 percent* offshore penalty on both accounts?	No. If the taxpayer can establish that funds were transferred from one account to another, any duplication will be removed before calculating the **offshore** penalty. However, the burden will be on the taxpayer to establish duplication.	No. If the taxpayer can establish that funds were transferred from one account to another, any duplication will be removed before calculating the *27.5 percent* penalty. However, the burden will be on the taxpayer to establish *the extent of the* duplication.
38.	If, in addition to other non-compliance, a taxpayer has failed to file an FBAR to report an account over which the taxpayer has signature authority but no beneficial interest (e.g., an account owned by his employer), will that foreign **financial** account be included in the base for calculating the taxpayer's offshore penalty?	If, in addition to other non-compliance, a taxpayer has failed to file an FBAR to report an account over which the taxpayer has signature authority but no beneficial interest (e.g., an account owned by his employer), will that foreign account be included in the base for calculating the taxpayer's *27.5 percent* offshore penalty?	No. The account the taxpayer has mere signature authority over will be treated as unrelated to the tax noncompliance the taxpayer is voluntarily disclosing. The taxpayer may cure the FBAR delinquency for **this** account **at any time prior to** being contacted **by the IRS** regarding an income tax examination or delinquent returns **by filing the FBAR with an explanatory statement. See section 3 of ''Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets'' for instructions.** The answer might be different if: (1) the account over which the taxpayer has signature authority is held in the name of a related person, such as a family member or **an entity** controlled by the taxpayer; (2) the account is held in the name of a foreign **entity** for which the taxpayer had a Title 26 reporting obligation; or (3) the account was related in some other way to the taxpayer's tax noncompliance **(e.g., was used by the taxpayer as a conduit).** In these cases, the taxpayer **may have an OVDP asset to which the offshore penalty applies. See FAQ 35.**	No. The account the taxpayer has mere signature authority over will be treated as unrelated to the tax noncompliance the taxpayer is voluntarily disclosing. The taxpayer may cure the FBAR delinquency for *the* account *the taxpayer does not own by filing the FBAR with an explanatory statement before* being contacted regarding an income tax examination or *a request for* delinquent returns. The answer might be different if: (1) the account over which the taxpayer has signature authority is held in the name of a related person, such as a family member or *a corporation* controlled by the taxpayer; (2) the account is held in the name of a foreign *corporation or trust* for which the taxpayer had a Title 26 reporting obligation; or (3) the account was related in some other way to the taxpayer's tax noncompliance. In these cases, *if* the taxpayer *is determined to have a direct or indirect beneficial interest in the account(s), the taxpayer will be liable for the 27.5 percent offshore penalty if there is unreported income on the account. On the other hand, if there is no unreported income with respect to the account, no penalty will be imposed.*
39.	**P**arents have a jointly owned foreign account on which they have made their children signatories**;** the children have an FBAR filing requirement but no income. **How** **s**hould the **family**	*If p*arents have a jointly owned foreign account on which they have made their children signatories*,* the children have an FBAR filing requirement but no income. *S*hould the *children just file*	**S**ignatories with no ownership interest in the account, such as the children in **this scenario,** should file delinquent FBARs **with explanatory statements. See section 3 of ''Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets'' for instructions.** As for the parents, only one offshore penalty will be applied with respect to voluntary disclosures relating to the same **foreign financial** account. In the example, the parents will be jointly required to pay a single **offshore** penalty **(at the applicable offshore penalty rate of either 27.5 percent or 50 percent)** on the account. This can be **satisfied by** one parent paying the total **offshore** penalty or **by** each paying a portion, at the taxpayers' option. However, any joint **owner of a foreign financial** account who does not make a voluntary disclosure	*For those s*ignatories with no ownership interest in the account, such as the children in *these facts, they* should file delinquent FBARs *as previously described in FAQ 17*. As for the parents, only one *27.5 percent* offshore penalty will be applied with respect to voluntary disclosures relating to the same account. In the example, the parents will be jointly required to pay a single *27.5 percent* penalty on the account. This can be *through* one parent paying the total penalty or *through* each paying a portion, at the taxpayers' option. However, any joint account *owner* who does not make a voluntary disclosure may be examined and subject to all *appropriate* penalties.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs ***(continued)***

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	correct this, and how will the offshore penalty be applied?	*delinquent FBARs and have the parents submit a voluntary disclosure? Will both parents be penalized 27.5 percent each? Will each parent have a 27.5 percent penalty on 50 percent of the balance?*	may be examined and subject to all **applicable** penalties.	
40.	If multiple taxpayers are co-owners of an **OVDP asset**, who will be liable for the offshore penalty?	If multiple taxpayers are co-owners of an *offshore account*, who will be liable for the offshore penalty?	In the case of co-owners, each taxpayer who makes a voluntary disclosure will be liable for the penalty on his percentage **ownership** of the highest **value of** the **OVDP asset**. The burden will be on the disclosing taxpayer claiming ownership of less than 100 percent of the **OVDP asset** to establish the extent of his ownership. His voluntary disclosure is effective as to his tax liability only. It does not cover the other co-owners. The IRS may examine any co-owner who does not make a voluntary disclosure. Co-owners examined by the IRS will be subject to all **applicable** penalties.	In the case of co-owners, each taxpayer who makes a voluntary disclosure will be liable for the penalty on his percentage of the highest *aggregate balance in* the *account*. The burden will be on the disclosing taxpayer claiming ownership of less than 100 percent of the *account* to establish the extent of his ownership. His voluntary disclosure is effective as to his tax liability only. It does not cover the other co-owners. The IRS may examine any co-owner who does not make a voluntary disclosure. Co-owners examined by the IRS will be subject to all *appropriate* penalties.
41.	If there are multiple individuals with signature authority over **an OVDP asset held in the name of** a trust, does everyone involved need to file delinquent FBARs? If so, **must** everyone **pay the** offshore penalty?	If there are multiple individuals with signature authority over a trust *account*, does everyone involved need to file delinquent FBARs? If so, *could* everyone *be subject to a 27.5 percent* offshore penalty?	Only one offshore penalty will be applied with respect to voluntary disclosures relating to the same **OVDP asset**. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose. The reporting requirements for filing an FBAR, however, do not change. Therefore, every **person** who is required to file an FBAR must file one.	Only one *27.5 percent* offshore penalty will be applied with respect to voluntary disclosures relating to the same *account*. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose. The reporting requirements for filing an FBAR, however, do not change. Therefore, every *individual* who is required to file an FBAR must file one.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
STATUTE OF LIMITATIONS				
42.	How can the IRS propose adjustments to tax for more than three years without either an agreement from the taxpayer or a statutory exception to the normal three-year statute of limitations for making those adjustments?	How can the IRS propose adjustments to tax for more than three years without either an agreement from the taxpayer or a statutory exception to the normal three-year statute of limitations for making those adjustments?	**As a condition to participate in the OVDP and receive the benefits of the OVDP’s penalty structure, the taxpayer must agree to the** assessment of tax and penalties for all voluntary disclosure years. If the taxpayer does not agree to the tax, interest, and penalt**ies** proposed by the voluntary disclosure examiner, the case will be referred to the field for a complete examination of all issues. In that examination, normal statute of limitations rules will apply. If no exception to the normal three-year statute applies, the IRS will only be able to assess tax, penalty and interest for three years. However, if the period of limitations was open because, for example, the IRS can prove a substantial omission of gross income, six years of liability may be assessed. Similarly, if there was a failure to file certain information returns, such as Form 3520, Form 5471, or Form 8938, the statute of limitations will not have begun to run. If the IRS can prove fraud, there is no statute of limitations for assessing tax. In addition, the statute of limitations for **assessing** FBAR penalties is six years from the date of the violation, which would be the date that an unfiled FBAR was due to have been filed. 31 U.S.C. § 5321(b)(1).	*Agreeing to* assessment of tax and penalties for all voluntary disclosure years *is part of the resolution offered by the IRS for resolving offshore voluntary disclosures. The taxpayer must agree to assessment of the liabilities for those years in order to get the benefit of the reduced penalty framework*. If the taxpayer does not agree to the tax, interest and penalt*y* proposed by the voluntary disclosure examiner, the case will be referred to the field for a complete examination of all issues. In that examination, normal statute of limitations rules will apply. If no exception to the normal three-year statute applies, the IRS will only be able to assess tax, penalty and interest for three years. However, if the period of limitations was open because, for example, the IRS can prove a substantial omission of gross income, six years of liability may be assessed. Similarly, if there was a failure to file certain information returns, such as Form 3520, Form 5471, or Form 8938, the statute of limitations will not have begun to run. If the IRS can prove fraud, there is no statute of limitations for assessing tax. In addition, the statute of limitations for *asserting* FBAR penalties is six years from the date of the violation, which would be the date that an unfiled FBAR was due to have been filed. 31 U.S.C. § 5321(b)(1).
43.	Will I be required to complete and sign agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties for any years that are otherwise set to expire while my **voluntary disclosure** is being processed by the IRS?	Will I be required to complete and sign agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties for any years that are otherwise set to expire while my *application* is being processed by the IRS?	Yes. Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties are required to be submitted as part of the voluntary disclosure package (see FAQ 25).	Yes. Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties are required to be submitted as part of the voluntary disclosure package (see FAQ 25).
FBAR QUESTIONS				
44.	If I had an FBAR reporting obligation for years covered by the voluntary disclosure, what version of the **FBAR** should I use	If I had an FBAR reporting obligation for years covered by the voluntary disclosure, what version of the *Form TD F 90-22.1*	**Taxpayers are required to file FBARs electronically at FinCEN’s website. On the cover page of the electronic form, select “Other” as the reason for filing late. An explanation box will appear. In the explanation box, enter “OVDP.”** Taxpayers who are unable to file electronically may contact FinCEN’s Regulatory Helpline at 1-800-949-2732 or **1-703-905-3975** (if calling from outside the United States) to determine possible **alternatives to electronic filing.**	*After June 30, 2013, taxpayers must file FBARs electronically.* Taxpayers who are unable to file electronically may contact FinCEN’s Regulatory Helpline at 1-800-949-2732 or (if calling from outside the United States) *1-703-905-3975* to determine possible *alternative for timely reporting. Through June 30, 2013, taxpayers may file electronically or by paper.* *Taxpayers should use the most current version of Form TD F 90-22.1, for filing delinquent FBARs to report*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	to report my interests in foreign **financial** accounts?	should I use to report my interests in foreign accounts?		*foreign accounts maintained in prior years. At this time, the most current version is the one that was revised in January 2012. The taxpayer may, however, rely on the instructions for the prior version of the form (revised in July 2000) for purposes of determining who must file to report foreign accounts maintained during the 2009 and prior calendar years. Taxpayers may rely on FBAR guidance that was applicable for the calendar year that is being reported (e.g., IRS Announcement 2010-16 or IRS Notice 2010-23) in determining their FBAR reporting obligations.*
45.	A taxpayer has two **foreign financial** accounts. No FBARs were filed. The taxpayer reported all income from one account but not the other. Mechanically, how does the taxpayer report this?	A taxpayer has two *offshore* accounts. No FBARs were filed. The taxpayer reported all income from one account but not the other. Mechanically, how does the taxpayer report this? *Does the taxpayer report both accounts as a voluntary disclosure or bifurcate it into a delinquent FBAR filing for the reported account and a voluntary disclosure for the unreported account?*	**Taxpayers are required** to file a single **FBAR** reporting all foreign **financial** accounts meeting the reporting requirement. The taxpayer should make a voluntary disclosure for the omitted income and **file** the delinquent FBARs with respect to both accounts. The account with no income tax issue is unrelated to the taxpayer's tax noncompliance, so no penalty will be imposed with respect to that account.	*Because the annual FBAR requirement is* to file a single *report* reporting all foreign accounts meeting the reporting requirement*, it is not possible to bifurcate the corrected filing*. The taxpayer should make a voluntary disclosure for the omitted income and *include* the delinquent FBARs with respect to both accounts. The account with no income tax issue is unrelated to the taxpayer's tax noncompliance, so no penalty will be imposed with respect to that account.
46.	If a taxpayer is uncertain about whether he is required to file an FBAR with respect to a particular foreign **financial** account, how can the taxpayer get help with this question?	If a taxpayer is uncertain about whether he is required to file an FBAR with respect to a particular foreign account, how can the taxpayer get help with this question?	**Information about FBAR filing requirements is available on FinCEN's website.** Help with questions about FBAR filing requirements is **also** available by telephone or e-mail. Call 1-866-270-0733 (toll free within the United States) or 1-313-234-6146 (not a toll-free number) from 8 a.m. to 4:30 p.m. Eastern time, except for weekends and federal holidays. **S**ubmit written questions by e-mail addressed to FBAR Questions. Do not call the IRS OVDP Hotline with questions about whether you have an FBAR filing requirement. The purpose of the **IRS OVDP** Hotline is to answer questions about how to make voluntary disclosures and what penalties apply.	Help with questions about FBAR filing requirements is available by telephone or e-mail. Call 1-866-270-0733 (toll free within the United States) or 1-313-234-6146 (not a toll-free number) from 8 a.m. to 4:30 p.m. Eastern time, except for weekends and federal holidays. *You can also s*ubmit written questions *about the FBAR rules* by e-mail addressed to FBARQuestions*@irs.gov. The instructions to the FBAR Form are at the end of the form*. Do not call the IRS OVDP Hotline with questions about whether you have an FBAR filing requirement. The purpose of the *Voluntary Disclosure* Hotline is to answer questions about how to make voluntary disclosures and what penalties apply*, assuming a taxpayer was required to file*.
TAXPAYER REPRESENTATIVES				
47.	I have a client who may be eligible to	I have a client who may be eligible to	The IRS anticipates that taxpayers will seek qualified tax and legal advice and representation in connection with considering and making a voluntary disclosure. If a taxpayer seeks the advice	The IRS anticipates that taxpayers will seek qualified tax and legal advice and representation in connection with considering and making a voluntary disclosure. If a taxpayer seeks the advice

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	make a voluntary disclosure. What are my responsibilities to my client under Circular 230?	make a voluntary disclosure. What are my responsibilities to my client under Circular 230?	of a tax practitioner, the practitioner must exercise due diligence in determining the correctness of any oral or written representations made to the client about the program and the implications for that taxpayer of going forward. If the taxpayer decides to proceed with the disclosure, the practitioner must exercise due diligence in determining the correctness of any oral or written representations that the practitioner makes during the representation to the Department of the Treasury**.** **The practitioner** must avoid giving, or participating in giving, false or misleading information to the Department of the Treasury or giving a false or misleading opinion to the taxpayer. If the taxpayer decides not to make the voluntary disclosure despite the taxpayer's noncompliance with United States tax laws, Circular 230 requires the practitioner to advise the client of the fact of the client's noncompliance and the consequences of the client's noncompliance. A practitioner whose client declines to make full disclosure of the existence of, or any taxable income from, a foreign financial account during a taxable year, may not prepare the client's income tax return for that year without being in violation of Circular 230.	of a tax practitioner, the practitioner must exercise due diligence in determining the correctness of any oral or written representations made to the client about the program and the implications for that taxpayer of going forward. If the taxpayer decides to proceed with the disclosure, the practitioner must exercise due diligence in determining the correctness of any oral or written representations that the practitioner makes during the representation to the Department of the Treasury*;* *and* must avoid giving, or participating in giving, false or misleading information to the Department of the Treasury or giving a false or misleading opinion to the taxpayer. If the taxpayer decides not to make the voluntary disclosure despite the taxpayer's noncompliance with United States tax laws, Circular 230 requires the practitioner to advise the client of the fact of the client's noncompliance and the consequences of the client's noncompliance. A practitioner whose client declines to make full disclosure of the existence of, or any taxable income from, a foreign financial account during a taxable year, may not prepare the client's income tax return for that year without being in violation of Circular 230.
48.	Are there special considerations for completing Form 2848, Power of Attorney and Declaration of Representative?	Are there special considerations for completing Form 2848, Power of Attorney and Declaration of Representative?	Yes. In addition to being authorized to represent the taxpayer for tax years within the voluntary disclosure period, the power of attorney must specifically authorize you to represent the taxpayer for income tax, civil penalties, and FBARs. See a sample power of attorney.	Yes. In addition to being authorized to represent the taxpayer for tax years within the voluntary disclosure period, the power of attorney must specifically authorize you to represent the taxpayer for income tax, civil penalties and FBARs. See a sample power of attorney. *at irs.gov.*
CASE RESOLUTION				
49.	If the taxpayer and the IRS cannot agree to the terms of the OVDP closing agreement, will mediation with Appeals be an option with respect to the terms of the closing agreement?	If the taxpayer and the IRS cannot agree to the terms of the OVDP closing agreement, will mediation with Appeals be an option with respect to the terms of the closing agreement?	No. The penalty framework for offshore volunt**a**ry disclosure and the agreement to limit tax exposure to an eight year period are **nonnegotiable** terms under the OVDP. If any part of the **closing agreement** is unacceptable to the taxpayer, **the taxpayer may opt out** **and** the case will be examined and all applicable penalties will be imposed (see FAQ 51). After a full examination, any tax and penalties imposed by the Service may be appealed, but the Service's decision on the terms of the OVDP closing agreement may not **be appealed**.	No. The penalty framework for offshore voluntry disclosure and the agreement to limit tax exposure to an eight year period are *package* terms under the OVDP. If any part of the *offshore penalty* is unacceptable to the taxpayer, the case will be examined and all applicable penalties will be imposed (see FAQ 51). After a full examination, any tax and penalties imposed by the Service *on examination* may be appealed, but the Service's decision on the terms of the OVDP closing agreement may not.
50.	Will examiners have any discretion to settle offshore voluntary disclosure cases?	Will examiners have any discretion to settle offshore voluntary disclosure cases?	No. Offshore voluntary disclosure examiners do not have discretion to settle cases for amounts less than what is properly due and owing. However, because the offshore penalty is a proxy for the FBAR penalty, **civil fraud penalty,** other penalties imposed under the Internal Revenue Code, and potential liabilities for years prior to the voluntary disclosure period, there may be cases where a	No. Offshore voluntary disclosure examiners do not have discretion to settle cases for amounts less than what is properly due and owing. However, because the *27.5 percent* offshore penalty is a proxy for the FBAR penalty, other penalties imposed under the Internal Revenue Code, and potential liabilities for years prior to the voluntary disclosure period, there may be cases where a taxpayer

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs ***(continued)***

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			taxpayer making a voluntary disclosure would owe less **outside of the OVDP**. Under no circumstances will taxpayers be required to pay a penalty greater than what they would otherwise be liable for under the maximum penalties imposed under existing statutes **for the years included in the disclosure period**. Examiners will compare the amount due under this offshore **program** to the tax, interest, and applicable penalties (at their maximum levels and without regard to issues relating to reasonable cause, willfulness, mitigation factors, or other circumstances that may reduce liability) for all years **within the disclosure period** that a taxpayer would owe **outside** of the OVDP. The taxpayer will pay the lesser amount. If the taxpayer disagrees with the result, the taxpayer may request that the case be referred for an examination of all relevant years and issues (see FAQ 51).	making a voluntary disclosure would owe less *if the special offshore initiative did not exist*. Under no circumstances will taxpayers be required to pay a penalty greater than what they would otherwise be liable for under the maximum penalties imposed under existing statutes. *For example, if a taxpayer had $100,000 in an offshore bank account in only one year and foreign income-producing real estate with a fair market value of $1,000,000, only the bank account would be subject to the FBAR penalty. Consequently, the maximum FBAR penalty would only be $100,000 (that is, the greater of $100,000 or 50% of the amount in the foreign account), which is substantially less than the offshore penalty of $302,500 (27.5% of $1,100,000). If this FBAR penalty, plus tax, interest and all other applicable penalties, are less than what is due under this offshore initiative, the taxpayer will only pay the lesser amount.* Examiners will compare the amount due under this offshore *initiative* to the tax, interest, and applicable penalties (at their maximum levels and without regard to issues relating to reasonable cause, willfulness, mitigation factors, or other circumstances that may reduce liability) for all *open* years that a taxpayer would owe *in the absence* of the OVDP *penalty regime*. The taxpayer will pay the lesser amount. If the taxpayer disagrees with the result, the taxpayer may request that the case be referred for an examination of all relevant years and issues (see FAQ 51).
51.	If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?	If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?	If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing **his** decision to withdraw from or opt out of the program. Once made, this election is irrevocable. An **‘‘**opt out**’’** is an election made by a taxpayer to have his case handled under the standard audit process. **Some taxpayers may prefer this approach; in some cases** the results under the **OVDP may** appear too severe given the facts of the case. **In other cases,** this is less clear. In **these less clear** cases, the **IRS** will **protect its interests** and the integrity of the voluntary disclosure program. In these cases, **the IRS will likely conduct** full scope examinations. **We anticipate that opting** out will be appropriate for a discrete minority of cases. Moreover, to the extent that issues are found **in** a full**-**scope examination that were not disclosed by the taxpayer, those issues may be the subject of review by Criminal Investigation. In either case, opting out is at the sole discretion of the taxpayer and the taxpayer **will** not be treated in a negative fashion merely because he chooses to opt out. The specific procedures for opting out are set forth in a separate guide titled Opt Out and Removal Guide for the 2009 OVDP, 2011 OVDI, and now the OVDP. Taxpayers are reminded that, even after opting out of the Service's civil settlement structure, they remain within Criminal Investigation's Voluntary Disclosure Practice. Therefore, taxpayers are still required to cooperate fully with the examiner by providing all requested information and records	If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing *the* decision to withdraw from or opt out of the program. Once made, this election is irrevocable. An opt out is an election made by a taxpayer to have his *or her* case handled under the standard audit process. *It should be recognized that in a given case, the opt out option may reflect a preferred approach. That is, there may be instances in which* the results under the *applicable voluntary disclosure program* appear too severe given the facts of the case. *There will be other instances where* this is less clear. In *the latter* cases, the *Service* will *look to ensure that the best interests of the Service* and the integrity of the voluntary disclosure program *remain intact*. In these cases, *it is expected that* full scope examinations *will occur if opt out is initiated*. *It is expected that opt* out will be appropriate for a discrete minority of cases. Moreover, to the extent that issues are found *upon* a full scope examination that were not disclosed by the taxpayer, those issues may be the subject of review by Criminal Investigation. In either case, opting out is at the sole discretion of the taxpayer and the taxpayer *should* not be treated in a negative fashion merely because he *or she* chooses to opt out. The specific procedures for opting out are set forth in a separate guide titled Opt Out and Removal Guide for the 2009 OVDP, 2011 OVDI, and now the OVDP. *The guide is posted to the website.* Taxpayers are reminded that, even after opting out of the Service's civil settlement structure, they

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
			and must still pay or make arrangements to pay the tax, interest, and penalties they are ultimately determined to owe. If a taxpayer does not cooperate and make payment arrangements, or if after examination, issues exist that were not disclosed prior to opt out, the case may be referred back to Criminal Investigation.	remain within Criminal Investigation's Voluntary Disclosure Practice. Therefore, taxpayers are still required to cooperate fully with the examiner by providing all requested information and records and must still pay or make arrangements to pay the tax, interest, and penalties they are ultimately determined to owe. If a taxpayer does not cooperate and make payment arrangements, or if after examination, issues exist that were not disclosed prior to opt out, the case may be referred back to Criminal Investigation.
51.1	Deleted	*Under what circumstances might a taxpayer consider opting out of the civil settlement structure of the OVDP?*		*The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation.* *Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income and assume a voluntary disclosure started in January 2012 for a voluntary disclosure period of 2003 through 2010.* *Example 1 — Unreported Income But No Tax Deficiency* *The taxpayer, a U.S. citizen who worked and resided in Country A, had a brokerage account in Country A that he opened in 1999. The account had a high balance of $2 million and generated income of $150,000 each year. The taxpayer did not report any of the income on his U.S. return because he mistakenly assumed he only had to report it on a Country A tax return. The taxpayer's amended Form 1040 returns showed that, after applying the foreign tax credit for taxes paid to the government of Country A, he had no tax deficiency with respect to the unreported income. Because the taxpayer had unreported income, he does not qualify for FAQ 17. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53.* *The Offshore Penalty under OVDP is $550,000 (i.e., 27.5% of $2 million), even though there was no tax owed to the U.S. Government and no other indication of wrongdoing.* *If the taxpayer elected to opt out and, upon examination, IRS determined that the FBAR violation was not willful, he would be subject to an FBAR penalty of up to $10,000 per year ($60,000 total for six years). If IRS determines that the violation was due to reasonable cause (for example, the taxpayer reasonably acted on the written advice of an independent legal advisor after having disclosed the account to the advisor), the taxpayer would be subject to no FBAR penalty.* *The penalty for a non-willful failure to file an FBAR would apply with respect to FBARs that were due on or after June 30, 2006. For this example, this would include*

<table>
<tr><th colspan="5">Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs (continued)</th></tr>
<tr><th>#</th><th>Questions (2014 OVDP FAQ)</th><th>Questions (2012 OVDP FAQ)</th><th>Answers (2014 OVDP FAQ)</th><th>Answers (2012 OVDP FAQ)</th></tr>
<tr><td></td><td></td><td></td><td></td><td>
FBARs that were filed to report foreign financial accounts maintained during calendar years 2005 through 2010.
<table>
<tr><th></th><th>Civil Settlement Structure</th><th>Opt out and 6 years non-willful FBAR penalty</th></tr>
<tr><td>Income Tax Due (not including interest</td><td>0</td><td>0</td></tr>
<tr><td>20% Accuracy-related penalty</td><td>0</td><td>0</td></tr>
<tr><td>27.5% Offshore Penalty</td><td>$550,000</td><td>0</td></tr>
<tr><td>FBAR Penalty</td><td>0</td><td>$60,000</td></tr>
<tr><td>Total</td><td>$550,000</td><td>$60,000</td></tr>
</table>
Example 2 — Unreported Income and Failure to File FBAR
The taxpayer is a U.S. citizen, who lived abroad in 2007, 2008 and 2009. While living abroad, the taxpayer opened an account in 2007 with a bank located in Country X.
Assume that the highest account balance during the three years (2007, 2008 and 2009) was $200,000. The taxpayer filed U.S. income tax returns for all years but only filed an FBAR for 2008 and 2009, not for 2007.
The taxpayer was unaware of his FBAR filing obligation until having his return professionally prepared in 2008. The taxpayer failed to report approximately $2,000 of interest income from the account, and, is therefore, unable to simply file a delinquent FBAR for 2007 as provided in FAQ 17. The tax deficiency was $700. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53. The Offshore Penalty under OVDP will be $55,000 (i.e., 27.5% of $200,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency If the taxpayer elected to opt out, the taxpayer will be subject to tax, penalties, and interest on the unreported income and, if, upon examination, IRS determines that the failure to file the FBAR was not willful, the taxpayer will be subject to a non-willful FBAR penalty of no more than $10,000 for failing to file an FBAR for 2007. If IRS determines that the FBAR violation was due to reasonable cause, then no FBAR penalty will be imposed.
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Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

<table>
<tr><th>#</th><th>Questions (2014 OVDP FAQ)</th><th>Questions (2012 OVDP FAQ)</th><th>Answers (2014 OVDP FAQ)</th><th>Answers (2012 OVDP FAQ)</th></tr>
<tr><td></td><td></td><td></td><td></td><td>
<table>
<tr><th></th><th>*Civil Settlement Structure*</th><th>*Opt out and 1 year non-willful FBAR penalty*</th><th>*Opt out and assume the civil fraud penatly applied*</th></tr>
<tr><td>*Income Tax Due (not including interest*</td><td>*$700*</td><td>*$700*</td><td>*$700*</td></tr>
<tr><td>*20% Accuracy-related penalty*</td><td>*$140*</td><td>*$140*</td><td>*0*</td></tr>
<tr><td>*27.5% Offshore Penalty*</td><td>*$55,000*</td><td>*0*</td><td>*0*</td></tr>
<tr><td>*Civil Fraud Penalty*</td><td>*0*</td><td>*0*</td><td>*$525*</td></tr>
<tr><td>*FBAR Penalty*</td><td>*0*</td><td>*$10,000*</td><td>*$10,000*</td></tr>
<tr><td>*Total*</td><td>*$55,840*</td><td>*$10,840*</td><td>*$11,225*</td></tr>
</table>

Example 3 — Unreported Controlled Foreign Corporation

The taxpayer, a U.S. citizen who lives in the United States, owns a 100% interest in a foreign corporation that has substantial operations in Country A and a foreign bank account. The foreign corporation is not required to file an FBAR and does not file one. The taxpayer also has signature authority over the foreign bank account. The taxpayer did not file an FBAR to report his financial interest in, or signature authority over, the foreign bank account of the corporation that he controls. The interest income earned on the foreign account was $5,000 for each year. The tax deficiency for each year was $1,750. The balance in the foreign bank account during the calendar years 2003 through 2010 was a constant $1 million. The value of the taxpayer's controlling interest in the foreign corporation is determined to be $100 million (including the value of the $1 million foreign bank account).

The taxpayer did not file a Form 5471 to report his interest in the controlled foreign corporation. Instead, he wrongly treated the foreign corporation as a disregarded entity and reported the corporation's income on a Schedule C. The income he reported from the foreign corporation did not include interest income earned on the corporation's foreign bank account. Otherwise, the individual was fully compliant in reporting all other taxable income, including income from the controlled foreign corporation. The statute of limitations for assessing tax and tax penalties with respect to the controlled foreign corporation remained open under IRC § 6501(c)(8) because the Form 5471 was not filed.
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<table>
<tr><th colspan="5">Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*</th></tr>
<tr><th>#</th><th>Questions (2014 OVDP FAQ)</th><th>Questions (2012 OVDP FAQ)</th><th>Answers (2014 OVDP FAQ)</th><th>Answers (2012 OVDP FAQ)</th></tr>
<tr><td></td><td></td><td></td><td></td><td>
<table>
<tr><th></th><th>*Civil Settlement Structure*</th><th>*Opt out and 6 years of the §6038(a) penalty plus 6 years of the FBAR non-willful penalty*</th><th>*Assume the civil fraud penalty applied for six years and the FBAR willful penalty applied for 6 years*</th></tr>
<tr><td>*Income Tax Due (not including interest*</td><td>*$14,000*</td><td>*$14,000*</td><td>*$14,000*</td></tr>
<tr><td>*20% Accuracy-related penalty*</td><td>*$2,800*</td><td>*$2,800*</td><td>*0*</td></tr>
<tr><td>*27.5% Offshore Penalty*</td><td>*$27,500,000*</td><td>*0*</td><td>*0*</td></tr>
<tr><td>*§6038(a) Penalty*</td><td>*0*</td><td>*$60,000*</td><td>*$60,000*</td></tr>
<tr><td>*Civil Fraud Penalty*</td><td>*0*</td><td>*0*</td><td>*$10,500*</td></tr>
<tr><td>*FBAR*</td><td>*0*</td><td>*$60,000*</td><td>*$60,000*</td></tr>
<tr><td>*Penalty*</td><td></td><td></td><td></td></tr>
<tr><td>*Total*</td><td>*$27,516,800*</td><td>*$136,800*</td><td>*$3,084,500*</td></tr>
</table>
Example 4 — The taxpayer is a dual citizen of the United States and Country A. Taxpayer lived and worked in Country A during 2000 through 2010.

He had checking and savings accounts in country A with an aggregate balance of approximately $50,000 in each year. He had no income from U.S. sources during the period. The taxpayer complied with Country A's tax laws and fully reported his salary and the interest on his bank accounts. Although Taxpayer earned income in excess of the applicable exemption amount and standard deduction, he did not timely file U.S. income returns or FBARs for any of the years he lived in Country A. After learning of his U.S. filing obligations, taxpayer consulted with counsel, who concluded that he did not qualify for FAQ 17 relief because of his tax non-compliance. Taxpayer made a voluntary disclosure, filing income tax returns reporting tax of approximately $400 each year. He also filed delinquent FBARs.

The taxpayer qualifies for a reduced penalty of 5 percent under FAQ 52, part 3, below. The Offshore Penalty under OVDP will therefore be $2,500 (i.e., 5% of $50,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency. If the taxpayer elects to opt out, the taxpayer will still be subject to tax and interest on the unreported income but, upon examination, IRS is not likely to assert accuracy related or FBAR penalties.

See Fact Sheet 2011-13 (December 2011). Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine
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Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
				if they qualify for the new compliance procedures. Example 5 - The facts are the same as in Example 4, except that, the taxpayer also has interests in offshore entities for which Forms 5471 or 3520 should have been filed. The value of the taxpayer's interest in the entities is approximately $200,000 in each year. The taxpayer acquired his interest in the entities with tax compliant funds, and the entities' assets produce no income. The taxpayer does not qualify for FAQ 18 relief because of the tax noncompliance discussed in Example 4, and decides to make a voluntary disclosure including, in addition to the items in Example 4, delinquent Forms 5471 and 3520. *The Offshore Penalty under OVDP will be $2,500 (i.e., 5% of $50,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency. If the taxpayer elects to opt out, the taxpayer will still be subject to tax and interest on the unreported income but upon examination, IRS is not likely to assert accuracy related, FBAR, or information return penalties.* *See Fact Sheet 2011-13 (December 2011). Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine if they qualify for the new compliance procedures.*
51.2	Deleted	*2 Under what circumstances might opting out of the civil settlement structure of the 2011 OVDI be a disadvantage for the taxpayer?*		*The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income and assume a voluntary disclosure started in January 2012 for a voluntary disclosure period of 2003 through 2010.* *Example 6 — Large Unreported Gain* *The taxpayer, a U.S. citizen, opened a checking account in Country A in 2008 with funds upon which U.S. taxes were previously paid. The taxpayer discloses that he had failed to report the sale, in 2008, of an apartment building in Country A that he owned. The apartment building was valued at $10 million and the taxpayer's unreported gain on the sale was $6 million. The related tax deficiency was $2,100,000. The taxpayer deposited the entire $10 million, from the sale, in the checking account with the foreign bank. $10 million represented the highest balance in the foreign checking account during the year and was the balance in the account as of June 30 of the following year, the date that an FBAR was due.* *The apartment building that was sold was held in a foreign trust that was a grantor trust (with the taxpayer as the grantor). The taxpayer established the trust in 2008, just prior to the sale of the apartment building, and transferred the building to the trust. The taxpayer did not*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
				file a Form 3520 to report the creation of the trust and the transfer of property into the trust.

The Offshore Penalty under OVDP will be $2,750,000 (i.e., 27.5% of $10 million). The taxpayer would also be required to pay the $2,100,000 tax deficiency, interest, and a 20% accuracy-related penalty. A 20% penalty on a $2,100,000 deficiency is $420,000.

If the taxpayer elected to opt out, he could face an FBAR penalty with respect to the 2008 calendar year of $5,000,000 (i.e., a 50% willful FBAR penalty on the balance in the checking account as of June 30, the date that the FBAR was due). Taxpayer will also owe tax, penalties, and interest with respect to the $2,100,000 deficiency. The taxpayer would also be subject to FBAR penalties for all other open years, if the aggregate balance in the checking account exceeded $10,000 during each year.

Upon examination, the revenue agent may determine that the nonreporting was due to fraud. In that case, the civil fraud penalty on the $2.1 million tax deficiency attributable to fraud would be $1,575,000 (i.e., 75% of $2,100,000).

	Civil Settlement Structure	*Opt out and 1 year willful FBAR penalty*	*Opt out and assume the civil fraud penalty applied*
Income Tax Due (not including interest	*$2,100,000*	*$2,100,000*	*$2,100,000*
20% Accuracy-related penalty	*$420,000*	*$420,000*	*0*
27.5% Offshore Penalty	*$2,750,000*	*0*	*0*
Civil Fraud Penalty	*0*	*0*	*$1,575,000*
§6677 Penalty	*0*	*$3,500,000*	*$3,500,000*
Total	*$5,270,000*	*$11,020,000*	*$12,175,000*

The IRC § 6677 penalty for failing to file the Form 3520 information return would be an additional $3.5 million (i.e., 35% of $10 million).

Example 7 — Civil Fraud Penalty Warranted

In 2002, Taxpayer sold a building located in Country X for $400,000 short term capital gain, which he intentionally failed to report on his 2002 Form 1040. Assume the taxpayer's basis in the building was zero. He deposited the sales proceeds in an offshore account with a bank located in Country Y. The account with the bank in

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

<table>
<tr><th>#</th><th>Questions (2014 OVDP FAQ)</th><th>Questions (2012 OVDP FAQ)</th><th>Answers (2014 OVDP FAQ)</th><th>Answers (2012 OVDP FAQ)</th></tr>
<tr><td></td><td></td><td></td><td></td><td>
<p>Country Y is in the name of a trust the taxpayer established in Country Z in 2000. The account earned $12,000 in interest each year from 2003 through 2010. The taxpayer closed the account with the bank in Country Y in 2010 and brought the funds back into the United States, disguising the funds as a loan from an allegedly unrelated entity.</p>
<p>The highest balance in the foreign account was $496,000. The Offshore Penalty under OVDP is $136,400 (i.e., 27.5% of $496,000). The total of the tax deficiencies for the years 2002 through 2010 was $173,600. This consisted of a tax deficiency of $140,000 for the 2002 year (for the unreported gain of $400,000) and a total of $33,600 for the tax years 2003 through 2010 (for the unreported interest income). The 75% civil fraud penalty would otherwise apply with respect to the related tax deficiencies. There is no statute of limitations for assessments of tax attributable to fraud.</p>
<p>The total of the IRC § 6677 penalty for failing to file a Form 3520 to report the $400,000 transfer to the account (35% of $400,000) and the failure to file Forms 3520-A (5% of the $400,000 plus the interest income added each year) was $495,200.</p>
<p>The statute of limitations for assessing FBAR penalties for willful violations in each year is open for the 2005 through 2010 calendar years. The total amount of willful FBAR penalties that may be assessed is $1,398,000 (50% of the balance in the account for each year, including the $12,000 in interest income added to the account each year).</p>
<table>
<tr><th></th><th>Civil Settlement Structure</th><th>Opt out and 8 years §6677 penalty and 6 years FBAR Penalty</th></tr>
<tr><td>Income Tax Due (not including interest</td><td>$33,600</td><td>$173,600</td></tr>
<tr><td>75% Civil Fraud Penalty</td><td>0</td><td>$130,200</td></tr>
<tr><td>20% Accuracy-related penalty</td><td>$5,040</td><td>0</td></tr>
<tr><td>27.5% Offshore Penalty</td><td>$136,400</td><td>0</td></tr>
<tr><td>§6677 Penalty</td><td>0</td><td>$495,200</td></tr>
<tr><td>FBAR Penalty</td><td>0</td><td>$1,398,000</td></tr>
<tr><td>Total</td><td>$175,040</td><td>$2,197,000</td></tr>
</table>
</td></tr>
<tr><td>51.3</td><td>If I opt out of the OVDP and undergo a regular examination, is there a chance my case could be referred back</td><td>If I opt out of the OVDP and undergo a regular examination, is there a chance my case could be referred back</td><td>Yes. Criminal Investigation's Voluntary Disclosure Practice provides a recommendation that you not be prosecuted for violations up to the date of your disclosure. If your disclosure is ultimately determined to have not been complete, accurate, and truthful, or if you commit a crime after the date of your voluntary disclosure, you are potentially subject to penalties and prosecution.</td><td>Yes. Criminal Investigation's Voluntary Disclosure Practice provides a recommendation that you not be prosecuted for violations up to the date of your disclosure. If your disclosure is ultimately determined to have not been complete, accurate, and truthful, or if you commit a crime after the date of your voluntary disclosure, you are potentially subject to penalties and prosecution.</td></tr>
</table>

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
	to Criminal Investigation for penalties or prosecution?	to Criminal Investigation for penalties or prosecution?		
52.	Deleted. If you have circumstances covered by former FAQ 52, you should not use OVDP and should see section 2 of the ''Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets.''	*Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 5 percent offshore penalty?*		*Unless the taxpayer would owe a lesser amount under FAQ 50, taxpayers making voluntary disclosures who fall into one of the three categories described below will qualify for a 5 percent offshore penalty. Examiners have no authority to negotiate a different offshore penalty percentage.* 1. *Taxpayers who meet all four of the following conditions: (a) did not open or cause the account to be opened (unless the bank required that a new account be opened, rather than allowing a change in ownership of an existing account, upon the death of the owner of the account); (b) have exercised minimal, infrequent contact with the account, for example, to request the account balance, or update accountholder information such as a change in address, contact person, or email address; (c) have, except for a withdrawal closing the account and transferring the funds to an account in the United States, not withdrawn more than $1,000 from the account in any year for which the taxpayer was non-compliant; and (d) can establish that all applicable U.S. taxes have been paid on funds deposited to the account (only account earnings have escaped U.S. taxation). For funds deposited before January 1, 1991, if no information is available to establish whether such funds were appropriately taxed, it will be presumed that they were.* *Example 1: When the taxpayer's father died, the taxpayer inherited two offshore accounts. His father's last deposit to the accounts was more than 30 years ago. The taxpayer provided his email address to the bank to receive bank statements by email and indicated an investment approach as required by the bank to open the account in the taxpayer's name. Twice he has been to the foreign jurisdiction and talked to a banker— during one of those visits he withdrew $1,000 from one of the accounts. Otherwise, he did not withdraw any money from the accounts until last year, when he closed the accounts and repatriated the money to a U.S. bank. He never reported earnings on the accounts on his U.S. tax returns and he never filed an FBAR. He is entitled to the reduced 5% offshore penalty. Example 2: The facts are the same as in example 1, except that $40,000 of the funds were deposited to one of the accounts in 1995. The taxpayer would have to identify the source of the deposit and, if the source was taxable in the U.S., prove that U.S. income tax was paid on those funds. In the absence of such proof, the taxpayer is not entitled to the reduced 5% offshore penalty. Example 3: The facts are the same as in example 1, except that subsequent to opening the account, the taxpayer voluntarily provided instructions to the bank concerning the investment of funds. The taxpayer is not entitled to the reduced 5% offshore penalty.* 2. *Taxpayers who are foreign residents and who were unaware they were U.S. citizens.* *Example 1: The taxpayer was born in the U.S. to parents*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
				of foreign citizenship. She grew up in a foreign jurisdiction, unaware that she had been born in the U.S. She has a $60,000 account in the foreign jurisdiction. She has never filed U.S. returns or FBARs. She became aware she was a U.S. citizen when she had to get a birth certificate in order to obtain a passport from the foreign jurisdiction where she resides. Unless she decides to opt out, she is entitled to the reduced 5% offshore penalty. Subsequent to learning of her U.S. citizenship, taxpayer took no action with respect to her foreign accounts that would disqualify a U.S. taxpayer from the 5 percent penalty under paragraph 1, above. Also see FAQ 51.1 Examples 4 and 5. *Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine if they qualify for the new compliance procedures. Example 2: The facts are the same as in example 1, except that the taxpayer always knew she was a U.S. citizen and never inquired about her U.S. tax obligations. The taxpayer is not entitled to the reduced 5% offshore penalty, unless she qualifies under paragraph 1 or 3. Also see FAQ 51.1 Examples 4 and 5.* *Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine if they qualify for the new compliance procedures.* 3. *Taxpayers who are foreign residents and who meet all three of the following conditions for all of the years of their voluntary disclosure: (a) taxpayer resides in a foreign country; (b) taxpayer has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency; and (c) taxpayer has $10,000 or less of U.S. source income each year. For these taxpayers only, the offshore penalty will not apply to non-financial assets, such as real property, business interests, or artworks, purchased with funds for which the taxpayer can establish that all applicable taxes have been paid, either in the U.S. or in the country of residence. This exception only applies if the income tax returns filed with the foreign tax authority included the offshore-related taxable income that was not reported on the U.S. tax return.* *Example 1: The taxpayer is a U.S. citizen who has lived and worked as a corporate executive in Country X since 1995. His income has included earnings in excess of $250,000 in each year, as well as bank interest and investment income on financial accounts that had a high aggregate balance of $1.2 million in 2009. He has paid all required taxes on his earnings and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States. In addition to his financial accounts, the taxpayer has acquired a personal residence in Country X with an equity of $900,000 and an automobile worth $85,000, both financed with previously taxed savings from the U.S., as well as his salary and investment earnings in Country X.* *Because the taxpayer was fully tax compliant in Country X, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $60,000.*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
				The residence and automobile will not be included in the penalty base because the funds used to acquire them were fully taxed in the Country X. *Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine if they qualify for the new compliance procedures. Example 2: The taxpayer is a U.S. citizen who has lived in Country X since 1995. He is an entrepreneur who developed his own software business, which he operated as a wholly owned corporation, ABC Corp., incorporated in Country X, until he took the corporation public in 2005. After the IPO, the taxpayer sold ABC stock at a capital gain of $5 million, and retained other ABC stock with a market value of approximately $20 million. He used $2 million of the stock proceeds to purchase a personal residence and put the remainder in his investment accounts. His income has included salary exceeding $250,000 in each year, the $5 million capital gain in 2005, and bank interest and investment income on financial accounts that had a high aggregate balance of $3.8 million in 2009. He has paid all required taxes on his earnings, capital gain, and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States.* *Because the taxpayer was fully tax compliant in the country of residence, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $190,000. The ABC stock and the personal residence will not be included in the penalty base because the funds used to acquire them were fully taxed in the country of residence.* *Non-resident taxpayers should also review the New Filing Compliance Procedures for Non-Resident U.S. Taxpayers to determine if they qualify for the new compliance procedures.*
53.	Deleted. If you have circumstances covered by former FAQ 53, you should not use OVDP and should see section 2 of the "Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets."	*Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 12.5 percent offshore penalty?*		*Unless the taxpayer qualifies for a lesser payment as calculated under FAQ 50 or a 5 percent offshore penalty under FAQ 52, taxpayers whose highest aggregate account balance (including the fair market value of assets in undisclosed offshore entities and the fair market value of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income) in each of the years covered by the OVDP is less than $75,000 will qualify for a 12.5 percent offshore penalty. As in other cases, examiners have no authority to negotiate a different offshore penalty percentage.* *Example 1: The taxpayer was born in a foreign jurisdiction and is now a U.S. citizen. He has a landscaping business in the U.S. He sends money to an account in the foreign jurisdiction that he owns jointly with his mother (who is a resident of that jurisdiction). The account never has more than $75,000 in it. He has never filed an FBAR or paid U.S. tax on the earnings from the account. He is entitled to the reduced 12.5% offshore penalty. The result would be the same for taxpayers who are U.S. citizens by birth. Example 2: The facts are the same as in example 1, except that the taxpayer made a deposit to the account in 2005 that briefly brought the account balance to $78,000. Because the highest account balance during the years covered by the OVDP was greater than $75,000, the taxpayer is not entitled to the reduced 12.5% offshore penalty.*

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs ***(continued)***

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
54.	I have a Canadian registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or other similar Canadian plan. I did not make a timely election pursuant to Article XVIII(7) of the U.S.-Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed, but I would now like to make an election. What should I do?	I have a Canadian registered retirement savings plan (RRSP), registered retirement income fund (RRIF), or other similar Canadian plan. I did not make a timely election pursuant to Article XVIII(7) of the U.S.-Canada income tax treaty to defer U.S. income tax on income earned by the RRSP or RRIF that has not been distributed, but I would now like to make an election. What should I do?	**Taxpayers** should provide the following information (see FAQ 7): • A statement requesting an extension of time to make an election to defer income tax • Forms 8891 for each of the tax years and type of plan covered under the voluntary disclosure • A dated statement signed by the taxpayer under penalties of perjury describing: – Events that led to the failure to make the election – Events that led to the discovery of the failure – If the taxpayer relied on a professional advisor, the nature of the advisor’s engagement and responsibilities **Taxpayers whose cases previously** have been resolved and closed with a Form 906 closing agreement who believe that the account balance of the RRSP or RRIF was included in the calculation of the miscellaneous Title 26 offshore penalty and would now like to make an election should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the examiner assigned to their case, and a copy of the closing agreement. This information should be sent to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 Attn: OVDP Determination Upon receipt of this information, the case will be assigned to an examiner. The examiner will provide the taxpayer with further instructions on making the election. Making this election does not preclude an OVDP participant from electing to opt out of the civil settlement structure of the program.	*The answer depends upon whether you are participating in the OVDP announced by the IRS on January 9, 2012, the 2011 OVDI, or the 2009 OVDP.* *Taxpayers who are participating in the OVDP announced by the IRS on January 9, 2012,* should provide the following information (see FAQ 7): • A statement requesting an extension of time to make an election to defer income tax • Forms 8891 for each of the tax years and type of plan covered under the voluntary disclosure • A dated statement signed by the taxpayer under penalties of perjury describing: – Events that led to the failure to make the election – Events that led to the discovery of the failure – If the taxpayer relied on a professional advisor, the nature of the advisor’s engagement and responsibilities *Taxpayers who are participating in the 2011 OVDI should wait until they are contacted by an examiner about their case. Once they are contacted, they should inform the examiner of their desire to make an election and provide the examiner the information listed above. Taxpayers who participated in the 2009 OVDP whose cases have not been resolved and closed with a Form 906 closing agreement should inform the examiner working their case of their desire to make an election and provide the examiner the information listed above. Taxpayers who participated in the 2009 OVDP whose cases* have been resolved and closed with a Form 906 closing agreement who believe that the account balance of the RRSP or RRIF was included in the calculation of the miscellaneous Title 26 offshore penalty and would now like to make an election should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the examiner assigned to their case, and a copy of the closing agreement. This information should be sent to: Internal Revenue Service 3651 S. I H*i* 35 Stop 4301 AUSC Austin, TX 78741 Attn: *2009* OVDP Determination Upon receipt of this information, the case will be assigned to an examiner. The examiner will provide the taxpayer with further instructions on making the election. Making this election does not preclude an OVDP participant from electing to opt out of the civil settlement structure of the program.
54.1	If my election is granted, will the RRSP or RRIF balance be included in the offshore penalty base?	If my election is granted, will the RRSP or RRIF balance be included in the offshore penalty base?	No.	No.

Appendix B. Side-by-Side Comparison of the 2012 and 2014 IRS Offshore Disclosure Program FAQs *(continued)*

#	Questions (2014 OVDP FAQ)	Questions (2012 OVDP FAQ)	Answers (2014 OVDP FAQ)	Answers (2012 OVDP FAQ)
55.	I have a retirement or pension plan in a foreign country (other than a plan described in FAQ 54) that I do not believe should be included in the offshore penalty base. What should I do?	I have a retirement or pension plan in a foreign country (other than a plan described in FAQ 54) that I do not believe should be included in the offshore penalty base. What should I do?	If you have a retirement or pension plan in a foreign country (other than a plan described in FAQ 54) for which you believe there is no U.S. reporting requirement and that you believe should not be included in the offshore penalty base, you should contact the OVD**P** hotline at **1-**267**-**941-0020.	If you have a retirement or pension plan in a foreign country (other than a plan described in FAQ 54) for which you believe there is no U.S. reporting requirement and that you believe should not be included in the offshore penalty base, you should contact the OVD*I* hotline at *(*267*)* 941-0020.