



IRS releases draft Form W-9 requester instructions

Global Information Reporting

Updated [Instructions for the Requester of Form W-9](#) were released in draft on December 21, 2023. These instructions clarify the requirements for new Line 3b, included in the draft Form W-9, *Request for Taxpayer Identification Number and Certification*, published on July 26, 2023, as well as guidance on Line 3a and other updates related to section 1446.

It is important to note that a new version of Form W-9 has not yet been finalized to account for the changes to the instructions. The newest draft Form W-9 on the IRS website similarly has not yet been updated to account for these changes, and therefore the expectation is for a new draft Form W-9 to be released to accommodate these updates to the requester instructions.

The updated instructions make clear that for the new draft Form W-9, the new Line 3b box is only required to be checked when such partnership, trust, or estate is furnishing the Form W-9 to a flowthrough entity in which it owns an interest, meaning a Form W-9 requester structured as a flowthrough entity must require Line 3b only from its owners (not account holders) that are flowthrough entities. As added to the new draft Form W-9, new Line 3b states the following: “If you checked ‘Partnership’ or ‘Trust/estate’ on line 3a (and you are providing this form to a partnership, trust, or estate), check this box if you have any foreign partners, owners, or beneficiaries.” This box allows partnerships (including LLCs classified as partnerships), trusts, and estates to indicate that they have foreign partners, owners, or beneficiaries. The requester can rely on this information unless the requester knows that the information is incorrect. The instructions note that a checked box 3b could indicate that a partnership that is the requester may be required to complete Schedules K-2 and K-3 (Form 1065).

Further updates were made to the requester instructions to provide clarification on a number of points. The instructions were updated to assist

disregarded entities in filling out the form by specifying that information for disregarded entities is reported as the owner's name on Line 1, and the disregarded entity's name is entered on Line 2. The instructions clarify that the US owner of a disregarded entity must provide the Form W-9, not the disregarded entity. Similarly, a US grantor or other US owner of a grantor trust must provide the Form W-9, and not the trust. However, for a non-grantor trust, the US trust must provide the Form W-9, not the beneficiaries. Finally, Line 3a allows a *regarded* LLC to identify its tax characterization (as a C corporation, S corporation, or partnership).

In addition to this clarifying guidance, the instructions were updated to reflect the legislative and regulatory changes related to section 1446. Specifically, the instructions now describe how a presumption of foreign status applies for section 1446(f) if a properly completed and signed Form W-9 is not received. However, the payee can instead provide an affidavit stating, under penalty of perjury, the transferor's US TIN and that the transferor is not a foreign person to avoid withholding under section 1446(f). The instructions also note the expansion to the section 1446(a) regulations that allow certain entities to act as nominees for publicly traded partnership (PTP) distributions.

The instructions include references to the updated qualified intermediary (QI) agreement outlined in Rev. Proc. 2022-43. The instructions clarify that a payee is the holder of the account unless there is a QI, or a foreign person acting as agent or intermediary for a payment, who can transmit the Form W-9 to the payor. As part of their agreement, a QI must provide a withholding agent with the Forms W-9, or disclose the names, addresses, and taxpayer identifying numbers of US non-exempt recipients for whom the QI receives reportable amounts.

Finally, the instructions clarify that a US branch of a foreign person (treated as a US person under Treas. Reg. § 1.1441-1(b)(2)(iv)) or a foreign branch of a US financial institution that is a QI does not provide a Form W-9.

Get in touch

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