

**Joint Statement**  
**between the U.S. Department of Justice**  
**and**  
**the Swiss Federal Department of Finance**

1. The United States Department of Justice has been and continues to be engaged in law enforcement action against individuals and entities that use foreign bank accounts to evade U.S. taxes and reporting requirements, and individuals and entities that facilitate the evasion of U.S. taxes and reporting requirements. In announcing today the Program for Swiss banks the Department of Justice intends to provide a path for Swiss Banks that are not currently the target of a criminal investigation authorized by the U.S. Department of Justice, Tax Division, to obtain resolution concerning their status in connection with the Department's overall investigations, and to assist the Department of Justice in its law enforcement efforts. The Program does not apply to individuals and is not available to any Swiss bank as to which the Tax Division has authorized a formal criminal investigation concerning its operations.
2. Switzerland welcomes the efforts of the Department of Justice to provide the Program and intends to draw the attention of the Swiss Banks to the terms of the Program and encourages them to consider participating therein. Switzerland notes that the Swiss Parliament by Declaration of 19 June 2013 stated its expectation that the Swiss Federal Council will take all measures within existing legal framework to put Swiss banks in a position to cooperate with the Department of Justice. Switzerland represents that applicable Swiss law will permit effective participation by the Swiss Banks on the terms set out in the Program.
3. The signatories take note that the Swiss Financial Market Supervisory Authority intends to encourage, within its supervisory powers, all Swiss Banks to send a letter to U.S. Persons or Entities with U.S. Related Accounts at those Swiss Banks informing them of the Program and drawing their attention to the Internal Revenue Service Offshore Voluntary Disclosure Initiative.
4. Switzerland intends to process treaty requests according to the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, and the Protocol Amending the Convention, signed at Washington on September 23, 2009, if and when it is in force and applicable, as may be amended, and intends to do so on an expedited basis, including by providing additional personnel and the other necessary resources to process the requests.
5. Noting the importance attached by both sides to providing a high level of personal data and privacy protection for all individuals as provided in their laws, the signatories understand that, if personal data are provided, they should only be used for purposes of law enforcement (which may include regulatory action) in the United States or as otherwise permitted by U.S. law. Personal data should only be retained for so long as necessary for these purposes.

6. The signatories intend to resolve any difficulties or doubts arising from this Joint Statement by way of consultations.

Signed at Washington, D.C., this 29th day of August, 2013, in duplicate in English.

A handwritten signature in black ink, appearing to read 'J. M. Cole', written over a horizontal line.

JAMES M. COLE  
Deputy Attorney General  
United States Department of Justice

A handwritten signature in black ink, appearing to read 'M. Sager', written over a horizontal line.

MANUEL SAGER  
Ambassador Extraordinary  
and Plenipotentiary of  
Switzerland to the United States

**PROGRAM FOR NON-PROSECUTION  
AGREEMENTS OR NON-TARGET LETTERS FOR SWISS BANKS**

**I. Scope and Definitions**

**A. Scope of the Program**

This Program is available to any Swiss Bank

1. requesting a Non-Prosecution Agreement on the terms set out in Paragraph II, below (Category 2 Bank);
2. requesting a Non-Target Letter on the terms set out in Paragraph III, below (Category 3 Bank); or
3. requesting a Non-Target Letter on the terms set out in Paragraph IV, below (Category 4 Bank).

This Program does not apply to individuals and shall not be available to any Swiss Bank as to which the Tax Division has authorized a formal criminal investigation concerning its operations (Category 1 Bank) as of the date of the announcement of this Program. All Category 1 Banks either have already been notified that the Tax Division has authorized a formal criminal investigation concerning its operations, or will be so notified through its counsel by certified mail issued in conjunction with the announcement of this Program.

**B. Definitions**

1. "Department" means the United States Department of Justice.
2. "Tax Division" means the Tax Division of the United States Department of Justice.
3. "FATCA Agreement" means the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA signed on February 14, 2013.<sup>1</sup>
4. "Swiss Bank" has the same meaning as the term "Swiss Financial Institution" in the FATCA Agreement, except that it shall exclude any "Investment Entity" or "Specified Insurance Company" that does not independently meet the definition of "Custodial Institution" or "Depository Institution."
5. "FFI Agreement" has the same meaning as in the FATCA Agreement.

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<sup>1</sup> References to the FATCA Agreement are for definitional purposes only and apply for the purpose of this Program without regard to any subsequent amendments to the FATCA Agreement and regardless of whether or when the FATCA Agreement is ratified or becomes effective.

6. "Applicable Period" shall mean the period between August 1, 2008, and either (a) the later of December 31, 2014, or the effective date of an FFI Agreement, or (b) the date of the Non-Prosecution Agreement or Non-Target Letter, if that date is earlier than December 31, 2014, inclusive.
7. "U.S. person" has the same meaning as in the FATCA Agreement.
8. "Entity" has the same meaning as in the FATCA Agreement.
9. "U.S. Related Accounts" means accounts which exceeded \$50,000 in value at any time during the Applicable Period, as measured by the account balance on the last day of each month during the Applicable Period, and as to which indicia exist that a U.S. Person or Entity has or had a financial or beneficial interest in, ownership of, or signature authority (whether direct or indirect) or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) over the account, as determined by applying the due diligence procedures applicable to "Lower Value Accounts" in the FATCA Agreement, Annex I, Part II, for accounts with \$250,000 or less in value at all times during the Applicable Period, and by applying the due diligence procedures applicable to "High-Value Accounts" in the FATCA Agreement, Annex I, Part II, for accounts with more than \$250,000 in value at any time during the Applicable Period, notwithstanding the amounts and dates set out in the FATCA Agreement, Annex I, Part II.
10. "Independent Examiner" means a qualified independent attorney or accountant; the Tax Division reserves the right to object to a particular attorney or accountant, but will not unreasonably withhold approval.
11. "Non-Target Letter" means a letter from the Tax Division stating that, as of the date of the letter and based upon information then known to the Tax Division, the Swiss Bank to which the letter is addressed is not the target of a criminal investigation authorized by the Tax Division for violations of any tax-related offenses under Titles 18 or 26, United States Code, or for any unreported monetary transactions under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period.

## **II. Swiss Banks Requesting A Non-Prosecution Agreement (Category 2 Banks)**

### **A. Any Swiss Bank**

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of August 29, 2013 (i.e., that is not a Category 1 Bank);
2. that is not a Category 4 Bank; and

3. that has reason to believe it may have committed tax-related offenses under Titles 18 or 26, United States Code, or monetary transactions offenses under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period,

may request a Non-Prosecution Agreement (“NPA”) on the terms set out in Paragraphs II.B through K, below.

- B. Each Swiss Bank requesting an NPA must provide a letter to the Tax Division, expressing its intent, no later than December 31, 2013. The letter must:
  1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;
  2. provide the identity and qualifications of the Independent Examiner;
  3. state that the Swiss Bank will maintain all records required for compliance with the terms of an NPA as set out in this Program, including all records that may be sought by treaty requests; and
  4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of an NPA or a DPA.

If such Bank is not able to comply with the requirements set out in this Program within 120 days from the date of the letter of intent, the Tax Division will grant a one-time extension of 60 days upon a showing of good cause.

- C. If the Tax Division concludes that a Swiss Bank has met all obligations set forth in the NPA, the Department will not prosecute the Swiss Bank for any tax-related offenses under Titles 18 or 26, United States Code, or for any unreported monetary transactions under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period.
- D. Each Swiss Bank requesting an NPA must fully cooperate in the disclosure of the following evidence and information.
  1. Prior to the execution of an NPA, the Swiss Bank must provide information including:
    - a. how the cross-border business for U.S. Related Accounts was structured, operated, and supervised (including internal reporting and other communications with and among management);

- b. the name and function of the individuals who structured, operated, or supervised the cross-border business for U.S. Related Accounts during the Applicable Period;
  - c. how the Swiss Bank attracted and serviced account holders;
  - d. an in-person presentation and documentation, properly translated, supporting the disclosure of the above information, as well as cooperation and assistance with further explanation of information and materials so presented, upon request, or production of additional explanatory materials as needed; and
  - e. the total number of U.S. Related Accounts and the maximum dollar value, in the aggregate, of the U.S. Related Accounts that:
    - i. existed on August 1, 2008;
    - ii. were opened between August 1, 2008, and February 28, 2009; and
    - iii. were opened after February 28, 2009.
2. Upon execution of an NPA, for all U.S. Related Accounts that were closed during the Applicable Period, the Swiss Bank must provide information including:
- a. the total number of accounts; and
  - b. as to each account:
    - i. the maximum value, in dollars, of each account, during the Applicable Period;
    - ii. the number of U.S. persons or entities affiliated or potentially affiliated with each account, and further noting the nature of the relationship to the account of each such U.S. person or entity or potential U.S. person or entity (e.g., a financial interest, beneficial interest, ownership, or signature authority, whether directly or indirectly, or other authority);
    - iii. whether it was held in the name of an individual or an entity;
    - iv. whether it held U.S. securities at any time during the Applicable Period;
    - v. the name and function of any relationship manager, client advisor, asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other individual or entity functioning in a similar capacity known by the Bank to be affiliated with said account at any time during the Applicable Period; and
    - vi. information concerning the transfer of funds into and out of the account during the Applicable Period on a monthly basis, including (a) whether

funds were deposited or withdrawn in cash; (b) whether funds were transferred through an intermediary (including but not limited to an asset manager, financial advisor, trustee, fiduciary, nominee, attorney, accountant, or other third party functioning in a similar capacity) and the name and function of any such intermediary; (c) identification of any financial institution and domicile of any financial institution that transferred funds into or received funds from the account; and (d) any country to or from which funds were transferred.

3. Prior to the execution of an NPA, the Swiss Bank will, at its expense, have the information described in Paragraph II.D.2, above, verified by an Independent Examiner. The verification will include a statement that the Independent Examiner has confirmed that the due diligence standards set out in Paragraph I.B.9, above, were applied in collecting the information described in Paragraph II.D.2, above.
4. As a condition of any NPA, the Swiss Bank will provide all necessary information for the United States to draft treaty requests to seek account information; such cooperation will include but not be limited to the development of appropriate search criteria.
5. As a condition of any NPA, the Swiss Bank will collect and maintain all records that are potentially responsive to such treaty requests to facilitate prompt responses.

E. Retention of records

The terms of an NPA will include that the Swiss Bank agrees to retain all records relating to its U.S. cross-border business, including records relating to all U.S. Related Accounts closed during the Applicable Period, for a period of 10 years from the termination date of the NPA.

F. Assistance in Related Matters

The terms of an NPA will include that the Swiss Bank, upon request, will provide:

1. testimony of a competent witness or information as needed to enable the United States to use the information and evidence obtained pursuant to a provision of this Program or separate treaty request in any criminal or other proceeding; and
2. assistance in identification and translation of significant documents at the expense of the Swiss Bank.

G. Closure of Accounts of Recalcitrant Account Holders

The terms of an NPA will provide that the Swiss Bank agrees to close any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the U.S. Internal Revenue Code. The terms of the NPA will require that the Swiss Bank

implement procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds. The terms of the NPA will also provide that the Swiss Bank agrees not to open any U.S. Related Accounts (as defined in Paragraph I.B.9, above, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by the Swiss Bank.

#### H. Payment

Upon execution of an NPA, the Swiss Bank will agree to pay as a penalty:

1. for U.S. Related Accounts that existed on August 1, 2008, an amount equal to 20% of the maximum aggregate dollar value of all such accounts during the Applicable Period;
2. for U.S. Related Accounts that were opened between August 1, 2008, and February 28, 2009, an amount equal to 30% of the maximum aggregate dollar value of all such accounts; and
3. for U.S. Related Accounts that were opened after February 28, 2009, an amount equal to 50% of the maximum aggregate value of all such accounts.

The determination of the maximum dollar value of the aggregated U.S. Related Accounts may be reduced by the dollar value of each account as to which the Swiss Bank demonstrates, to the satisfaction of the Tax Division, was not an undeclared account, was disclosed by the Swiss Bank to the U.S. Internal Revenue Service, or was disclosed to the U.S. Internal Revenue Service through an announced Offshore Voluntary Disclosure Program or Initiative following notification by the Swiss Bank of such a program or initiative and prior to the execution of the NPA.

- I. This Program sets out the framework for the proposed NPAs. Each NPA may take into account factors specific to the particular Swiss Bank.
- J. If the Department determines, in its sole discretion, that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, it may decline to enter into an NPA; or if after entering into an NPA, the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence, or has otherwise materially violated the terms of the NPA, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the NPA or this Program. For purposes of this provision, by executing the NPA, the Swiss Bank will agree that any prosecutions under statutes included in Paragraph II.C, above, that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree

that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

- K. If the Tax Division determines, upon review of the information provided by a Swiss Bank under Paragraph II.D, above, or other information available to the Tax Division, that the Swiss Bank's conduct demonstrates extraordinary culpability, the Tax Division reserves the right to require that the Swiss Bank enter a Deferred Prosecution Agreement ("DPA") instead of an NPA.

### **III. Swiss Banks Requesting A Non-Target Letter As A Category 3 Bank**

#### **A. Any Swiss Bank**

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of the date of this Program (i.e., that is not a Category 1 Bank);
2. that is not a Category 4 Bank; and
3. that has not committed any tax-related offenses under Titles 18 or 26, United States Code, or monetary transactions offenses under §§ 5314 or 5322, Title 31, United States Code, in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period (i.e., that is not a Category 2 Bank),

may request a Non-Target Letter on the terms set out in Paragraphs III.B through H, below.

- B. Each Swiss Bank requesting a Non-Target Letter as a Category 3 Bank must provide a letter to the Tax Division, expressing its intent no earlier than July 1, 2014 and no later than October 31, 2014. The letter must:
1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;
  2. provide the identity and qualifications of the Independent Examiner;
  3. state that the Swiss Bank will maintain all records required for compliance with the terms set out below; and
  4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of a Non-Target Letter.
- C. If a Swiss Bank, after having undertaken an investigation in a timely and good faith manner, belatedly determines, based on the discovery of information that in good faith could not have been discovered previously, that it should instead have requested an

NPA as a Category 2 Bank, the Tax Division may consider whether to enter into discussions with the Swiss Bank as if the Swiss Bank had timely requested an NPA under the terms of Paragraph II, above. A request for relief under this provision must be made before October 31, 2014. Relief will be granted at the sole discretion of the Tax Division, and only under extraordinary circumstances. Under no circumstances will such relief be considered if the Tax Division has authorized a formal criminal investigation concerning the operations of the Swiss Bank, or has received information concerning wrongful conduct by the Swiss Bank.

- D. A Swiss Bank requesting a Non-Target Letter under Paragraph III.B, above, must, at its expense, engage an Independent Examiner to conduct an independent internal investigation.
- E. At the conclusion of the independent internal investigation, the Swiss Bank and the Independent Examiner must:
  - 1. verify the percent of the Swiss Bank's account holdings and assets under management that are U.S. Related Accounts;
  - 2. verify that the Swiss Bank has an effective compliance program, accompanied by a description of the compliance program; and
  - 3. provide the Tax Division with a report of the Independent Examiner's internal investigation, prepared in English, that includes: (i) a list of the witnesses, including titles, interviewed by the Independent Examiner and a summary of the information provided by each witness; (ii) identification of the files reviewed by the Independent Examiner; (iii) the factual findings of the Independent Examiner; and (iv) the conclusions reached by the Independent Examiner.
- F. A Swiss Bank requesting a Non-Target Letter under Paragraph III.B, above, must agree:
  - 1. to maintain all notes, drafts, correspondence, reports, and other documents or records created or prepared in any manner by the Independent Examiner, or reviewed by or provided to the Independent Examiner, for a period of ten years from the date of the Non-Target Letter;
  - 2. to close any and all accounts of recalcitrant account holders, as defined in Section 1471(d)(6) of the U.S. Internal Revenue Code, and to implement procedures to prevent its employees from assisting recalcitrant account holders to engage in acts of further concealment in connection with closing any account or transferring any funds;
  - 3. not to open any U.S. Related Accounts (as defined in Paragraph I.B.9, above, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that will ensure that the account will be declared to the United States and will be subject to disclosure by the Swiss Bank; and

4. that, if the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence to the United States, or has otherwise materially violated the terms of any agreement with the United States, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the Non-Target Letter or this Program. For purposes of this provision, the Swiss Bank will agree that any prosecutions that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.
- G. Following the submission of the report of an Independent Examiner's internal investigation on the terms set out in Paragraph III.E.3, above:
1. The Tax Division may either (a) inform the Swiss Bank that the Swiss Bank is eligible for a Non-Target Letter as a Category 3 Bank or (b) seek additional information from the Swiss Bank prior to making its determination. The Tax Division may decline to provide a Non-Target Letter if the requested information is not provided.
  2. The Tax Division will endeavor to provide the determination or the request for information set out in Paragraph III.G.1, above, within a period of 270 days from receipt of the report of the Independent Examiner's internal investigation. Should the Tax Division seek additional information, the Tax Division will endeavor to provide a determination within 90 days of the receipt of all such additional information. If the Tax Division is unable to act within these time periods, the Tax Division will provide notice to the Swiss Bank of its expectation as to the additional time that will be needed to complete its review.
- H. The Tax Division may decline to provide a Non-Target Letter to any Swiss Bank if it determines that the Swiss Bank has failed to meet the standard set out in Paragraph III.A.3, above, or that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, or it has information that contradicts the verification or report of the Independent Examiner under Paragraph III.E, above, or that otherwise demonstrates criminal culpability by the Swiss Bank.

#### **IV. Swiss Banks Requesting A Non-Target Letter As A Category 4 Bank**

##### **A. Any Swiss Bank**

1. as to which the Tax Division has not authorized a formal criminal investigation concerning its operations as of the date of this Program (i.e., that is not a Category 1 Bank); and

2. that is a “Deemed Compliant Financial Institution” as a “Financial Institution with Local Client Base” under the FATCA Agreement, Annex II Paragraph II.A.1, as if the FATCA Agreement were in force during the Applicable Period (except that the Swiss Bank must meet the terms of Annex II, Paragraph II.A.1.e on December 31, 2009, and the date of the announcement of this Program),

may request a Non-Target Letter on the terms set out in Paragraphs IV.B through E, below.

- B. A Swiss Bank requesting a Non-Target Letter as a Category 4 Bank must provide a letter to the Tax Division, expressing its intent no earlier than July 1, 2014 and no later than October 31, 2014. The letter must:
  1. include a plan for complying with the requirements set out herein, within a reasonable time, but not to exceed 120 days from the date of the letter of intent;
  2. provide the identity and qualifications of the Independent Examiner;
  3. state that the Swiss Bank will maintain all records required for compliance with the terms set out below; and
  4. state that the Swiss Bank agrees that with respect to any applicable statute of limitations that has not expired as of the date of the announcement of this Program, the Bank waives any potential defense based on the statute of limitations for the period from the date of the announcement of this Program to the issuance of a Non-Target Letter.
- C. To obtain a Non-Target Letter as a Category 4 Bank, a Swiss Bank must:
  1. provide verification executed by the Swiss Bank and an Independent Examiner that it has satisfied the requirements of Paragraph IV.A, above;
  2. agree to maintain records sufficient to establish the basis for verification of its status as a Category 4 Bank for a period of ten years from the date of the Non-Target Letter; and
  3. agree that, if the Department, in its sole discretion, determines that the Swiss Bank has provided materially false, incomplete, or misleading information or evidence to the United States, or has otherwise materially violated the terms of any agreement with the United States, the United States may pursue any and all legal remedies available to it, including investigating and instituting criminal charges against the Swiss Bank, without regard to any other provision of the Non-Target Letter or this Program. For purposes of this provision, the Swiss Bank will agree that any prosecutions that are not time-barred by the applicable statute of limitations on the date of the announcement of the Program may be commenced against the Swiss Bank, and the Swiss Bank will agree to waive any defenses premised upon the expiration of the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay, and will

agree that such waiver is knowing, voluntary, and in express reliance upon the advice of the Swiss Bank's counsel.

- D. Upon acceptance of verification of a Swiss Bank's status as a Category 4 Bank by the Tax Division, and the agreement by the Swiss Bank to the terms set out in Paragraph IV.C, above, the Tax Division will provide the Swiss Bank with a Non-Target Letter.
- E. The Tax Division may decline to provide a Non-Target Letter if it determines that any information or evidence provided by the Swiss Bank is materially false, incomplete, or misleading, or if it has evidence that contradicts the verification of the Independent Examiner under Paragraph IV.C, above, or otherwise demonstrates criminal culpability by the Swiss Bank.

#### **V. Other Provisions**

- A. The Tax Division will not authorize formal criminal investigation of any additional Swiss Banks in connection with undeclared U.S. Related Accounts held by the Swiss Bank during the Applicable Period before January 1, 2014.
- B. The personal data provided by the Swiss Banks under this Program will be used and disclosed only for purposes of law enforcement (which may include regulatory action) in the United States or as otherwise permitted by U.S. law.
- C. This Program is conditioned on the intention of Switzerland, as stated in the Joint Statement between the U.S. Department of Justice and the Swiss Federal Department of Finance dated August 29, 2013, to encourage Swiss Banks to consider participation in the Program. Should Switzerland fail to provide or act to withdraw such encouragement, or should legal barriers prevent effective participation by the Swiss Banks on the terms set out in this Program, this Program may be terminated by the Department.

Announced on August 29, 2013.