



American Institute of CPAs  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1081

May 31, 2011

FinCEN  
Attention: Office of Regulatory Policy  
P.O. Box 39  
Vienna, VA 22183

RE: Request to Eliminate or Reduce Filing of FBAR for 2009 and Prior Years for Those with Signature Authority Over, but No Financial Interest in, a Foreign Bank or Financial Account

Dear Sir or Madam:

The American Institute of Certified Public Accountants (AICPA) requests guidance regarding the Report of Foreign Bank and Financial Account (FBAR), Form TD F 90-22.1, which is required under Title 31 of the U.S. Code (the Bank Secrecy Act, or BSA). Our comments focus on the urgent need for immediate guidance associated with the preparation of the FBAR due to be filed (received) by June 30, 2011 for a select group of filers. These comments were developed by the Foreign Bank and Financial Account Reporting Task Force (FBAR Task Force) of the AICPA's International Taxation Technical Resource Panel, and approved by the Tax Executive Committee.

The AICPA is the national professional organization of certified public accountants comprised of approximately 370,000 members. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

### **Request for Immediate Guidance**

We are requesting immediate guidance on the filing of all prior year FBARs with respect to individuals with signatory authority over, but no financial interest in, a foreign bank or financial account. These FBARs have been deferred from the June 30, 2010 and June 30, 2009 filing deadlines under Internal Revenue Service (IRS) Notice 2010-23 and Notice 2009-62. Many of these FBARs are due on June 30, 2011, as the Department of the Treasury (Treasury) and the

Financial Crimes Enforcement Network (FinCEN) have now finalized the new FBAR regulations.<sup>1</sup> The preamble to the regulations addresses FBAR filings that have been deferred pursuant to Notices 2010-23 and 2009-62 as follows:

Although this final rule is not retroactive, filers who properly deferred filing obligations pursuant to IRS Notice 2010-23 may, if they wish, apply the provisions of this final rule in determining their FBAR filing requirements for reports due June 30, 2011, with respect to foreign financial accounts maintained in calendar years beginning before 2010.

The new FBAR regulations provide persons with signature authority over, but no financial interest in, a foreign financial account for which an FBAR would otherwise have been due, except for deferrals provided for by Notices 2010-23 and 2009-62 (filers), the choice of: a) applying the definition of signatory contained in the former regulations and instructions, or b) applying the newly issued regulations and instructions in preparing filings now due June 30, 2011 pursuant to Notice 2010-23.

Given the rapidly approaching deadline and the analysis needed by filers to determine an appropriate filing or non-filing position we offer the following recommendations.

### **Preferred Recommendation**

We recommend that FinCEN waive all 2009 and prior year signatory FBAR filings that have been deferred under Notice 2010-23.

### **Alternative Recommendations**

However, if FinCEN chooses not to make such waiver, and in the event that FinCEN continues to require the filing of 2009 and prior year reporting for foreign financial accounts over which the person has signature authority, but no financial interest in (prior year signatory FBARs), we make the following alternative recommendations:

1. Limitation on prior year FBAR filings to 2008 and 2009

Due to the limited use of, and difficulty to collect, the necessary data, we recommend that FinCEN limit the filings of prior year signatory FBARs to 2008 and 2009. Thus, three years of FBARs (2008 through 2010) would be required to be filed.

2. Conform with the 2011 Offshore Voluntary Disclosure Initiative (OVDI) August 31, 2011 due date

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<sup>1</sup> FR Doc. 2011-4048.

In its 2011 OVDI, IRS provides in Q&A #17 that penalties will not be assessed for previously unfiled FBARs (in situations where the filer reported and paid tax on all their taxable income for prior years) if the delinquent FBARs are filed by August 31, 2011. We recommend that, to conform to IRS guidance, FinCEN adopt an August 31, 2011 due date for 2009 and prior year signatory FBAR filings that are now due at June 30, 2011 under Notice 2010-23.

3. Complete waiver due to hardship

We believe that there are situations in which the signatory no longer has access to the data needed to properly prepare prior year signatory FBARs. As an alternative to waiving prior year signatory FBAR filings entirely (which is our preference), we strongly recommend that FinCEN consider extending a hardship exception / waiver to the requirement to file for persons with signature authority over, but no financial interest in, a foreign financial account, for situations in which the signatory no longer has reasonable access to account data maintained by a former employer or similar circumstance. Some examples could also include minority shareholders in a business, a prior trustee, investment advisor, etc.

We recommend that such a hardship exception / waiver be a complete waiver for such signatory from filings of FBARs for all prior years (for 2009 and prior years).

In the interest of sound administration, we ask that FinCEN provide definitive guidance on prior year signatory FBARs as soon as practical, given the fast approaching June 30, 2011 deadline.

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We appreciate your consideration of our recommendations, and we welcome further discussion. If you have any questions, please contact Neil A.J. Sullivan, Chair, AICPA FBAR Task Force at (914) 713-0503, or [neilsullivan@att.net](mailto:neilsullivan@att.net); Joseph M. Calianno, Chair, AICPA International Taxation Technical Resource Panel at (202) 521-1505, or [joe.calianno@us.gt.com](mailto:joe.calianno@us.gt.com); or Michelle R. Koroghlanian, AICPA Technical Manager at (202) 434-9268, or [mkoroghlanian@aicpa.org](mailto:mkoroghlanian@aicpa.org).

Sincerely,



Patricia A. Thompson, CPA  
Chair, Tax Executive Committee

cc: Bill S. Bradley, FinCEN  
Jamal El-Hindi, FinCEN

Samuel Berman, IRS  
Rodney A. Lundquist, IRS