

# Proposed FBAR Regulations Expand Filing Exemption and Reporting Requirements

**March 10, 2016**

Untitled Document As reported in our prior client alerts,[\[1\]](#) the Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (FBAR), must be filed by a U.S. person that holds a financial interest in, or signature or other authority over, a foreign financial account if the aggregate value of all such U.S. person's foreign financial accounts exceeds \$10,000 at any time during the year. Proposed regulations would (i) expand and simplify the category of persons exempted from filing an FBAR who have signature or other authority over, but no financial interest in, a foreign financial account, (ii) eliminate the special reporting rule for persons with signature or other authority over, or a financial interest in, 25 or more financial accounts that allows such persons to not disclose information with respect to such accounts that filers with fewer than 25 accounts are required to report, and (iii) for 2016 onward, align the due date for FBAR reporting with the due date for filing individual income tax returns. These proposed regulations will not take effect until and unless they are adopted in final form. Until such time, the existing procedures for FBAR filings remain in effect.

In order to minimize uncertainty with respect to persons who had signature or other authority over, but no financial interest in, a foreign financial account until comprehensive FBAR guidelines could be released, the Internal Revenue Service issued notices in 2009, 2010, and 2011 granting filing extensions to such U.S. persons. These extensions expired on November 1, 2011.

Separately, the 2011 final FBAR regulations (initially proposed in 2010) expanded exemptions originally introduced as part of the FBAR form instructions (last modified in 2008) for certain U.S. persons with signature or other authority over, but no financial interest in, foreign financial accounts of certain types of federally regulated entities ("covered entities").[\[2\]](#)

Due to uncertainty about certain aspects of this exemption, FinCEN released numerous notices after the 2011 FBAR regulations became final that extended filing dates for certain persons not clearly exempted by the 2011 regulations.[\[3\]](#)

Proposed regulations promulgated by FinCEN on March 1, 2016[\[4\]](#) would expand and clarify the existing exemption for U.S. persons with signature or other authority, but no financial interest in, foreign financial accounts, and revise other FBAR filing requirements. Under the proposed regulations:

- Officers, employees, and agents of any U.S. entity, where that U.S. entity or any U.S. entity "within the same corporate or business structure" is required to report a foreign financial account on an FBAR are relieved of their own requirement to file an FBAR with respect to that account where the officer, employee or agent has signatory or other authority over, but no financial interest in, that account. FinCEN uses the term "agent" to more fully encompass all entities and individuals, such as authorized service providers and their employees. A U.S. entity is "within the same corporate or business structure" when it is an entity that is permitted to be reported together on a consolidated FBAR. Generally, an entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.
- The proposed regulations would significantly expand the 2011 exemption that only applied to "covered entities" and which did not clearly address instances in which employees had signature authority over accounts of covered entities or their controlled persons, other than their actual employer. See note 3, above.

However, it is important to note that the expanded exemption contained in the proposed regulations does not apply to a foreign financial account where neither the employer nor any other entity in the employer's corporate or business structure is required to report that account on an FBAR. This could occur, for example, in instances in which a U.S. person is employed by a non-U.S. entity with no FBAR obligation to report its foreign financial accounts, has signature or other authority over the account and the account is not otherwise included in an FBAR filing as the foreign entity is not included as a subsidiary of a U.S. entity that is filing an FBAR. In such a case, the U.S. person would have an obligation to report his or her signature or other authority over the non-U.S. entity's foreign financial accounts on an FBAR.

- In connection with the expanded exemption above, employers are required to maintain information identifying all officers, employees or agents with signature or other authority over, but no financial interest in, foreign financial accounts. Such records must be maintained for five years and made available to FinCEN or law enforcement on request.
- U.S. persons with a financial interest in, or signature authority over, 25 or more foreign financial accounts are no longer able to rely on a special rule exempting them from providing account information on each of their foreign financial accounts. Previously, such filers only needed to report the number of accounts and the filer's identifying information. Under the proposed regulations, such persons must report the same account information as filers with fewer than 25 accounts for all foreign financial accounts that must be included in their FBAR filings, e.g., where the exemption discussed above does not apply.

The FBAR for calendar year 2015 must be filed electronically by June 30, 2016. For calendar years 2016 and onward, the FBAR filing date will be the April 15 following the close of the calendar year. In addition, the proposed regulations provide taxpayers with the ability to request and be granted an extension for filing until October 15 of the following calendar year, although the procedure for requesting an extension has not yet been made available.

[1] June 16, 2011: ["Delayed FBAR Filing For Signatory Authority"](#) and March 14, 2011: ["FinCEN Issues Final Rules on FBAR."](#)

[2] The following federally regulated entities are considered "covered entities" for the purposes of the 2011 final regulations:

- bank examined by a Federal banking agency;
- a financial institution registered with and examined by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC);
- an authorized service provider with signature authority over a foreign financial account owned or maintained by an investment company registered with the SEC;
- an entity with a class of equity securities listed (or American depository receipts listed) on any U.S. national securities exchange ("listed corporation") or a U.S. subsidiary if the subsidiary is included in the consolidated report the parent filed; and
- an entity that has a class of equity securities registered (or American depository receipts registered) under section 12(g) of the Securities Exchange Act ("section 12(g) corporation").

[3] The notices granted extensions to (1) officers and employees of covered entities with signature or other authority over, but no financial interest in, a foreign financial account of a controlled person (a controlled person is a United States or foreign entity more than 50 percent owned, directly or indirectly, by a covered entity), (2) officers and employees of a controlled person of a covered entity with signature or other authority over, but no financial interest in, a foreign financial account of the entity, the controlled person, or another controlled person of the entity, and (3) officers and employees of investment advisors registered with the Securities and Exchange Commission with signature or other authority over, but no financial interest in, the foreign financial accounts of persons that are not registered investment companies.

[4] The proposed regulations are available, and an accompanying FinCEN press release is available.

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