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Extension of FBAR Filing Deadline for Certain Filers

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On December 20, 2019, the Financial Crimes Enforcement Network ("FinCEN") issued Notice 2019-1, extending the filing deadline for the Report of Foreign Bank and Financial Accounts, FinCEN Form 114 (FBAR), for certain individuals with signature or other authority over (but no financial interest in) employer-owned foreign financial accounts to April 15, 2021. FinCEN has provided similar extensions over the previous eight years.[1] This new extension applies to reporters with signatory authority during the 2019 calendar year and to those individuals whose reporting deadline was extended under prior notices (such as certain employees or officers of investment advisers registered with the U.S. Securities and Exchange Commission (SEC) who have signature authority over, but no financial interest in, certain foreign financial accounts).[2] All other filers must still file by April 15, 2020, although FinCEN will grant an automatic extension until October 15, 2020.

As reported in our prior client alerts,[3] the 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. FBAR proposed regulations released in March 2016 and referenced by Notice 2019-1 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 where another U.S. filer is filing an FBAR with respect to the same 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 FBAR proposed regulations will not take effect until and unless they are adopted in final form. [4] Until such time, the existing procedures for FBAR filings remain in effect, subject to the extension provided in Notice 2019-1.

Potential filers should note that the scope of individuals covered by Notice 2019-1 is broader than that of the FBAR proposed regulations. As described above, the FBAR proposed regulations exempt certain persons with signature or other authority over, but no financial interest in, certain foreign financial accounts from filing an FBAR only if another U.S. filer is filing an FBAR with respect to the same account. Under Notice 2019-1, however, these individuals are not obligated to file an FBAR, regardless of whether another U.S. filer is filing an FBAR with respect to the same account. It is unclear whether the final regulations, when issued, will only excuse an individual with signature or other authority over, but no financial interest in, a foreign financial account where another U.S. filer is filing an FBAR with respect to the same account or will eliminate this requirement to qualify for the exception. As a result, since Notice 2019-1 grants an extension only until 2021, employees of registered investment advisors with signature or other authority over, but no financial interest in, a non-U.S. account could have to file an FBAR if the FBAR proposed regulations are finalized in their current form.

[1] The previous 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.

[2] See Notices 2018-1, 2017-1, 2016-1, 2015-1, 2014-1, 2013-1, 2012-1, 2012-2, 2011-1 and 2011-2.

[3] June 16, 2011: “Delayed FBAR Filing For Signatory Authority” (http://www.proskauer.com/publications/client-alert/delayed-fbar-filing-for-signatory-authority) and March 14, 2011: “FinCEN Issues Final Rules on FBAR.” (http://www.proskauer.com/publications/client-alert/fincen-issues-final-rules-on-fbar).

[4] Beginning with the 2016 calendar year, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Pub. Law 114-41) aligned the due date for FBAR filings with the due date for filing individual income tax returns. Thus, the rule described in clause (iii) of the immediately preceding sentence is already in effect.

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