
IRS and FinCEN Extend FBAR Filing Deadline for Certain Officers and Employees with Signature Authority Only

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On May 31, 2011, the Internal Revenue Service and the Financial Crimes Enforcement Network ("FinCEN") announced that a small subset of individuals would be granted a one-year extension to file Reports of Foreign Bank and Financial Accounts ("FBARs"). The affected individuals are officers and employees with signature or other authority over, but no financial interest in, foreign financial accounts who, prior to the adoption of the final FBAR regulations on February 24, 2011 (the "Regulations"), were exempt from filing an FBAR for accounts that were reported on their employer's FBAR, assuming certain other conditions were met. FinCEN Notice 2011-1, which can be found [here](#), was issued in response to questions about whether the five FBAR filing exceptions provided in the Regulations for officers and employees of certain entities (the "Covered Entities") are also available to these individuals. The five exceptions are as follows:

1. An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Federal Reserve, the FDIC, or the National Credit Union Administration is not required to report signature authority over a foreign financial account owned or maintained by the bank.
2. An officer or employee of a financial institution that is registered with and examined by the SEC or CFTC is not required to report signature authority over a foreign financial account owned or maintained by the financial institution.

3. An officer or employee of an "authorized service provider" is not required to report signature authority over a foreign financial account that is owned or maintained by an investment company that is registered with the SEC. "Authorized service provider" means an entity that is registered with and examined by the SEC and provides services to an investment company registered under the Investment Company Act of 1940.
4. An officer or employee of an entity that has a class of equity securities listed (or ADRs listed) on any U.S. national securities exchange is not required to report signature authority over a foreign financial account of such entity.
5. An officer or employee of a U.S. subsidiary is not required to report signature authority over a foreign financial account of the subsidiary if its U.S. parent has a class of equity securities listed on any U.S. national securities exchange and the subsidiary is included in a consolidated FBAR report of the U.S. parent.

Under the Regulations, these exceptions do not exempt (i) officers and employees of a Covered Entity from filing an FBAR for foreign financial accounts held by the Covered Entity's **subsidiary** over which they have only signature or other authority, or (ii) officers and employees of a **subsidiary** with respect to foreign financial accounts held by the Covered Entity or another of its subsidiaries over which they have only signature or other authority. In order "to facilitate more accurate compliance" in light of the recent finalization of the Regulations, FinCEN Notice 2011-1 provides a one-year extension for FBAR reporting by these individuals, who are defined under the Notice as follows:

- An employee or officer of a Covered Entity who has signature or other authority over and no financial interest in a foreign financial account of a "controlled person" of the Covered Entity; and
- An employee or officer of a "controlled person" of a Covered Entity who has signature or other authority over and no financial interest in a foreign financial account of the Covered Entity, the "controlled person" or another "controlled person" of the Covered Entity.

A "controlled person" is defined as a U.S. or foreign entity that is more than 50% owned (directly or indirectly) by the Covered Entity.

While these individuals remain subject to FBAR reporting, their 2010 filing deadline is now June 30, 2012. The IRS and FinCEN declined to provide an extension to any other category of filer, who must file their 2010 FBARs by June 30, 2011.

Links to our prior Email Alerts on the FBAR are provided below.

[Investors in Offshore Funds May Have to File FBARs by June 30, 2009](#) (June 22, 2009)

[Investors in Offshore Funds May File Late FBARs by September 23, 2009](#) (June 25, 2009)

[IRS Postpones Deadline for Certain Filers of FBARs Until June 30, 2010](#) (August 7, 2009)

[IRS Extends September 23 FBAR Deadline for Taxpayers](#) (September 21, 2009)

[Treasury and IRS Issue Guidance on FBAR Filings](#) (March 1, 2010)

[Treasury Issues Final Regulations on FBAR Filing Requirements](#) (March 2, 2011)

IRS CIRCULAR 230 DISCLOSURE:

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