

## CLIENT MEMORANDUM

# Treasury Announces FBAR Mandatory Electronic Filing Requirement

July 17, 2013

## AUTHORS

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Effective July 1, 2013, FBARs must be filed electronically using the E-Filing System maintained by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). This mandatory electronic filing requirement applies to all FBARs, and to amendments of previously filed FBARs, that are submitted by individuals or by entities on or after the effective date.

This new requirement affects anyone who expects to file an FBAR on or before June 30, 2014 for reportable foreign financial accounts held during calendar year 2013, as well as anyone filing in future years. The mandatory electronic filing requirement also applies to anyone who submits an initial FBAR after June 30, 2013 for 2012 accounts or for accounts of any prior year, and is thus filing late. In addition, anyone who after June 30, 2013 submits an amendment to a previously filed FBAR that was filed either on paper or electronically must file the amended FBAR electronically.

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## FBAR Mandatory Electronic Filing

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FinCEN has established the website-based BSA E-Filing System to support the electronic filing of Bank Secrecy Act (“BSA”) forms, including the FBAR. Before accessing the E-Filing System for the first time, a filer must enroll in the E-Filing System by completing a registration process through FinCEN’s website.<sup>1</sup> There is no registration fee.

An FBAR filer who is an individual, whether filing with respect to a financial interest in a foreign account or with respect to signature authority over a financial account, should register for the E-Filing System on the filer’s own behalf.

An FBAR filer that is an entity may designate a “Supervisory User” to serve as the initial and primarily responsible user of the E-Filing System for the entity.

Once FinCEN acknowledges a registration, the registrant is to complete the process by designating a user name and password for future access to the E-Filing System and then downloading the software that enables online viewing of the FBAR form. By using the E-Filing System, FBAR filers will be able to track the status of their FBARs, receive confirmations of receipt by FinCEN, and view information regarding prior filings.

Firms that are “financial institutions” within the meaning of the BSA, including mutual funds and broker-dealers, should already have become E-Filing System registrants pursuant to the 2012 deadline for mandatory electronic filing of other BSA forms, including Suspicious Activity Reports and Cash Transaction Reports. Such firms need not register again to file electronic FBARs.

FinCEN may reject as invalid an FBAR submitted on paper after June 30, 2013. Failure to file a FinCEN form in the required electronic format may result in a civil penalty.

Each U.S. person, including a citizen or resident of the United States and any entity organized under the laws of the United States, is required to file an FBAR, using Form TD F 90-22.1, with the U.S. Treasury Department by June 30 of each year with respect to foreign financial accounts that had an aggregate value of more than \$10,000 and that the person had a financial interest in, or signature authority over, during the previous calendar year. Failure to file the FBAR, which requires basic information about foreign domiciled accounts, can result in significant civil and/or criminal penalties.<sup>2</sup>

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<sup>1</sup> The enrollment process begins at <http://bsaefiling.fincen.treas.gov/main.html> and requires the submission of basic information about the filer, including name, address, and taxpayer identification number. FinCEN also provides an overview of the enrollment process at <http://bsaefiling.fincen.treas.gov/tour/tour.html>.

<sup>2</sup> For further information on the FBAR requirements generally, please see Willkie Farr & Gallagher LLP Client Memoranda: “Treasury Department Issues Revised Rules For Reporting Foreign Financial Accounts” (Mar. 16, 2011), available [here](#); “Update on Foreign Bank and Financial Account Reporting: IRS Issues Revised FBAR Form and Instructions” (Apr. 1, 2011), available [here](#); “Treasury Department Agencies Extend The ‘FBAR’ Deadline For Some Filers With Signature Authority Over Foreign Financial Accounts” (June 20, 2011), available [here](#); “Treasury Department Extends FBAR Deadline Until June 30, 2013 For Certain Filers” (Feb. 24, 2012), available [here](#); “Internal Revenue Service Has Revised FBAR-Related Questions on U.S. Form 1040, Schedule B” (Mar. 15, 2012), available [here](#); and “Treasury Department Extends FBAR Deadline Until June 30, 2014 for Certain Filers” (Jan. 18, 2013), available [here](#).

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## **FBAR Mandatory Electronic Filing**

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If you have any questions regarding this memorandum, please contact Joseph A. Riley (212-728-8715, jriley@willkie.com), Barbara Block (202-303-1178, bblock@willkie.com), or the Willkie attorney with whom you regularly work.

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