

## CLIENT MEMORANDUM

# Reporting Requirement of Foreign Financial Accounts Under FBAR Process Extended Until October 2017, Re-extended for Certain Filers to April 2018

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## AUTHORS

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Any U.S. person that had a financial interest in, or signature authority over, a foreign financial account with an aggregate value of more than \$10,000 in 2016 is required to file the Report of Foreign Bank and Financial Accounts (“FBAR”) with the U.S. Treasury Department. Each filer – or an individual or entity authorized in writing by the filer using FinCEN Form 114a – must complete and submit the FBAR electronically, using Form 114 and the Financial Crimes Enforcement Network (“FinCEN”) BSA E-Filing System.<sup>1</sup> Failure to file the FBAR, which requires basic information about foreign financial accounts, can result in significant civil and/or criminal penalties.<sup>2</sup> FinCEN has extended the filing deadline for

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<sup>1</sup> Form 114, Form 114a, and information regarding the Bank Secrecy Act (“BSA”) E-Filing System are available [here](#).

<sup>2</sup> For further information on the FBAR requirements generally, please see Willkie Farr & Gallagher LLP Client Memoranda: “New FBAR Regulations Proposed and FBAR Deadline Extended Until April 15, 2017 for Certain Filers” (Mar. 4, 2016), available [here](#); “New FBAR Filing Deadline, Beginning 2017 Filing Season” (Aug. 6, 2015), available [here](#); “Reminder: Foreign Bank and Financial Accounts Report (“FBAR”) Filing Deadline of June 30, 2015” (May 27, 2015), available [here](#); “Treasury Department Extends FBAR Deadline Until June 30, 2016 for Certain Filers” (Jan. 6, 2015), available [here](#); “Reminder: Foreign Bank and Financial Accounts Report (“FBAR”) Filing Deadline of June 30, 2014 for 2013 FBAR” (May 30, 2014), available [here](#); “Treasury Department Extends FBAR Deadline Until June 30, 2014 for Certain Filers” (Jan. 18, 2013), available [here](#); “Internal Revenue Service Has Revised FBAR Related Questions on U.S. Form 1040, Schedule B” (Mar. 15, 2012), available [here](#); “Treasury Department Extends FBAR Deadline Until June 30, 2013 For Certain Filers” (Feb. 24, 2012), available [here](#); “Treasury Department Agencies

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2017 until October 15. FinCEN also has re-extended the filing deadline for certain filers with only signature authority over a covered account until April 15, 2018.

### **FBAR Deadline Extended until October 15th**

The new annual due date for the FBAR coincides with the federal income tax filing deadline, this year being April 18, 2017. However, FinCEN recently announced that filers will receive an automatic extension for 2016 reporting until October 15, 2017. This is an automatic extension, and filers need not make a specific request to FinCEN to take advantage of the extension.<sup>3</sup> Certain disclosures as to a taxpayer's financial interest in or signature authority over foreign financial accounts may still be required in certain U.S. income tax return forms, including Schedule B of the U.S. Form 1040; such income tax return forms remain subject to their applicable filing deadlines and are unaffected by FinCEN's extension for FBAR filings.

### **Deadline Re-extended for Certain Signature Authority FBARs**

On December 16, 2016, FinCEN released Notice 2016-1 announcing an extension until April 15, 2018 for certain filers with signature authority over, but no financial interest in, one or more foreign financial accounts.<sup>4</sup> Specifically, this extension applies to:

- officers and employees of banks, publicly traded corporations, and certain other entities specified in the FBAR regulations (each, a "specified entity"<sup>5</sup>) who had signature authority over, but no financial interest in, the foreign financial accounts of a person that is "controlled" (i.e., more than 50% owned, directly or indirectly) by such individual's employer;

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Extend The 'FBAR' Deadline For Some Filers With Signature Authority Over Foreign Financial Accounts" (June 20, 2011), available [here](#); "Update on Foreign Bank and Financial Account Reporting: IRS Issues Revised FBAR Form and Instructions" (Apr. 1, 2011), available [here](#); and "Treasury Department Issues Revised Rules For Reporting Foreign Financial Accounts" (Mar. 16, 2011), available [here](#).

<sup>3</sup> FinCEN's announcement of the new due date for FBARs may be found [here](#).

<sup>4</sup> Notice 2016-1 may be found [here](#).

<sup>5</sup> The FBAR regulations establish an exception from the requirement to file an FBAR for signature authority with respect to the reportable accounts of the employer for officers and employees of any of the following "specified entities": (i) banks or other depository institutions subject to functional regulation by a federal agency that also examines them for Bank Secrecy Act ("BSA") anti-money laundering compliance; (ii) entities the shares of which are listed on any U.S. national securities exchange; (iii) an "Authorized Service Provider," defined as an entity registered with and examined by the Securities and Exchange Commission (the "SEC") and that provides services to an investment company registered under the Investment Company Act of 1940; (iv) an officer or employee of a "financial institution" (as expressly defined by the BSA) that is registered with and examined by the SEC or the Commodity Futures Trading Commission; and (v) an entity that has a class of equity securities registered (or American Depositary Receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act.

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- officers and employees of a person controlled by a specified entity who had signature authority over, but no financial interest in, the reportable foreign accounts of the controlled person of which such individual is an officer or employee, or the reportable accounts of the controlling entity or its other controlled persons; and
- officers and employees of investment advisers registered with the U.S. Securities and Exchange Commission who had signature authority over, but no financial interest in, the foreign financial accounts of persons that are not investment companies registered under the Investment Company Act of 1940.

FinCEN has issued seven similar extensions in the past for these categories of officers and employees. The most recent extension applies to those holding signature authority during 2016, as well as during previous years subject to similar extensions.<sup>6</sup>

### **Proposed Amendments to the FBAR Regulations Remain Pending**

On March 10, 2016, FinCEN issued a Notice of Proposed Rulemaking to revise the regulations regarding FBARs, specifically with respect to the requirements for individuals with signature authority over, but no financial interest in, foreign financial accounts. Although the public comment period for the proposed regulations closed in May 2016, FinCEN has not published final regulations. Thus, all existing FBAR regulations remain in effect.

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<sup>6</sup> The categories of individuals affected by Notice 2016-1 were identified and previously granted extensions by FinCEN in Notices [2015-1](#), [2014-1](#), [2013-1](#), [2012-1](#), [2012-2](#), [2011-1](#) and [2011-2](#).