

CLIENT MEMORANDUM

New FBAR Regulations Proposed and FBAR Deadline Extended Until April 15, 2017 for Certain Filers

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AUTHORS

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On March 1, 2016, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") proposed new regulations regarding filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (the "FBAR").

Under the proposed regulations, no FBAR would be required of an entity's officer, employee or agent who has signature or other authority over a foreign financial account in which the entity (or a subsidiary, parent entity or other entity within the same corporate or business structure of such entity) has a financial interest if the officer, employee or agent has no financial interest in the account and the account is required to be reported on an FBAR by the entity (or by another entity within the same corporate or business structure). An entity with a financial interest in a foreign account would be required, in addition to satisfying any FBAR filing requirement, to maintain records for five years of all officers, employees and agents with signature authority over such accounts and to provide such records if requested by FinCEN. The maintained records would be "deemed filed" with FinCEN.

The proposed regulations would also eliminate the current rule that allows FBAR filers with a financial interest in or signature authority over 25 or more foreign financial accounts to submit only limited reporting regarding such accounts.

FinCEN will accept comments on the proposed regulations for 60 days after their official release. The proposed regulations would not become effective until some point after their publication in final form.

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The proposed regulations do not resolve the status of certain “signature authority” filers who were affected by a series of FBAR notices issued annually from 2011 through 2015 that deferred their FBAR filing due dates. However, FinCEN requests comments on whether it should allow entities and individuals to rely on the provisions of the proposed rule, if finalized, with regard to FBAR filings properly deferred pursuant to these notices.

On December 8, 2015, FinCEN issued the latest of such notices, Notice 2015-1, which extends for certain filers the due date for the FBAR, to April 15, 2017.¹ This Notice was preceded by six earlier extensions that applied to similarly situated individuals. With respect to reporting an individual’s signature authority over, but no financial interest in, foreign financial accounts during 2015 and preceding years, the latest extension specifically applies to:

- officers and employees of banks, publicly traded corporations, and certain other entities specified in the FBAR regulations (each, a “specified entity”²) 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 their employer;
- 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 the 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. SEC 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.

This new FinCEN Notice extends the previous deadline of June 30, 2016 set for these filers last year in FinCEN Notice 2014-1.³

For all other filers, the FBAR filing deadline remains unchanged: the FBAR for 2015 is due on or before June 30, 2016. Each U.S. person, including a citizen or resident of the United States and any entity organized under the laws of the

¹ Notice 2015-1 may be viewed [here](#).

² 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.

³ The categories of individuals affected by Notice 2015-1 were identified and previously granted extensions by FinCEN in Notice 2011-1, Notice 2011-2, Notice 2012-1, Notice 2012-2, Notice 2013-1 and Notice 2014-1.

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United States, is required to file the FBAR 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. Each filer - or 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 BSA E-Filing System.⁴ Failure to file the FBAR, which requires basic information about foreign domiciled accounts, can result in significant civil and/or criminal penalties.⁵

Please be aware that beginning in 2017, FBAR reports will be due on April 15 of each calendar year, not on June 30, as was previously the case. This change is a permanent change and will apply to FBARs for 2016 and subsequent years. Consequently, FBARs for 2016 will be due on April 15, 2017.⁶

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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⁴ Form 114, Form 114a and information regarding the BSA E-Filing System are available [here](#).

⁵ 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](#); "Treasury Department Extends FBAR Deadline Until June 30, 2014 for Certain Filers" (Jan. 18, 2013), available [here](#); "Reminder: Foreign Bank and Financial Accounts Report (FBAR) Filing Deadline of June 30, 2014 for 2013 FBAR" (May 30, 2014), available [here](#); and "Treasury Department Extends FBAR Deadline Until June 30, 2016 for Certain Filers" (Jan. 6, 2015) available [here](#).

⁶ Please see Willkie Farr & Gallagher LLP Client Memorandum: "New FBAR Filing Deadline, Beginning 2017 Filing Season" (August 6, 2015), available [here](#).