



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

April 4, 2013

The Honorable Mark Mazur
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Steven Miller
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Bill S. Bradley
Chief Counsel
Financial Crimes Enforcement Network
Department of Treasury
P.O. Box 39
Vienna, VA 22183

Mr. Jamal El-Hindi
Associate Director, Regulatory Policy
and Programs Division
Financial Crimes Enforcement Network
Department of Treasury
P.O. Box 39
Vienna, VA 22183

RE: Request for Confirmation of the Requirement for Certain Non-Financial Legal Entities to Electronically File the FBAR prior to July 1, 2013

Dear Messrs. Mazur, Miller, Wilkins, Musher, Bradley, and El-Hindi:

The American Institute of Certified Public Accountants (AICPA) requests guidance regarding the Report of Foreign Bank and Financial Account (FBAR), Form TD F 90-22.1, which is required under Title 31 of the U.S. Code (the Bank Secrecy Act, or BSA). Our comments focus on the need for immediate guidance associated with the requirement for certain non-financial legal entities to electronically file the FBAR.

These comments were developed by the Foreign Asset and Account Disclosure Task Force of the AICPA International Taxation Technical Resource Panel, and approved by the Tax Executive Committee.

The AICPA is the world's largest member association representing the accounting profession, with nearly 386,000 members in 128 countries and a 125-year heritage of servicing the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

Request for Immediate Guidance Regarding Electronic Filing of Report of Foreign Bank Account, TD F 90-22.1 Related to Certain Non-Financial Legal Entities

The AICPA requests specific guidance clarifying whether legal entity FBAR filers (*e.g.* corporations, trusts, limited liability and tax exempt entities), are covered by the general exemption from FBAR e-filing through June 30, 2013.

On February 24, 2012, the Financial Crimes Enforcement Network (FinCEN) bureau of the Department of the Treasury (Treasury) issued "Important Notice about Mandatory Electronic Filing of Reports to FinCEN"¹ which stated:

"FinCEN is announcing today a general exemption from mandatory electronic filing of the Report of Foreign Bank and Financial Accounts (FBAR) until July 1, 2013."

Additionally, FinCEN's Bank Secrecy Act website contains "Mandatory E-Filing FAQs."² Under the FAQ category "What FinCEN Reports must be E-Filed," the following paragraph was posted:

"To receive the various benefits received from E-Filing, FinCEN encourages *individuals* (emphasis added) to E-File FBARs (Reports of Foreign Bank and Financial Accounts) electronically and has made that option available at the BSA E-Filing website.³ However, FinCEN granted a general exemption for mandatory E-Filing for the FBAR until June 30, 2013.

E-Filing for all other reports is mandatory effective July 1, 2012."

¹ <http://www.fincen.gov/whatsnew/html/20120221.html>.

² http://www.fincen.gov/forms/e-filing/Efiling_FAQs.html.

³ <http://bsaefiling.fincen.treas.gov/main.html>.

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The specific use of the word “individuals” in the FAQ has led to confusion among many legal entity filers as to whether or not they are covered by the general exemption from e-filing FBARs due on June 30, 2013.

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We appreciate your timely consideration of our recommendations, and we welcome further discussion. If you have any questions, please contact Christine Ballard, Chair of the AICPA International Taxation Technical Resource Panel, at (703) 970-0424, or Christine.ballard@dhgllp.com; or Kristin Esposito, AICPA Technical Manager, at (202) 434-9241, or kesposito@aicpa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Porter". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey A. Porter, CPA
Chair, Tax Executive Committee

cc: Steven Musher, Associate Chief Counsel (International)