

FinCEN Notice 2012-2 FBAR Filing Requirement-

Extended Filing Date Related to Notice 2012-1

The Financial Crimes Enforcement Network (FinCEN) is announcing a further extension of time for certain Report of Foreign Bank and Financial Accounts (FBAR) filings in light of ongoing consideration of questions regarding the filing requirement and its application to individuals with signature authority over but no financial interest in certain types of accounts.

On February 14, 2012, FinCEN issued Notice 2012-1 to extend the filing date for Form TD F 90-22.1, FBAR, for certain individuals with signature authority over but no financial interest in one or more foreign financial accounts to June 30, 2013. This Notice was preceded by two earlier extensions: On May 31, 2011, FinCEN issued Notice 2011-1 (revised on June 2, 2011), to extend to June 30, 2012, the due date for filing the FBAR, for certain individuals with signature authority over but no financial interest in one or more foreign financial accounts, specifically individuals whose FBAR filing requirements may be affected by the signature authority filing exceptions in 31 CFR § 1010.350(f)(2)(i)-(v). On June 17, 2011, FinCEN issued Notice 2011-2 similarly extending the FBAR filing due date to June 30, 2012, for certain employees or officers of investment advisers registered with the Securities and Exchange Commission who have signature authority over but no financial interest in certain foreign financial accounts.

FinCEN continues to receive questions that require additional consideration with respect to the exceptions addressed in these Notices, therefore, FinCEN is further extending the filing due date to June 30, 2014, for individuals whose filing due date for reporting signature authority was previously extended by Notice 2012-1. This extension applies to the reporting of signature authority held during the 2012 calendar year, as well as all reporting deadlines extended by previous Notices 2011-1 and 2011-2. For all other individuals with an FBAR filing obligation, the filing due date remains unchanged. Questions or comments regarding the contents of this notice should be addressed to the FinCEN Regulatory Helpline at 800-949-2732.

Dated: _____ 12/26/2012 _____

_____/s/_____

Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network

General Instructions

Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (the "FBAR"), is used to report a financial interest in or signature authority over a foreign financial account. The FBAR must be **received** by the Department of the Treasury on or before **June 30th** of the year immediately following the calendar year being reported. The June 30th filing date may not be extended.

Who Must File an FBAR. A United States person that has a financial interest in or signature authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year. See General Definitions, to determine who is a United States person.

General Definitions

Financial Account. A financial account includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution (or other person performing the services of a financial institution). A financial account also includes a commodity futures or options account, an insurance policy with a cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund (i.e., a fund that is available to the general public with a regular net asset value determination and regular redemptions).

Foreign Financial Account. A foreign financial account is a financial account located outside of the United States. For example, an account maintained with a branch of a United States bank that is physically located outside of the United States is a foreign financial account. An account maintained with a branch of a foreign bank that is physically located in the United States is not a foreign financial account.

Financial Interest. A United States person has a financial interest in a foreign financial account for which:

- (1) the United States person is the owner of record or holder of legal title, regardless of whether the account is maintained for the benefit of the United States person or for the benefit of another person; or
- (2) the owner of record or holder of legal title is one of the following:
 - (a) An agent, nominee, attorney, or a person acting in some other capacity on behalf of the United States person with respect to the account;
 - (b) A corporation in which the United States person owns directly or indirectly: (i) more than 50 percent of the total value of shares of stock or (ii) more than 50 percent of the voting power of all shares of stock;
 - (c) A partnership in which the United States person owns directly or indirectly: (i) an interest in more than 50 percent of the partnership's profits (e.g., distributive share of partnership income taking into account any special allocation agreement) or (ii) an interest in more than 50 percent of the partnership capital;
 - (d) A trust of which the United States person: (i) is the trust grantor and (ii) has an ownership interest in the trust for United States federal tax purposes. See 26 U.S.C. sections 671-679 to determine if a grantor has an ownership interest in a trust;
 - (e) A trust in which the United States person has a greater than 50 percent present beneficial interest in the assets or income of the trust for the calendar year; or
 - (f) Any other entity in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of equity interest or assets, or interest in profits.

Person. A person means an individual and legal entities including, but not limited to, a limited liability company, corporation, partnership, trust, and estate.

Signature Authority. Signature authority is the authority of an individual (alone or in conjunction with another individual) to control the disposition of assets held in a foreign financial account by direct communication (whether in writing or otherwise) to the bank or other financial institution that maintains the financial account. See Exceptions, Signature Authority.

United States. For FBAR purposes, the United States includes the States, the District of Columbia, all United States territories and possessions (e.g., American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands), and the Indian lands as defined in the Indian Gaming Regulatory Act. References to the laws of the United States include the laws of the United States federal government and the laws of all places listed in this definition.

United States Person. United States person means United States citizens; United States residents; entities, including but not limited to, corporations, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

Note. The federal tax treatment of an entity does not determine whether the entity has an FBAR filing requirement. For example, an entity that is disregarded for purposes of Title 26 of the United States Code must file an FBAR, if otherwise required to do so. Similarly, a trust for which the trust income, deductions, or credits are taken into account by another person for purposes of Title 26 of the United States Code must file an FBAR, if otherwise required to do so.

United States Resident. A United States resident is an alien residing in the United States. To determine if the filer is a resident of the United States apply the residency tests in 26 U.S.C. section 7701(b). When applying the residency tests, use the definition of United States in these instructions.

Exceptions

Certain Accounts Jointly Owned by Spouses. The spouse of an individual who files an FBAR is not required to file a separate FBAR if the following conditions are met: (1) all the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse; (2) the filing spouse reports the jointly owned accounts on a timely filed FBAR; and (3) both spouses sign the FBAR in Item 44. See Explanations for Specific Items, Part III, Items 25-33. Otherwise, both spouses are required to file separate FBARs, and each spouse must report the entire value of the jointly owned accounts.

Consolidated FBAR. If a United States person that is an entity is named in a consolidated FBAR filed by a greater than 50 percent owner, such entity is not required to file a separate FBAR. See Explanations for Specific Items, Part V.

Correspondent/Nostro Account. Correspondent or nostro accounts (which are maintained by banks and used solely for bank-to-bank settlements) are not required to be reported.

Governmental Entity. A foreign financial account of any governmental entity of the United States (as defined above) is not required to be reported by any person. For purposes of this form, governmental entity includes a college or university that is an agency of, an instrumentality of, owned by, or operated by a governmental entity. For purposes of this form, governmental entity also includes an employee retirement or welfare benefit plan of a governmental entity.

International Financial Institution. A foreign financial account of any international financial institution (if the United States government is a member) is not required to be reported by any person.

IRA Owners and Beneficiaries. An owner or beneficiary of an IRA is not required to report a foreign financial account held in the IRA.

Participants in and Beneficiaries of Tax-Qualified Retirement Plans. A participant in or beneficiary of a retirement plan described in Internal Revenue Code section 401(a), 403(a), or 403(b) is not required to report a foreign financial account held by or on behalf of the retirement plan.

Signature Authority. Individuals who have signature authority over, but no financial interest in, a foreign financial account are not required to report the account in the following situations:

(1) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, 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 Securities and Exchange Commission or Commodity Futures Trading Commission 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 Securities and Exchange Commission. Authorized Service Provider means an entity that is registered with and examined by the Securities and Exchange Commission 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 American depository receipts listed) on any United States 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 United States subsidiary is not required to report signature authority over a foreign financial account of the subsidiary if its United States parent has a class of equity securities listed on any United States national securities exchange and the subsidiary is included in a consolidated FBAR report of the United States parent.

(6) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act is not required to report signature authority over a foreign financial account of such entity.

Trust Beneficiaries. A trust beneficiary with a financial interest described in section (2)(e) of the financial interest definition is not required to report the trust's foreign financial accounts on an FBAR if the trust, trustee of the trust, or agent of the trust: (1) is a United States person and (2) files an FBAR disclosing the trust's foreign financial accounts.

United States Military Banking Facility. A financial account maintained with a financial institution located on a United States military installation is not required to be reported, even if that military installation is outside of the United States.

Filing Information

When and Where to File. The FBAR is an annual report and must be received by the Department of the Treasury on or before June 30th of the year following the calendar year being reported. Do Not file with federal income tax return.

File by mailing to:

Department of the Treasury
Post Office Box 32621
Detroit, MI 48232-0621

If an express delivery service is used, file by mailing to:

IRS Enterprise Computing Center
ATTN: CTR Operations Mailroom, 4th Floor
985 Michigan Avenue
Detroit, MI 48226

The FBAR may be hand delivered to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI. The FBAR may also be delivered to the Internal Revenue Service's tax attaches located in United States embassies and consulates for forwarding to the Department of the Treasury, Detroit, MI. The FBAR is not considered filed until it is received by the Department of the Treasury in Detroit, MI.

No Extension of Time to File. There is no extension of time available for filing an FBAR. Extensions of time to file federal tax returns do NOT extend the time for filing an FBAR. If a delinquent FBAR is filed, attach a statement explaining the reason for the late filing.

Amending a Previously Filed FBAR. To amend a filed FBAR, check the "Amended" box in the upper right hand corner of the first page of the FBAR. Complete the form in its entirety and include the amended information. Do not attach a copy of the original FBAR. An amendment should not be made until at least 120 calendar days after the original FBAR is filed.

Record Keeping Requirements. Persons required to file an FBAR must retain records that contain the name in which each account is maintained, the number or other designation of the account, the name and address of the foreign financial institution that maintains the account, the type of account, and the maximum account value of each account during the reporting period. The records must be retained for a

period of 5 years from June 30th of the year following the calendar year reported and must be available for inspection as provided by law. Retaining a copy of the filed FBAR can help to satisfy the record keeping requirements.

An officer or employee who files an FBAR to report signature authority over an employer's foreign financial account is not required to personally retain records regarding these accounts.

Questions. FBAR help is available by telephone or e-mail. Call 866-270-0733 (toll-free within the U.S.) or 313-234-6146 (from outside the U.S., not toll-free) from 8 a.m.—4:30 p.m. Eastern time, or e-mail your inquiry to FBARquestions@irs.gov.

Explanations for Specific Items

Part I — Filer Information

Item 1. The FBAR is an annual report. Enter the calendar year being reported. If amending a previously filed FBAR, check the "Amended" box.

Item 2. Check the box that describes the filer. Check only one box. Individuals reporting only signature authority, check box "a". If filing a consolidated FBAR, check box "d". To determine if a consolidated FBAR can be filed, see Part V. If the type of filer is not listed in boxes "a" through "c", check box "e", and enter the type of filer. Persons that should check box "e" include, but are not limited to, trusts, estates, limited liability companies, and tax-exempt entities (even if the entity is organized as a corporation). A disregarded entity must check box "e", and enter the type of entity followed by "(D.E.)". For example, a limited liability company that is disregarded for United States federal tax purposes would enter "limited liability company (D.E.)".

Item 3. Provide the filer's United States taxpayer identification number. Generally, this is the filer's United States social security number (SSN), United States individual taxpayer identification number (ITIN), or employer identification number (EIN). Throughout the FBAR, numbers should be entered with no spaces, dashes, or other punctuation. If the filer does NOT have a United States taxpayer identification number, complete Item 4.

Item 4. Complete Item 4 only if the filer does NOT have a United States taxpayer identification number. Item 4 requires the filer to provide information from an official foreign government document to verify the filer's nationality or residence. Enter the document number followed by the country of issuance, check the appropriate type of document, and if "other" is checked, provide the type of document.

Item 5. If the filer is an individual, enter the filer's date of birth, using the month, day, and year convention.

Items 9, 10, 11, 12, and 13. Enter the filer's address. An individual residing in the United States must enter the street address of the individual's United States residence, not a post office box. An individual residing outside the United States must enter the individual's United States mailing address. If the individual does not have a United States mailing address, the individual must enter a foreign residence address. An entity must enter its United States mailing address. If the entity does not have a United States mailing address, the entity must enter its foreign mailing address.

Item 14. If the filer has a financial interest in 25 or more foreign financial accounts, check "Yes" and enter the number of accounts. Do not complete Part II or Part III of the FBAR. If filing a consolidated FBAR, only complete Part V, Items 34-42, for each United States entity included in the consolidated FBAR.

Note. If the filer has signature authority over 25 or more foreign financial accounts, only complete Part IV, Items 34-43, for each person for which the filer has signature authority, and check "No" in Part I, Item 14.

Filers must comply with applicable recording keeping requirements. See Record Keeping Requirements.

Part II — Information on Financial Account(s) Owned Separately

Enter information in the applicable parts of the form only. Number the pages used, and mail only those pages. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

Item 15. Determining Maximum Account Value.

Step 1. Determine the maximum value of each account (in the currency of that account) during the calendar year being reported. The maximum value of an account is a reasonable approximation of the greatest value of currency or nonmonetary assets in the account during the calendar year. Periodic account statements may be relied on to determine the maximum value of the account, provided that the statements fairly reflect the maximum account value during the calendar year. For Item 15, if the filer had a financial interest in more than one account, each account must be valued separately.

Step 2. In the case of non-United States currency, convert the maximum account value for each account into United States dollars. Convert foreign currency by using the Treasury's Financial Management Service rate (this rate may be found at www.fms.treas.gov) from the last day of the calendar year. If no Treasury Financial Management Service rate is available, use another verifiable exchange rate and provide the source of that rate. In valuing currency of a country that uses multiple exchange rates, use the rate that would apply if the currency in the account were converted into United States dollars on the last day of the calendar year.

If the aggregate of the maximum account values exceeds \$10,000, an FBAR must be filed. An FBAR is not required to be filed if the person did not have \$10,000 of aggregate value in foreign financial accounts at any time during the calendar year.

For United States persons with a financial interest in or signature authority over fewer than 25 accounts that are unable to determine if the aggregate maximum account values of the accounts exceeded \$10,000 at any time during the calendar year, complete Part II, III, IV, or V, as appropriate, for each of these accounts and enter "value unknown" in Item 15.

Item 16. Indicate the type of account. Check only one box. If "Other" is selected, describe the account.

Item 17. Provide the name of the financial institution with which the account is held.

Item 18. Provide the account number that the financial institution uses to designate the account.

Items 19-23. Provide the complete mailing address of the financial institution where the account is located. If the foreign address does not include a state (e.g., province) or postal code, leave the box(es) blank.

Part III – Information on Financial Account(s) Owned Jointly

Enter information in the applicable parts of the form only. Number the pages used, and mail only those pages. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

For Items 15-23, see Part II. Each joint owner must report the entire value of the account as determined under Item 15.

Item 24. Enter the number of joint owners for the account. If the exact number is not known, provide an estimate. Do not count the filer when determining the number of joint owners.

Items 25-33. Use the identifying information of the principal joint owner (excluding the filer) to complete Items 25-33. Leave blank items for which no information is available. If the filer's spouse has an interest in a jointly owned account, the filer's spouse is the principal joint owner. Enter "(spouse)" on line 26 after the last name of the joint spousal owner. See Exceptions, Certain Accounts Jointly Owned by Spouses, to determine if the filer's spouse is required to independently report the jointly owned accounts.

Part IV – Information on Financial Account(s) Where Filer has Signature Authority but No Financial Interest in the Account(s)

Enter information in the applicable parts of the form only. Number the pages used, and mail only those pages. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

25 or More Foreign Financial Accounts. Filers with signature authority over 25 or more foreign financial accounts must complete only Items 34-43 for each person on whose behalf the filer has signature authority.

Modified Reporting for United States Persons Residing and Employed Outside of the United States. A United States person who (1) resides outside of the United States, (2) is an officer or employee of an employer who is physically located outside of the United States, and (3) has signature authority over a foreign financial account that is owned or maintained by the individual's employer should only complete Part I and Part IV, Items 34-43 of the FBAR. Part IV, Items 34-43 should only be completed one time with information about the individual's employer.

For Items 15-23, see Part II.

Items 34-42. Provide the name, address, and identifying number of the owner of the foreign financial account for which the individual has signature authority over but no financial interest in the account. If there is more than one owner of the account for which the individual has signature authority, provide the information in Items 34-42 for the principal joint owner (excluding the filer). If account information is completed for more than one account of the same owner, identify the owner only once and write "Same Owner" in Item 34 for the succeeding accounts with the same owner.

Item 43. Enter filer's title for the position that provides signature authority (e.g., treasurer).

Part V – Information on Financial Account(s) Where Filer Is Filing a Consolidated Report

Enter information in the applicable parts of the form only. Number the pages used, and mail only those pages. If there is not enough space to provide all account information, copy and complete additional pages of the required Part as necessary. Do not use any attachments unless otherwise specified in the instructions.

Who Can File a Consolidated FBAR. An entity that is a United States person that owns directly or indirectly a greater than 50 percent interest in another entity that is required to file an FBAR is permitted to file a consolidated FBAR on behalf of itself and such other entity. Check box "d" in Part I, Item 2 and complete Part V. If filing a consolidated FBAR and reporting 25 or more foreign financial accounts, complete only Items 34-42 for each entity included in the consolidated FBAR.

For Items 15-23, see Part II.

Items 34-42. Provide the name, United States taxpayer identification number, and address of the owner of the foreign financial account as shown on the books of the financial institution. If account information is completed for more than one account of the same owner, identify the owner only once and write "Same Owner" in Item 34 for the succeeding accounts of the same owner.

Signatures

Items 44-46. The FBAR must be signed by the filer named in Part I. If the FBAR is being filed on behalf of a partnership, corporation, limited liability company, trust, estate, or other entity, it must be signed by an authorized individual. Enter the authorized individual's title in Item 45.

An individual must leave "Filer's Title" blank, unless the individual is filing an FBAR due to the individual's signature authority. If an individual is filing because the individual has signature authority over a foreign financial account, the individual should enter the title upon which his or her authority is based in Item 45.

A spouse included as a joint owner, who does not file a separate FBAR in accordance with the instructions in Part III, must also sign the FBAR (in Item 44) for the jointly owned accounts. See the instructions for Part III.

Penalties

A person who is required to file an FBAR and fails to properly file may be subject to a civil penalty not to exceed \$10,000 per violation. If there is reasonable cause for the failure and the balance in the account is properly reported, no penalty will be imposed. A person who willfully fails to report an account or account identifying information may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50 percent of the balance in the account at the time of the violation. See 31 U.S.C. section 5321(a)(5). Willful violations may also be subject to criminal penalties under 31 U.S.C. section 5322(a), 31 U.S.C. section 5322(b), or 18 U.S.C. section 1001.