Strafford

Presenting a live 110-minute teleconference with interactive Q&A

FBAR and Preparing for Filings Under New Deadlines

Navigating FBAR Demands and Latest Guidance on 2011 Form, FATCA Return and Compliance Initiative

WEDNESDAY, AUGUST 17, 2011

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Matthew D. Lee, Partner, **Blank Rome LLP**, Philadelphia

Steven Toscher, Principal, **Hochman Salkin Rettig Toscher & Perez**, Beverly Hills, Calif.

Stanley Ruchelman, Member, **The Ruchelman Law Firm**, New York

For this program, attendees must listen to the audio over the telephone.

Please refer to the instructions emailed to the registrant for the dial-in information. Attendees can still view the presentation slides online. If you have any questions, please contact **Customer Service at1-800-926-7926 ext. 10**.

TD F 90-22.1

(Rev. March 2011)
Department of the Treasury

Do not use previous editions of this form

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS

Do NOT file with your Federal Tax Return

OMB No. 1545-2038

1 This Report is for Calendar Year Ended 12/31

___ ___ ___ ___

Amended ☐

Part I Filer Information

2 Type of Filer

a ☐ Individual **b** ☐ Partnership **c** ☐ Corporation **d** ☐ Consolidated **e** ☐ Fiduciary or Other—Enter type ________

3 U.S. Taxpayer Identification Number **If filer has no U.S. Identification Number complete Item 4.**	**4** Foreign identification (Complete only if item 3 is not applicable.) **a** Type: ☐ Passport ☐ Other ________ **b** Number **c** Country of Issue	**5** Individual's Date of Birth MM/DD/YYYY
6 Last Name or Organization Name	**7** First Name	**8** Middle Initial

9 Address (Number, Street, and Apt. or Suite No.)

10 City	**11** State	**12** Zip/Postal Code	**13** Country

14 Does the filer have a financial interest in 25 or more financial accounts?

☐ Yes If "Yes" enter total number of accounts ________

(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information)

☐ No

Part II Information on Financial Account(s) Owned Separately

15 Maximum value of account during calendar year reported	**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held

20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

Signature

44 Filer Signature	**45** Filer Title, if not reporting a personal account	**46** Date (MM/DD/YYYY)

File this form with: U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations 31 CFR 1010.350 (formerly 31 CFR 103.24). No report is required if the aggregate value of the accounts did not exceed $10,000. **See Instructions For Definitions.**

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 USC 552a (e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 1010.350 (formerly 31 CFR 103.24).

The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than $500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 1010.350 (formerly 31 CFR 103.24) . The Social Security number will be used as a means to identify the individual who files the report.

The estimated average burden associated with this collection of information is 20 minutes per respondent or record keeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Internal Revenue Service, Bank Secrecy Act Policy, 5000 Ellin Road C-3-242, Lanham MD 20706.

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

Form TD F 90-22.1
Page Number
____ of ____

Complete a Separate Block for Each Account Owned Separately

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ____ ____ ____ ____	**3–4** Check appropriate Identification Number ☐ Taxpayer Identification Number ☐ Foreign Identification Number Enter identification number here:	**6** Last Name or Organization Name

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country

Part III Information on Financial Account(s) Owned Jointly

Complete a Separate Block for Each Account Owned Jointly

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ____ ____ ____ ____	3–4 Check appropriate Identification Number ☐ Taxpayer Identification Number ☐ Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name

15 Maximum value of account during calendar year reported		16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions.		
26 Last Name or Organization Name of principal joint owner		27 First Name of principal joint owner, if known	28 Middle initial, if known
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known

15 Maximum value of account during calendar year reported		16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions.		
26 Last Name or Organization Name of principal joint owner		27 First Name of principal joint owner, if known	28 Middle initial, if known
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known

15 Maximum value of account during calendar year reported		16 Type of account a ☐ Bank b ☐ Securities c ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions.		
26 Last Name or Organization Name of principal joint owner		27 First Name of principal joint owner, if known	28 Middle initial, if known
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known

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

Complete a Separate Block for Each Account

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ____ ____ ____ ____

3–4 Check appropriate Identification Number
☐ Taxpayer Identification Number
☐ Foreign Identification Number
Enter identification number here:

6 Last Name or Organization Name

15 Maximum value of account during calendar year reported

16 Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation

19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held

20 City | **21** State, if known | **22** Zip/Postal Code, if known | **23** Country

34 Last Name or Organization Name of Account Owner

35 Taxpayer Identification Number of Account Owner

36 First Name | **37** Middle initial | **38** Address (Number, Street, and Apt. or Suite No.)

39 City | **40** State | **41** Zip/Postal Code | **42** Country

43 Filer's Title with this Owner

15 Maximum value of account during calendar year reported

16 Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation

19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held

20 City | **21** State, if known | **22** Zip/Postal Code, if known | **23** Country

34 Last Name or Organization Name of Account Owner

35 Taxpayer Identification Number of Account Owner

36 First Name | **37** Middle initial | **38** Address (Number, Street, and Apt. or Suite No.)

39 City | **40** State | **41** Zip/Postal Code | **42** Country

43 Filer's Title with this Owner

15 Maximum value of account during calendar year reported

16 Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below

17 Name of Financial Institution in which account is held

18 Account number or other designation

19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held

20 City | **21** State, if known | **22** Zip/Postal Code, if known | **23** Country

34 Last Name or Organization Name of Account Owner

35 Taxpayer Identification Number of Account Owner

36 First Name | **37** Middle initial | **38** Address (Number, Street, and Apt. or Suite No.)

39 City | **40** State | **41** Zip/Postal Code | **42** Country

43 Filer's Title with this Owner

Part V Information on Financial Account(s) Where the Filer is Filing a Consolidated Report

Complete a Separate Block for Each Account

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ____ ____ ____ ____	**3–4** Check appropriate Identification Number ☐ Taxpayer Identification Number ☐ Foreign Identification Number Enter identification number here:	**6** Last Name or Organization Name

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country
34 Corporate Name of Account Owner			**35** Taxpayer Identification Number of Account Owner
38 Address (Number, Street, and Apt. or Suite No.)			
39 City	**40** State	**41** Zip/Postal Code	**42** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country
34 Corporate Name of Account Owner			**35** Taxpayer Identification Number of Account Owner
38 Address (Number, Street, and Apt. or Suite No.)			
39 City	**40** State	**41** Zip/Postal Code	**42** Country

15 Maximum value of account during calendar year reported		**16** Type of account **a** ☐ Bank **b** ☐ Securities **c** ☐ Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	**19** Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	**21** State, if known	**22** Zip/Postal Code, if known	**23** Country
34 Corporate Name of Account Owner			**35** Taxpayer Identification Number of Account Owner
38 Address (Number, Street, and Apt. or Suite No.)			
39 City	**40** State	**41** Zip/Postal Code	**42** Country

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, make the needed additions or corrections, attach a statement explaining the additions or corrections, and staple a copy of the original FBAR to the amendment. An amendment should not be made until at least 90 calendar days after the original FBAR is filed. Follow the instructions in "When and Where to File" to file an amendment.

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. For questions regarding the FBAR, contact the Detroit Computing Center Hotline at 1-800-800-2877, option 2.

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 Corporate 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. 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.

Part III – Administrative, Procedural, and Miscellaneous

INFORMATION REPORTING WITH RESPECT TO FOREIGN FINANCIAL ASSETS AND CERTAIN INTERESTS IN A PFIC—SUSPENSION OF INFORMATION REPORTING REQUIREMENTS UNTIL THE INTERNAL REVENUE SERVICE RELEASES FORM 8938, STATEMENT OF SPECIFIED FOREIGN FINANCIAL ASSETS, AND REVISED FORM 8621, RETURN BY A SHAREHOLDER OF A PASSIVE FOREIGN INVESTMENT COMPANY OR A QUALIFIED ELECTING FUND

Notice 2011-55

I. Background and Purpose

Section 511 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71, enacted on March 18, 2010 (the HIRE Act), amended the Internal Revenue Code by adding new section 6038D, Information With Respect to Foreign Financial Assets. Section 6038D applies to taxable years beginning after March 18, 2010. Under section 6038D(a), any individual who during the taxable year holds an interest in any specified foreign financial asset is required to attach to his or her income tax return for the taxable year certain required information with respect to each specified foreign financial asset if the aggregate value of all of the individual's specified foreign financial assets exceeds $50,000.

Section 521 of the HIRE Act further amended the Internal Revenue Code by adding new section 1298(f). Section 1298(f) is effective on March 18, 2010. Under section 1298(f), United States persons who are shareholders of a passive foreign investment company (PFIC) are required to file an annual report containing such information as the Secretary may require. Prior to the enactment of section 1298(f), PFIC shareholders were required to file Form 8621 in certain circumstances. On April 6, 2010, the Department of the Treasury and the Internal Revenue Service (IRS) published Notice 2010-34, “PFIC Shareholder Reporting Under New Section 1298(f) for Tax Years Beginning Before March 18, 2010,” 2010-17 I.R.B. 612, which provided that shareholders of a PFIC that were not otherwise required to file Form 8621 annually prior to the enactment of section 1298(f) would not be required to file an annual report as a result of the addition of section 1298(f) for taxable years beginning before March 18, 2010.

The Department of the Treasury and the IRS intend to issue regulations under sections 6038D and 1298(f), and the IRS intends to release Form 8938, “Statement of Specified Foreign Financial Assets,” and a revised Form 8621, “Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund,” modified to reflect the requirements of section 1298(f). An individual required to report an interest in one or more specified foreign financial assets under section 6038D will be required to attach Form 8938 to the individual’s income tax return for the taxable year to report the required information. A PFIC shareholder required to report information under section 1298(f) will be required to attach the revised Form 8621 to the PFIC shareholder’s income tax return or information return (e.g., Form 1065, “U.S. Return of Partnership Income”) for the taxable year to report the required information.

II. Interim Guidance

Individuals with reporting requirements under section 6038D may have to file an income tax return for a taxable year before the IRS releases Form 8938. This notice suspends the requirement for these individuals to attach Form 8938 to income tax returns that are filed before the release of Form 8938.

Similarly, PFIC shareholders that would not be required to file Form 8621 under the current Instructions to such form may, under section 1298(f), have to file an income tax return or information return (e.g., Form 1065) for a taxable year beginning on or after March 18, 2010, but before the IRS releases revised Form 8621. Pending the release of the revised Form 8621, modified to reflect the requirements of section 1298(f), this notice suspends the section 1298(f) reporting requirement for taxable years beginning on or after March 18, 2010, for PFIC shareholders that are not otherwise required to file Form 8621 as provided in the current Instructions to Form 8621. PFIC shareholders with Form 8621 reporting obligations as provided in the current Instructions to Form 8621 (e.g., upon disposition of stock of a PFIC or with respect to a qualified electing fund under section 1293) must continue to file the current Form 8621 with an income tax or information return filed prior to the release of the revised Form 8621.

Following the release of Form 8938 or revised Form 8621, individuals and PFIC shareholders for which the filing of Form 8938 or 8621 has been suspended under this notice for a taxable year (suspended taxable year) will be required to attach Form 8938, Form 8621, or both, as appropriate, for the suspended taxable year to their next income tax or information return required to be filed with the IRS.

Under section 6501(c)(8), the period of limitation for assessment of tax with respect to periods for which reporting is required under sections 6038D or 1298(f) will not expire before three years after the date on which the IRS receives Forms 8938 or 8621, as appropriate, for the taxable year. A Form 8938 or 8621 filed for a suspended taxable year with a timely filed income tax or information return (taking into account extensions) as required by this notice will be treated as having been filed on the date that the income tax or information return for the suspended taxable year was filed. The failure to furnish Forms 8938 and 8621 for the suspended taxable year as described in this notice may result in the extension of the period of limitation for the suspended taxable year under section 6501(c)(8), and penalties may apply.

Compliance with sections 6038D and 1298(f) does not relieve a person of the responsibility to file Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," (FBAR) if the FBAR is otherwise required to be filed.

The principal author of this notice is Joseph Henderson of the Office of the Associate Chief Counsel (International). For further information regarding this notice as it relates to section 6038D, please contact Mr. Henderson at (202) 622-3880 (not a toll-free call). For further information regarding this notice as it relates to section 1298(f), please contact Susan E. Massey at (202) 622-3840 (not a toll-free call).

International Businesses Topics

- Individual Taxpayer
- Income Tax Treaties
- KYC Rules
- More Topics . .

IRS Resources

- Compliance & Enforcement
- Contact My Local Office
- e-file
- Forms and Publications
- Newsroom
- Frequently Asked Questions
- Taxpayer Advocate Service
- Where To File

2011 Offshore Voluntary Disclosure Initiative Frequently Asked Questions and Answers

FAQ Updates:

Q&A 25.1 posted 6/2/11
Q&A 51.1 Posted 6/2/11
Q&A 51.2 Posted 6/2/11
Q&A 51.3 Posted 6/2/11
A32 Updated 6/2/11
A35 Updated 6/2/11
A51 Updated 6/2/11
A52 Updated 6/2/11

A47 - Updated 3/14/11
FAQ 5 & 50 - Updated 2/14/11
FAQ 8 - Updated 2/10/11
FAQ 1-53 - Posted 2/8/11

#	Questions	Answers
Overview		
1.	Why did the IRS announce a new special offshore voluntary disclosure initiative at this time?	The IRS's prior Offshore Voluntary Disclosure Program (2009 OVDP), which closed on October 15, 2009, demonstrated the value of a uniform penalty structure for taxpayers who came forward voluntarily and reported their previously undisclosed foreign accounts and assets. Not only did the initiative offer consistency and predictability to taxpayers in determining the amount of tax and penalties they faced, it also enabled the IRS to centralize the civil processing of offshore voluntary disclosures. Therefore, it was determined that a similar initiative should be available to the large number of taxpayers with offshore accounts and assets who applied to IRS Criminal Investigation's traditional voluntary disclosure practice since the October 15 deadline. This new initiative, the 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI) will be available to those taxpayers and other similarly situated taxpayers who come forward and complete all requirements on or before August 31, 2011.
2.	What is the objective of this initiative?	The objective remains the same as the 2009 OVDP – to bring taxpayers that have used undisclosed foreign accounts and undisclosed foreign entities to avoid or evade tax into compliance with United States tax laws.
3.	How does this initiative differ from the IRS's longstanding voluntary disclosure practice or the 2009 OVDP?	The Voluntary Disclosure Practice is a longstanding practice of IRS Criminal Investigation whereby CI takes timely, accurate, and complete voluntary disclosures into account in deciding whether to recommend to the Department of Justice that a taxpayer be criminally prosecuted. It enables noncompliant taxpayers to resolve their tax liabilities and minimize their chance of criminal prosecution. When a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure practice, the IRS will not recommend criminal prosecution to the Department of Justice. This current offshore initiative is a counter-part to Criminal Investigation's Voluntary Disclosure Practice. Like its predecessor, the 2009 OVDP, which ran from March 23, 2009 through October 15, 2009, it addresses the civil side of a taxpayer's voluntary disclosure by defining the number of tax years covered and setting the civil penalties that will apply.
4.	Why should I make a voluntary disclosure?	Taxpayers with undisclosed foreign accounts or entities should make a voluntary disclosure because it enables them to become compliant, avoid substantial civil penalties and generally eliminate the risk of criminal prosecution. Making a voluntary disclosure also provides the opportunity to calculate, with a reasonable degree of certainty, the total cost of resolving all offshore tax issues. Taxpayers who do not submit a voluntary disclosure run the risk of detection by the IRS and the imposition of substantial penalties, including the fraud penalty and foreign information return penalties, and an increased risk of criminal prosecution. The IRS remains actively engaged in ferreting out the identities of those with undisclosed foreign accounts. Moreover, increasingly this information is available to the IRS under tax treaties, through submissions by whistleblowers, and will become more available as the Foreign Account Tax Compliance Act (FATCA) and Foreign Financial Asset Reporting (new IRC § 6038D) become effective.

5.	What are some of the civil penalties that might apply if I don't come in under voluntary disclosure and the IRS examines me? How do they work?	Depending on a taxpayer's particular facts and circumstances, the following penalties could apply: • A penalty for failing to file the Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR"). United States citizens, residents and certain other persons must annually report their direct or indirect financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded $10,000 at any time during the year. Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of $100,000 or 50 percent of the total balance of the foreign account per violation. See 31 U.S.C. § 5321(a)(5). Non-willful violations that the IRS determines were not due to reasonable cause are subject to a $10,000 penalty per violation. • A penalty for failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts under IRC § 6048.This return also reports the receipt of gifts from foreign entities under section 6039F.The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift. • A penalty for failing to file Form 3520-A, Information Return of Foreign Trust With a U.S. Owner. Taxpayers must also report ownership interests in foreign trusts, by United States persons with various interests in and powers over those trusts under IRC § 6048(b).The penalty for failing to file each one of these information returns or for filing an incomplete return, is five percent of the gross value of trust assets determined to be owned by the United States person. • A penalty for failing to file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report information under IRC §§ 6035, 6038 and 6046.The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return. • A penalty for failing to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Taxpayers may be required to report transactions between a 25 percent foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by IRC §§ 6038A and 6038C. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency. • A penalty for failing to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information under IRC § 6038B. The penalty for failing to file each one of these information returns is ten percent of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was intentional. • A penalty for failing to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. United States persons with certain interests in foreign partnerships use this form to report interests in and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests under IRC §§ 6038, 6038B, and 6046A. Penalties include $10,000 for failure to file each return, with an additional $10,000 added for each month the failure continues beginning 90 days after

		the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return, and ten percent of the value of any transferred property that is not reported, subject to a $100,000 limit. • Fraud penalties imposed under IRC §§ 6651(f) or 6663. Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax. • A penalty for failing to file a tax return imposed under IRC § 6651(a)(1). Generally, taxpayers are required to file income tax returns. If a taxpayer fails to do so, a penalty of 5 percent of the balance due, plus an additional 5 percent for each month or fraction thereof during which the failure continues may be imposed. The penalty shall not exceed 25 percent. • A penalty for failing to pay the amount of tax shown on the return under IRC § 6651(a)(2). If a taxpayer fails to pay the amount of tax shown on the return, he or she may be liable for a penalty of .5 percent of the amount of tax shown on the return, plus an additional .5 percent for each additional month or fraction thereof that the amount remains unpaid, not exceeding 25 percent. • An accuracy-related penalty on underpayments imposed under IRC § 6662. Depending upon which component of the accuracy-related penalty is applicable, a taxpayer may be liable for a 20 percent or 40 percent penalty.
6.	What are some of the criminal charges I might face if I don't come in under voluntary disclosure and the IRS examines me?	Possible criminal charges related to tax returns include tax evasion (26 U.S.C. § 7201), filing a false return (26 U.S.C. § 7206(1)) and failure to file an income tax return (26 U.S.C. § 7203). Willfully failing to file an FBAR and willfully filing a false FBAR are both violations that are subject to criminal penalties under 31 U.S.C. § 5322. A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to $250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up to $250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a fine of up to $100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to $500,000.
KEY FEATURES OF INITIATIVE		
7.	What are the terms of the 2011 Offshore Voluntary Disclosure Initiative?	Under the terms of the 2011 Offshore Voluntary Disclosure Initiative, taxpayers must: • Provide copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure; • Provide complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the account or entity (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts). • File complete and accurate original or amended offshore-related information returns (see FAQ 29 for certain dissolved entities) and Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR") for calendar years 2003 through 2010; • Cooperate in the voluntary disclosure process, including providing information on offshore financial accounts, institutions and facilitators, and signing agreements to extend the period of time for assessing tax and penalties; • Pay 20% accuracy-related penalties under IRC § 6662(a) on the full amount of your underpayments of tax for all years; • Pay failure to file penalties under IRC § 6651(a)(1), if applicable; • Pay failure to pay penalties under IRC § 6651(a)(2), if applicable; • Pay, in lieu of all other penalties that may apply, including FBAR and offshore-related information return penalties, a miscellaneous Title 26 offshore penalty, equal to 25% (or in limited cases 12.5% (see FAQ 53) or 5% (see FAQ 52)) of the highest aggregate balance in foreign bank

accounts/entities or value of foreign assets during the period covered by the voluntary disclosure;

- Submit full payment of all tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties with the required submissions set forth in FAQ 25 or make good faith arrangements with the IRS to pay in full, the tax, interest, and these penalties (see FAQ 20 for more information regarding a taxpayer's ability to fully pay) (the suspension of interest provisions of IRC § 6404(g) do not apply to interest due in this initiative); and
- Execute a Closing Agreement on Final Determination Covering Specific Matters, Form 906.

8. How does the penalty framework work? Can you give us an example?

The values of accounts and other assets are aggregated for each year and the penalty is calculated at 25 percent of the highest year's aggregate value during the period covered by the voluntary disclosure. If the taxpayer has multiple accounts or assets where the highest value of some accounts or assets is in different years, the values of accounts and other assets are aggregated for each year and a single penalty is calculated at 25 percent of the highest year's aggregate value. For example, assume the taxpayer has the following amounts in a foreign account over the period covered by his voluntary disclosure. **It is assumed for purposes of the example that the $1,000,000 was in the account before 2003 and was not unreported income in** 2003.

Year	Amount on Deposit	Interest Income	Account Balance
2003	$1,000,000	$50,000	$1,050,000
2004		$50,000	$1,100,000
2005		$50,000	$1,150,000
2006		$50,000	$1,200,000
2007		$50,000	$1,250,000
2008		$50,000	$1,300,000
2009		$50,000	$1,350,000
2010		$50,000	$1,400,000

(NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, does not have an investment in a Passive Foreign Investment Company (PFIC), files a return but does not include the foreign account or the interest income on the return, and the maximum applicable penalties are imposed.)

If the taxpayers in the above example come forward and their voluntary disclosure is accepted by the IRS, they face this potential scenario:

They would pay $518,000 plus interest. This includes:

- Tax of $140,000 (8 years at $17,500) plus interest,
- An accuracy-related penalty of $28,000 (i.e., $140,000 x 20%), and
- An additional penalty, in lieu of the FBAR and other potential penalties that may apply, of $350,000 (i.e., $1,400,000 x 25%).

If the taxpayers didn't come forward, when the IRS discovered their offshore activities, they would face up to $4,543,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayers would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution.

The civil liabilities outside the 2011 Offshore Voluntary Disclosure Initiative potentially include:

- The tax, accuracy-related penalties, and, if applicable, the failure to file and failure to pay penalties, plus interest, as described above,
- FBAR penalties totaling up to $4,375,000 for willful failures to file complete and correct FBARs (2004 - $550,000, 2005 - $575,000, 2006 - $600,000, 2007 - $625,000, 2008 - $650,000, and 2009 - $675,000, and 2010 - $700,000),
- The potential of having the fraud penalty (75 percent) apply, and
- The potential of substantial additional information return

		penalties if the foreign account or assets is held through a foreign entity such as a trust or corporation and required information returns were not filed. Note that if the foreign activity started before 2003, the Service may examine tax years prior to 2003 if the taxpayer is not part of the 2011 OVDI.
9.	What years are included in the 2011 OVDI disclosure period?	Calendar year taxpayers must include tax years 2003 through 2010 in which they have undisclosed foreign accounts and/or undisclosed foreign entities. Fiscal year taxpayers must include fiscal years ending in calendar years 2003 through 2010.
10.	What are my options if my account involves passive foreign investment company (PFIC) issues?	To date, a significant number of cases submitted under the 2009 OVDP involve PFIC investments. A lack of historical information on the cost basis and holding period of many PFIC investments makes it difficult for taxpayers to prepare statutory PFIC computations and for the Service to verify them. As a result, resolution of voluntary disclosure cases could be unduly delayed. Therefore, for purposes of this initiative, the Service is offering taxpayers an alternative to the statutory PFIC computation that will resolve PFIC issues on a basis that is consistent with the Mark to Market (MTM) methodology authorized in Internal Revenue Code § 1296 but will not require complete reconstruction of historical data. The terms of this alternative resolution are: • If elected, the alternative resolution will apply to all PFIC investments in cases that have been accepted into this initiative. The initial MTM computation of gain or loss under this methodology will be for the first year of the 2011 OVDI application, but could be made after 2003 depending on when the first PFIC investment was made. Generally, the first year of the 2011 OVDI application will be for the calendar year ending December 31, 2003. This will require a determination of the basis for every PFIC investment, which should be agreed between the taxpayer and the Service based on the best available evidence. • A tax rate of 20% will be applied to the MTM gain(s), MTM net gain(s) and gains from all PFIC dispositions during the 2011 OVDI period, in lieu of the rate contained in IRC § 1291(a)(1)(B) for the amount allocable to the current year and IRC §1291(c)(2) for the deferred tax amount(s) allocable to any other taxable year. • A rate of 7% of the tax computed for PFIC investments marked to market in the first year of the 2011 OVDI application will be added to the tax for that year, in lieu of the interest charge mechanism described in IRC §§ 1291(c) and 1296(j). • MTM losses will be limited to unreversed inclusions (generally, previously reported MTM gains less allowed MTM losses) on an investment-by-investment basis in the same manner as IRC § 1296. During the 2011 OVDI period, these MTM losses will be treated as ordinary losses (IRC 1296(c)(1)(B)) and the tax benefit is limited to the tax rate applicable to the MTM gains derived during the 2011 OVDI period (20%). MTM and/or disposition losses in any subsequent year on PFIC assets with basis that was adjusted upward as a result of the alternate resolution in voluntary disclosure years, will be treated as capital losses. Any unreversed inclusions at the end of the 2011 OVDI period will be reduced to zero and the MTM method will be applied to all subsequent years in accordance with IRC § 1296 as if the taxpayer had acquired the PFIC stock on the last day of the last year of the 2011 OVDI period at its MTM value and made an IRC § 1296 election for the first year beginning after the 2011 OVDI period. Thus, any subsequent year losses on disposition of PFIC stock assets in excess of unreversed inclusions arising after the end of the 2011 OVDI period will be treated as capital losses. • Regular and Alternative Minimum Tax are both to be computed without the PFIC dispositions or MTM gains and losses. The tax from the PFIC transactions (20% plus the 7% for 2003, if applicable) is added to (or subtracted from) the applicable total tax (either regular or AMT, whichever is higher). The tax and interest (i.e., the 7% for the first year of the 2011 OVDI) computed under the 2011 OVDI alternative MTM can be added to the applicable total tax (either regular or AMT, whichever is higher) and placed on the amended return in the margin, with a supporting schedule. • Underpayment interest and penalties on the deficiency are computed in accordance with the Internal Revenue Code and the terms of the 2011 OVDI.

		For any PFIC investment retained beyond December 31, 2010, the taxpayer must continue using the MTM method, but will apply the normal statutory rules of section 1296 as well as the provisions of IRC §§ 1291-1298, as applicable. Before electing the alternative PFIC resolution, taxpayers with PFIC investments should consult their tax advisors to ensure that the issue is material in their cases and that the alternative is in fact preferable to the statutory computation in their situation. If the taxpayer does not elect to use the alternative PFIC computation, the PFIC provisions of §§ 1291-1298 apply.
11.	What happens if I fail to make a voluntary disclosure by the August 31, 2011 deadline?	Although the terms of this initiative are available only to taxpayers who complete the voluntary disclosure process on or before August 31, 2011, Criminal Investigation's Voluntary Disclosure Practice remains available to taxpayers who wish to disclose voluntarily their tax violations after that date. However, these taxpayers will not be eligible for the special civil terms of this initiative and will be liable for all applicable civil penalties, including the willful FBAR penalty. In addition, the civil resolution of their cases may extend to tax years prior to 2003.
ELIGIBILITY FOR THIS INITIATIVE		
12.	Who is eligible to make a voluntary disclosure under this initiative?	Taxpayers who have undisclosed offshore accounts or assets are eligible to apply for IRS Criminal Investigation's Voluntary Disclosure Practice and the 2011 OVDI penalty regime for tax years 2003 through 2010.
13.	Are entities, such as corporations, partnerships and trusts eligible to make voluntary disclosures?	Yes, entities are eligible to participate in the 2011 OVDI.
14.	I'm currently under examination. Can I come in under voluntary disclosure?	No. If the IRS has initiated a civil examination, regardless of whether it relates to undisclosed foreign accounts or undisclosed foreign entities, the taxpayer will not be eligible to come in under the 2011 OVDI. Taxpayers under criminal investigation by CI are also ineligible. The taxpayer or the taxpayer's representative should discuss the offshore accounts with the agent.
15.	What if the taxpayer has already filed amended returns reporting the additional unreported income, without making a voluntary disclosure (i.e. quiet disclosure)?	The IRS is aware that some taxpayers have attempted so-called "quiet" disclosures by filing amended returns and paying any related tax and interest for previously unreported offshore income without otherwise notifying the IRS. Taxpayers who have already made "quiet" disclosures are eligible to take advantage of the penalty framework applicable to this initiative by submitting an application, along with copies of their previously filed returns (original and amended) to the IRS's Voluntary Disclosure Coordinator (see FAQ 24) by August 31, 2011. Taxpayers are strongly encouraged to come forward under the 2011 OVDI to make timely, accurate, and complete disclosures. Those taxpayers making "quiet" disclosures should be aware of the risk of being examined and potentially criminally prosecuted for all applicable years.
16.	Some taxpayers have made quiet disclosures by filing amended returns. Will the IRS audit these taxpayers? If so, will they be eligible for the 25 percent offshore penalty? Is the IRS really going to prosecute someone who filed an amended return and correctly reported all their income?	The IRS is reviewing amended returns and could select any amended return for examination. The IRS has identified, and will continue to identify, amended tax returns reporting increases in income. The IRS will closely review these returns to determine whether enforcement action is appropriate. If a return is selected for examination, the 25 percent offshore penalty would not be available. When criminal behavior is evident and the disclosure does not meet the requirements of a voluntary disclosure under IRM 9.5.11.9, the IRS may recommend criminal prosecution to the Department of Justice.
17.	I have properly reported all my taxable income but I only recently learned that I should have been filing FBARs in prior years to report my personal foreign bank account or to report the fact that I have signature authority over bank accounts owned by my employer. May I come forward under this new initiative to correct this?	The purpose for the voluntary disclosure practice is to provide a way for taxpayers who did not report taxable income in the past to come forward voluntarily and resolve their tax matters. Thus, if you reported and paid tax on all taxable income but did not file FBARs, do not use the voluntary disclosure process. For taxpayers who reported and paid tax on all their taxable income for prior years but did not file FBARs, you should file the delinquent FBAR reports according to the instructions (send to Department of Treasury, Post Office Box 32621, Detroit, MI 48232-0621) and attach a statement explaining why the reports are filed late. The IRS will not impose a penalty for the failure to file the delinquent FBARs if there are no underreported tax liabilities and the FBARs are filed by August 31, 2011. However, FBARs for 2010 are due on June 30, 2011 and must be filed by that date.
18.	Question 17 states that a taxpayer who only failed to file an FBAR should not use this process. What about a taxpayer who only has delinquent Form 5471s or Form 3520s but no tax due? Does that taxpayer fall outside this voluntary disclosure process?	A taxpayer who has failed to file tax information returns, such as Form 5471 for controlled foreign corporations (CFCs) or Form 3520 for foreign trusts but who has reported and paid tax on all their taxable income with respect to all transactions related to the CFCs or foreign trusts, should file delinquent information returns with the appropriate service center according to the instructions for the form and attach a statement explaining why the information returns are filed late. (The Form 5471 should be submitted with an amended return showing no change to income or tax liability.) The IRS will not impose a penalty for the failure to file the

		information returns if there are no underreported tax liabilities and the information returns are filed by August 31, 2011.
19.	Is a taxpayer who previously sought relief under the IRS's traditional Voluntary Disclosure Practice or who made a quiet disclosure before the 2011 OVDI was announced eligible for the terms of the 2011 OVDI?	A taxpayer who made a voluntary disclosure (other than a voluntary disclosure under the 2009 OVDP) or made a quiet disclosure is eligible to apply for the 2011 OVDI. Participants in the 2009 OVDP are not eligible.
20.	If I don't have the ability to full pay can I still participate in this initiative?	Yes. The terms of this initiative require the taxpayer to pay the tax, interest, and accuracy-related penalty, and, if applicable the failure to file and failure to pay penalties with their submission. However, it is possible for a taxpayer who is unable to make full payment of these amounts to request the IRS to consider other payment arrangements (see FAQ 25). The burden will be on the taxpayer to establish inability to pay, to the satisfaction of the IRS, based on full disclosure of all assets and income sources, domestic and offshore, under the taxpayer's control. Assuming that the IRS determines that the inability to fully pay is genuine, the taxpayer must work out other financial arrangements, acceptable to the IRS, to resolve all outstanding liabilities, in order to be entitled to the penalty relief under this initiative.
21.	If the IRS has served a John Doe summons seeking information that may identify a taxpayer as holding an undisclosed foreign account or undisclosed foreign entity, does that make the taxpayer ineligible to make a voluntary disclosure under this initiative?	No. The mere fact that the Service served a John Doe summons does not make every member of the John Doe class ineligible to participate. However, once the Service obtains information under a John Doe summons that provides evidence of a specific taxpayer's noncompliance with the tax laws, that particular taxpayer may become ineligible. For this reason, a taxpayer concerned that a party served with a John Doe summons will provide information about him to the Service should apply to make a voluntary disclosure as soon as possible.
2011 OVDI PROCESS		
22.	Can my representative talk to the IRS without revealing my identity?	Yes, but hypothetical situations present a potential for misunderstanding that exists when there is no assurance that the hypothetical contains all relevant facts. In addition, posing a situation as a hypothetical does not satisfy the requirements for making a voluntary disclosure. If the IRS receives information relating specifically to the taxpayer's undisclosed foreign accounts or undisclosed foreign entities while the hypothetical question is pending, the taxpayer may become ineligible to make a voluntary disclosure. If practitioners have questions about the terms of the voluntary disclosure program, they should contact the IRS OVDI Hotline at (267) 941-0020, visit www.irs.gov, or contact their nearest CI office with questions.
23.	How do I request pre-clearance before I submit my offshore voluntary disclosure?	For the 2011 OVDI pre-clearance may be requested as follows: 1. Taxpayers or representatives may fax to the Criminal Investigation Lead Development Center (LDC) identifying information (name, date of birth, social security number and address) and an executed power of attorney (if represented) to (215) 861-3050 to request pre-clearance before making an offshore voluntary disclosure. 2. Criminal Investigation will then notify taxpayers or their representatives via fax whether or not they are cleared to make an offshore voluntary disclosure. 3. Taxpayers deemed cleared should follow the steps outlined below (FAQ 24) within 30 days from receipt of the fax notification to make an offshore voluntary disclosure. Pre-clearance does not guarantee a taxpayer acceptance into the 2011 OVDI. Taxpayers must truthfully, timely, and completely comply with all provisions of the offshore voluntary disclosure program. Taxpayers or representatives with questions regarding pre-clearance can call (215) 861-3759 or contact their nearest CI office. For all other offshore voluntary disclosure questions call the IRS OVDI Hotline at (267) 941-0020.
24.	How do I make an offshore voluntary disclosure and where should I submit my offshore voluntary disclosure to determine whether I am preliminarily accepted under this initiative?	For the 2011 OVDI, an offshore voluntary disclosure is submitted as follows: 1. Taxpayers or their representatives should mail their Offshore Voluntary Disclosures Letter to the following address: Offshore Voluntary Disclosure Coordinator 600 Arch Street, Room 6404 Philadelphia, PA 19106 2. Criminal Investigation will review the Offshore Voluntary Disclosures Letter received and notify taxpayers or representatives by mail whether their offshore voluntary

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disclosures have been preliminarily accepted or declined. It is intended that Criminal Investigation will complete its work within 30 days of receipt of a complete Offshore Voluntary Disclosures Letter.
All other voluntary disclosures that are not covered under this initiative should follow the instructions.
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<tr><td>25.</td><td>After I am notified by CI that my disclosure is timely, what other information will I have to provide?</td><td>
The letter from CI will instruct the taxpayer or their representative to submit the full voluntary disclosure package of information to the Austin Campus:

Internal Revenue Service
3651 S. I H 35 Stop 4301 AUSC
Austin, TX 78741
ATTN: 2011 Offshore Voluntary Disclosure Initiative

on or before August 31, 2011. This package must include:

Copies of previously filed original (and, if applicable, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure;
Complete and accurate amended federal income tax returns (for individuals, Form 1040X, or original Form 1040 if delinquent) for all tax years covered by the voluntary disclosure, with applicable schedules detailing the amount and type of previously unreported income from the account or entity (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estates or trusts).
A completed Foreign Account or Asset Statement for each previously undisclosed foreign account or asset during the voluntary disclosure period (available at 2011 Offshore Voluntary Disclosure Initiative Documents and Forms).
For those applicants disclosing offshore financial accounts with an aggregate highest account balance in any year of $1 million or more, a completed Foreign Financial Institution Statement for each foreign financial institution with which the taxpayer had undisclosed accounts or transactions during the voluntary disclosure period (available at 2011 Offshore Voluntary Disclosure Initiative Documents and Forms);
Properly completed and signed Taxpayer Account Summary With Penalty Calculation (available at 2011 Offshore Voluntary Disclosure Initiative Documents and Forms);
A check payable to the Department of Treasury in the total amount of tax, interest, accuracy-related penalty, and, if applicable, the failure to file and failure to pay penalties, for the voluntary disclosure period. If you cannot pay the total amount of tax, interest, and penalties as described above, submit your proposed payment arrangement and a completed Collection Information Statement (Form 433-A, Collection Information Statement for Wage Earners and Self-employed Individuals, or Form 433-B, Collection Information Statement for Businesses, as appropriate) (see FAQ 20).
For those applicants disclosing offshore financial accounts with an aggregate highest account balance in any year of $500,000 or more, copies of offshore financial account statements reflecting all account activity for each of the tax years covered by your voluntary disclosure. For those applicants disclosing offshore financial accounts with an aggregate highest account balance of less than $500,000, copies of offshore financial account statements reflecting all account activity for each of the tax years covered by your voluntary disclosure must be readily available upon request.
Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties.

Please see the Submission Requirements on the IRS's website, 2011 Offshore Voluntary Disclosure Initiative Documents and Forms, for a complete description of the forms and other information that must be submitted.

You may also be contacted by an examiner with a request for specific additional information if needed to process your voluntary disclosure. The examiner will certify that your voluntary disclosure is correct, accurate, and complete by reviewing your records along with your amended or delinquent income tax returns. The examiner will also verify the tax, interest, and civil penalties you owe.
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		A full and complete submission is required for acceptance into the program.
25.1	What if I cannot make a complete submission by August 31, 2011?	A taxpayer may request an extension of the deadline to complete his or her submission if the taxpayer can demonstrate a good faith attempt to fully comply with FAQ 25 on or before August 31, 2011. The good faith attempt to fully comply must include the properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties. Requests for up to a 90 day extension must include a statement of those items that are missing, the reasons why they are not included, and the steps taken to secure them. Requests for extensions must be made in writing and sent to the Austin Campus on or before August 31, 2011: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 ATTN: 2011 Offshore Voluntary Disclosure Initiative
26.	Who will process my voluntary disclosure after I have submitted the information described in FAQ 25?	After you send in your full and complete submission as described in FAQ 25, your case will be assigned to a civil examiner to complete the certification of your tax returns for accuracy, completeness and correctness.
27.	Will my voluntary disclosure be subject to an examination?	Normally, no examination will be conducted with respect to a voluntary disclosure made under this initiative, although the Service reserves the right to conduct an examination. The normal process is to assign the voluntary disclosure to an examiner to certify the accuracy and completeness of the voluntary disclosure. The certification process is less formal than an examination and does not carry with it all the rights and legal consequences of an examination. For example, the examiner will not send the usual taxpayer notices, the certification process will not constitute a "second examination" if one or more years in the voluntary disclosure has previously been examined, and the taxpayer will not have appeal rights with respect to the Service's determination. However, the examiner has the right to ask any relevant questions, request any relevant documents, and even make third party contacts, if necessary to certify the accuracy of the amended returns, without converting the certification to an examination.
28.	How long should the process take before it is completed?	Because every case is different, there is no way to predict how long the process will take for you. However, the IRS has taken certain steps to improve our efficiency in processing cases. Moreover, there are certain steps you can take to expedite matters. If you have not already done so, you should have delinquent or amended tax returns prepared now because they must be submitted with your package by August 31, 2011. You should also start gathering all of your foreign account statements and other documentation for all of the years covered by your voluntary disclosure. You may view a description of the submission requirements necessary to process your voluntary disclosure at www.irs.gov. Once the examiner has all the information needed to certify your voluntary disclosure, most cases should be completed expeditiously. The 2011 OVDI will operate on a first-come, first-served basis. As a result, complete submissions coming in before the final deadline are likely to close much faster.
29.	My offshore assets were held in the name of a foreign entity that I controlled. However, the sole purpose of the entity was to conceal my ownership of the assets, and I intend to dissolve the entity now that I am making a voluntary disclosure. Do I still have to file the delinquent information returns for the entity?	A taxpayer who holds assets through a foreign entity he or she controls, such as a corporation or a trust, is required to file information returns for that entity (e.g., Form 5471 for a foreign corporation and Forms 3520 and 3520-A for a foreign trust), regardless of whether the taxpayer honored the form of the entity in his or her dealings with the assets. However, in cases where the taxpayer certifies under penalty of perjury that the entity had no purpose other than to conceal the taxpayer's ownership of assets, and where the taxpayer dissolves the entity, the Service may agree to waive the requirement that delinquent information returns be filed if it concludes it is in the Service's interest to do so. Taxpayers wishing to request the Service to disregard a foreign entity should submit a Statement on Dissolved Entities.
30.	What should I do if I am having difficulty obtaining my records from overseas?	If you are having difficulty, speak with your agent or if your case is not yet assigned, contact the IRS OVDI Hotline at (267) 941-0020. Our experience with offshore cases in recent years has shown that taxpayers are ultimately successful in retrieving copies of statements and other records from foreign banks.
CALCULATING THE OFFSHORE PENALTY		
31.	When determining the highest amount in each undisclosed foreign account for each year or the highest asset balance of all undisclosed foreign entities for each year, what exchange rate should be used?	Convert foreign currency by using the foreign currency exchange rate at the end of the year. 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 at the close of the calendar year. Each account is to be valued separately.
32.	If a taxpayer's violation includes unreported individual foreign accounts and business accounts (for an active business), does the 25 percent offshore penalty include the business accounts?	Yes. Assuming that there is unreported income with respect to all the accounts, they all will be included in the penalty base. No distinction is drawn based on whether the account is a business

		account or a savings or investment account.
33.	Is there a de minimis unreported income exception to the 25 percent penalty?	No. No amount of unreported income is considered de minimis for purposes of determining whether there has been tax non-compliance with respect to an account or asset and whether the account or asset should be included in the base for the 25 percent penalty.
34.	If the look back period is 2003-2010, what does the taxpayer do if the taxpayer held foreign real estate, sold it in 2002, and did not report the gain on his 2002 return? Does the taxpayer compute the 25 percent on the highest aggregate balance in 2003-2010? What, if anything, does IRS expect the taxpayer to do with respect to 2002?	Gain realized on a foreign transaction occurring before 2003 does not need to be included as part of the voluntary disclosure. If the proceeds of the transaction were repatriated and were not offshore after December 31, 2002, they will not be included in the base for the 25 percent offshore penalty. On the other hand, if the proceeds remained offshore after December 31, 2002, they will be included in the base for the penalty.
35.	What kinds of assets does the 25 percent offshore penalty apply to?	The offshore penalty is intended to apply to all of the taxpayer's offshore holdings that are related in any way to tax non-compliance, regardless of the form of the taxpayer's ownership or the character of the asset. The penalty applies to all assets directly owned by the taxpayer, including financial accounts holding cash, securities or other custodial assets; tangible assets such as real estate or art; and intangible assets such as patents or stock or other interests in a U.S. or foreign business. If such assets are indirectly held or controlled by the taxpayer through an entity, the penalty may be applied to the taxpayer's interest in the entity or, if the Service determines that the entity is an alter ego or nominee of the taxpayer, to the taxpayer's interest in the underlying assets. Tax noncompliance includes failure to report income from the assets, as well as failure to pay U.S. tax that was due with respect to the funds used to acquire the asset. See FAQ 52, category 3, for a limited exception to this rule.
36.	A taxpayer owns valuable land and artwork located in a foreign jurisdiction. This property produces no income and there were no reporting requirements regarding this property. Must the taxpayer report the land and artwork and pay a 25 percent penalty? What if the property produced income that the taxpayer did not report?	The answer to the first question depends on whether the non-income producing assets were acquired with funds improperly non-taxed. The offshore penalty is intended to apply to offshore assets that are related to tax non-compliance. Thus, if offshore assets were acquired with funds that were subject to U.S. tax but on which no such tax was paid, the offshore penalty would apply regardless of whether the assets are producing current income. Assuming that the assets were acquired with after tax funds or from funds that were not subject to U.S. taxation, if the assets have not yet produced any income, there has been no U.S. taxable event and no reporting obligation to disclose. The taxpayer will be required to report any current income from the property or gain from its sale or other disposition at such time in the future as the income is realized. Because there has not been tax noncompliance, the 25 percent offshore penalty would not apply to those assets. In answer to the second question, if the assets produced income subject to U.S. tax during 2003-2010 which was not reported, the assets will be included in the penalty computation regardless of the source of the funds used to acquire the assets. If the foreign assets were held in the name of an entity such as a trust or corporation, there would also have been an information return filing obligation that may need to be disclosed. See FAQ 5.
37.	If a taxpayer transferred funds from one unreported foreign account to another between 2003 and 2010, will he have to pay a 25 percent offshore penalty on both accounts?	No. If the taxpayer can establish that funds were transferred from one account to another, any duplication will be removed before calculating the 25 percent penalty. However, the burden will be on the taxpayer to establish the extent of the duplication.
38.	If, in addition to other noncompliance, a taxpayer has failed to file an FBAR to report an account over which the taxpayer has signature authority but no beneficial interest (e.g., an account owned by his employer), will that foreign account be included in the base for calculating the taxpayer's 25 percent offshore penalty?	No. The account the taxpayer has mere signature authority over will be treated as unrelated to the tax noncompliance the taxpayer is voluntarily disclosing. The taxpayer may cure the FBAR delinquency for the account the taxpayer does not own by filing the FBAR with an explanatory statement by August 31, 2011. The answer might be different if: (1) the account over which the taxpayer has signature authority is held in the name of a related person, such as a family member or a corporation controlled by the taxpayer; (2) the account is held in the name of a foreign corporation or trust for which the taxpayer had a Title 26 reporting obligation; or (3) the account was related in some other way to the taxpayer's tax noncompliance. In these cases, if the taxpayer is determined to have a direct or indirect beneficial interest in the account(s), the taxpayer will be liable for the 25 percent offshore penalty if there is unreported income on the account. On the other hand, if there is no unreported income with respect to the account, no penalty will be imposed.
39.	If parents have a jointly owned foreign account on which they have made their children signatories, the children have an FBAR filing requirement but no income. Should the children just file delinquent FBARs and have the parents submit a voluntary disclosure? Will both parents be penalized 25 percent each? Will each parent have a 25 percent penalty on 50 percent of the balance?	For those signatories with no ownership interest in the account, such as the children in these facts, they should file delinquent FBARs as previously described in FAQ 17. As for the parents, only one 25 percent offshore penalty will be applied with respect to voluntary disclosures relating to the same account. In the example, the parents will be jointly required to pay a single 25 percent penalty on the account. This can be through one parent paying the total penalty or through each paying a portion, at the taxpayers' option. However, any joint account owner who does not make a voluntary disclosure may be examined and subject to all appropriate penalties.

40.	If multiple taxpayers are co-owners of an offshore account, who will be liable for the offshore penalty?	In the case of co-owners, each taxpayer who makes a voluntary disclosure will be liable for the penalty on his percentage of the highest aggregate balance in the account. His voluntary disclosure is effective as to his tax liability only. It does not cover the other co-owners. The IRS may examine any co-owner who does not make a voluntary disclosure. Co-owners examined by the IRS will be subject to all appropriate penalties.
41.	If there are multiple individuals with signature authority over a trust account, does everyone involved need to file delinquent FBARs? If so, could everyone be subject to a 25 percent offshore penalty?	Only one 25 percent offshore penalty will be applied with respect to voluntary disclosures relating to the same account. The penalty may be allocated among the taxpayers with beneficial ownership making the voluntary disclosures in any way they choose. The reporting requirements for filing an FBAR, however, do not change. Therefore, every individual who is required to file an FBAR must file one.
STATUTE OF LIMITATIONS		
42.	How can the IRS propose adjustments to tax for more than three years without either an agreement from the taxpayer or a statutory exception to the normal three-year statute of limitations for making those adjustments?	Agreeing to assessment of tax and penalties for all voluntary disclosure years is part of the resolution offered by the IRS for resolving offshore voluntary disclosures. The taxpayer must agree to assessment of the liabilities for those years in order to get the benefit of the reduced penalty framework. If the taxpayer does not agree to the tax, interest and penalty proposed by the voluntary disclosure examiner, the case will be referred to the field for a complete examination of all issues. In that examination, normal statute of limitations rules will apply. If no exception to the normal three-year statute applies, the IRS will only be able to assess tax, penalty and interest for three years. However, if the period of limitations was open because, for example, the IRS can prove a substantial omission of gross income, six years of liability may be assessed. Similarly, if there was a failure to file certain information returns, such as Form 3520 or Form 5471, the statute of limitations will not have begun to run. If the IRS can prove fraud, there is no statute of limitations for assessing tax. In addition, the statute of limitations for asserting FBAR penalties is six years from the date of the violation, which would be the date that an unfiled FBAR was due to have been filed. 31 U.S.C. § 5321(b)(1).
43.	Will I be required to complete and sign agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties for any years that are otherwise set to expire while my application is being processed by the IRS?	Yes. Properly completed and signed agreements to extend the period of time to assess tax (including tax penalties) and to assess FBAR penalties are required to be submitted by August 31, 2011 (see FAQ 25).
FBAR QUESTIONS		
44.	If I had an FBAR reporting obligation for years covered by the voluntary disclosure, what version of the Form TD F 90-22.1 should I use to report my interests in foreign accounts?	Taxpayers should use the most current version of Form TD F 90-22.1, for filing delinquent FBARs to report foreign accounts maintained in prior years. At this time, the most current version is the one that was revised in October 2008. The taxpayer may, however, rely on the instructions for the prior version of the form (revised in July 2000) for purposes of determining who must file to report foreign accounts maintained during the 2009 and prior calendar years. Taxpayers may rely on guidance that was applicable for prior FBAR filing seasons (e.g., IRS Announcement 2010-16 or IRS Notice 2010-23) in determining their FBAR reporting obligations.
45.	A taxpayer has two offshore accounts. No FBARs were filed. The taxpayer reported all income from one account but not the other. Mechanically, how does the taxpayer report this? Does the taxpayer report both accounts as a voluntary disclosure or bifurcate it into a delinquent FBAR filing for the reported account and a voluntary disclosure for the unreported account?	Because the annual FBAR requirement is to file a single report reporting all foreign accounts meeting the reporting requirement, it is not possible to bifurcate the corrected filing. The taxpayer should make a voluntary disclosure for the omitted income and include the delinquent FBARs with respect to both accounts. The account with no income tax issue is unrelated to the taxpayer's tax noncompliance, so no penalty will be imposed with respect to that account.
46.	If a taxpayer is uncertain about whether he is required to file an FBAR with respect to a particular foreign account, how can the taxpayer get help with this question?	Help with questions about FBAR filing requirements is available on the FBAR Hotline at 1-800-800-2877. Select option 2. You can also submit written questions about the FBAR rules by e-mail addressed to FBARQuestions@irs.gov. The instructions to the FBAR form are available at www.irs.gov. Do not call the IRS OVDI Hotline with questions about whether you have an FBAR filing requirement. The purpose of the Voluntary Disclosure Hotline is to answer questions about how to make voluntary disclosures and what penalties apply, assuming a taxpayer was required to file.
TAXPAYER REPRESENTATIVES		
47.	I have a client who may be eligible to make a voluntary disclosure. What are my responsibilities to my client under Circular 230?	The IRS anticipates that taxpayers will seek qualified tax and legal advice and representation in connection with considering and making a voluntary disclosure. If a taxpayer seeks the advice of a tax practitioner, the practitioner must exercise due diligence in determining the correctness of any oral or written representations made to the client about the program and the implications for that taxpayer of going forward. If the taxpayer decides to proceed with the disclosure, the practitioner must exercise due diligence in determining the correctness of any oral or written representations that the practitioner makes during the representation to the Department of the Treasury; and must avoid giving, or participating in giving, false or misleading information to the Department of the Treasury or giving a false or misleading opinion to the taxpayer. If the taxpayer decides not to make the voluntary disclosure despite

		the taxpayer's noncompliance with United States tax laws, Circular 230 requires the practitioner to advise the client of the fact of the client's noncompliance and the consequences of the client's noncompliance. A practitioner whose client declines to make full disclosure of the existence of, or any taxable income from, a foreign financial account during a taxable year, may not prepare the client's income tax return for that year without being in violation of Circular 230.
48.	Are there special considerations for completing Form 2848, Power of Attorney and Declaration of Representative?	Yes. In addition to being authorized to represent the taxpayer for tax years 2003 through 2010, the power of attorney must specifically authorize you to represent the taxpayer for income tax, civil penalties and FBARs. A sample power of attorney can be found at www.irs.gov.
CASE RESOLUTION		
49.	If the taxpayer and the IRS cannot agree to the terms of the 2011 OVDI closing agreement, will mediation with Appeals be an option with respect to the terms of the closing agreement?	No. The penalty framework and the agreement to limit tax exposure to years 2003 through 2010 are package terms under the 2011 OVDI. If any part of the offshore penalty is unacceptable to the taxpayer, the case will be examined and all applicable penalties will be imposed (see FAQ 51). After a full examination, any tax and penalties imposed by the Service on examination may be appealed, but the Service's decision on the terms of the 2011 OVDI closing agreement may not.
50.	Will examiners have any discretion to settle cases?	No. Voluntary disclosure examiners do not have discretion to settle cases for amounts less than what is properly due and owing. However, because the 25 percent offshore penalty is a proxy for the FBAR penalty, other penalties imposed under the Internal Revenue Code, and potential liabilities for years prior to 2003, there may be cases where a taxpayer making a voluntary disclosure would owe less if the special offshore initiative did not exist. Under no circumstances will taxpayers be required to pay a penalty greater than what they would otherwise be liable for under the maximum penalties imposed under existing statutes. For example, if a taxpayer had $100,000 in an offshore bank account in only one year and foreign income-producing real estate with a fair market value of $1,000,000, only the bank account would be subject to the FBAR penalty. Consequently, the maximum FBAR penalty would only be $100,000 (that is, the greater of $100,000 or 50% of the amount in the foreign account), which is substantially less than the offshore penalty of $275,000 (25% of $1,100,000). If this FBAR penalty, plus tax, interest and all other applicable penalties, are less than what is due under this offshore initiative, the taxpayer will only pay the lesser amount. Examiners will compare the amount due under this offshore initiative to the tax, interest, and applicable penalties (at their maximum levels and without regard to issues relating to reasonable cause, willfulness, mitigation factors, or other circumstances that may reduce liability) for all open years that a taxpayer would owe in the absence of the 2011 OVDI penalty regime. The taxpayer will pay the lesser amount. If the taxpayer disagrees with the result, the taxpayer may request that the case be referred for an examination of all relevant years and issues (see FAQ 51).
51.	If, after making a voluntary disclosure, a taxpayer disagrees with the application of the offshore penalty, what can the taxpayer do?	If the offshore penalty is unacceptable to a taxpayer, that taxpayer must indicate in writing the decision to withdraw from or opt out of the program. Once made, this election is irrevocable. An opt out is an election made by a taxpayer to have his or her case handled under the standard audit process. It should be recognized that in a given case, the opt out option may reflect a preferred approach. That is, there may be instances in which the results under the applicable voluntary disclosure program appear too severe given the facts of the case. There will be other instances where this is less clear. In the latter cases, the Service will look to ensure that the best interests of the Service and the integrity of the voluntary disclosure program remain intact. In these cases, it is expected that full scope examinations will occur if opt out is initiated. It is expected that opt out will be appropriate for a discrete minority of cases. Moreover, to the extent that issues are found upon a full scope examination that were not disclosed by the taxpayer, those issues may be the subject of review by Criminal Investigation. In either case, opting out is at the sole discretion of the taxpayer and the taxpayer should not be treated in a negative fashion merely because he or she chooses to opt out. The specific procedures for opting out are set forth in a separate guide titled Opt Out and Removal Guide for the 2009 OVDP and 2011 OVDI. The guide is posted to the website. Taxpayers are reminded, that even after opting out of the Service's civil settlement structure, they remain within Criminal Investigation's Voluntary Disclosure Practice. Therefore, taxpayers are still required to cooperate fully with the examiner by providing all requested information and records and must still pay or make arrangements to pay the tax, interest, and penalties they are ultimately determined to owe. If a taxpayer does not cooperate and make payment arrangements, or if after examination, issues exist

		that were not disclosed prior to opt out, the case may be referred back to Criminal Investigation.
51.1	Under what circumstances might a taxpayer consider opting out of the civil settlement structure of the 2011 OVDI?	The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income. Example 1 – Unreported Income But No Tax Deficiency The taxpayer, a U.S. citizen who worked and resided in Country A, had a brokerage account in Country A that he opened in 1999. The account had a high balance of $2 million and generated income of $150,000 each year. The taxpayer did not report any of the income on his U.S. return because he mistakenly assumed he only had to report it on a Country A tax return. The taxpayer's amended Form 1040 returns showed that, after applying the foreign tax credit for taxes paid to the government of Country A, he had no tax deficiency with respect to the unreported income. Because the taxpayer had unreported income, he does not qualify for FAQ 17. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53. The Offshore Penalty under 2011 OVDI is $500,000 (i.e., 25% of $2 million), even though there was no tax owed to the U.S. Government and no other indication of wrongdoing. If the taxpayer elected to opt out and, upon examination, IRS determined that the FBAR violation was not willful, he would be subject to an FBAR penalty of up to $10,000 per year ($60,000 total for six years). If IRS determines that the violation was due to reasonable cause (for example, the taxpayer reasonably acted on the written advice of an independent legal advisor after having disclosed the account to the advisor), the taxpayer would be subject to no FBAR penalty. The penalty for a nonwillful failure to file an FBAR would apply with respect to FBARs that were due on or after June 30, 2005. For this example, this would include FBARs that were filed to report foreign financial accounts maintained during calendar years 2004 through 2009.

	Civil Settlement Structure	Opt out and 6 years nonwillful FBAR penalty
Income Tax Due (not including interest)	0	0
20% Accuracy-related penalty	0	0
25% Offshore Penalty	$500,000	0
FBAR Penalty	0	$60,000
Total	$500,000	$60,000

Example 2 - Unreported Income and Failure to File FBAR

The taxpayer is a U.S. citizen, who lived abroad in 2007, 2008 and 2009. While living abroad, the taxpayer opened an account in 2007 with a bank located in Country X. Assume that the highest account balance during the three years (2007, 2008 and 2009) was $200,000. The taxpayer filed U.S. income tax returns for all years but only filed an FBAR for 2008 and 2009, not for 2007. The taxpayer was unaware of his FBAR filing obligation until having his return professionally prepared in 2008. The taxpayer failed to report approximately $2,000 of interest income from the account, and, is therefore, unable to simply file a delinquent FBAR for 2007 as provided in FAQ 17. The tax deficiency was $700. In addition, assume the taxpayer does not otherwise qualify for a reduced penalty under FAQ 52 or 53.

The Offshore Penalty under 2011 OVDI will be $50,000 (i.e., 25% of $200,000). The taxpayer would also be required to pay the tax deficiency for each year, interest on the deficiency, and the 20% accuracy-related penalty on the deficiency.

If the taxpayer elected to opt out, the taxpayer will be subject to tax, penalties, and interest on the unreported income and, if, upon examination, IRS determines that the failure to file the FBAR was not willful, the taxpayer will be subject to a non-willful FBAR penalty of no more than $10,000 for failing to file an FBAR for 2007. If IRS determines that the FBAR violation was due to reasonable cause, then no FBAR penalty will be imposed.

	Civil Settlement Structure	Opt out and 1 year nonwillful FBAR penalty	Opt out and assume the civil fraud penalty applied
Income Tax Due (not including interest)	$700	$700	$700
20% Accuracy-related penalty	$140	$140	0
25% Offshore Penalty	$50,000	0	0
Civil Fraud Penalty	0	0	$525
FBAR Penalty	0	$10,000	$10,000
Total	$50,840	$10,840	$11,225

Example 3 - Unreported Controlled Foreign Corporation

The taxpayer, a U.S. citizen who lives in the United States, owns a 100% interest in a foreign corporation that has substantial operations in Country A and a foreign bank account. The foreign corporation is not required to file an FBAR and does not file one. The taxpayer also has signature authority over the foreign bank account. The taxpayer did not file an FBAR to report his financial interest in, or signature authority over, the foreign bank account of the corporation that he controls. The interest income earned on the foreign account was $5,000 for each year. The tax deficiency for each year was $1,750. The balance in the foreign bank account during the calendar years 2003 through 2010 was a constant $1 million. The value of the taxpayer's controlling interest in the foreign corporation is determined to be $100 million (including the value of the $1 million foreign bank account).

The taxpayer did not file a Form 5471 to report his interest in the controlled foreign corporation. Instead, he wrongly treated the foreign corporation as a disregarded entity and reported the corporation's income on a Schedule C. The income he reported from the foreign corporation did not include interest income earned on the corporation's foreign bank account. Otherwise, the individual was fully compliant in reporting all other taxable income, including income from the controlled foreign corporation. The statute of limitations for assessing tax and tax penalties with respect to the controlled foreign corporation remained open under IRC § 6501(c)(8) because the Form 5471 was not filed.

	Civil Settlement Structure	Opt out and 6 years of the § 6038(a) penalty plus 6 years of the FBAR nonwillful penalty	Assume the civil fraud penalty applied for six years and the FBAR willful penalty applied for 6 years
Income Tax Due (not including interest)	$14,000	$14,000	$14,000
20% Accuracy-related penalty	$2,800	$2,800	0
25% Offshore Penalty	$25,000,000	0	0
§ 6038(a) Penalty	0	$60,000	$60,000
Civil Fraud Penalty	0	0	$10,500
FBAR Penalty	0	$60,000	$3,000,000
Total	$25,016,800	$136,800	$3,084,500

51.2 Under what circumstances might opting out of the civil settlement structure of the 2011 OVDI be a disadvantage for the taxpayer?
Total

The following scenarios are provided to illustrate the effect of a taxpayer opting out of the civil settlement structure. Opting out of the civil settlement structure does not affect the status of a taxpayer's voluntary disclosure under Criminal Investigation's Voluntary Disclosure Practice, so long as the taxpayer is fully cooperative in the examination process, by providing all requested foreign records and submitting to interviews, as requested, and as long as no new issues are uncovered that were previously not disclosed. The facts of each example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, they may not be relied upon in dealing with any taxpayer's actual case. For all of the following examples, assume a 35% tax rate on all unreported income.

Example 4 - Large Unreported Gain

The taxpayer, a U.S. citizen, opened a bank account in Country A in 2008 with funds upon which U.S. taxes were paid. The taxpayer discloses that he had failed to report the sale, in 2008, of an apartment building in Country A that he owned. The apartment building was valued at $10 million and the taxpayer's unreported gain on the sale was $6 million. The related tax deficiency was $2,100,000. The taxpayer deposited the entire $10 million in the checking account with the foreign bank and, the next day, transferred the funds to his bank account in the U.S. The apartment building that was sold was held in a foreign trust that was a grantor trust (with the taxpayer as the grantor). The taxpayer established the trust in 2008, just prior to the sale of the apartment building, and transferred the building to the trust. The taxpayer did not file a Form 3520 to report the creation of the trust and the transfer of property.

The Offshore Penalty under 2011 OVDI will be $2,500,000 (i.e., 25% of $10 million). The taxpayer would also be required to pay the $2,100,000 tax deficiency, interest, and a 20% accuracy-related penalty. A 20% penalty on a $2,100,000 deficiency is $420,000.

If the taxpayer elected to opt out, he could face an FBAR penalty with respect to the 2008 calendar year of $5,000,000 (i.e., a 50% willful FBAR penalty on the checking account, which included $10 million in sale proceeds). Taxpayer will also owe tax, penalties, and interest with respect to the $2,100,000 deficiency. The taxpayer would also be subject to FBAR penalties for all other open years, if the aggregate balance in the checking account exceeded $10,000 during each year.

Upon examination, the revenue agent may determine that the nonreporting was due to fraud. In that case, the civil fraud penalty on the $2.1 million tax deficiency attributable to fraud would be $1,575,000 (i.e., 75% of $2,100,000). The IRC § 6677 penalty for failing to file the Form 3520 information return would be an additional $3.5 million (i.e., 35% of $10 million).

	Civil Settlement Structure	Opt out and 1 year willful FBAR penalty	Opt out and assume the civil fraud penalty applied
Income Tax Due (not including interest)	$2,100,000	$2,100,000	$2,100,000
20% Accuracy-related penalty	$420,000	$420,000	0
25% Offshore Penalty	$2,500,000	0	0
Civil Fraud Penalty	0	0	$1,575,000
§ 6677 Penalty	0	$3,500,000	$3,500,000
FBAR Penalty	0	$5,000,000	$5,000,000
Total	$5,020,000	$11,020,000	$12,175,000

Example 5 – Civil Fraud Penalty Warranted

In 2002, Taxpayer sold a building located in Country X for $400,000 short term capital gain, which he intentionally failed to report on his 2002 Form 1040. Assume the taxpayer's basis in the building was zero. He deposited the sales proceeds in an offshore account with a bank located in Country Y. The account with the bank in Country Y is in the name of a trust the taxpayer established in Country Z in 2000. The account earned $12,000 in interest each year from 2003 through 2010. The taxpayer closed the account with the bank in Country Y in 2010 and brought the funds back into the United States, disguising the funds as a loan from an allegedly unrelated entity.

The highest balance in the foreign account was $496,000. The Offshore Penalty under 2011 OVDI is $124,000 (i.e., 25% of $496,000). The total of the tax deficiencies for the years 2002 through 2010 was $173,600. This consisted of a tax deficiency of $140,000 for the 2002 year (for the unreported gain of $400,000) and a total of $33,600 for the tax years 2003 through 2010 (for the unreported interest income). The 75% civil fraud penalty would otherwise apply with respect to the related tax deficiencies. There is no statute of limitations for assessments of tax attributable to fraud.

The total of the IRC § 6677 penalty for failing to file a Form 3520 to report the $400,000 transfer to the account (35% of $400,000) and the failure to file Forms 3520-A (5% of the $400,000 plus the interest income added each year) was $495,200.

The statute of limitations for assessing FBAR penalties for willful violations in each year is open for the 2004 through 2010 calendar years. The total amount of willful FBAR penalties that may be assessed is $1,362,000 (50% of the balance in the account for each year, including the $12,000 in interest income added to the account each year).

	Civil Settlement Structure	Opt out and 8 years § 6677 penalty and 6 years FBAR Penalty
Income Tax Due (not including interest)	$33,600	$173,600
75% Civil Fraud Penalty	0	$130,200
20% Accuracy Related Penalty	$5,040	0
25% Offshore Penalty	$118,000	0
§ 6677 Penalty	0	$495,200
FBAR Penalty	0	$1,362,000
Total	$156,640	$2,161,000

51.3 If I opt out of the 2011 OVDI and undergo a regular examination, is there a chance my case could be referred back to Criminal Investigation for penalties or prosecution?

Yes. Criminal Investigation's Voluntary Disclosure Practice provides a recommendation that you not be prosecuted for violations up to the date of your disclosure. If your disclosure is ultimately determined to have not been complete, accurate, and truthful, or if you commit a crime after the date of your voluntary disclosure, you are subject to penalties and prosecution. The facts of the example were chosen to illustrate particular issues and do not represent a full analysis of a taxpayer's particular situation. Consequently, the example may not be relied upon in dealing with any taxpayer's actual case. For the following example, assume a 35% tax rate on all unreported income.

Example 6 - IRS Learns of Unreported Income and False Statements After Opt Out

Taxpayer made a voluntary disclosure for tax years 2003 through 2010 under the 2011 OVDI to report a foreign bank account he opened while working outside the United States. The highest aggregate balance in the account was $1,000,000. The account earned a total of $350,000 over the 8 years that was not reported on his tax returns.

On his voluntary disclosure application, the taxpayer stated that he worked full-time overseas as a consultant from 1989 through 1999, but he had to return to the United States permanently after a medical condition prevented him from continuing to work. He stated that he currently lives on his savings from the foreign account and a small disability pension.

The taxpayer elected to opt out of the 2011 OVDI because he believed the total tax, interest, and penalties were too high. Particularly, the taxpayer stated that the $250,000 offshore penalty (25% of $1,000,000) was too severe. He would rather take his chances being audited so he could argue reasonable cause and that he did not willfully fail to file the FBARs.

The assigned examiner placed tax years 2003 through 2010 under regular examination. As part of the examination, the examiner performed the gross income tests required by the Internal Revenue Manual. The analysis disclosed that the income reported by the taxpayer from 2003 through 2010 was much less than his expenditures during the same period. The examiner's analysis disclosed that over the 8 year period, the taxpayer spent approximately $750,000, roughly $50,000 per year more than he earned during the same period.

When the examiner asked the taxpayer how he was able to support himself, the taxpayer stated that because he was unable to be gainfully employed due to his medical condition, he received gifts and help from family members and friends. He could not, however, provide any proof of the gifts or even recall the names of the family members and friends who helped him.

Ultimately, through third-party contacts the examiner located a business owner for whom the taxpayer performed consulting services. The business owner admitted that he paid the taxpayer approximately $50,000 a year "under the table."

Due to the pattern of significant amounts of unreported income over an 8 year period and the false statements made by the taxpayer in his application and to the examiner, the case could be referred to Criminal Investigation for investigation and possible prosecution and assertion of the civil fraud penalty.

The income tax due is computed on the unreported offshore interest income ($350,000) and the unreported wages ($400,000). $750,000 at a 35% tax rate = $262,500	Civil Settlement Structure assuming the taxpayer had voluntarily disclosed all unreported income [1]	Opt out and the civil fraud penalty and willful FBAR applied
Income Tax Due (not including interest)	$262,500	$262,500
20% Accuracy-related penalty	$24,500	0
25% Offshore Penalty	$250,000	0
Civil Fraud Penalty [2]	$105,00	$196,875
FBAR Penalty ($500,000/yr 2004-2009)	0	$3,00,000
Total	$642,000	$3,459,375

Footnotes for answer 51.3:

[1] It is assumed that the "under the table" income was reported on the properly prepared amended returns as required by the terms of the OVDI.

[2] Civil fraud penalty computed on "under the table" income in OVDI and on all unreported income after opt out.

52. Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 5 percent offshore penalty?

Unless the taxpayer would owe a lesser amount under FAQ 50, taxpayers making voluntary disclosures who fall into one of the three categories described below will qualify for a 5 percent offshore penalty. Examiners have no authority to negotiate a different offshore penalty percentage.

1. Taxpayers who meet all four of the following conditions: (a) did not open or cause the account to be opened (unless the bank required that a new account be opened, rather than allowing a change in ownership of an existing account, upon the death of the owner of the account); (b) have exercised minimal, infrequent contact with the account, for example, to request the account balance, or update accountholder information such as a change in address, contact person, or email address; (c) have, except for a withdrawal closing the account and transferring the funds to an account in the United States, not withdrawn more than $1,000 from the account in any year for which the taxpayer was non-compliant; and (d) can establish that all applicable U.S. taxes have been paid on funds deposited to the account (only account earnings have escaped U.S. taxation). For

funds deposited before January 1, 1991, if no information is available to establish whether such funds were appropriately taxed, it will be presumed that they were.

Example 1: When the taxpayer's father died, the taxpayer inherited two offshore accounts. His father's last deposit to the accounts was more than 30 years ago. The taxpayer provided his email address to the bank to receive bank statements by email and indicated an investment approach as required by the bank to open the account in the taxpayer's name. Twice he has been to the foreign jurisdiction and talked to a banker—during one of those visits he withdrew $1,000 from one of the accounts. Otherwise, he did not withdraw any money from the accounts until last year, when he closed the accounts and repatriated the money to a U.S. bank. He never reported earnings on the accounts on his U.S. tax returns and he never filed an FBAR. He is entitled to the reduced 5% offshore penalty.

Example 2: The facts are the same as in example 1, except that $40,000 of the funds were deposited to one of the accounts in 1995. The taxpayer would have to identify the source of the deposit and, if the source was taxable in the U.S., prove that U.S. income tax was paid on those funds. In the absence of such proof, the taxpayer is not entitled to the reduced 5% offshore penalty.

Example 3: The facts are the same as in example 1, except that subsequent to opening the account, the taxpayer voluntarily provided instructions to the bank concerning the investment of funds. The taxpayer is not entitled to the reduced 5% offshore penalty.

2. Taxpayers who are foreign residents and who were unaware they were U.S. citizens.

   Example 1: The taxpayer was born in the U.S. to parents of foreign citizenship. She grew up in a foreign jurisdiction, unaware that she had been born in the U.S. She has a $60,000 account in the foreign jurisdiction. She has never filed U.S. returns or FBARs. She became aware she was a U.S. citizen when she had to get a birth certificate in order to obtain a passport from the foreign jurisdiction where she resides. She is entitled to the reduced 5% offshore penalty. Subsequent to learning of her U.S. citizenship, taxpayer took no action with respect to her foreign accounts that would disqualify a U.S. taxpayer from the 5 percent penalty under paragraph 1, above.

   Example 2: The facts are the same as in example 1, except that the taxpayer always knew she was a U.S. citizen and never inquired about her U.S. tax obligations. The taxpayer is not entitled to the reduced 5% offshore penalty, unless she qualifies under paragraph 1 or 3.

3. Taxpayers who are foreign residents and who meet all three of the following conditions for all of the years of their voluntary disclosure: (a) taxpayer resides in a foreign country; (b) taxpayer has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency; and (c) taxpayer has $10,000 or less of U.S. source income each year. For these taxpayers only, the offshore penalty will not apply to non-financial assets, such as real property, business interests, or artworks, purchased with funds for which the taxpayer can establish that all applicable taxes have been paid, either in the U.S. or in the country of residence. This exception only applies if the income tax returns filed with the foreign tax authority included the offshore-related taxable income that was not reported on the U.S. tax return.

   Example 1: The taxpayer is a U.S. citizen who has lived and worked as a corporate executive in Country X since 1995. His income has included earnings in excess of $250,000 in each year, as well as bank interest and investment income on financial accounts that had a high aggregate balance of $1.2 million in 2009. He has paid all required taxes on his earnings and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States. In addition to his financial accounts, the taxpayer has acquired a personal residence in Country X with an equity of $900,000 and an automobile worth $85,000, both financed with previously taxed savings from the U.S., as well as his salary and investment earnings in Country X.

		Because the taxpayer was fully tax compliant in Country X, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $60,000. The residence and automobile will not be included in the penalty base because the funds used to acquire them were fully taxed in the Country X. Example 2: The taxpayer is a U.S. citizen who has lived in Country X since 1995. He is an entrepreneur who developed his own software business, which he operated as a wholly owned corporation, ABC Corp., incorporated in Country X, until he took the corporation public in 2005. After the IPO, the taxpayer sold ABC stock at a capital gain of $5 million, and retained other ABC stock with a market value of approximately $20 million. He used $2 million of the stock proceeds to purchase a personal residence and put the remainder in his investment accounts. His income has included salary exceeding $250,000 in each year, the $5 million capital gain in 2005, and bank interest and investment income on financial accounts that had a high aggregate balance of $3.8 million in 2009. He has paid all required taxes on his earnings, capital gain, and investment income in Country X in every year, but has filed no U.S. income tax returns since moving out of the United States. Because the taxpayer was fully tax compliant in the country of residence, he will be eligible for a reduced offshore penalty of 5 percent of the value of the financial accounts, or $190,000. The ABC stock and the personal residence will not be included in the penalty base because the funds used to acquire them were fully taxed in the country of residence. Taxpayers who participated in the 2009 OVDP whose cases have been resolved and closed with a Form 906 closing agreement who believe the facts of their case qualify them for the 5% reduced penalty criteria of the 2011 OVDI, but paid a higher penalty amount under the 2009 OVDP should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the Revenue Agent assigned to their case, and a copy of their closing agreement. This information should be sent to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 Attn: 2009 OVDP Determination Upon receipt of this information, the case will be assigned to an examiner to review and make a determination.
53.	Under what circumstances would a taxpayer making a voluntary disclosure under this initiative qualify for a reduced 12.5 percent offshore penalty?	Unless the taxpayer qualifies for a lesser payment as calculated under FAQ 50 or a 5 percent offshore penalty under FAQ 52, taxpayers whose highest aggregate account balance (including the fair market value of assets in undisclosed offshore entities and the fair market value of any foreign assets that were either acquired with improperly untaxed funds or produced improperly untaxed income) in each of the years covered by the 2011 OVDI is less than $75,000 will qualify for a 12.5 percent offshore penalty. As in other cases, examiners have no authority to negotiate a different offshore penalty percentage. Example 1: The taxpayer was born in a foreign jurisdiction and is now a U.S. citizen. He has a landscaping business in the U.S. He sends money to an account in the foreign jurisdiction that he owns jointly with his mother (who is a resident of that jurisdiction). The account never has more than $75,000 in it. He has never filed an FBAR or paid U.S. tax on the earnings from the account. He is entitled to the reduced 12.5% offshore penalty. The result would be the same for taxpayers who are U.S. citizens by birth. Example 2: The facts are the same as in example 1, except that the taxpayer made a deposit to the account in 2005 that briefly brought the account balance to $78,000. Because the highest account balance during the years covered by the 2011 OVDI was greater than $75,000, the taxpayer is not entitled to the reduced 12.5% offshore penalty. Taxpayers who participated in the 2009 OVDP whose cases have been resolved and closed with a Form 906 closing agreement who believe the facts of their case qualify them for the 12.5% reduced penalty criteria of the 2011 OVDI, but paid a higher penalty amount under the 2009 OVDP should provide a statement to this effect including all pertinent contact information (name, address, SSN, home/cell phone numbers), the name of the Revenue Agent assigned to their case, and a copy of their closing agreement. This information should be sent to: Internal Revenue Service 3651 S. I H 35 Stop 4301 AUSC

		Austin, TX 78741 Attn: 2009 OVDP Determination Upon receipt of this information, your case will be assigned to an examiner to review and make a determination.

Page Last Reviewed or Updated: June 03, 2011

FinCEN Notice 2011-1 FBAR Filing Requirement--Extended Filing Date Related to Exceptions Described in 31 CFR 1010.350(f)(2) (Revised)

FinCEN is issuing this notice concerning reports of foreign financial accounts ("FBAR") to provide administrative relief in connection with exceptions described in 31 CFR 1010.350(f)(2), relating to certain exceptions concerning signature or other authority.

On February 24, 2011, FinCEN published a final rule that amended the Bank Secrecy Act ("BSA") regulations regarding reports of foreign financial accounts (the "Final Rule").[1] The Final Rule addressed the scope of the persons that are required to file reports of foreign financial accounts and further specified the types of accounts that are reportable.

The Final Rule also provided filing relief in the form of exceptions for officers or employees with signature or other authority over certain foreign financial accounts. These exceptions apply only where the officers or employees have no financial interest in the reportable account. The exceptions appear at 31 CFR 1010.350(f)(2)(i)-(v).

Following the release of the final rule, FinCEN received questions concerning the application of the exceptions by the June 30, 2011 compliance date to the following individuals:

(1) an employee or officer of an entity under § 1010.350(f)(2)(i)-(v) who has signature or other authority over and no financial interest in a foreign financial account of a controlled person[2] of the entity; or

[1] Amendments to the Bank Secrecy Act Regulations-Reports of Foreign Financial Accounts, 76 FR 10234 (Feb. 24, 2011).
[2] For purposes of this notice, a controlled person is a United States or foreign entity more than 50 percent owned (directly or indirectly) by an entity under § 1010.350(f)(2)(i)-(v).

(2) an employee or officer of a controlled person of an entity under § 1010.350(f)(2)(i)-(v) who has signature or other authority over and no financial interest in a foreign financial account of the entity, the controlled person, or another controlled person of the entity.

In light of these questions, FinCEN is granting an extension of the filing date to June 30, 2012 to allow these individuals additional time to file FBARs based on their signature or other authority in situations (1) through (2) described above. For all other individuals with an FBAR filing obligation, the filing date remains unchanged. Questions or comments regarding the contents of this notice may be addressed to the FinCEN Regulatory Helpline at 800-949-2732. General FBAR filing questions may be directed to the IRS hotline at 800-800-2877, option 2, or to FBARQuestions@irs.gov.

Dated: June 2, 2011

James H. Freis, Jr.
Director,
Financial Crimes Enforcement Network

Part III - Administrative, Procedural, and Miscellaneous

FBAR FILING REQUIREMENTS - ADDITIONAL ADMINISTRATIVE RELIEF FOR INDIVIDUALS WHOSE FILING DEADLINE WAS EXTENDED UNDER NOTICE 2010-23

Notice 2011-54

This Notice provides additional administrative relief to persons whose requirement to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), to report signature authority over foreign financial accounts held during calendar year 2009 or earlier calendar years was properly deferred under Notice 2009-62, 2009-35 I.R.B. 260, or Notice 2010-23, 2010-11 I.R.B. 441.

On August 31, 2009, the Department of the Treasury and the Internal Revenue Service published Notice 2009-62, which, in part, extended the filing deadline for persons with no financial interest in a foreign financial account but with signature or other authority over that account (hereinafter referred to as "signature authority") for the 2008 or earlier calendar years. In Notice 2010-23, the Department of the Treasury and the IRS further extended relief to persons whose filing deadline was properly deferred by Notice 2009-62 and provided a new filing deadline to June 30, 2011, to report signature authority over, but no financial interest in, foreign financial accounts for calendar year 2009 or earlier calendar years. The extensions were provided to allow the Treasury Department time to develop comprehensive FBAR guidance.

On February 24, 2011, the Financial Crimes Enforcement Network (FinCEN) published final regulations (76 FR 10234) amending the Bank Secrecy Act implementing regulations regarding FBARs, found at 31 CFR 1010.350 (formerly 31 CFR 103.24). The regulations became effective on March 28, 2011, and apply to FBARs required to be filed by June 30, 2011, with respect to foreign financial accounts maintained in calendar year 2010, as well as to FBARs for subsequent calendar years. The final regulations also provide that individuals who properly deferred their FBAR filing obligations pursuant to Notice 2010-23 may apply the provisions of the final regulations in determining their FBAR filing requirements for reports due June 30, 2011, with respect to foreign financial accounts maintained in calendar years beginning before 2010. In March 2011, the IRS released a revised FBAR form with accompanying instructions that reflect the amendments made by the final FBAR regulations.

The IRS and FinCEN recently have been informed that individuals with signature authority over, but no financial interest in, foreign financial accounts are having difficulty compiling the information needed to file complete and accurate FBARs with respect to the 2009 or earlier calendar years by the June 30, 2011 deadline, as previously extended by Notice 2009-62 or Notice 2010-23. Accordingly, the IRS and FinCEN provide the following additional administrative relief:

Persons having signature authority over, but no financial interest in, a foreign financial account in 2009 or earlier calendar years for which the reporting deadline was extended by Notice 2009-62 or Notice 2010-23 will now have until November 1, 2011, to file FBARs with respect to those accounts. The deadline for reporting signature authority over, or a financial interest in, foreign financial accounts for the 2010 calendar year remains June 30, 2011.

The administrative relief provided in this Notice does not limit the relief provided in FinCEN's Notice 2011-1, which was released on May 31, 2011, and revised on June 6, 2011. A copy of revised FinCEN Notice 2011-1 may be found at www.fincen.gov. Additionally, the administrative relief provided in this Notice does not affect the requirements to provide information or file FBARs in connection with the IRS's 2009 Offshore Voluntary Disclosure Program or the 2011 Offshore Voluntary Disclosure Initiative. Nor does this Notice alter the deadlines for electing to participate in, or fulfilling the submission requirements of, the Offshore Voluntary Disclosure Program or the Offshore Voluntary Disclosure Initiative.

EFFECT ON OTHER DOCUMENTS

Notice 2010-23 is modified and supplemented.

The principal author of this notice is Emily M. Lesniak of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this Notice, contact Emily M. Lesniak at (202) 622-4570 (not a toll-free call).

FinCEN Notice 2011-2 FBAR Filing Requirement--Extended Filing Date Relating to Officers or Employees of Investment Advisors Registered With the Securities and Exchange Commission

FinCEN is issuing this notice concerning reports of foreign financial accounts ("FBAR") to provide administrative relief in the case of officers or employees of investment advisors registered with the Securities and Exchange Commission who have signature or other authority over but no financial interest in certain foreign financial accounts.

On February 24, 2011, FinCEN published a final rule that amended the Bank Secrecy Act ("BSA") regulations regarding reports of foreign financial accounts (the "Final Rule").[1] The Final Rule addressed the scope of the persons that are required to file reports of foreign financial accounts and further specified the types of accounts that are reportable.

The Final Rule also provided filing relief in the form of exceptions for officers or employees with signature or other authority over certain foreign financial accounts. These exceptions apply only where the officers or employees have no financial interest in the reportable account. One of those exceptions applies to officers and employees of Authorized Service Providers who have signature or other authority over (but no financial interest in) a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.[2]

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[1] Amendments to the Bank Secrecy Act Regulations-Reports of Foreign Financial Accounts, 76 FR 10234 (Feb. 24, 2011).

[2] 31 CFR 1010.350(f)(2)(iii).

"Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940 ("registered investment company").

Following the release of the final rule, FinCEN received questions about processing issues in filing the FBAR by the June 30, 2011 compliance date in the case of officers and employees of investment advisors registered with the Securities and Exchange Commission when such individuals have signature or other authority over (but no financial interest in) the foreign financial accounts of persons that are not registered investment companies.

In light of these questions, FinCEN is granting an extension of the filing date to June 30, 2012 to allow officers and employees of investment advisors registered with the Securities and Exchange Commission with signature or other authority over (but no financial interest in) the foreign financial accounts of persons that are not registered investment companies additional time to file FBARs[3]. The extension is applicable to FBARs for calendar year 2010 and FBARs for calendar year 2009 or earlier calendar years for which the filing deadline was properly deferred under Notice 2009-62, 2009-35 I.R.B. 260, or Notice 2010-23, 2010-11 I.R.B. 441. Questions or comments regarding the contents of this notice may be addressed to the FinCEN Regulatory Helpline at 800-949-2732. General FBAR filing questions may be directed to the IRS hotline at 800-800-2877, option 2, or to FBARQuestions@irs.gov.

Dated: June 17, 2011

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James H. Freis, Jr.
Director, Financial Crimes Enforcement Network

[3] See also, FinCEN Notice 2011-1.