

FinCEN Issues Additional Extension for Certain FBAR Filers

Certain individuals having only signature authority over foreign financial accounts have until June 30, 2013, to file the FBAR.

March 1, 2012

On February 14, the Financial Crimes Enforcement Network (FinCEN) announced that certain persons who are obligated to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), now have until **June 30, 2013**, to file the form.¹ This extended filing deadline applies to certain individuals with signature authority over but no financial interest in one or more foreign financial accounts and to certain employees or officers of investment advisers registered with the Securities and Exchange Commission (SEC) who have signature authority over but no financial interest in certain foreign financial accounts. FinCEN cites “additional questions and concerns” regarding exceptions to filing addressed in prior FinCEN notices as the basis for this latest extension. This is the second filing extension applicable to such persons. It covers not only the reporting of signature authority held by such persons for 2011, but also for all other years for which filing was previously extended to June 30, 2012, under FinCEN Notices 2011-1 and 2011-2. All others who are required to file an FBAR must still do so by June 30, 2012.

Very generally, FinCEN Notice 2011-1 provided an extension to file FBARs for the following employees and officers of certain “Excepted Entities” (as defined in the Final Regulations released by FinCEN on February 24, 2011²):

1. The prior deadline for such persons was June 30, 2012. For further details on the FBAR, see the following LawFlashes: “Important New Development Regarding Reporting of Foreign Bank and Financial Accounts: What Corporations and Individuals Need to Know” (Jan. 27, 2009), available at http://www.morganlewis.com/pubs/Tax_ForeignBank_LF_27jan09.pdf; “FinCEN and IRS Issue Guidance on FBAR Filing Requirements for Certain U.S. Persons” (Feb. 26, 2010), available at http://www.morganlewis.com/pubs/TaxLF_FinCEN-IRSGuidanceOnFBARFilingReqs_26feb10.pdf; “FinCEN Issues Final FBAR Regulations for Certain U.S. Persons Holding Foreign Financial Accounts” (Mar. 11, 2011), available at http://www.morganlewis.com/pubs/TaxLF_FinCENIssuesFinalFBARRegulations_11march11.pdf; “FinCEN Issues Extension for Certain FBAR Filers” (June 3, 2011), available at http://www.morganlewis.com/pubs/TaxLF_FinCENIssuesExtensionFBARFilers_03june11.pdf; and “Two More Extensions: IRS and FinCEN Issue Extensions for Certain FBAR Filers in IRS Notice 2011-54 and FinCEN Notice 2011-2” (June 20, 2011), available at http://www.morganlewis.com/pubs/TaxLF_IRSFinCENIssueExtensionsforFilers_20june11.pdf.

2. For further details, see “FinCEN Issues Extension for Certain FBAR Filers.”

- (1) An employee or officer of an Excepted Entity who has signature or other authority over and no financial interest in a foreign financial account of a controlled person of the entity.
- (2) An employee or officer of a controlled person of an Excepted Entity who has signature or other authority over and no financial interest in a foreign financial account of the entity or another controlled person of the entity.

For purposes of FinCEN Notice 2011-1, a “controlled person” is a U.S. or foreign entity more than 50% owned (directly or indirectly) by an Excepted Entity.

As noted, the employees or officers described in FinCEN Notice 2011-1 now have until June 30, 2013, to file FBARs if FinCEN ultimately decides that such filings are required.

Very generally, FinCEN Notice 2011-2 extended the FBAR filing deadline until June 30, 2012, for certain individuals who are employees or officers of investment advisors registered with the SEC and who have signature or other authority over and no financial interest in foreign financial accounts of persons that are not investment companies registered under the 1940 Act. The exemption set forth in the Final Regulations only covers employees of “Authorized Service Providers” (ASPs) with respect to accounts of mutual funds that are registered under the 1940 Act.³

As noted, the employees or officers described in FinCEN Notice 2011-2 now have until June 30, 2013, to file FBARs if FinCEN ultimately decides that such filings are required.

We have updated our “[Ultimate FBAR Due Date Chart](#)” to reflect these extended deadlines.⁴

In a separate release on February 24, 2012, FinCEN announced that it will postpone mandatory electronic filing of the FBAR until July 1, 2013 (a one-year extension), thus providing that electronic filing begins with the FBAR for the 2013 calendar year due by June 30, 2014.

Finally, a notable change made to the 2011 IRS Form 1040, Schedule B, Line 7a, now requires individual U.S. taxpayers to indicate, *inter alia*, whether they have signature or other authority over a foreign financial account, and if so, indicate whether or not they are required to file the FBAR. Presumably, employees and officers who are eligible for the extension under FinCEN Notice 2012-1 will answer the first question in the affirmative and the second in the negative based on the extension provided. Unfortunately, no official guidance has been provided on this issue.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following members of the Morgan Lewis Tax Practice:

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3. For further details, see “Two More Extensions: IRS and FinCEN Issue Extensions for Certain FBAR Filers in IRS Notice 2011-54 and FinCEN Notice 2011-2.”

4. The chart is available online at http://www.morganlewis.com/pubs/IRS_FinCENGuidanceChart_20june11.pdf.

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