



September, 12 2011

FinCEN
Attention: Office of Regulatory Policy
P.O. Box 39
Vienna, VA 22183

Re: Treatment of Persons with Signature or Other Authority Over, but No Financial Interest in, a Foreign Bank or Financial Account for Financial Bank Account Reporting (FBAR) on Form TD F 90-22.1

Dear Sir or Madam:

The Association for Financial Professionals (AFP) would like to submit comments regarding the FBAR rules that would require corporate individuals with signature or other authority over, but no financial interest in, a foreign bank or other financial account. We would also like the opportunity to schedule a meeting with you to discuss the potential unintended impact this new rule will have on the corporate treasury professional.

AFP represents approximately 16,000 finance and treasury professionals from over 5,000 corporations, including the Fortune 1,000 and the largest middle-market companies. Our membership includes a significant number of corporate treasurers and treasury professionals who are responsible for the protection and management of corporate cash, corporate liquidity requirements and corporate investments.

As directed under the Bank Secrecy Act (Act), the Financial Crime Enforcement Network (FinCEN) and the Internal Revenue Service (IRS) (hereinafter referred to as the “agencies”) are charged with implementing and enforcing rules designed to detect and prevent money laundering, tax evasion or other criminal activities, to include deterring the financing of terrorist activities. Specifically, a provision in the Act established reporting requirements for cash purchases of negotiable instruments of \$10,000 or more in foreign bank accounts.

On October 2, 2009, AFP’s Committee on Investment of Employee Benefit Assets (CIEBA) provided comment to Commissioner Shulman on the FBAR Notice 2008-62¹. However, their comments on the proposed guidance focused on the potential impact on plan sponsors. At the time that CIEBA issued comments, the larger organization did not focus on these rules as it pertained to the corporate treasury professionals that manage cash on behalf of their employers in the normal course of doing business.

On February 24, 2011, FinCEN published final rules amending the Act surrounding FBAR. The amended rules became effective on March 28, 2011 and apply to all reports required to be filed by June 30, 2011.

¹ CIEBA is the voice of AFP on employee benefit plan asset management and investment issues. CIEBA, a nationally recognized forum for ERISA-governed corporate pension plan sponsors on fiduciary and investment matters, represents more than 115 of the country’s largest retirement funds and manages \$1.4 trillion of defined benefit and defined contribution plan assets on behalf of approximately 16 million participants and beneficiaries.

Upon closer review with the passing of the final rules, we now have considerable concern that these rules place a reporting burden on more than the intended target audience. As a result of our review, we make the following requests on behalf of our members:

1. We respectfully request that Treasury reconsider its current guidance and exempt, or provide filing relief, from the FBAR reporting requirements to those U.S. persons with signature or other authority over, but no financial interest in the foreign bank or financial account of their employers.

AFP understands your directives and supports your objectives. We recognize the important function FBAR serves in aiding law enforcement and protecting the integrity of our financial system. However, the current rules will impose a significant reporting burden on our members, who are not the Act's intended focus. The majority of our members that manage and protect the assets of their companies do not have a personal vested interest in those assets. They are not engaged in money laundering, tax evasion or terrorist financing using these custodial accounts. The additional reporting burden will add an unnecessary degree of complexity to their federal tax reporting requirement. While it is understandable that corporations may incur additional costs as a result of implementing the guidance, we are deeply concerned that individuals might also incur increased costs for their personal tax preparation. AFP believes that adding this layer of costs on our members, simply as a result of their career choices, does not support the intent of the guidance.

We request that the agencies revisit the current rules and repeal the reporting requirements for U.S. individuals with signatory authority over, but no personal financial interest in, foreign bank accounts. As an alternative, we ask that the agencies consider some form of reporting relief for this population. As an example, the agencies could shift the reporting responsibility to senior management (e.g. the CFO or the Treasurer). Management could attest to the reporting detail of all foreign bank accounts held, similar to the attestations required under Sarbanes-Oxley 404 rules. The individual employer would simply be required to report their signatory authority over, but no financial interest in, foreign bank or financial accounts on their individual filings. This would still provide the regulators with a cross check, if needed, without the additional reporting burden of completing Form TD F 90-22.1.

2. We request that any exemptive relief granted by agencies be retroactive for all prior years.

Until recently, many of our members were unaware of the individual FBAR requirement. Coordination must be made between their corporate employer and the affected banks. It is our understanding that this process has been difficult from both sides. In many cases, obtaining past year information from the foreign institutions can be difficult, due to the scarcity of available information from prior years. In addition, access to the information from the employer can be difficult, if not impossible, if the affected treasury employee no longer works for the company. Thus, if the agencies do not provide retroactive relief, a vast majority of our members may not have had enough time to do a full assessment and, regrettably, will not meet the compliance deadlines.

Conclusion

AFP appreciates the opportunity to provide the agencies feedback on their recently issued guidance. AFP's Government Relations Committee will be in Washington on September 29, 2011 to discuss regulatory and legislative issues important to our membership. AFP's Government Relations Committee

is comprised of treasurers and treasury personnel of multinational corporations that will directly be impacted by this rule. Therefore, the committee respectfully requests a meeting with your staff on that date. The Committee offers your staff the opportunity to engage in open dialogue with treasury practitioners on how an acceptable solution may be achieved. Please feel free to contact Salome J. Tinker, AFP's Director of Accounting and Financial Reporting Policy at (301) 961-8871, sltinker@AFPonline.org or Thomas Hunt, AFP's Director of Treasury Services at (301) 961-8676, thunt@AFPonline.org for any additional information.

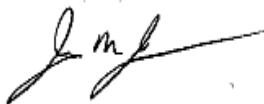
Sincerely,



Joseph C. Meek, CTP
Chair, AFP Government Relations Committee



Denise Laussade, CTP
Chair Financial Markets,
AFP Government Relations Committee



June M. Johnson, CTP, CPA
Chair, Financial Accounting and
Investor Relations Task Force
AFP Government Relations Committee