

tax lawflash

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FinCEN Announces Extension for Certain FBAR Filers

Certain individuals having only signature authority over foreign financial accounts now have until June 30, 2015 to file the Report of Foreign Bank and Financial Accounts.

On December 17, 2013, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) released Notice 2013-1,¹ which states 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, 2015** to file the form.² This extended filing deadline applies to certain individuals who have signature authority over, but no financial interest in, one or more foreign financial accounts. The extension also applies 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. As with the prior extension, FinCEN cites "ongoing consideration of questions regarding the filing requirement and its application to individuals with signature authority over but no financial interest in certain types of accounts" as the basis for this latest extension. This extension covers not only the reporting of signature authority held by such persons for 2013 but also the reporting deadlines previously extended under FinCEN Notices 2011-1, 2011-2, 2012-1, and 2012-2. The filing due date of June 30 of each year applies to all others who are required to file an FBAR.

Generally, FinCEN Notice 2013-1 further extends the FBAR filing deadline for the following employees and officers of certain "excepted entities" (as defined in the final regulations released by FinCEN on February 24, 2011³):

- An employee or officer of an excepted entity who has signature or other authority over, but no financial interest in, a foreign financial account of a controlled person of the entity.
- An employee or officer of a controlled person of an excepted entity who has signature or other authority over, but no financial interest in, a foreign financial account of the entity or another controlled person of the entity. For this purpose, a "controlled person" is a U.S. or foreign entity that is more than 50% owned (directly or indirectly) by an excepted entity.

1. View Notice 2013-1 at [http://www.fincen.gov/forms/files/FBAR%20Notice%20re%20Extended%20Filing%20Date%20\(532-2013\)_editSig.pdf](http://www.fincen.gov/forms/files/FBAR%20Notice%20re%20Extended%20Filing%20Date%20(532-2013)_editSig.pdf).

2. The prior deadline for such persons was June 30, 2014, per Notice 2012-2. For further details on the FBAR, see our previous LawFlashes on the subject: "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; "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; "FinCEN Issues Additional Extension for Certain FBAR Filers" (Mar. 1, 2012), available at http://www.morganlewis.com/pubs/Tax_LF_FinCENAddExtensionforFBARFilers_01march12.pdf; and "FinCEN Announces Third Extension for Certain FBAR Filers" (Jan. 4, 2013), available at http://www.morganlewis.com/pubs/Tax_LF_FinCENAnnouncesFBARExtension_04jan13.

3. For further details, see our June 3, 2011 LawFlash, "FinCEN Issues Extension for Certain FBAR Filers," available at http://www.morganlewis.com/pubs/TaxLF_FinCENIssuesExtensionFBARFilers_03june11.pdf.

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Notice 2013-1 also generally extends the filing deadline for employees or officers of investment advisers registered with the SEC who have signature or other authority over, but no financial interest in, foreign financial accounts of persons that are not investment companies registered under the Investment Company Act of 1940 (1940 Act). The exemption set forth in the final regulations only covers employees of “authorized service providers” with respect to accounts of mutual funds that are registered under the 1940 Act.⁴

As noted, the above-described employees or officers now have until June 30, 2015 to file FBARs if FinCEN ultimately decides that such filings are required. Our “Ultimate FBAR Due Date Chart” has been updated to reflect these extended deadlines and is available at <https://www.morganlewis.com/pubs/UltimateFBARDueDateChart.pdf>.

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4. For further details, see our June 20, 2011, LawFlash, “Two More Extensions: IRS and FinCEN Issue Extensions for Certain FBAR Filers in IRS Notice 2011-54 and FinCEN Notice 2011-2,” available at http://www.morganlewis.com/pubs/TaxLF_IRSFinCENIssueExtensionsforFilers_20june11.pdf.