

June 21, 2011

Last Minute FBAR Extensions for “Signature Authority Only” Filers – Making Sense of the Announcements

In the past week, two extensions for filing a Report of Foreign Bank and Financial Account (FBAR) were announced by the IRS and FinCEN for certain persons that are required to file FBARs solely as a result of their signature authority over a foreign financial account in which they have no financial interest. These extensions are in addition to the June 6, 2011, clarification of FinCEN Notice 2011-1 (May 31, 2011), which extended the FBAR filing due date for certain officers and employees of regulated entities or controlled entities of a regulated entity. The extensions announced for the FBAR filings originally due June 30, 2011, are summarized as follows:

Extensions Under FinCEN Notices 2011-1 and 2011-2 and IRS Notice 2011-54

Filer	Deadline
<ul style="list-style-type: none"> ▪ An officer or employee of a regulated entity with signature or other authority over, but no financial interest in, the foreign account of a controlled person; ▪ An officer or employee of a controlled person of a regulated entity with signature or other authority over, but no financial interest in, the foreign account of the regulated entity, the controlled person, or another controlled person of the regulated entity for <u>2010 and earlier years</u> ▪ (FinCEN Notice 2011-1 as reissued 6/6/2011) 	June 30, 2012
Officer or employee of an SEC-registered investment adviser with signature or other authority over, but no financial interest in, the account of a non-registered investment company for <u>2010 and earlier years</u> (FinCEN Notice 2011-2)	June 30, 2012
Any person not otherwise covered by the FinCEN Notices described above that has signature or other authority over, but no financial interest in, an account for <u>2009 and earlier years but not including 2010</u> (IRS Notice 2011-54)	November 1, 2011
All other filers for all other years	June 30, 2011

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FinCEN Notice 2011-2 and IRS Notice 2011-54

On June 17, 2011, FinCEN released FinCEN Notice 2011-2, which extends the filing deadline for 2010 and earlier FBARs until June 30, 2012, for officers and employees of Securities and Exchange Commission (SEC) – registered investment advisers who have signature or other authority over, but no financial interest in, the foreign financial accounts of persons that are not registered investment companies. Under the final FBAR regulations, the officers and employees of SEC-registered investment advisers are not required to report their signature or other authority over foreign financial accounts that are owned or maintained by registered investment companies if such officers or employees have no financial interest in the accounts. However, there is no exception for signature authority over accounts owned by non-registered investment companies. The extension follows an extension announced by FinCEN Notice 2011-1 for officers and employees of regulated entities and their “controlled” affiliates who have signature authority over accounts of the entity or its controlled affiliates. For a discussion of FinCEN Notice 2011-1, see Sutherland’s [Legal Alert](#).

On June 16, 2011, the day prior to the release of FinCEN Notice 2011-2, the IRS issued Notice 2011-54, which extends the FBAR filing deadline for all pre-2010 FBARs from June 30, 2011, to November 1, 2011, for all persons who properly extended their pre-2010 FBAR filing deadlines under Notices 2009-62 and 2010-23, i.e., persons with signature authority but no financial interest in a foreign financial account. The due date for 2010 FBARs remains June 30, 2011, unless filers otherwise qualify for an extension under FinCEN Notice 2011-1, or under FinCEN Notice 2011-2. Notice 2011-54 states that it does not limit any relief provided under FinCEN Notice 2011-1, which presumably also applies to the relief provided later by FinCEN Notice 2011-2. Therefore, officers and employees who qualify for extensions under FinCEN Notices 2011-1 or 2011-2 are not required to file pre-2011 FBARs until June 30, 2012. The IRS explained that the Notice was being issued because filers may experience some difficulty in obtaining the records for prior periods.

It should be noted that, after issuing FinCEN Notice-2011-1, on June 6, FinCEN revised it to clarify that the extension applies to officers and employees of a controlled person (as defined in the Notice) when those persons have signature or other authority over, but no financial interest in, a foreign financial account of the controlled person.



If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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