



## American Citizens Abroad

*The Voice of Americans Overseas*

The Honorable Timothy F. Geithner  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington DC, 20220

July 17, 2009

Dear Mr. Secretary,

American Citizens Abroad (ACA) is a non-profit, non-partisan, volunteer organization whose mission is to defend the rights and interests of Americans living overseas. We feel it is urgent to bring to your attention, as well as to the attention of President Obama to whom we are writing today, the devastating damage created by recent Treasury Department and IRS policies on the estimated 5 million Americans who live and work abroad. We refer to the **proposed modified Qualified Intermediary Regulations** set to become effective January 1, 2010 and to **new FBAR filing requirements for foreign bank accounts**. While we appreciate that these policies have been put in place to chase down tax evaders, they are making untenable the **banking situation and career situation** for honest taxpaying citizens overseas.

First, the **proposed reinforced Qualified Intermediary (QI) regulations** are so draconian that banks overseas are getting rid of American clients rather than face the administrative hassle and the perceived legal risks of complying. Banks abroad consider U.S. citizens as toxic. The few banks that will continue to serve overseas Americans have set up special subsidiaries exclusively for Americans; the high cost of administering these units with all of the necessary reporting to the IRS and legal requirements leads to very high minimum account requirements and high fees, thereby shutting out middle class Americans. Americans with foreign spouses are obliged to stop joint bank accounts, so that at least their foreign spouse can maintain a bank account. If Americans overseas can't have access to a local bank account, even for the most mundane requirements, how can they function in a modern economy?

Second, the **more inclusive Treasury FBAR filing requirements for foreign bank accounts (TDF 90-22.1)** are cutting Americans off from leading positions in the global economy by requiring FBAR filing on accounts over which one has signatory authority but no personal financial interest. Non-U.S. companies and organizations overseas are removing U.S. citizens from positions of responsibility rather than risk having non-U.S. accounts declared to the United States. Americans are also withdrawing from responsible charitable activities. FBAR also imposes undue requirements on the non-U.S. spouse of American citizens, for instance in the case of joint accounts. Under the proposed regulations, an American spouse cannot even have credit card access to the non-American spouse's account without making the latter subject to U.S. reporting requirements, which he or she will adamantly refuse!

It is beyond the legal authority of the United States to require access to the bank information of foreign corporations or associations simply because a U.S. citizen holds a responsible position, in particular because the second paragraph under "**Privacy Act and Paper Work Reduction Act Notice**" of the FBAR instructions states clearly: "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 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." This regulation is making Americans pariahs in international business.

It is apparent that the FBAR requirements were drafted and introduced with haste last year. The FBAR initial instructions extended the disclosure requirement to any person "in and doing business in the United States". The question of whether a foreign person is "in and doing business in the United States" is exceedingly problematic. Following comments received, the IRS announced on June 5, 2009 that it would temporarily suspend the reporting requirement with respect to those persons who are not citizens,

residents or domestic entities. This announcement by the IRS was made just 25 days prior to the final deadline for filing the FBAR.

Similarly, just prior to the original due date of June 30<sup>th</sup>, the IRS announced a deadline extension to September for filing the FBAR for taxpaying citizens living overseas. If honest overseas Americans have not filed the FBAR up to now, it is because the Treasury Department and the IRS have not sufficiently informed them of this requirement. There is no mention in the 1040 general instructions and only Schedule B refers to it in passing. Americans abroad may also find themselves in an irresolvable conflict between FBAR requirements and their foreign spouses and foreign employers' stance on privacy.

The unduly harsh penalties for not filing or for incorrectly filing, even when this is done unknowingly, are confiscatory and totally unjustified. There should **never** be cause for a penalty for not filing an FBAR if taxpayers file all of their income properly on their 1040.

Other shortcomings of the FBAR should also be noted.

- The limit of \$10,000, in place for many years, is too low and should be raised to at least \$50,000.
- Rather than require reporting the maximum amount during the year, the form should provide multiple ranges for choice. It would greatly facilitate compliance as it is very difficult to determine the highest U.S. dollar amount during the year when such an amount may not correspond to the maximum local currency amount due to currency fluctuation.
- The personal information required on the FBAR should be abbreviated so as to make the form less vulnerable to fraudulent activity. The form includes all information necessary, including a signature, to have access to an account.

Finally, the problematic situation created by the proposed QI regulations and FBAR are compounded by the difficulty that Americans overseas have in opening and maintaining a bank account in the United States. The **Patriot Act**, introduced in 2001, tightened Know-Your-Customer (KYC) regulations. Many US banks have decided that this KYC clause cannot be fulfilled if the customer lives overseas. Consequently, these banks are closing accounts of US citizens on the sole ground of their overseas addresses. If Americans abroad cannot maintain a bank account either abroad or in the United States, they are truly in a Catch 22. This truly creates financial and constitutional injustice. ACA has a thick file of citizens who have been refused U.S. bank accounts, and this issue has already been raised with FinGen in the Treasury Department.

Mr. Secretary, we urge you to take corrective measures so that overseas Americans can survive abroad, represent our nation and serve American interests in the global economy. ACA specifically recommends:

- 1) Do not introduce the proposed new QI regulations and make it publicly known rapidly
- 2) Revert to the prior FBAR regulations, increase the minimum amount, make the form less open to fraudulent activity, eliminate confiscatory penalties, and, in particular, eliminate the requirement to report on bank accounts over which one has signatory authority but no personal financial interest.
- 3) Review with the Treasury Department, the Executive Office and Congress what can be done to encourage U.S. banks to take on Americans living overseas as clients.

Thank you for your consideration to this situation requiring urgent attention. We remain fully at your disposal to help in any way we can.

Sincerely yours,

Marylouise Serrato  
Executive Director

Jacqueline Bugnion  
Director

CC: Mr. Douglas Shulman, Commission of Internal Revenue  
Ms. Nina E. Olson, National Taxpayer Advocate  
The Honorable Carolyn Maloney, Co-Chair of the Americans Abroad Caucus  
The Honorable Joe Wilson, Co-Chair of the Americans Abroad Caucus

Attached: Copy of ACA letter dated July 17<sup>th</sup> to President Barack Obama