



November 22, 2010

James H. Freis, Jr.  
Director  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, Virginia 22183

**Re: Request for Prompt Guidance on FBAR Reporting For Retirement Plans**

Dear Director Freis:

We write to request that the Financial Crimes Enforcement Network ("FinCEN") promptly announce whether it expects its upcoming final regulations (1) will require tax-exempt retirement plans to file a Report of Foreign Bank and Financial Accounts (commonly referred to as "FBAR"), and (2) will clarify whether the persons responsible for the investment affairs of these tax-exempt retirement plans have "signature authority" that requires them to provide information about company pension plan foreign investments on their individual tax returns ("Form 1040"). It is urgent that guidance on these topics – particularly the one affecting individual taxpayers – be issued promptly since the tax return filing season is fast approaching.

We understand that FinCEN has received numerous comments on the February 2010 proposed regulations in these areas. We continue to believe that permanent and complete relief from FBAR reporting requirements for tax-qualified retirement plans is appropriate and that granting such relief is well within FinCEN's regulatory authority. As numerous commentators have explained, retirement plans are already subject to extensive governmental reporting requirements – and such plans simply do not involve any of the abuses at which FBAR is aimed.

In any case, it is important that FinCEN issue clear guidance on the extent to which FBAR reporting requirements may apply to tax-exempt retirement plans and that such guidance be issued as soon as possible. If any FBAR reporting is required by tax-exempt retirement plans, guidance is needed soon so that plans can start collecting the necessary information promptly after year-end and comply with the FBAR reporting obligation in a timely fashion.

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We would emphasize that company officials responsible for the investment affairs of these retirement plans also need such guidance to know whether they have a reporting obligation under FBAR so that they can proceed to file their Form 1040 for the 2010 taxable year when they normally do, including for early filers. We note in this regard that corporate officials are exempt from FBAR even if they have "signature authority" over their company's foreign investment accounts if the company is an SEC reporting company (or similar listed company) – as long as the individual himself has no interest in the account. In essence, we ask that the same rule apply to corporate officials or individual trustees acting solely as ERISA plan fiduciaries for their company's pension plans.

We appreciate FinCEN's consideration of our request and remain available to discuss any questions you may have.

Sincerely,

**Lynn Dudley**  
Senior Vice President, Policy  
American Benefits Council

**Judy Schub**  
Managing Director  
Committee on the Investment  
of Employee Benefit Assets

CC: J. Mark Iwry  
George Bostick