

## K. Shared Jurisdiction and Lack of Coordination between IRS and FinCEN Burdens Taxpayers and Undermines Compliance Efforts

On February 24, 2012, the Federal Crimes Enforcement Network (FinCEN) issued a news release announcing that as of June 30, 2013, taxpayers would be required to file Reports of Foreign Bank Accounts and Financial Assets (FBARs) electronically rather than on paper.<sup>1</sup> Taxpayers file FBARs electronically using FinCEN's system, BSA e-filing.

FinCEN's website contains the following e-Filing FAQ: "What happens if a paper report is submitted after the July 1, 2012, electronic deadline? FinCEN may impose civil money penalties for noncompliance with our regulations, including \$500 for each negligent currency transaction or suspicious activity reporting violation under 31 C.F.R. § 1010.820."<sup>2</sup> The FAQ does not reflect FinCEN's extension of the deadline for FBAR filers to 2013, which leads to taxpayer confusion and distrust. Taxpayers who intend to file an FBAR after June 30, 2013, but will be unable to do so electronically face the prospect of civil penalties for not being able to e-file.

FinCEN provides help desk numbers to call, but the assistors give inconsistent information. A TAS employee was told by one assistor that FBARs simply had to be filed electronically after July 30, 2013; a different assistor advised filing electronically if possible but otherwise to submit a paper FBAR. When asked whether a taxpayer filing a paper FBAR after July 1 risked incurring a civil penalty, the second assistor indicated that FinCEN's talking points did not address that issue (but he personally doubted it).<sup>3</sup> A still different assistor returned a practitioner's call, expressed surprise to hear about the FAQ, checked with "upper management" and then returned to say that the reference to the penalty was intended merely as a "warning shot over the bow."<sup>4</sup> The National Taxpayer Advocate objects to this kind of informal guidance that is shared only with a small group of people – those sophisticated enough to identify potential problems and able to find someone knowledgeable to discuss them. Information of this sort should be made publicly available for all impacted taxpayers, and not imparted by telephone to a select few.

In the same conversation, the practitioner noted the absence of outreach and education on various aspects of the e-filing requirement. The FinCEN assistor explained that FinCEN had asked the IRS to provide outreach, and the IRS had refused because FinCEN authority resides in Title 31 of the US Code, while the Internal Revenue Code is found in Title 26. The shared jurisdiction over FBAR compliance between FinCEN and the IRS, with buck-passing on both sides, burdens taxpayers.

1 *FinCEN Reports Going Paperless* (Feb. 24, 2012). Final notice of the requirement was published in the Federal Register shortly thereafter. See 77 Fed. Reg. 12367-01 (Feb. 29, 2012).

2 FinCEN e-filing FAQs, available at [http://www.fincen.gov/forms/e-filing/Efiling\\_FAQs.html](http://www.fincen.gov/forms/e-filing/Efiling_FAQs.html) (last visited June 12, 2013). The deadline for transitioning to e-filing was initially 2012, but was extended to 2013 for FBAR filers. *FinCEN Reports Going Paperless* (Feb. 24, 2012). Final notice of the requirement was published in the Federal Register shortly thereafter. See 77 Fed. Reg. 12367-01 (Feb. 29, 2012).

3 Telephone conversations between TAS attorney advisor and FinCEN helpdesk assistors, June 12 and 13, 2013.

4 Telephone conversation between practitioner (CPA) and FinCEN helpdesk assistor, June 12, 2013.

In 2013 and 2014, the National Taxpayer Advocate and her attorney advisors will meet with both FinCEN personnel and IRS FBAR Liaisons in order to identify ways to provide better guidance to taxpayers.