



February 21, 2018

David Schwartz  
President & CEO  
Florida International Bankers Association  
80 SW 8th Street #2505  
Miami, FL 33130

*Re: Request for Guidance on SAR Filing Obligations with regard to Customer Participation in a Tax Regularization Program*

Dear Mr. Schwartz,

This responds to your letter of December 19, 2016, seeking guidance from the Financial Crimes Enforcement Network (FinCEN) on behalf of the Florida International Bankers Association's member institutions, regarding Suspicious Activity Report (SAR) filing obligations with regard to customer participation in tax regularization programs in their home country. Specifically, you ask whether a bank must file a SAR upon a customer's inquiry into or participation in a tax regularization program. FinCEN finds there is no SAR filing obligation based solely upon a customer inquiry into or participation in a tax regularization program.

You state that a significant number of your members' customers have expressed interest in finding out about or participating in tax regularization programs. According to your letter, Argentina, Brazil, and Colombia have recently implemented tax regularization programs that waive civil and criminal penalties for past non-disclosure or evasion of taxes.<sup>1</sup> These programs now require that the participants' custodial institutions submit documentation verifying the value of the customer-disclosed assets. You state that this asset verification requirement has raised concerns among financial institutions regarding their subsequent knowledge of their customer's past failure to comply with a foreign tax law. You ask in your letter whether a financial institution has an obligation under the SAR rules to report on a customer's inquiries about or participation in a tax regularization program. You maintain that a SAR obligation does not exist, but that the financial institution should subsequently conduct a review of the customer's accounts based on the new information.

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<sup>1</sup> See Brazil's Law 13,254, published on January 13, 2016 in the Brazilian Official Gazette, allowing taxpayers to disclose previously unreported offshore assets (legally obtained) for a one-time tax charge and penalty. See also Argentina's Law 27,260, published on July 22, 2016, in the Argentine Official Gazette.

The BSA's regulations require a financial institution to file a SAR when it detects a suspicious transaction conducted by, at, or through the financial institution and the transaction exceeds the applicable monetary threshold.<sup>2</sup> A transaction is suspicious if it:

- 1) involves funds derived from illegal activity or if it is conducted to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade any Federal law or regulation or to avoid any Federal transaction reporting requirement;
- 2) is designed to evade any requirements of the BSA or any BSA implementing regulations; or
- 3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.<sup>3</sup>

A customer's inquiry into or participation in a tax regularization program does not by itself constitute a suspicious transaction or activity for purposes of the SAR rules. Nor would the inquiry about or participation in such a program, considered independent of other factors, give a financial institution notice of a past activity that would require the filing of a SAR. A customer may choose to participate in a tax regularization program for a variety of reasons, for example, to obtain certainty in the face of a complex tax environment. Based on the above considerations, FinCEN concludes that a financial institution is not required to file a SAR solely upon learning of a customer's interest or participation in a tax regularization program. A financial institution may choose to undertake a subsequent review of a customer's accounts in light of the new information as part of its overall risk assessment of that customer and its account activity.

In arriving at the conclusions in this letter, we have relied upon the accuracy and completeness of the representations made in your letter. Nothing precludes FinCEN from seeking further action should any of this information prove inaccurate or incomplete. This letter is intended to provide interpretive guidance based on the information you submitted to us and does not constitute a binding administrative ruling.<sup>4</sup> We reserve the right, after redacting your name, and your company's name and address, to publish this letter as guidance to financial institutions in accordance with our regulations. You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

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<sup>2</sup> 31 CFR § 1010.320. *See, e.g.*, 31 CFR § 1020.320.

<sup>3</sup> *Id.*

<sup>4</sup> As our response is not in the form of an administrative ruling, the substance of this letter should not be considered determinative in any state or federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body.

If you have any additional questions, please contact Kendal McManus of my staff at (703) 905-3591.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Sharrin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andrea M. Sharrin  
Associate Director  
Policy Division