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By Hand Delivery and Electronic Delivery

Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Request for Temporary Suspension of FBAR Filing Requirement for Pension Plans

Dear Commissioner Shulman:

We represent a coalition of public and private employee benefit pension plans, plan sponsors, and plan service providers whose members are responsible for investing and safeguarding hundreds of billions of dollars in assets intended to provide retirement security for millions of working Americans. On behalf of this coalition, and the benefit plans its members serve, we respectfully request that the Internal Revenue Service ("IRS" or the "Service") temporarily suspend any requirement that U.S. persons file a Report of Foreign Bank and Financial Accounts (commonly referred to as "FBAR") with respect to "foreign financial accounts" held by or for the benefit of employee benefit pension plans and individual retirement accounts (collectively, "Plans" and all of which are described in section 402(c)(8) of the Internal Revenue Code of 1986, as amended).

There are numerous reasons to suspend the FBAR filing requirements with respect to Plans, and quite simply, no meaningful policy reasons not to suspend the requirement. Specifically, the policy goals of FBAR – to detect and prevent taxpayers from hiding assets offshore to avoid income taxes or launder money – are not advanced by requiring filings from Plans. Plans are generally exempt from income taxes and are already highly regulated, long-term investment programs with strict limits on contributions and distributions and extensive reporting requirements. As such, Plans present virtually no risk of being used for either tax-evasion or money laundering. Moreover, a temporary suspension is necessary in light of the substantial FBAR-related penalties which could be assessed despite the lack authoritative guidance on the application of FBAR filing requirements to Plans.

As you are aware, the Service has requested that interested persons submit comments on the FBAR and instructions during a comment period lasting through August 31, 2009. Announcement 2009-51, 2009-25 I.R.B. 1105 (June 5, 2009). In addition, the Service has informally extended until September 23, 2009, the deadline for filing the 2008 calendar year FBAR for persons who only recently learned of their obligation to file, provided certain conditions are met. Voluntary Disclosure: Questions and Answers, Question 43 (June 24, 2009), *available at* <http://www.irs.gov/newsroom/article/0,,id=210027,00.html>. Both the open comment period and the informal filing extension were provided in recognition of the significant confusion that exists regarding the scope of the FBAR filing requirements.

We sincerely appreciate the Service's call for public comments, and we intend to submit comments with respect to a number of Plan-related FBAR filing issues. We are concerned, however, that because the comment period closes a mere three weeks before the "extended" filing deadline, the Service will not have sufficient time to consider the public comments it has requested, let alone to provide guidance in response to those comments, before September 23, 2009. As a result, Plans are placed in the very difficult position of having to prepare filings without any authoritative, formal guidance from the Service. The concerns of Plans and their representatives are heightened by the fact that civil penalties for a failure to file FBAR can range from \$500 per violation up to the greater of \$100,000 or 50 percent of the account balance, and in some circumstances, criminal penalties may even apply. The specter of potential penalties is especially unsettling in the Plan community, where, for example, individual employees of corporations sponsoring retirement plans for company workers – or public employees and/or union representatives – often serve as members of investment committees for Plans. Without a formal suspension from the Service, these individuals must determine whether and how to file based almost entirely on informal guidance and speculation. And they face a Hobson's choice: risk filing an inaccurate FBAR or face significant potential penalties for failing to file. Moreover, because FBAR filing requirements also trigger reporting on individual income tax returns, including Form 1040, the burden associated with FBAR filings goes far beyond that which may have been reasonably expected by Plan fiduciaries and service providers when agreeing to act in connection with Plan investments.

In light of the lack of any realistic concerns about the use of Plans as tax-evasion or money laundering vehicles, the current confusion within the Plan community regarding the application of FBAR filing requirements to Plans, the burdens imposed by the current uncertainty on individuals whose only relationship to a foreign account is through their service to a Plan, and the potential for substantial penalties for failing to file FBAR, we respectfully request that the Service promptly announce a formal suspension of the FBAR filing requirement for Plan-related investments until it has an opportunity to review and address the comments it receives during the open comment period.

We appreciate your consideration of this request. As noted above, we expect to submit detailed, formal comments shortly, but if you would like to discuss this request, please do not hesitate to contact us.

Respectfully submitted,

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