



## FinCEN: No SAR Filing Obligation When Customers Voluntarily Disclose to Home Country

On February 21, 2018, the Financial Crimes Enforcement Network ("FinCEN") issued highly anticipated [guidance](#) affecting reporting obligations for U.S. financial institutions in response to an [inquiry](#) by the Florida International Bankers Association ("FIBA"). FinCEN stated that a U.S. financial institution is not required to file a Suspicious Activity Report ("SAR") after learning of a customer's voluntary disclosure of past noncompliance to a foreign taxing authority.

Regulations promulgated under the Bank Secrecy Act require a financial institution to file a SAR when it detects a suspicious transaction conducted by, at, or through a U.S. financial institution, and that transaction exceeds the applicable monetary threshold. In connection with recently implemented tax regularization or voluntary disclosure programs in Latin America, U.S. financial institutions are often requested to provide documentation verifying the value of a customer's U.S. holdings.

FIBA asserted that both as a matter of law and best practices, a financial institution in this situation does not have an obligation to file a SAR, but instead should subsequently undertake a review of its customer's accounts. FinCEN agreed that a customer's inquiry to the financial institution or participation in a voluntary disclosure does not constitute a suspicious transaction or activity for purposes of the SAR regulations. FinCEN also advised that a financial institution "may choose to undertake a subsequent review" of its customer and the account activity.

FinCEN's decision potentially reduces both compliance and commercial burdens on U.S. financial institutions. However, U.S. financial institutions continue to be subject to increasing regulatory obligations with respect to their foreign customers, including FinCEN's recent decision to strengthen the customer due diligence rules. U.S. financial institutions with foreign customers should monitor regulatory and administrative developments in this area and continue to consult with their advisors on how best to comply.

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