American Bankers Association
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Phoebe A. Papageorgiou
Vice President, Trust Policy
P 202-663-5053
phoebep@aba.com

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The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Bank Fiduciaries Requesting Trust and Estate EIN's under New IRS EIN Application Process

Dear Commissioner Rettig:

The American Bankers Association[1] (ABA) writes seeking guidance and relief from certain aspects of the Internal Revenue Service (IRS) application process to obtain Employer Identification Numbers (EIN) for trusts and estates of decedents. In IR-2019-58,[2] the IRS announced a new application process for EINs that requires an individual to act as "Responsible Party" and provide personally identifiable information (PII), such as a Social Security number or individual taxpayer identification number. IRS stated that this PII is required to enhance the security of the application system and provide a contact for particular EIN applicants.

ABA represents regulated financial institutions of all sizes and business models, including banks, savings associations, and nondepository trust companies (collectively, banks) that act in a fiduciary capacity as trustee of a trust or executor of a decedent's estate. In their fiduciary capacity, these banks often must obtain EINs for the trusts and estates that they administer. In the past, these banks were able to obtain EINs using the bank name and EIN. However, under the new application process, bank employees must provide PII to the IRS in order to obtain EINs for trusts or estates. This information is required even though the bank in its corporate capacity and not the individual employee has legal title to the assets of and fiduciary authority to act on behalf of the trust or estate.

[1] The American Bankers Association (ABA) is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard more than $14 trillion in deposits, and extend $10.4 trillion in loans.
[2] IR-2019-58, *available at* https://www.irs.gov/newsroom/irs-revises-ein-application-process-seeks-to-enhance-security.

IRS Should Recognize the Bank as Trustee, Executor, and Responsible Party and not Require the Bank Employee to Provide PII

We understand the interest of the IRS to enhance security and provide a contact, but we believe that the regulated nature of banks distinguishes them from other EIN applicants. ABA, therefore, respectfully requests that the IRS not require bank employees to provide PII in order to obtain EINs for trusts and estates for which the bank is the fiduciary and has legal title. Specifically, we urge that the IRS allow a bank applicant to identify itself as the trustee or executor, as well as the Responsible Party, using the bank's name and EIN. We also urge the IRS to acknowledge that banks also may establish certain trusts, such as common trust funds under Internal Revenue Code Section 584 or collective investment trust subject to Rev. Rul. 81-100. In these situations, the bank is both the grantor and the trustee of the common trust fund or collective investment trust.

The changes we urge the IRS to adopt would align with the prior application process, which had provided a discrete designation for bank trustees and executors. If the IRS does not recognize the bank as the trustee, executor, and/or Responsible Party, we note these potential concerns:

- Privacy concerns of bank employees with sharing PII outside the financial institution will negatively affect the ability of banks to open new trust and estate accounts in a timely fashion.
- Legal and liability concerns will arise with respect to a bank that requires its employees, as a condition of their continued employment, to supply their own PII on behalf of and with respect to the bank's trust and estate clients.
- Because bank employees often move to new positions within the bank or leave the institution, communications between the bank and IRS about a particular trust or estate will be hindered if the IRS will only acknowledge specific employees as trustee, executor, or Responsible Party.
- Banks may need to adopt policies and procedures to manage the risks of sharing employee PII outside the financial institution.

Bank Regulation and Examination Mitigates IRS Concerns about Security

While we understand the IRS's concerns about information security, we hold that the regulatory and examination framework to which banks are subject distinguishes them from other applicants and mitigates those concerns. Specifically, banks are subject to periodic examinations by various regulators (depending on the charter of the institution), namely the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and/or State bank commissioners. During these onsite examinations, which occur at least every 18 months, regulators examine banks to ensure they are operating in a "safe and sound" manner, in addition to complying with relevant regulations. An important element of safety and soundness is adequate fraud management that includes—[3]

- Sound corporate governance practices, including code of ethics or conduct.
- Policies, processes, personnel, and control systems to identify, measure, monitor, and control fraud risk consistent with the bank's size, complexity, and risk profile.
- Internal controls designed to prevent and detect fraud, as well as to respond appropriately to fraud, suspected fraud, or allegations of fraud.

These fraud management systems should alleviate many of the concerns the IRS has raised about the information security in the EIN application process.

Conclusion

ABA appreciates your consideration of this request for guidance and relief for bank trustees and executors from certain aspects of the EIN application process. The IRS should recognize banks as being well-regulated financial institutions that do not present the security concerns that may arise with other EIN applicants. We welcome further discussion on the matters raised in this letter with the appropriate offices within the IRS.

Sincerely,

Phoebe A. Papageorgiou

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Vice President, Trust Policy

[3] *See* OCC Bulletin 2019-37, Operational Risk: Fraud Risk Management Principles (July 24, 2019), available at https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-37.html; FDIC Risk Manual of Examination Policies, Part 4.1, Management, available at https://www.fdic.gov/regulations/safety/manual/index.html.