

March 10, 2011

The Honorable Mario Diaz-Balart
Vice-Chairman
Subcommittee on Financial Services and General Government
House Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Diaz-Balart:

We are writing to draw your attention to a matter of serious concern relating to proposed regulations from the IRS (proposed REG-146097-09) for reporting on nonresident aliens (NRA proposed regulations). The NRA proposed regulations, issued by the IRS in January 2011, requires that U.S. bank deposit interest paid to any nonresident alien individual must be reported annually to the IRS. Similar regulations were proposed in January 2001 and subsequently withdrawn. In August 2002, narrower NRA regulations that require reporting only on interest payments to an NRA individual that is a resident of Canada were proposed and have been in effect since.¹

We are very concerned about these expanded NRA proposed regulations and request that you strongly urge the Service to leave the rule as it currently stands. The regulations would have a negative impact on the U.S. economy, including the risk of flight of foreign capital at a time when such capital is very much needed. For instance, the implementation of the proposed rule would result in NRA depositors withdrawing their deposits and closing their U.S. accounts rather than being subject to a rule requiring that details pertaining to their personal accounts and investments be reported to the IRS and shared with their home governments.² For many banks, the resulting hit to the banks' deposit business will significantly reduce funds available for lending and investment purposes. This reduction in deposits will further weaken the economy by making it difficult for community banks to provide much needed services to their communities as well as to retain many of their employees or hire new ones.

Moreover, this proposal could not have come at a worse time. Financial institutions are currently in the process of implementing the costly and burdensome processes that are required in order to comply with the new section 6050W and the Cost Basis reporting provisions that became effective at the beginning of this year. In addition, the IRS/Treasury are currently working on regulations implementing the Foreign Account Tax Compliance Act (FATCA) provisions enacted last year for which financial institutions will be required to undergo even more

¹ The withdrawn 2001 regulations required expanded reporting, but only with respect to NRAs that are residents of countries with which the U.S. had a tax treaty. The proposed regulations encompass all nonresident aliens – regardless of country of residence.

² There are legitimate reasons why NRAs place money in U.S. banks. For example: concerns and fears about crime/security in their home country; lack of trust in their governments or the privacy of financial institutions in their home country; and their view of the U.S. as a reliable place to deposit their money.

burdensome and costly processes for compliance.³ None of these reporting requirements are used by the banks themselves; instead, these are required *for the sole* benefit of the Service. In some cases, it is difficult to understand how these new burdens will even be used by the IRS. Adding these proposed regulations will further strain banks' information technology staff and budgets, especially for the banks that risk losing billions of dollars in deposits of their NRA customers.

The NRA proposed regulations have no statutory basis. Further, the Service has not conducted any cost-benefit analysis regarding this proposal. There is no indication whatsoever that it is Congress' intent to tax NRA deposit interest income or require reporting of such income. A proper cost-benefit study would show that the cost of compliance for many community banks significantly outweighs any illusory benefits that the Service believes it will derive, because these banks will be forced to incur significant costs to implement a monitoring and reporting system – solely for the benefit of the IRS – that will not collect any new taxes for the U.S. Instead, the proposed regulations will further damage the very institutions that will be providing the information as well as the U. S. economy.

Foreign deposits are important to U.S. financial institutions and any rule that might undermine the competitiveness of U.S banks with respect to foreign deposits should be seriously scrutinized by Congress, especially where there is no statutory basis for such a rule as in this case. We believe that the Service should devote its resources to rules that actually help promote the U.S. tax laws, rather than focusing on regulations that, in fact, do not reflect the intent of Congress and hinder the efforts to revive the U.S. economy.

We recommend that you request that Treasury Secretary Geithner cover this issue during the Subcommittee hearing scheduled for March 16, 2011, at 2:00 p.m. Further, we urge you to closely scrutinize this IRS initiative and ensure that the NRA proposed regulations are withdrawn.

Please feel free to contact me if you have any questions or would like to discuss this issue further.

Sincerely,

A handwritten signature in black ink that reads "Floyd E. Stoner". The signature is written in a cursive, flowing style.

Floyd E. Stoner

³ Moreover, the banking industry is currently dealing with the massive regulations that resulted from the Dodd-Frank Act, and many community banks are having a hard time just trying to understand their impact. Adding these proposed regulations, which would have the effect of diminishing their deposit funds, will cripple community banks with NRA deposits.