PROPOSED REGULATIONS TO REQUIRE REPORTING OF NONRESIDENT ALIEN DEPOSIT INTEREST INCOME

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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PROPOSED REGULATIONS TO REQUIRE REPORTING OF NONRESIDENT ALIEN DEPOSIT INTEREST INCOME

Thursday, October 27, 2011

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Renacci, Pearce, Luetkemeyer, Huizenga, Canseco, Fincher; Maloney, Hinojosa, McCarthy of New York, Baca, and Scott.

Ex officio present: Representative Bachus.

Also present: Representatives Posey and Green.

Chairwoman CAPITO. Welcome. We are going to have votes today between 11:00 and 11:30, so we would like to finish this hearing if we can before 11:00, before our votes. But if not, we will recess and reconvene.

This morning, the Financial Institutions and Consumer Credit Subcommittee will examine the proposed IRS regulation that would require U.S. financial institutions to report the interest paid to nonresident aliens to the Internal Revenue Service.

This proposal is not new. The IRS put forth this proposed regulation before. In 2001, the IRS came forth with a similar concept and after significant comments and suggestions, the IRS narrowed the proposal significantly in 2002, but the measure has never been finalized.

I know that many members of this subcommittee and the full committee have expressed concerns about the proposed regulation. For many of them, the financial institutions in their districts rely on deposits from nonresident aliens. In some cases, the percentage of nonresident alien deposits comprises a significant percentage of the institutions' overall deposits.

There is concern that the proposed IRS regulation will make the United States and our financial institutions a less attractive venue for investment and that nonresident aliens will retreat from their current institutions in favor of institutions in other nations.

Members of the subcommittee need to hear more about the cost and benefits of this proposal. We also need answers to questions about the information that would be gathered by the IRS.

What will the IRS do with the information about the individuals and families who are depositing their resources in U.S. financial institutions? Which countries will the IRS share this information with if needed?

This morning's hearing will provide Members with an opportunity to better understand the merits of these concerns as well as the merits of the proposed IRS regulation and to hopefully find some answers to these questions. I will look forward to hearing from our witnesses, and I want to thank you all for your willingness to participate in this hearing.

I would now like to recognize the ranking member of the subcommittee, the gentlelady from New York, Mrs. Maloney, for 3 minutes for the purpose of making an opening statement.

Mrs. MALONEY. Thank you. And I would like to welcome all the witnesses here today. This hearing concerns a proposed IRS rule that would require U.S. banks and broker-dealers to report to the IRS any deposit interest income paid on a U.S. account opened in the name of a non-U.S. person who resides abroad.

Currently, banks are required to report the amount of interest earned on the bank deposits of people who are U.S. citizens or citizens of Canada. The proposed regulation would expand that role to all nonresident aliens who hold accounts at U.S. banks. The idea behind the proposed regulation is to strengthen the exchange of information programs that the United States has with other countries.

It is also expected to increase taxpayer compliance by making it more difficult for U.S. individuals to avoid information reporting by claiming to be nonresident aliens. Simply stated, the United States should not actively make it easier for the laws of other countries to be broken or evaded.

It complements what Congress required of foreign institutions in the Foreign Account Tax Compliance Act (FATCA). I understand legislation has been proposed by some of my colleagues on the committee that would effectively prevent the IRS from enacting its rule.

And although this is not a bill that has been referred to our committee, the purpose of this hearing is to really explore the potential problems that this proposed regulation may pose for banks because that is our jurisdiction.

It has been argued that Congress has pursued policies that will attract foreign capital, which in turn helps to finance economic growth. Accordingly, financial institutions are concerned that the proposed regulation will drive foreign investment out of our economy and, therefore, goes against congressional intent in this area.

So, I am hopeful that the witnesses will be able to respond to these concerns. It has been expressed that the proposed regulation will impose a burdensome new reporting requirement on smaller banks that do not have the infrastructure to handle the reporting. This is something else I would like the witnesses to be prepared to explore.

I am particularly interested in whether the policy goal of international cooperation in tax policy along with disclosure and transparency desires outweighs the burden that the policy might pose.

So, this is another area I look forward to hearing about from the witnesses today. I thank the Chair for calling this hearing.

Chairwoman CAPITO. Thank you, Mrs. Maloney. I would like to recognize Mr. Canseco for 1½ minutes for the purpose of making an opening statement.

Mr. CANSECO. Thank you, Madam Chairwoman. In April of this year, I helped lead an effort along with my colleague, Mr. Hinojosa, to express the concerns of several Members from the Texas delegation about the IRS' proposed rule regarding nonresident alien deposits.

In a letter to President Obama, we outlined the tremendous damage that could be caused to banks in Texas and around the country if the proposed rule went into effect. One study done on a similar proposed rule 9 years ago estimated as much as $88 billion could flee American banks as a result of this rule.

American banks have become attractive destinations for foreign depositors due to the reliability and transparency of our banking system, and we should not be turning away voluntary capital when financial institutions are already struggling. Yet, the IRS was willing to go forward with this rule under the disjointed logic that it would somehow help the United States recover money from tax evaders.

Aside from whatever benefit may come, what concerns me the most is that it appears the IRS has not properly taken the potential costs of this proposed rule into account. Should it go into effect, the costs could be tremendous, and Federal agencies not taking the potential cost of rules into account has become a very disturbing trend in Washington.

I appreciate very much Chairwoman Capito's calling this hearing today in order to examine the issues a little closer. I yield back.

Chairwoman CAPITO. Thank you. I would like to recognize Mr. Scott for 3 minutes for the purpose of making an opening statement.

Mr. SCOTT. Thank you, Madam Chairwoman, for holding this hearing today on a regulation proposed by the IRS to require United States financial institutions to report the amount of interest earned by nonresident aliens. I am pleased that this subcommittee will discuss the potential effects such a reporting requirement would have on financial institutions.

We know that the IRS has proposed such a rule before, first, in 1996 when the IRS mandated that United States banks had to report interest payments from nonresident aliens from Canada.

Also, 10 years ago in 2001, the IRS proposed a regulation that would have expanded this rule to all nonresident aliens. However, critics have stated that such regulations would have hurt banks by dissuading foreign capital from entering the United States which could in turn harm the status of banks here in our own country.

And while this is a valid concern, we also must consider the advantages such a rule could have in strengthening the United States' tax enforcement efforts. Supporters of the IRS regulations say that the rule would prevent a tax haven situation in which citizens of other countries utilize the United States financial institutions to avoid paying taxes at home.

They also state that in allowing the United States to provide account information to foreign countries, the rule would reaffirm the ability of the United States to offer cooperative tax information in exchange for IRS enforcement efforts.

In any case, I look forward to discussing the potential benefits and drawbacks in the event this rule is enacted. And I certainly look forward to the testimony of our distinguished witnesses as well as ongoing discussions on this issue and the issue of foreclosure prevention in general.

As many of you know, foreclosure prevention is one of my primary interests, and I am certainly interested in pursuing that further with my colleagues. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you. I would like to recognize the chairman of the full Financial Services Committee, Mr. Bachus, for 3 minutes for an opening statement.

Chairman BACHUS. I thank the chairwoman. And I can't stress enough how important this hearing is at a time when our financial institutions especially need capital. Regulations have a real cost and real consequences.

On January 7th, as we all know, the IRS proposed a regulation that would force American financial institutions to report any interest paid to nonresident aliens. This regulation will have a tremendous negative effect on our financial institutions.

Generally, U.S. tax authorities require only information they need to impose a tax. Because the United States does not tax nonresident alien deposit interest, it is hard to understand why the IRS feels the need to collect any information about this income.

The IRS says this rule intended to strengthen the exchange of information programs the United States has with other countries and to increase compliance by making it more difficult for individuals to avoid information reporting.

But more than 90 years ago, in an effort to attract foreign investment into the U.S. economy, our Congress got it right when they opted not to tax nonresident alien interest income. Should this regulation be finalized, I fear it will drive the capital out of the United States and limit critical funds that banks can use to finance lending and investment activities that are critical to our economic growth, creation of jobs, and increased revenue.

This hearing presents a great opportunity for Members to learn about the cost and consequences of the proposed IRS regulation. I would like to introduce a letter from the Florida delegation to the President of the United States, and my colleague Bill Posey is actually the first signature on this letter.

Let me read this paragraph from it: "Many nonresident alien depositors are from countries with unstable governments or political environments, where personal security is a major concern. They are concerned that their personal bank account information could be leaked by unauthorized persons in their home country governments to criminal or terrorist groups upon receipt from U.S. authorities, which could result in kidnappings or other terrorist actions being taken against them and their family members in their home countries, a scary scenario that is very real."

Every day, we read about a kidnapping in one of these countries and in many cases, the death of the victim. Do we really want this blood on our hands? Do we really want to contribute to this?

And as far as the figure, this also says that it could cost—the Mercatus Center at George Mason University, a very respected university—said that this could drive $88 billion dollars from American financial institutions; and that was actually an earlier draft.

This one is more damaging, so it is as if our policyholders and some of our government agencies are really not living in the real world, and don't realize what a desperate situation we are in with our economy, that they would come forward with such a proposal at a time like this.

I think it is one of the reasons the American people are shaking their heads and beginning to lose confidence in our government, and those who make the decisions. But ultimately, it will be our responsibility to say that this regulation—either the IRS backs off of it or we stop it. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you. I understand the Minority has no more opening statements, so I will go to Mr. Posey for 3—

Mrs. MALONEY. May I make a unanimous—

Chairwoman CAPITO. Oh, yes.

Mrs. MALONEY. I request unanimous consent to place in the record a letter by Senator Carl Levin in support of the proposed rule to require the U.S. banks and broker-dealers to report to the IRS.

Chairwoman CAPITO. Without objection, it is so ordered.

Mr. Posey?

Mr. POSEY. Thank you, Madam Chairwoman. Although I am not a member of the subcommittee, I very much appreciate you allowing me to participate due to my great interest, as the chairman had mentioned.

At a time when both sides of the aisle in this House have gone out of their way to make more capital available to American businesses, the Administration is doing just the opposite by pursuing a regulation well-described previously by the Members that will drive capital out of our country, out of our economy.

This policy will not further any U.S. interests. And, in fact, the IRS has admitted that this information is not needed to enforce U.S. tax law. It is being requested solely for the benefit of foreign governments. Although some may put the utmost importance on global information sharing, we put the most importance on America's interests first.

I believe that we should be focusing on America's economic recovery, jobs, and keeping capital within our economy, especially during these turbulent financial times. Make no mistake about it. The proposed regulation will drive hundreds of billions of dollars out of America and cause irreparable harm to an already fragile U.S. economy.

According to the Commerce Department, foreigners have $1.6 trillion passively invested in the U.S. economy. My colleague here in the community, Mr. Meeks, and I have introduced bipartisan legislation, bicameral legislation, H.R. 2568 which would prevent the Secretary of the Treasury from forcing financial institutions to report interest on deposits paid to nonresident aliens. And Senators

Marco Rubio, Bill Nelson, John Cornyn, and Kay Bailey Hutchison have introduced identical legislation in the Senate.

At the appropriate time, I would like to introduce a couple of our witnesses today, Madam Chairwoman, and submit some items for the record. I would ask unanimous consent to insert the Florida letter that the chairman read; your letter; my letters to the Treasury; letters of support; and Senator Marco Rubio's written statement.

Chairwoman CAPITO. Without objection, it is so ordered.

Mr. POSEY. And I yield back.

Chairwoman CAPITO. Thank you. I think that concludes our opening statements. I would like to introduce our panel of witnesses for the purpose of giving a 5-minute opening statement, but I will yield to Mr. Posey if he would like to make some remarks about some of our witnesses in the form of an introduction.

Mr. POSEY. Thank you, Madam Chairwoman. I am familiar with two of the witnesses you are kind enough to call today. First, Tom Cardwell is the former commissioner of the Florida Office of Financial Regulation. He serves as a public official who has the responsibility for safety and soundness of the financial institutions chartered in Florida. He knows the issue. He has served as general counsel to the Florida Bankers Association for over 20 years. I think he will have some great testimony for us today.

Second, Alex Sanchez is the president and CEO of the Florida Bankers Association, located in Tallahassee, Florida's capital. He is the leading voice for Florida's banking industry. His duties include representing and advocating for Florida's banking industry before all legislative and regulatory bodies in Tallahassee and here in Washington.

Alex has served under two Presidents—President Bush and President Obama—on the Federal Retirement Thrift Investment Board of Directors. He worked very well with my predecessor; he worked well with Congressman Weldon to squash several proposed rules in 2001.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you—

Mr. BACA. Madam Chairwoman, if I could just make a quick comment—

Chairwoman CAPITO. Yes.

Mr. BACA. Thank you very much, Madam Chairwoman, for having this hearing. And as I was hearing the discussion by Members on the other side talk about nonresident aliens and capitals that we need and the amount of revenue, $1.6 trillion in revenue that could be lost—hearing that, I say, maybe that is why the other side should support comprehensive immigration—that would deal with the 14.7 million people who are here in the United States who would actually be able to help the banking industry and others—with matriculas and others as well.

So I wanted to throw that into the record as we begin to discuss this one issue. Let us just not look at it from one perspective of revenue, but let us look at the potential of additional revenue not only in the banking industry but to other individuals as it pertains to those undocumenteds who are here and needing comprehensive im-

migration; Ronald Reagan did in 1986, and this legislation can do something there as well.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you.

Now, we will go to our first witness who has already been introduced, Mr. Thomas Cardwell, a former commissioner of the Florida Office of Financial Regulation.

Welcome.

STATEMENT OF J. THOMAS CARDWELL, FORMER COMMISSIONER, FLORIDA OFFICE OF FINANCIAL REGULATION

Mr. CARDWELL. Thank you, Madam Chairwoman, and members of the subcommittee. My name is Tom Cardwell, and I am the former commissioner of the Office of Financial Regulation for Florida, a position I held from August 2009 until about 60 days ago. As the regulator of financial institutions in Florida, I undertook to determine the effects of the rule on those that are regulated and the public that they served. We conducted a survey of a set of banks under my jurisdiction in South Florida.

Of 16 reporting commercial banks and 22 foreign banks, we found $14.2 billion of NRA deposits. This doesn't include deposits that would have been in national banks, non-Florida State banks, or federally-regulated banks. So I would estimate collectively that they hold more than twice the NRA deposits of the banks that I regulated and I would not be surprised to find $30 billion to $40 billion worth of NRA deposits alone just in South Florida.

We also found a high concentration of NRA deposits in certain banks: 41 percent of the deposits of the 16 commercial banks and 90 percent of those in foreign financial institutions were NRA deposits.

So with that factual background, we considered what would happen if these deposits or some subset of them were lost and we found three areas of serious concern.

The first concern is liquidity. Banks, as you know, do not keep their deposits in their vaults; they lend their money to borrowers. The typical loan-to-deposit ratio is 85 percent. The loans are illiquid, the borrowers don't have to give the money back until the stated terms of the loan.

A deposit run of 15 percent would put an institution in jeopardy. There wouldn't be cash to pay off the depositors and the result of that, I can tell you from experience, is that the bank fails. A runoff of only 30 percent of the NRA deposits would put 11 of the 16 commercial banks that I surveyed in South Florida at a risk for failure.

The second concern I had was increased stress on the health of the already fragile banks; lower deposits means less lending capacity which means less opportunity for earnings. There are significant expenses associated with implementing the rule which fall more heavily on smaller community banks who don't have assets over which to spread them.

Many NRA deposits are in fact a part of larger customer relationships including wealth management business interests, so that if the deposit account goes, so does a whole lot of other business. So we are not just talking about NRA deposits.

The third concern is reduced lending capacity. It is generally recognized that for every dollar in deposits, there is a multiplier effect of about 9 times. That is, a $10 billion decrease in deposits that could result in $90 billion in diminished lending capacity.

We estimate that a 20 percent reduction in NRA deposits would decrease lending capacity in South Florida by $25.6 billion. The economy there is fragile. The community banks that we regulate provide much of the small business lending. This, frankly, is not a time to restrict it.

But the next question as a regulator was, is the benefit worth the cost? The IRS plan is for blanket collection of depositor information which it may or may not use. So what will the IRS get in return for this rule? It won't get any increased tax revenue because the deposits are not taxed, so it will not get any U.S. tax cheats, and then, for example, in Colombia or Venezuela, because that isn't where the U.S. money is. It won't get the right to ask for specific information about identified accounts because they already have the right to get that; there is a free flow of information.

As best I can tell, what the IRS wants is the generalized ability to say that they are promoting international tax transparency, albeit at the expense of domestic institutions and citizens. So as the banking regulator of Florida, I concluded that there was a real potential and actual cost to our institutions and citizens and little discernible benefit. I did not see this rule as being in the public interest of the State of Florida and that is why I have opposed it before the IRS and why I appeared before you today.

I think, frankly, this is the kind of rule that gives regulation a bad name. As a regulator, I saw many good rules, and saw some bad ones. I understand the importance of rules in carrying out policies and our laws. This rule has the lofty intent of stopping U.S. tax cheats but the application of it, I fear, is going to cause far more harm than benefit. It may cause a failure, and we certainly will weaken, and so it may cause the failure of financial institutions, it will harm local economies by reducing loan capacity, it will add additional expenses and regulatory burden to institutions, many of whom can ill-afford it, and the goal of tax cheats will not really be advanced because we are not collecting information from many countries that are not associated with tax cheating.

So I appreciate this opportunity to express my concerns about it and look forward to answering your questions.

[The prepared statement of Mr. Cardwell can be found on page 34 of the appendix.]

Chairwoman CAPITO. Thank you. Our next witness is Mr. Alex Sanchez, president and chief executive officer of the Florida Bankers Association.

Welcome, Mr. Sanchez.

STATEMENT OF ALEX SANCHEZ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FLORIDA BANKERS ASSOCIATION

Mr. SANCHEZ. Thank you, Madam Chairwoman, and good morning to the members of the subcommittee. I want to first of all thank you and the Members for having this hearing. I also want to thank Congressman Posey for his leadership in our State. Our governor is opposed to this.

Our legislature, on a bipartisan basis, passed a resolution in opposition to this NRA proposal. And I also want to thank Chairman Bachus, because, Mr. Chairman, you were there 11 years ago, and you are here today on this issue again. Thank you.

I also want to thank the American Bankers Association and the ICBA for their opposition to this as well as a united group in our industry.

Madam Chairwoman and members of the subcommittee, I speak on behalf of thousands of Florida small business owners who depend on loans from our banks and also the nonresident aliens who shop, buy, buy real estate, invest in our State, and obviously who will live in our State 3 to 6 months out of a year primarily, Madam Chairwoman, from our hemisphere, from South America.

I will tell you that some will say that the privacy standards of the United States will be the same in other countries, and again, I particularly emphasize our hemisphere, the countries in the western hemisphere, in South America, and my response to them is I think they are naive. I think they are naive, Madam Chairwoman.

Some will say that these deposits are tainted by criminals and drug traffickers and all that. Again, they are using emotional and non-factual arguments and they forget about the banking regulatory scheme that we have in our great country on BSA, on "know your customer."

So these deposits are generational and have been in our banks for generations because of the primary reasons that from our hemisphere, people have—they do not trust the institutions in their home countries. They are worried about an economic collapse where their currency will be worthless. That is why they have their monies in the United States of America. I have heard that personally, myself, from customers, from our banks in Florida, and I have spoken to them on why they have their monies here.

They are afraid that some bureaucrat back home will leak the information out for a month's salary to the kidnappers and the terrorists. And as Chairman Bachus pointed out, this happens all the time in our hemisphere.

At a time when we are trying to create jobs, Madam Chairwoman, and the burden on businesses is high, I do not understand why this Administration proposes just this January, in the State of the Union Address, President Obama said he would offer regulatory burden relief for businesses in the United States, yet, the same month, Madam Chairwoman and members of the subcommittee, this Administration proposed this rule.

And as we have been pointing out, the loss of these deposits, which is what bankers lend to small businesses, to the real job creators—small business owners—will be at risk. So I don't understand why this was proposed at a time when our economy is soft and we are trying to create jobs. Why did every Member of our Florida delegation sign a letter to the President asking for withdrawal of this, led by Congressman Posey and Congresswoman Debbie Wasserman Schultz?

Why? Because I think, on a bipartisan basis, every Member of our congressional delegation realized this is a bad, bad idea.

When I spoke to the Treasury Tax Counsel, Ms. Corwin, and told her that hardly any, if none—any Americans who had bank ac-

counts in Venezuela and Colombia and Ecuador and Peru—I asked her, "Where is the reciprocity for the United States? There are no Americans down there with bank accounts."

And her response was, "We are only going to exchange this information with countries we have a tax-treaty exchange information with."

And I said, "Ms. Corwin, the only two countries in this hemisphere we have a tax exchange treaty with that I am aware of are, number one, by most human rights groups, the purported number one extortion and kidnapping country in the world, Mexico; and number two, Hugo Chavez's Venezuela. Ms. Corwin, will you exchange information with those two countries?"

And Madam Chairwoman and members of the subcommittee, she was silent. She was silent. And she knows that is wrong.

The United States hopefully would never do that to people who believe in the United States, who have their monies here for safety, both from a personal and economic perspective.

Our economy has been hit hard, Madam Chairwoman, and I would like to conclude that as Mr. Cardwell said, this will really affect our economy. And from a personal perspective, I will say I came over, Madam Chairwoman, on a freedom flight on September 3rd, 1962 at 1 p.m. from Havana, Cuba, 1 month before the missile crisis. My family was very fortunate to get out of that communist tyranny in that island, to freedom in this great country. That is why I served in the military.

And Madam Chairwoman, let me say this: I think most South Americans learned from the Cuban experience that my parents lost everything they had, they were middle class in Cuba, ma'am, and they lost everything. I think most South Americans took note of that and said, "That isn't going to happen to me."

And now, obviously, the kidnapping and other criminal issues have accelerated since that time. So this is an important issue. I appreciate your opposition to this. Thank you.

[The prepared statement of Mr. Sanchez can be found on page 44 of the appendix.]

Chairwoman CAPITO. Thank you.

Our next witness—I am going to have to slip out for 10 or 15 minutes, and Mr. Renacci is going to take the chair—is Mr. Gerry Schwebel, the executive vice president of International Bancshares Corporation, for 5 minutes.

STATEMENT OF GERRY SCHWEBEL, EXECUTIVE VICE PRESIDENT, IBC BANK

Mr. SCHWEBEL. Thank you very much.

Good morning, Madam Chairwoman, and members of the subcommittee. Thank you for holding this important hearing on the Treasury Department's proposed regulation to require U.S. banks to report interest paid on deposits to nonresident alien individuals and the damaging effects this regulation would have on our economy and U.S. employment.

By way of background, IBC Bank, our bank, was founded in 1966 to meet the needs of small businesses in Laredo and serve cross-border trade. In 2010, Hispanic Business Magazine ranked IBC as the number one Hispanic-owned financial institution in the Nation.

I happen to oversee the international banking operations of our bank, but I am also here speaking today on behalf of the Coalition of Depository Institutions and Industry Trade Associations including the Texas Bankers Association, our friends from the Florida Bankers Association, as well as other trade groups such as the ABA and the Independent Bankers Association.

I want to state at the onset that we strongly oppose this Treasury initiative which is actually the resuscitation of a plan proposed by the IRS a decade ago but eventually withdrawn in the face of substantial congressional opposition.

U.S.-based depository institutions are the repository of literally trillions of dollars of foreign deposits throughout the Nation. These deposits flows are particularly important in States such as Texas, Florida, and California, which have international borders, large immigrant populations, and significant volumes of international trade and travel.

American banks and other financial institutions benefit greatly from this international deposit flow. The communities in which they do business benefit immensely from loan generation, job creation, and related economic growth which stem from this form of capital investment.

On January 17, 2011, the IRS published its proposed rule for public comment due by April 7th of this year. Hundreds of comments were submitted, most of which were overwhelmingly negative. I would also point out that the FDIC weighed in against the earlier incarnation of this proposal in a 2003 letter suggesting that no action be taken without a careful study of the potential impact on the U.S. banking system as well as a separate evaluation of the proposal's regulatory impact cost.

Notwithstanding the overwhelming level of public opposition, there is no reason to believe on the basis of Treasury Department actions to date that there was any intent to back off this highly controversial initiative.

It is for this reason that we are asking the Congress to oppose this proposal as it successfully did 10 years ago. According to the most recent Bureau of Economic Analysis report, liabilities to private foreign residents reported by U.S. banks increased by $166 billion and now total $3.7 trillion.

Our experience as bankers indicates that a substantial portion of the $3.7 trillion represents individual NRA deposits or business accounts connected to such individual depositors. This is because customers often place their individual and business accounts at the same bank for a number of reasons, including convenience.

There should also be no confusion about the fact that the imposition of a reporting requirement will be a clear and present threat to the retention of these deposits in the United States.

I can tell you from personal experience that the mere announcement of the proposed regulation and its widespread publicity has already generated major concerns on the part of our nonresident depositors.

Mexican newspaper accounts are stating that interest earned on banking accounts in the United States is already being sent to the Government of Mexico and up to 30 percent of current customer calls or inquiries are related to this matter.

The reasons for these calls and a high level of concern being expressed has little or nothing to do with tax compliance, but are occurring for reasons related to the security of the institutions involved, the physical safekeeping of the funds, and depending upon the depositor's domicile, the security of the depositors and their families.

It goes without saying that in all situations, the outflow of substantial deposit accounts can only reduce the ability of local banking institutions to recycle these funds into job-creating loans.

Deposit losses would result in large losses in funds available for mortgage loans, small business loans or other credit availability. Economic texts routinely state that for every dollar of deposits lost, there is a loss of $9 of credit. Regardless of whether one holds the view that the U.S. economy is near recession or near recovery, there is no reason to take any steps which would affirmatively curtail lending activity, reduce economic growth, and kill job creation.

We appreciate the degree to which Congress has once again stepped forward on this issue in a broad and bipartisan matter, beginning with the March 2nd letter of opposition from every Member of the Florida House Delegation.

The Texas House Delegation is likewise broadly on record in opposition to this proposal through the leadership of Representative Canseco and Representative Hinojosa. In addition to holding this hearing, we appreciate the April 15th letter of this year, which the House Financial Services Committee, through the efforts of Representatives Posey and Meeks, sent to the President.

It is our view, however, only legislation that blocks the proposed information reported regulation from taking effect will return confidence to the community of NRA depositors.

Thus, we stand strongly in support of H.R. 2568 which would specifically prevent the Secretary of the Treasury from expanding the interest reporting requirements to U.S. banks, credit unions, and securities firms regarding nonresident aliens.

We thank you again for bringing attention to this issue at today's hearing. And we look forward to working with this committee and your colleagues on the House Ways and Means Committee as well, to achieve such passage.

Thank you very much.

[The prepared statement of Mr. Schwebel can be found on page 49 of the appendix.]

Mr. RENACCI. [presiding]. Thank you, Mr. Schwebel.

Our last witness is Ms. Rebecca Wilkins, senior counsel for Federal tax policy at Citizens for Tax Justice.

STATEMENT OF REBECCA J. WILKINS, SENIOR COUNSEL, FEDERAL TAX POLICY, CITIZENS FOR TAX JUSTICE

Ms. WILKINS. Thank you.

Thank you for the opportunity to testify today. Citizens for Tax Justice has been around for over 30 years, and we work to maintain and promote a fair and sustainable tax system.

We want to be on the record that we fully support the IRS in the promulgation of these rules. We hope that it is only the first step in a long and ongoing improvement of the type and quality of infor-

mation that the IRS collects that can be shared with other countries pursuant to tax information exchange agreements.

Governments around the world right now are facing severe budget crises and this is due in no small part to the tax evasion that is facilitated by bank secrecy. It is estimated that the U.S. Treasury loses $100 billion annually in revenue to tax haven abuses.

Secrecy in the financial system facilitates corruption, tax evasion, and money laundering. Shell corporations, anonymous trusts, and bank secrecy in both the United States and abroad make it easy for criminals, terrorists, government officials, and even otherwise legitimate multinational corporations to hide their money, and they make it difficult for law enforcement and tax authorities to do their job.

America should not be a tax haven for international tax evaders. We do not believe that the United States should be a haven for citizens of other countries who wish to evade their tax obligations to their home country.

Regardless of the economic benefit to the United States from the inflow of capital, we should not make it easier for the laws of other countries to be broken or evaded. There is a global growing consensus that responsible governments must cooperate in exchanging tax information in order to combat the rampant tax evasion that is facilitated by offshore tax havens. And make no mistake; the United States is a tax haven for citizens of other countries.

The proposed rule will allow the United States Government to respond to requests from other governments. We have a major stake in assisting those other governments. Not only is it the moral and ethical thing to do, but we need the help of those governments in combating tax evasion in our own country.

We cannot meet our obligations under tax exchange information agreements unless we create a process that allows us to do that. And these rules are an important step in that direction.

These rules will also help the IRS catch cheating by U.S. taxpayers. We know that some U.S. taxpayers use a foreign name or a foreign entity in order to evade tax. And any action that reduces tax cheating brings not only much-needed revenue into the system, but it furthers other important goals. It ensures compliance by other taxpayers and it restores Americans' faith in the equity of the tax system.

We believe that the dire claims of economic consequences are completely unfounded. First of all, the rule only applies to deposits held by nonresident individuals. It only applies to bank deposits.

Of the $4 trillion in bank deposits in the United States by foreigners, over three-fourths of those funds are held by other governments, official institutions, international and regional organizations, and foreign banks.

Of the less than $1 trillion left, only the amount held in the name of individuals would be subject to the reporting requirements. And even for those accounts, you are covered by these rules. Only depositors who are tax evaders, money launderers, drug dealers, human traffickers, or other criminals will have an incentive to move their funds.

Mr. Sanchez said that most of his depositors have their accounts in U.S. banks because they don't trust the banking system in their own country, and I fully understand that.

If that is their reason, they have nothing to fear from these regulations because I assume if their only concern is the unstable banking system in their country, they are reporting the income on those accounts to their government and paying tax on them.

Objections to these rules on humanitarian grounds are largely baseless. The rules allow the IRS to collect the information. They don't require an exchange. The IRS exchanges the information only as a response to a specific, carefully limited request under a tax information exchange agreement.

We believe that the Treasury could add further safeguards to these rules to address any other humanitarian concerns.

Anti-money laundering, national security, anti-corruption, and anti-terrorism efforts could be enhanced through the implementation of these rules. But make no mistake, this is about tax evasion.

Those who oppose the current rules have a vested interest in facilitating tax cheating. But it is the honest tax-paying citizens of the United States and countries around the world who pay the price.

Chairman Bachus asked, "Do we want to have blood on our hands as a result of these rules?" I want to tell you, the United States already has blood on its hands. For every dollar of tax revenue that is taken out of the governments of developing countries, it impairs the ability of those countries to provide health and safety measures to feed its citizens, to provide sanitation, to provide health care, and to provide military and police that are not corrupt.

Every time we facilitate a dollar coming out of those economies, we have blood on our hands. In any case, it is wholly inappropriate to combat—

Chairwoman CAPITO. The gentlewoman's time has expired. Do you want to—are you—

Ms. WILKINS. —to combat unlawful activity in one country by encouraging unlawful activity in another country. We applaud the IRS for proposing these rules. And we support their implementation. Thank you.

[The prepared statement of Ms. Wilkins can be found on page 57 of the appendix.]

Chairwoman CAPITO. Thank you.

Let me ask you a quick question. Mr. Sanchez mentioned on the tax exchange agreements that only two countries in the western hemisphere—that we only have two agreements. Is that factual, according to what you—

Ms. WILKINS. I believe that is factual. We have, around the world, 97—either tax treaties or tax-exchange information agreements—but we have very few in the southern hemisphere here.

Chairwoman CAPITO. Okay.

I would say you make a pretty strong statement when you say anybody who opposes is, thus, in favor of tax cheaters. I would like to give Mr. Cardwell, who is a former regulator, a chance to respond to that.

Mr. CARDWELL. Thank you.

First, there is no credible evidence I have seen that says that any of these funds that we are talking about are here for tax-cheating purposes. This is—as best I can tell—a broad, generalized assertion with no factual background that I am aware of in there.

What I note is a large inconsistency in the IRS position. And the inconsistency is this, on the one hand they say, we have all these individual tax cheats and so, we need to get all of this information regarding reporting. On the other hand, the rule doesn't apply to most of the foreign money that is here in terms of businesses and trusts and everything else. So the IRS, if it is trying to solve the problem that foreign money in this country is involved in tax cheating—an unsupported assertion—this rule only touches a portion of that problem.

I think the real answer is, the United States to my knowledge has never been seen as a tax haven for tax cheaters. I am sure some amount of that may go on, but that has never been the criticism of the United States, that it is one of world's tax cheat havens.

Chairwoman CAPITO. Thank you.

Let me ask another question and I will—Mr. Sanchez, I will ask this of you. You mentioned the President's Executive Order so—that if regulations rise to a level of $100 million in fighting this on all different fronts that we should have an economic analysis as to the results of such a regulation.

In your mind, has any—Mr. Cardwell did a survey of the Southern Florida Banks. It is pretty extensive, showing $14.2 billion in deposits from nonresident aliens.

But to your knowledge, has the government ever or the IRS ever done such a study that shows the effects of this and quantifies the cost?

Mr. SANCHEZ. No, no, Madam Chairwoman. And I asked Treasury that same question, and the Administration several times, and the answer is "no." They are dead silent on that question.

And Madam Chairwoman, if I can just add, too—when Ms. Wilkins said that of the $4 trillion in FDIC deposits in the United States, she emphasized the word "only" $1 trillion would be at risk. I don't know where Ms. Wilkins comes from, Madam Chairwoman, but in Florida, that is a lot of money, ma'am.

And, even if we lose $0.5 trillion in our great country in these deposits, that is going to be a tremendous loss of economic activity and jobs in our country. And I think you confirmed what I said about the two countries we have treatises with.

Look, I don't have a problem, Madam Chairwoman, with Canada; it has established, democratic, safe institutions like the United States, but I think the point is well-known to you, ma'am, and the members of the committee, and even Ms. Wilkins would admit it that in Latin America, sadly, sadly, Madam Chairwoman, and unfortunately, they do not have the freedom and the safety and the democracy that we have in our institutions.

And that is why people put their money here, not to be tax cheats, ma'am.

Chairwoman CAPITO. Let me ask you, Mr. Schwebel, in your institution, you have attracted, obviously, a lot of these types of deposits. Do you cast about and advertise for this? Is it word of

mouth? What do you attribute that to besides your location, obviously?

Mr. SCHWEBEL. As you said, location, but at the same time, we, by virtue of our location, where we are, most of our business is generations, they have been with us for many, many years and through—as to diligence, we are constantly in contact communication, looking at their business and looking at them personally as well.

Chairwoman CAPITO. You have to have their documentation in front of you?

Mr. SCHWEBEL. Definitely, definitely. We are enhancing—

Chairwoman CAPITO. How often do you check that?

Mr. SCHWEBEL. Ours is ongoing. We looked at even the smartest transactions and looking at activity what everybody is doing, especially, in the environment that we have been—as a result of BSA and PATRIOT Act, that is a requirement.

Chairwoman CAPITO. If there is suspicious activity in an account, like large withdrawals or large deposits, do you then—are you empowered to go in and look at those?

Mr. SCHWEBEL. Definitely.

Chairwoman CAPITO. And report them to certain law enforcement agencies or regulators?

Mr. SCHWEBEL. Definitely, we—

Chairwoman CAPITO. Even these accounts, I know you are on other accounts if you have a deposit over $10,000 or such.

Mr. SCHWEBEL. Definitely. We are constantly in contact with not just the regulators, but all of the law enforcement organizations. It is very important to us that we understand what our customers are doing every day.

And we look at down to transactions. We look at the type of activities. And we have the mechanisms in place to track and monitor that. And, that is just part of life that we are in today.

Chairwoman CAPITO. All right. Thank you. My time has expired.

Mrs. Maloney?

Mrs. MALONEY. Thank you. I would like to thank all the witnesses for their testimony and to ask Ms. Wilkins, we have heard testimony today from financial institutions who believe that the proposed rule will create a liquidity run on our banks. One person testified that the rule would—that there is roughly $14 trillion in financial institutions invested in the United States by foreigners.

Are you not concerned that this rule will cause nonresidents to pull their investments out?

Ms. WILKINS. Thank you, Congresswoman. Of the $14 trillion that foreigners have invested in the United States, a large majority of that is in real estate, hedge funds, other things besides bank deposits.

The Federal Reserve in its most recent reports said $4.4 trillion of foreign deposits are in U.S. banks. And, yes, Mr. Sanchez, where I come from, a trillion dollars is a lot of money. But my point is the amount that is at risk is a very small fraction of that trillion dollars. Because that trillion dollars is the amount of deposits that are in U.S. banks from foreigners that are not in the name of another bank, another government or a regional or global organization.

Of that trillion—$1.2 trillion—in the most recent Federal Reserve report, a lot of that is going to be in the name of companies, of corporations, of partnerships, of trusts, and the rules only apply to individuals.

So, the amount that is in the name of individuals is some fraction of that $1.2 trillion.

And then, again, I emphasize that the amount that is really subject to flight is the accounts of people who have some reason to hide the fact that they are earning interest on U.S. deposits. So, they are not reporting that income to their country of origin and paying tax on that.

Mrs. MALONEY. But what about the concerns that some of my colleagues and some of the panelists have expressed that some banks would have a specific liquidity problem because of this. And I would also like to understand why such a substantial portion of these deposits are held in banks in Florida and Texas.

Ms. WILKINS. Obviously, their location is key. But I wonder if what Mr. Sanchez says is true, that these people are primarily using the U.S. banks because of the stability it provides. Why are they concerned about these regulations?

And if a particular bank may fail because a large number of deposits might be pulled, I have to ask, should we be protecting a bank whose core business is facilitating tax evasion and criminal activities?

Mrs. MALONEY. Some of my colleagues have expressed concerns about confidentiality. What steps or requirements are you aware of that the IRS must take to safeguard confidentiality about the information that is obtained about interest paid to nonresident aliens?

Ms. WILKINS. We are constantly frustrated by our inability to get any information out of the IRS. And, obviously, the IRS is very good about keeping tax information confidential.

I do think there is room in the regulations to improve requirements for other countries with whom we exchange information on the way they keep information confidential.

The U.S. Treasury does have the ability to refuse any request for information under a TEIA.

So, I think that will be very common if they feel like there is some risk.

Mrs. MALONEY. And can you explain how the proposed IRS rule is related to the FATCA, the Foreign Account Tax Compliance Act?

Ms. WILKINS. The FATCA that was passed last spring requires foreign branches of the U.S. banks and foreign financial institutions to report to the IRS interest earned by U.S. citizens and residents.

So, what the IRS is doing by collecting the information in these proposed rules is just turnabout is fair play. They are saying that if you will collect this information for us so that we can collect tax, we will collect this information for you.

I think that these rules are very important to encourage foreign financial institutions to comply with FATCA.

Mrs. MALONEY. And what impact do you think it would have on foreign compliance or cooperation with our country?

Ms. WILKINS. I think it will help a lot. I think the IRS and the Treasury are getting a lot of pushback from the foreign financial

institutions and from foreign governments about FATCA. And I think promulgation of these rules and more rules like this will help create cooperation among all the governments in the world.

Mrs. MALONEY. My time has expired.

Chairwoman CAPITO. Thank you. I would like to recognize Mr. Renacci for 5 minutes for questions.

Mr. RENACCI. Thank you, Madam Chairwoman. And I thank the witnesses for being here.

It is interesting. I have been a Congressman now for 10 months, and I sometimes wonder why the Federal Government does some of these things and the IRS gets involved.

And as I listened to all of you, I tried to break this down into three pieces: the cost to report; the potential loss of deposits; and a potential increase in tax revenues, is what I am hearing from one of the witnesses.

Let us talk about the cost to report.

Mr. Schwebel, can you tell me—you are already printing up 1099s for all of your other customers. There is probably not that much of a cost to report these additional taxpayers.

Mr. SCHWEBEL. As a matter of fact, we are going through the process of reviewing the requirements that—by having to submit specific new forms—that we do a 1042-S form, which is a standard IRS form that will be required for reporting individuals as well that are these NRAs.

If you take a bank like ours and we look at the volume of deposits that we have and then our—we are talking about individual accounts, personal accounts. In our deposit, our foreign deposit base, it is about 95 percent of those foreign deposits are personal accounts.

Ms. Wilkins was saying that they are not really individuals who are being affected. Our particular case—if you took my foreign deposit base, 95 percent of that would be almost $2.3 billion, $2.2 billion in the foreign deposits that had turned.

I would have to generate new reports to the IRS by submitting the 1042-S's that we currently have not doing.

Mr. RENACCI. That is not real—that is a change in the computer programming and—

Mr. SCHWEBEL. Yes. It is not just flicking the switch. It is a matter of collecting the data because we don't—and I will tell you that we submit our reports to Treasury, to the Federal Reserve, and and we do not distinguish in our reports whether they are personal or business accounts.

The requirements for the BL 1 report that is submitted is very clear. It is just the total number of accounts.

Mr. RENACCI. Mr. Cardwell, Ms. Wilkins states that there is no foundation to the argument that billions of dollars of deposits will leave the United States if these rules take effect. The regulation only applies to accounts owned by nonresident alien individuals.

You had a summary, I think, in your testimony. Do you agree with that statement?

Mr. CARDWELL. No, I don't agree with that statement. Obviously, the rule has not been in effect so we don't know what the effect will be. So, what you are doing is analyzing the risk of that hap-

pening. And as a regulator, I ask myself the question, what do you think is likely to occur?

First, I asked banks individually and anecdotally what they were hearing from their customers. And what they were hearing from their customers—a number of them—is, "Yes, we will pull our money out." And markets work.

We find instances where countries which don't do this kind of reporting are now soliciting these accounts on the grounds that the information will be reported.

So, the best information we have is that it is likely to have some portion pulled. Is it going to be all of it? Absolutely not.

I have used fairly conservative numbers like 20 or 30 percent to try to assess the harm that we have.

What concerns me the most is unless there is a really good reason to put this rule in place, why would you take the risk of losing the money? Because once it is gone, it is gone.

Once it leaves this country, if that is the result, we are not going to see it back here again.

So, unless you could convince me as a regulator that it is really important that we risk losing these deposits, I would say, let us not take the risk.

Mr. RENACCI. Thank you. You led right into my next question because I was going to ask Ms. Wilkins that question. First off, you have made a couple of bold statements here about taxation and tax cheats and how much money the United States Government is losing. This is the cost of the United States Government to start doing some of this if they are going further in reach.

So, what is the return to the Federal Government? Do you have any studies on that? And what is the risk of losing potential dollars?

I know the risk is the loss of liquidity in the banks. Are you saying that is okay? That you are not as concerned with that? That there is an amount of tax revenue that the IRS is going to be able to collect because of having other countries now report that income?

Ms. WILKINS. There are two answers to the flight issue. I think the risk of a lot of capital leaving is small. But I think whatever does—

Mr. RENACCI. But you don't know that for sure.

Ms. WILKINS. I don't. And I have to say, neither do they.

But I also think that it has come right back to the United States through the foreign—through the depository accounts of Cayman Island banks, Bermuda banks, Bahama banks right now. The biggest liability that U.S. banks have to foreigners is to banks in the Cayman Islands.

So, I think—

Mr. RENACCI. My time is almost—I guess, it is already out. But the question really is, do you have any studies to show how much the IRS is going to be able to find in new tax revenue by taking the expense of doing this?

Ms. WILKINS. No. Like Mr. Cardwell said, we don't know what the effects of these regulations are going to be. And the revenue increase to the United States in the short term is probably not big. But I think in the long term, as the governments continue to co-

operate on tax matters, I think tax revenues for countries all over the world will go up.

Mr. RENACCI. So, the revenue is not big but the risk of cash leaving is a potential. Thank you.

Chairwoman CAPITO. Thank you.

Mr. Hinojosa, for 5 minutes, for questions.

Mr. HINOJOSA. Thank you. Thank you, Chairwoman Capito. And I also want to thank Ranking Member Maloney for holding this important and timely hearing today on reporting interest on nonresident alien deposits at U.S. financial institutions.

Madam Chairwoman, I ask unanimous consent to insert into today's hearing record the following three letters. The first one is a letter from United States Senator Kay Bailey Hutchison and Senator John Cornyn of Texas asking Secretary Geithner, Secretary of the Treasury, to withdraw the IRS' proposal to require banks in the United States to report to the IRS all deposit interest paid to certain nonresident investors.

The second letter is one that the Texas delegation, co-authored by me, Ruben Hinojosa, and Congressman Francisco Canseco, sent to President Barack Obama, requesting that he withdraw and maintain the 90-year policy of attracting foreign capital to the United States that improves the safety and soundness of U.S. financial institutions, particularly community banks.

The third letter is one from the Florida delegation requesting that Treasury withdraw the proposed rule. Those are actions that justify the drafting of legislation and are offering H.R. 2568, which would prevent the Secretary of the Treasury from expanding the United States bank reporting requirements with respect to interest on deposits paid to nonresident aliens.

It is my sincere hope that the Obama Administration will withdraw the proposed rule that will endanger the safety and soundness of banks that are keeping the economy of Florida, California, and our State of Texas alive, and if promulgated, would result in a flight of nonresident alien deposits from U.S. markets.

As we emerge from the worst recession since the Great Depression, it does not make sense to impose regulations that will harm further the economies of Texas, Florida, and California, and will endanger the livelihood of the United States residents along the U.S.-Mexico border area.

I urge my colleagues on both sides of the aisle to join me in encouraging this Administration to withdraw the proposed rule. And with that, I yield back the remainder of my time.

Chairwoman CAPITO. The gentleman yields back, and we will submit those letters for the record, without objection.

As you have heard the bells and whistles going off, it means we have been called for a vote. We are going to go to Mr. Luetkemeyer for questioning, and then I probably will recess the committee and reconvene after we have votes. I apologize, but that is just kind of the way of life here.

So, Mr. Luetkemeyer?

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Ms. Wilkins, in your conclusion, you make the statement, "make no mistake, this is about tax evasion." According to what I am

reading here and my understanding of the rules, the IRS does not collect taxes on nonresident deposits. Is that correct?

Ms. WILKINS. That is correct.

Mr. LUETKEMEYER. So the tax evasion then is from people who come here and try to avoid taxes in other countries.

Ms. WILKINS. That is right. This is about the United States helping people evade taxes.

Mr. LUETKEMEYER. So why is it our problem to try and help other countries collect their taxes?

Ms. WILKINS. Why are we—

Mr. LUETKEMEYER. Answer my question. That is my question.

Ms. WILKINS. It is the same reason we are prosecuting the Swiss banks. Because they are facilitating tax evasion by our residents.

Mr. LUETKEMEYER. Yes, but our work—those people evading taxes in other countries, they are other countries' problems. That is not our problem, is it—

Ms. WILKINS. We are asking governments of other countries to collect information through—

Mr. LUETKEMEYER. Yes, but we are helping them—we are asking them to help us find our citizens who are cheating and not paying taxes here. Why should we be worried about collecting taxes for other countries?

Ms. WILKINS. We shouldn't help them the way they are helping us?

Mr. LUETKEMEYER. If they request it. But they are not requesting it, are they?

Ms. WILKINS. They do request it and unfortunately—

Mr. LUETKEMEYER. Through the existing laws, are we not able to accommodate them?

Ms. WILKINS. Unfortunately, without this rule, the IRS doesn't always have the information they need to respond to those requests. This would help the IRS respond.

Mr. LUETKEMEYER. Okay. Gentlemen, have you ever had problems with other countries requesting information from you with regard to tax evaders? Is this a normal occurrence that the different countries' governments contact you with regard to tax evasion of your customers?

Mr. SCHWEBEL. Congressman, no. There is a process. And the laws are in place and the procedures are in place and we have never had—we always cooperate any time there is any request. In our particular case basically, is to Mexico.

Mr. LUETKEMEYER. How many requests do you get a year? You have $2 billion worth of deposits—

Mr. SCHWEBEL. I will tell you that, as I headed the—since 1998, I took over the international operations of our bank. I could probably count on one hand the number of requests that have come in during those—

Mr. LUETKEMEYER. Okay.

Mr. Sanchez?

Mr. SANCHEZ. Sir, I would—

Mr. LUETKEMEYER. By the way, I don't want to interrupt you, but thank you for your compelling story and your patience. I appreciate the statements you made earlier during—

Mr. SANCHEZ. Thank you, sir. I would defer to Gerry on that one, but I will answer your question by telling you what is on the mind set of Treasury officials specifically who wrote this. Ms. Corwin said when I asked her, "You are only going to exchange this with countries we have a tax exchange treaty with?" She said, "Yes."

And that is when I brought up Mexico and Venezuela. And I said, "Well, then why are you collecting it for the world?" And she said it was our responsibility, sir, from the banking institution to inform all of our customers that the U.S. Federal Government was collecting it but we will not exchange it with all countries in the world.

I said, "Well, limit the rule to those you have a treaty with." And I caught her in a bad position there, because how can we tell every potential customer in the world that the U.S. Government is collecting this information but they are not going to exchange it? It doesn't make any sense.

Mr. LUETKEMEYER. Do you believe that they are collecting this information in violation of the Bank Secrecy Act?

Mr. SANCHEZ. As far as the Federal Government is concerned?

Mr. LUETKEMEYER. Right.

Mr. SANCHEZ. I mean—

Mr. LUETKEMEYER. You can't give that information out to any other individual or corporation or entity. You can't give it out to foreign governments, can you?

Mr. SANCHEZ. No.

Mr. LUETKEMEYER. They request that because the banks are—

Mr. SANCHEZ. No. No. No. We do it when we are requested by the U.S. Government—

Mr. LUETKEMEYER. Okay.

Mr. SANCHEZ. —obviously but—and we comply with the BSA laws and the PATRIOT Act, sir.

Mr. LUETKEMEYER. Right. But technically, this rule would be in opposition to the Bank Secrecy Act as it is known to you, right? It seemed to me, anyway.

Mr. SANCHEZ. Yes. I mean certainly the principles of our country—for us to think that Mexico and Venezuela, under Hugo Chavez, respect our privacy laws is absurd, sir.

Mr. LUETKEMEYER. Okay. The chairman made mention of the fact a while ago—and I had a discussion with Ms. Wilkins—and it certainly would seem to me that the IRS is by their actions here continuing to find ways to make it more difficult for foreign countries, foreign investors, foreign corporations to continue doing business with us either by allowing us to have deposits in their country to impact the investments in our country as well as to have them have their investments here.

I don't understand what the problem is they are trying to solve. The testimony today doesn't lead me to see that we still have a problem anywhere, if we are trying to avoid taxes, and you had half a dozen instances in 20 years, I fail to see the problem.

So, Madam Chairwoman, I appreciate your indulgence, and I yield back. Thank you.

Chairwoman CAPITO. Thank you.

You know what; I think we might be able to get to Mr. Canseco. We have 8 minutes left before votes. He will be our next questioner.

Mr. CANSECO. Thank you very much, Madam Chairwoman. Thank you very much to all the panelists for being here today on this very, very important issue.

Mr. Schwebel, my take on this rule is that smaller banks could be disproportionately affected by deposits that are pulled as a result of its implementation. Could you detail for us how IBC is uniquely positioned to serve foreign depositors and why depositors choose IBC over another bank in Texas or over other banks in the country?

Mr. SCHWEBEL. Yes, Congressman. Thank you for your question. The issue is we have been since 1966 when we started in Laredo we have grown throughout Texas. And those relations that we have cultivated over the years have now become generational—even of increasing trade activity between our countries. And Texas has been a great beneficiary of that by virtue of our location.

Those business relationships have become personal relationships as well which is what we seek. We seek those personal relationships as well from the businesses.

Mr. CANSECO. In your reading of the IRS proposed rule, do you feel that the IRS appropriately took into account the potential economic ratifications of the rule?

Mr. SCHWEBEL. Not at all. That is what we had been asking.

Mr. CANSECO. Let me ask you this: Ms. Wilkins, here to your left, seems to brush off in her testimony the notion that foreign depositors could be put at risk in their home countries should this rule go into effect. Yet, you discussed in your testimony the great concern over safety many of your customers have over the proposed rule.

In fact, you noted up to 30 percent of the calls you received are related to this rule. I would like to give you the chance to respond to Ms. Wilkins and to tell the panel what you hear from your customers and some of the safety concerns that could arise over the rule going into effect.

Mr. SCHWEBEL. The calls we have been getting since this came back to life in January of this year started coming in right after the news releases started coming out in Mexico.

Immediately, customers began visiting with us, calling us and telling us what was going on. And many of them been through this, you know; issues have come up 10 years ago. So those calls that we were getting—we are fielding those calls; we are documenting those calls; we are talking to our customers.

And they are legitimately concerned that the security of their lives, and their families' lives by just the release of this information and sharing it openly with their respective governments, could be in danger. And they are passionate about it. They are very concerned about it. Those are the views they are expressing to us.

Mr. CANSECO. Thank you, Mr. Schwebel.

Mr. Sanchez, the same question to you.

Mr. SANCHEZ. Sir, I have personally talked to many of our customers in Florida who are nonresident aliens and they have affirmed what Mr. Schwebel just said. They are genuinely concerned

not only about the economic side that I mentioned earlier, which is what Ms. Wilkins keeps emphasizing. She leaves out the part where I said that these men and women who live in these countries in our hemisphere are very concerned about their own personal safety and that of their children. And that is why they have their monies here because of our privacy standards.

They are concerned that if people back home found out they had these monies, their children, their families will be kidnapped. And I have talked to some who have in fact been kidnapped, all over the hemisphere, sir. So that is a valid concern. The United States will always be the beacon of hope for people from around the world not only for economic reasons but for personal safety reasons, sir.

Mr. CANSECO. And there is empirical evidence that there is a lot of kidnapping, sequestrations, and others for people with money, is that correct, Mr. Sanchez?

Mr. SANCHEZ. Yes, sir.

Mr. CANSECO. Yes. Thank you.

Mr. Schwebel, there is an often-cited study done by the Mercatus Center 7 years ago on a similar proposed rule that estimated up to $88 billion in deposits could flee the American banks as a result of it going into effect.

You discussed in your testimony one of the great concerns I have, which is the multiplier effect that this rule could result in the flight of not just deposits but also investments that nonresident aliens make in America.

Could you walk us through what we are talking about here and perhaps how it relates to family-linked accounts and different kinds of investments they may have with American banks?

Mr. SCHWEBEL. Correct. I will tell you out of personal experience, Congressman, that is my daily livelihood. We deal with these families, these businessmen and women who invest in the United States, bring their deposits, are doing cross-border business.

At the same time, what is happening is that they are—what they are doing is—that allows us, through that deposit—multiple effects, as Mr. Cardwell said, 7 to 9 times of that allows us to generate loans, small business, business mortgage loans, and other types of lending activity. The multiple effect of that deposit is great.

By virtue of that deposit leaving the country, then the impact of that lending ability, of course, will diminish as well. So that is what we are talking about. It allows us in our particular part of the country—that Texas has been resilient in this.

But if this money starts leaving as we believe it will as a result of this proposed rule, then the domino effect of that will be felt on the lending side.

Mr. SANCHEZ. It will be the same for Florida, sir.

Mr. CANSECO. Thank you. Thank you very much. My time is up. Thank you very much.

Chairwoman CAPITO. Thank you. As I announced earlier, we have a series of three votes and the subcommittee will recess until the end of the last vote. So I expect we will be back here somewhere between 11:25 and 11:30. Thank you again for your willingness to stay, I am assuming, and we will resume the hearing then because I know we have further questions.

So, this hearing will recess subject to the call of the Chair.

[recess]

Chairwoman CAPITO. If I could ask the witnesses just to go ahead and take their seats, we will resume. I am not certain if Mrs. Maloney is going to be returning. I kind of have a feeling maybe, maybe not. I am not sure. We are going to go ahead and start.

Is that okay? Yes.

Thank you all for your patience. And I know Mr. Pearce is on his way back and will have some questions, so we will start with Mr. Posey for 5 minutes for questioning, and we will resume the committee. The committee is out of recess.

Mr. POSEY. Thank you very much, Madam Chairwoman.

Ms. Wilkins, I must take exception to your comment that those who oppose the proposed rules have a vested interest in facilitating tax cheating. I am not thrilled about your use of the word "corrupt" and all the people you are pointing fingers at in your written testimony, either.

But your advocacy for the Government of Venezuela—and ultimately someday maybe Iran, North Korea, and Cuba and the like—startles me, quite frankly—most of us here are trying to put America first. I have known people in other countries who have deposited money in our banks, and they are not, in your words, "tax cheats, drug dealers, human traffickers" or criminals of any kind. I am shocked that you would denigrate them like that.

What do you think would happen to an honest, hardworking family in Venezuela, for example, who fears the oppression and instability there and they have money in our banks? What do you think would happen if Chavez's administration found out about it? What would happen to those people? People who love democracy and freedom anywhere could suffer greatly from the betrayal of their confidence.

In response, Madam Chairwoman, to a question asked by a Member earlier, I have asked the Treasury Department for a cost-benefit analysis of the proposed regulation since they proposed it earlier this year and they have never provided it to me. I think I know why, and it is probably because they have never done it.

Common sense says you should know the facts before you leave, even though testimony here elsewhere might lead you to believe otherwise. Not only will it drive capital out of U.S. banks that would otherwise have been able to stimulate our economy, help our small businesses.

Mr. Cardwell, in your testimony, including your remarks before the IRS on May 18th, you said that this regulation could place some Florida-regulated banks in jeopardy and it could perhaps lead to some banks failing. You are saying to this committee that Treasury overregulation if fully implemented could lead directly to bank failures, if I am correct. And if so, would you explain?

Mr. CARDWELL. Yes, Congressman. What happens is that the withdrawal of the deposits will hit some banks a lot harder than others because they have a large proportion of them and, therefore, lose only 20 or 30 percent of the NRA—if only 20 to 30 percent, generally, of NRA deposits are withdrawn, but they constitute 40 or 50 or 60 percent of the total deposits, then you get into a liquidity crisis.

What happens is that the banks don't have enough cash in the vault to pay off all the people who ask for their money to leave. And when that happens as a regulator, when a bank cannot come up with the money, the FDIC and the banking regulators have to close it. And that is a bank failure and the bank is gone and it didn't come back.

That is the liquidity problem that you have as a bank—it is simply not liquid enough to be able to pay all the deposit as often when it can't—the regulator has to take it over. That is what the mechanism is.

And I saw a significant number—I gave them in my testimony—they are in there—of banks in Florida. And I am sure there are ones in Texas and California and, frankly, they are anywhere where in other States, in New York and others, where you have substantial ethnic minorities because this is where—they are the ones that tend to have a higher proportion of the NRA deposits. And so, I believe that this is an issue that affects not only the States that are here today but other States as well.

Mr. POSEY. Thank you.

Mr. Sanchez, would you like to weigh in on that?

Mr. SANCHEZ. Yes, Congressman Posey. I think that folks like Ms. Wilkins—and I am sure she is well-intentioned and she is very intelligent. But I would like her to meet with real people outside Washington, D.C., who have a compelling story; who are seeking the safety of their families; who are worried about the bureaucracies and their governments and their countries.

And sadly, I wish it wasn't that way, Mr. Posey, in South America in our hemisphere. But as Chairwoman Capito asked, the two countries we do have a treaty with are Mexico and Hugo Chavez's Venezuela.

And from a personal perspective, Mr. Posey, I can tell you, I wish you had met my father when he was alive. He lost everything in Cuba because one day, Fidel Castro changed the currency from the Cuban peso which was exchanged in the world markets to the new Cuban peso and everything was wiped out. Everything was wiped out in Cuba. My father, my mother had built a home, in 1957—they lost that. I think others and the government took it over.

I think Ms. Wilkins needs to see stories like that, that realities are still happening in our hemisphere. And other South Americans learn from the Cuban experience: "That will not happen to me." That is why a lot more of these NRA deposits are deposited in Florida than in other States, sir.

Mr. POSEY. Wouldn't your father have been a lot better off if you had the assurance of the U.S. Treasury that nobody would tell him?

Mr. SANCHEZ. Yes, sir. Of course, right.

Mr. POSEY. Thank you, Madam Chairwoman. I yield back.

Chairwoman CAPITO. Mrs. Maloney has additional questions.

Mrs. MALONEY. I would like to ask Gary Schwebel, can you elaborate on what you view will be the burden to your bank of complying with the proposed IRS rule?

Mr. SCHWEBEL. Sure. Thank you for your question. A process has been explained as we review the procedure and having to report personal accounts. Right now, all the reporting is just by total NRA

nonresident alien accounts. That is divided by personal or even business accounts as our requirements have right now.

But we would have to definitely generate some new systems, look at all not just on the technology side. But also, we would have to go back and understand really what information are you going to need, what the service is going to need?

Mrs. MALONEY. What new infrastructure do you think you would need?

Mr. SCHWEBEL. Definitely, it is going to require us to get some newer technology in reporting in order to meet the demand of all these accounts. We have thousands of account holders who are NRAs so what is it—if you are going to need more specific information—that are just providing a name and an address of someone, what is that going to be—what good will that do to you if you have people—in our particular case, Mexico—with the same name and the same address?

There has to be something that you have to be able to link it to, and that is what still is even not clear from the service to tell us what good does it do just getting a name of someone if you are not going to be able to share it and to be able to really go back and check?

Mrs. MALONEY. Okay.

I would like to ask Thomas Cardwell, as a former regulator, I know you share the concerns of the Florida Bankers Association that the proposed rule will inhibit banks from access to foreign capital. The concern is that nonresidents will take their deposits to other countries that they believe can protect their confidential information.

I understand that our Federal regulators are comfortable with the IRS and what they are doing with this rule. Can you explain where there might be a disconnect of the concern of the Florida Bankers and not the concern apparently of the regulators with whom we interact daily on any concerns with banking?

Mr. CARDWELL. Right. As the IRS does not appear to have looked carefully at what the effect will be on actual independent individual institutions, and they think in a broad scope this really isn't going to be heavy on banks. It is not the problem of banks in general.

What we found is that when we look at the individual institutions that we regulated, and gave what I would call a type of stress test to what would happen if these types of deposits flowed out, that is where we saw the problems.

As far as the Federal regulators are concerned about looking at this as well, it is interesting to note that I did talk to them about this. They have evidence of some concern. They had concern back in 2000 and one when this came before and opposed this and to be frank about it all of the data, as Gerry was saying, as to how they report it in there—it isn't really clear even to them of what the effect would be.

I know that for example, and just before I left in July, the FDIC was making inquiries of banks to get information because even they didn't really know how it would affect them. So the mechanism is pretty clear and the real issue is, how much of it are we going to have?

Mrs. MALONEY. And Mr. Sanchez, the story about your father and the changing of the currency. When he lost his home, was it because they changed the currency and he didn't have the money to pay off the home, or did the Castro government just come in and take everybody's property?

And even if you had the money to pay it off in the new currency—could you tell us more about that story?

Mr. SANCHEZ. Yes, Congresswoman Maloney. The government confiscated my parents' home—

Mrs. MALONEY. They just came in and took it?

Mr. SANCHEZ. And took it, right, in Havana. And, all Cubans lost whatever monies they had. I think that was the opening why many of these NRA deposits since then have been deposited.

Obviously, we have had this record in the United States, it is 1922, of not taxing NRA deposits specifically from South America in our hemisphere which is where my emphasis today.

The Cuban experience, I think, was a wake-up call to everybody in the hemisphere that, that will not happen to me. So my parents—

Mrs. MALONEY. Was there any warning when they went in and just changed the currency like that?

Mr. SANCHEZ. No, there was not. Ernesto Che Guevara was the "fed" chairman, I guess you can say at that time, and you know how qualified he was to head that up, ma'am. And he changed the currency and everyone was totally wiped out.

Obviously, the kidnapping issue wasn't prevalent in Cuba before then and at that time and it is an issue now in our hemisphere. And that, along with the economic collapses of the economies down there, are the two main reasons why folks from our hemisphere have their money deposited in an American bank.

And my point to Treasury was, how many Americans have accounts down there? Not many, if any at all, ma'am.

Mrs. MALONEY. Thank you.

Mr. SANCHEZ. Thank you.

Chairwoman CAPITO. Mr. Pearce for 5 minutes for questions. Thanks for your patience, Mr. Pearce.

Mr. PEARCE. Thank you, Madam Chairwoman.

Ms. Wilkins, we were kind of engaged in a discussion here earlier, where there was about a trillion dollars that more or less may be involved in you said in only a small fraction of that trillion would actually be something that would be subject to reporting.

What percent can we quantify that, if anyone has a number?

Ms. WILKINS. Unfortunately, we don't, no. The way it is reported to the Federal Reserve is just whether or not it is another government or another bank. And then everything is sort of—

Mr. PEARCE. Would you guess it would be 10 percent?

Ms. WILKINS. I don't have any idea—

Mr. PEARCE. Mr. Sanchez, do you have an idea of some amount?

Mr. SANCHEZ. As to how much of that trillion, sir, is—

Mr. PEARCE. Would be reported? Ms. Wilkins said that a very small fraction would be reported of the trillion. And so, she is saying it is not such a big deal, and I was just trying to quantify how much of the trillion.

Mr. Schwebel?

Mr. SCHWEBEL. Congressman, what we have done—in the research that we have done, my bank is an example. It is very significant, as I stated earlier.

Our NRA deposits, the majority of those NRA deposits are personal accounts, which are the ones that this proposal is affecting. So if we have a 10 percent stress test, let us say—would leave the bank—and, like I said, we are fielding calls from our—but the idea that the 10 percent stress test on those deposits—we are talking about over $200 million that we would actually believe would leave the bank, and the multiples of that potential money to lending.

Mr. PEARCE. Okay, I get it. Thanks.

Ms. Wilkins, there is the thing that was recently uncovered in Florida where people are filling out—they are going out and getting dead people's tax or their Social Security numbers and filing for refunds.

The IRS promised that if you file for a dead person, then you can get $9,500, and if it is under $10,000, you get it back in 2 weeks. And so, people have been walking through the door and filling out fraudulent returns. And the IRS refuses to share the returns with the FBI.

Has your association taken a position with respect to the IRS sharing information with the FBI on these fraudulent returns?

Ms. WILKINS. Not on that particular instance, but we think there is a huge problem in the IRS confidentially rules that don't allow the IRS to share information with bank regulators, for example, with the FCC, with law enforcement. We would love to see that—

Mr. PEARCE. If you would take a look at that and see I would like to have your stated position on what the IRS is saying that they are not to give any of the documentation there because obviously it is a scam and it is—about 100 have been uncovered, and they say only 10 percent. So that is a billion dollars in Tampa Bay alone; just the one town.

And so—

Ms. WILKINS. Unfortunately, I think the IRS feels that they can't legally share the information. That the internal revenue—

Mr. PEARCE. What do you think?

Ms. WILKINS. I think that is how the law is written. I think it needs to be changed.

Mr. PEARCE. So the law is written so that our government is—that our government is rewriting the law to where they can share with foreign governments but our government is not rewriting a law where they can share with the FBI internally—

Ms. WILKINS. Well, the tax treaties are law, and tax treaties say that we can share information.

Mr. PEARCE. I understand. I am just saying that I see a moral complication there.

Ms. WILKINS. I think it is very unfortunate that the IRS—

Mr. PEARCE. I would appreciate your written statement on that.

Ms. WILKINS. You got it.

Mr. PEARCE. Did you all take a position a year or 2 years ago—there are 100,000 Federal employees who didn't pay their taxes. Have you all taken a position on that? It is a very visible thing, 100,000 people. It is almost a billion dollars in taxes that weren't paid by Federal employees.

Did you all take a position on that?

Ms. WILKINS. I don't think we took a position on that particular issue but we—

Mr. PEARCE. Would you take a position on that right now?

Ms. WILKINS. Absolutely. We think everybody should pay their taxes.

Mr. PEARCE. Does that include Mr. Geithner? Did you all take a position on Mr. Geithner?

Ms. WILKINS. We think everybody should pay their taxes, and we think this rule will help—

Mr. PEARCE. So would you come and testify to that effect, that Mr. Geithner should have paid his taxes? Would you state that ensuring compliance for other taxpayers and restoring Americans' faith when they activated the tax system would apply to Mr. Geithner?

Ms. WILKINS. Absolutely.

Mr. PEARCE. Okay. And I appreciate that.

I would note that when you say that no small part of the budget crisis originates in this area, that according to your numbers, $100 billion is probably involved. That is your statement on the report. That would be 60 percent of the current deficit.

Yet, when you referred to the amount that is actually going to be investigated, you call that a small fraction. You were saying that a small fraction of that trillion dollars would actually be involved. So a small fraction of something around 2 or 3 or 5 percent if you would work the numbers and what of interest it would be but then you would declare no small part as though at some point, your numbers ought to kind of be a little bit more correlated.

Ms. WILKINS. There are two different issues: I think the debt crisis we are seeing in Europe, to a large extent, has to do with tax evasion; and what happened in Greece is because of the widespread acceptance of tax evasion that is in their culture.

Mr. PEARCE. But we are talking about what you said about our budget crisis, and that is 6 percent according to your numbers and the last deficit was $1.5 trillion, and you used the number $100 billion that is 6 percent.

I am just saying that you use one measuring stick in one part of your report and different measuring sticks—so just from up here, those discrepancies look large. And I see my time has expired.

Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you, Mr. Pearce.

That concludes our hearing. The Chair notes that some members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

Additionally, I would like to ask that these statements be entered into the record: the American Bankers Association; the Conference of State Bank Supervisors; the Credit Union National Association; the Florida International Bankers Association; the Institute of International Bankers; the Texas Department of Banking; and the Independent Community of Bankers of America.

I would like to thank you all for your patience in waiting through our votes. I appreciate your efforts, your information, and your passion.

And with that, I will say the hearing is adjourned.

[Whereupon, at 12:01 p.m., the hearing was adjourned.]

A P P E N D I X

October 27, 2011

Written Statement of

J. Thomas Cardwell

Former Commissioner of the State of Florida Office of Financial Regulation

on

Proposed Regulations to Require Reporting of Nonresident Alien Deposit Interest Income

before the

House Financial Services Committee

Subcommittee on Financial Institutions and Consumer Credit

October 27, 2011

Madame Chairwoman and Members of the Subcommittee:

I am Tom Cardwell. I served as the Commissioner of Financial Regulation of Florida from August 2009 until August 2011.

I appear before you today as the public official who, for that period, had responsibility for the safety and soundness of financial institutions chartered by the state of Florida.

The Office of Financial Regulation is responsible for chartering and regulation of 170 commercial banks and 38 international offices having deposits exceeding $70 billion.

The rule proposed by the Internal Revenue Service that will require the automatic reporting of interest on the deposits of non-resident aliens, I believe, creates serious safety and soundness concerns to banks and further will have significant negative economic impacts on the communities served by those banks.

BACKGROUND OF NRA BANK DEPOSITS

The United States has long been a recipient of substantial deposits from foreign residents. These deposits have been beneficial to us and have, as a matter of long standing policy, been encouraged.

Florida, among other states, is home to significant non-resident alien (NRA) deposits. Our bankers tell us that most of these are stable long-term deposits that play a significant role in funding our banks. These accounts have not been associated with money laundering or the conduct of illicit activities.

NRA deposits are often driven here by a distrust of foreign economies and their governments by their own citizens. Experience with inflation, devaluation, nationalization and corruption causes ordinary citizens, quite rationally and appropriately, to wish to put some part of their life savings in a safe place. The United States is such a place.

Florida's geographic location has long made it a hub for business, trade and travel for people from Central and South America. Governments and economies in the area are often unstable. This has resulted in banks located in Florida receiving significant deposits from people in the region who are attracted by the safety of our financial system and by Florida's geographic proximity.

Beyond economic concerns, citizens in some countries rightly distrust their governments. Dictators, demagogues, political partisans, corrupt state and local officials often act outside the law. Extortion, abduction, robbery and embezzlement are facts of life. Providing such governments with a list of assets is felt by their citizens to jeopardize not only their property but also their lives and those of their families and associates.

OFR STUDY AND CONCLUSIONS

As Commissioner of Financial Regulation I felt it important to try to determine the effects of the proposed NRA rule on the state's institutions and on its economy. To do so, we contacted individual institutions, we reviewed the financial data that the Office collects and we applied our experience and expertise regarding the impact the rule could have on financial institutions.

We concluded that (1) there will be a negative impact on the safety and soundness of individual institutions and (2) there will be a negative impact on state and local economies in Florida.

I would add that I think it fair to say that what we found in Florida can be extrapolated to other parts of the country where there are NRA deposits.

A. IMPACT ON THE SAFETY AND SOUNDNESS OF INDIVIDUAL INSTITUTIONS

The Office of Financial Regulation conducted a survey of NRA deposits in South Florida. There are 32 state chartered banks and 22 foreign banks or banking corporations in that area over which OFR has regulatory responsibility. The survey reflects data from 16 of the state chartered banks and 21 of the 22 foreign entities.

As reflected in the tables below, there are $14.2 billion dollars in NRA deposits in Florida regulated institutions.

With respect to the 16 Florida chartered commercial banks surveyed, 41% of their total deposits were in NRA deposits.

Institu-tion Name	Total NRA Deposits	Total Deposits (including NRA's)	% Total NRA Deposits to Total Deposits
Bank 1	$734,738	$802,233	91.59%
Bank 2	$230,508	$347,871	66.26%
Bank 3	$63,467	$169,694	37.40%
Bank 4	$46,489	$476,988	9.75%
Bank 5	$413,260	$463,634	89.13%
Bank 6	$13,933	$91,591	15.21%
Bank 7	$100,337	$219,331	45.75%
Bank 8	$646,043	$700,190	92.27%
Bank 9	$329,253	$455,750	72.24%
Bank 10	$1,605,665	$3,412,205	47.06%
Bank 11	$26,471	$79,272	33.39%
Bank 12	$41,233	$132,563	31.10%
Bank 13	$45,185	$1,352,921	3.34%
Bank 14	$174,228	$1,279,015	13.62%
Bank 15	$67,004	$140,857	47.57%
Bank 16	$195,665	$1,444,091	13.55%
TOTALS	**$4,733,479**	**$11,568,206**	**40.92%**

With respect to the 21 Florida regulated foreign institutions surveyed, 90% of their total deposits are NRA deposits.

Institution Name	Total NRA Deposits	Total Deposits (including NRA's)	% Total NRA Deposits to Total Deposits
Bank 1	$131,855	$152,753	86.32%
Bank 2	$2,802,193	$2,802,193	100.00%
Bank 3	$297,733	$294,292	101.17%
Bank 4	$1,315,665	$1,440,756	91.32%
Bank 5	$1,100,000	$1,097,055	100.27%
Bank 6	$885	$11,375	7.78%
Bank 7	$205,634	$205,655	99.99%
Bank 8	$90,747	$134,615	67.41%
Bank 9	$598,090	$598,434	99.94%
Bank 10	$414,465	$423,107	97.96%
Bank 11	$167,333	$587,599	28.48%
Bank 12	$385,368	$391,103	98.53%
Bank 13	$35,079	$130,773	26.82%
Bank 14	$17,774	$25,661	69.26%
Bank 15	$30,505	$97,870	31.17%
Bank 16	$197,516	$200,076	98.72%
Bank 17	$291,946	$292,363	99.86%

Institution Name	Total NRA Deposits	Total Deposits (including NRA's)	% Total NRA Deposits to Total Deposits
Bank 18	$514,610	$514,914	99.94%
Bank 19	$698,791	$698,922	99.98%
Bank 20	$208,785	$219,045	95.32%
Bank 21	$6,453	$6,906	93.44%
TOTALS	**$9,811,427**	**$10,325,467**	**89.91%**

It should be noted that these figures do not include NRA deposits in nationally chartered banks, or federally regulated foreign institutions, or in banks chartered in other states that are operating in Florida. While we do not have hard figures, it is probable that NRA funds in these other institutions substantially exceed those in Florida regulated entities.

1. **Effect on Liquidity**

Banks do not keep their deposits in their vaults. They lend the money to borrowers. A typical loan to deposit ratio is 85%. The loans are illiquid. Borrowers do not have to return the money other than on the stated terms.

Regulators generally recognize a deposit runoff of 15% could place an institution in jeopardy. There would not be cash available to pay off depositors. When this happens, the bank fails.

Eleven (11) of the sixteen (16) surveyed banks in South Florida have over 30% NRA deposits. A loss in a short period of time of even half of those deposits would put those institutions at risk of failure.

LEVEL OF NRA DEPOSITS	NUMBER OF AFFECTED SOUTH FLORIDA BANKS
NRA Deposits Comprise Over **80%** of Total Deposits	3
NRA Deposits Comprise Over **47%** of Total Deposits	7
NRA Deposits Comprise Over **30%** of Total Deposits	11

The 22 foreign entities are less at risk for complete failure. However, given their high percentage of NRA deposits (14 over 90%, 17 over 67%), it is unlikely there would be any reason for them to continue to do business in Florida. There would, thus, be a Florida failure, in the sense the institution would be gone from Florida's economic landscape.

LEVEL OF NRA DEPOSITS	NUMBER OF FLORIDA REGULATED FOREIGN ENTITIES
NRA Deposits Comprise Over **90%** of Total Deposits	14
NRA Deposits Comprise Over **67%** of Total Deposits	17
NRA Deposits Comprise Over **27%** of Total Deposits	19

2. Other Negative Effects on Bank Conditions

In addition to liquidity issues, loss of deposits will shrink the ability of institutions to make loans and engage in other financial transactions. With less in deposits, there is less to lend. This negatively impacts the income of banks. Banks in Florida have been under significant stress following the financial and real estate crises we have sustained. Over the last two years, Florida has closed over 30 financial institutions. Approximately two-thirds of our banks are on our regulatory watch list. Many have impaired capital levels. Of the banks I regulated, 64% were unprofitable last year. Of all banks headquartered in Florida, both state and national, 66% were unprofitable. Continued losses erode capital and lead to further closures. Withdrawal of deposits will impair earnings and can lead to further failures. At best, the process of returning to fiscal soundness will be delayed and made more tenuous. At worst, some banks will not be able to earn their way out of their current difficulties and will fail.

The existing NRA deposits cannot be quickly replaced with domestic or other NRA deposits. Since NRA deposits are generally a low cost source of funds when a financial institution must replace them with higher cost funds, the net interest margin is squeezed. The result is either greater losses or lesser profits, depending on the condition of the bank. This is a particularly bad time to further reduce community bank earnings.

3. Effect on Lending

The domestic banks the OFR regulates are primarily community banks. These are the backbone of small business lending. The foreign institutions also lend their deposits to Florida borrowers. They also lend those deposits to individuals and businesses in foreign countries to enable them to do business here. Examples are loans to buy property in Florida or to finance trade transactions with U.S. based businesses.

The generally recognized economic rule is that every dollar in deposits generates nine (9) dollars in lending. The table below shows the impact of deposit loss on lending capacity.

EXISTING RELATIONSHIP:

$14.2 Billion in NRA Deposits Support $127.8 Billion in Lending

% Decrease in NRA Deposits	Estimated Decrease in South Florida Lending (Billions)
20%	$ (25.56)
30%	$ (38.34)
40%	$ (51.12)
50%	$ (63.90)
60%	$ (76.68)

Reduction in deposits will lead to diminished lending capacity. It should be noted that, if nationally chartered banks and federally regulated foreign deposit entities are considered, as they should be, the lending base diminution will be at least twice the above.

B. IMPACT ON THE STATE AND LOCAL ECONOMY

The banks I regualted were largely community banks. Community banks are the key to small business lending. Withdrawal of deposits diminishes the lending capacity of financial institutions. It is generally agreed that bank deposits have a nine to ten times multiplier effect on lending depending on Federal Reserve reserve requirements. As an example, withdrawal of $10 billion of deposits could result in reduced lending capacity of $90 billion or more.

As noted in the survey, if Florida chartered banks lost 20% of their NRA deposits, it would decrease their lending capacity by over $25 billion.

Florida's economy is fragile. As of the end of 2010, 19.4% of Florida residential mortgages were 90 days or more past due. Forty-seven percent were under water. The current Florida unemployment rate is 10.7%, one of the highest in the nation. Florida lacks the presence of large corporations or manufacturing facilities. It predominantly has a small business economy. The diminution of lending capacity of community banks is particularly harmful to the state's economic recovery.

The largest concentration of banks with NRA deposits is in the southern part of the state. The impact of diminished lending will be exacerbated there as it will fall on a more concentrated area. This is the moment when Florida most needs to prime the lending pump particularly to small businesses. The proposed rule will materially undercut the effort to do so.

Reduction of NRA deposits will have a long-term as well as a short-term negative impact. The

permanent departure of a class of stable deposits reduces the lending base into the foreseeable future.

Current federal policy has expressed a critical need to encourage small business lending, particularly by community banks. To promote this policy, Congress passed the Small Business Jobs Act which included a $30 billion fund to provide Tier 1 capital for community banks to encourage their lending to small businesses. The implementation of this rule will directly undermine that policy.

It is my opinion that the reduction in NRA deposits that will be caused by this rule will measurably slow down the recovery of the Florida economy and will certainly not be a benefit to the economy as a whole.

THE NEGATIVES OF THE RULE FAR EXCEED THE POSITIVES

1. Since the United States does not tax NRA deposits there is no need to collect account information for the purpose of seeing that domestic taxes are paid. The rule collects the information in blanket fashion even though the IRS argues it will only be given to those countries that can be trusted to use it properly. There is no benefit to collecting information that will not be used where the act of collection drives away depositors.

2. There is nothing in the Background and Explanation of Provisions in the published notice that gives any indication of the extent to which the rule will be of any benefit to the United States.

3. The asserted interests of the United States taxing authorities can be achieved by methods other than the blanket collection of the entire universe of non-resident alien deposit information with the authority to make it available to other governments. The United States has tax treaties with many countries. These treaties could provide for the reciprocal exchange of information on an appropriate case by case basis.

4. There is nothing in the rule to address confidentiality of the information. A general "trust me" statement that the IRS will use its authority wisely will not be sufficient in the minds of depositors who already have a skeptical view of government. The rule creates room for doubt and it is that doubt that will cause deposits to leave.

5. The proposed rule treats a nuanced issue with what some would call a "meat ax" approach. It disregards obvious specific problems in favor of a generalized approach which might be convenient to administer and to advocate with others but causes substantial harm to a broad spectrum of institutions, regulators, individuals, and long established policies.

6. The rule does impose substantial regulatory burdens on financial institutions and particularly on those which are small businesses. The options are to gather the information by hand or to invest in software or software changes. Cost will vary from institution to institution depending on the number of NRA accounts and the ability of existing software to carry out the task. Based on anecdotal information, the cost could be many thousands of dollars for some

institutions. The burden of the costs will be much higher on smaller institutions which have less revenue over which to spread those costs. It is in particular a burden to our many institutions which in the current environment are not profitable.

If there are significant objectives that need to be addressed in the area of tax transparency that call for transmission of non-resident alien account information to the IRS, an effort should be made to create a rule that achieves those objectives and also addresses the harm the current proposal creates.

At a minimum, before proceeding further with the proposal, an appropriate credible study should be undertaken. We need to make sure that we truly understand both the positives and the negatives of what will happen if the rule is implemented. The failure to do so can cause significant and, in some cases, irreversible damage to many of the stakeholders in this issue.

IRS DEFENSE OF THE RULE

The IRS defends the proposed rule on several grounds.

1. There is no requirement that the information be exchanged with other governments. The problem is not that the exchange is mandatory. The problem is the fear of the depositor that it could be exchanged when the IRS, in its discretion, decides to do so. It is the risk of disclosure that will cause depositors to move deposits.

2. The information is not exchanged unless and until several conditions are met, including a review of the protections against the misuse of information. There is, however, no reference to what the conditions are. There is no disclosure of how or by whom the review is conducted. There is no identification of any written rule, policy or procedure by which a decision is made. There is no way that a depositor could assess the risk that his or her information could be disclosed.

3. Information can only be exchanged if there is a tax treaty or Tax Information Exchange Agreement (TIEA). This is of no comfort to the depositor, unless the treaty has protections built into it. The IRS has not advised what provisions are made regarding confidentiality or misuse of the information in any treaty.

4. The United States needs to provide tax information to other countries if it wants to get information in return. Under existing law, if a foreign government requests bank information regarding deposits under a treaty or TIEA, the IRS can request the information from banks and provide it to the foreign government. The IRS has the authority it needs. It would seem far preferable to have foreign governments specify what they want, and from whom, than for the IRS to position itself to "at its discretion respond, exchange spontaneously or automatically [provide information to] a foreign government" as it claims it wishes to do.

5. Deposits will not run off because they did not when deposit information was collected from Canadians. Canada is not Latin America or Central America. Canadian citizens are not, to the best of my knowledge, concerned with a government that does not follow the rule of law.

Banks have asked their customers what effect the rule will have and those customers say they will remove their deposits from the United States.

The IRS has failed to address concerns that individual institutions with concentrations of deposits are at risk, that specific local economies will be disproportionately affected and that the costs of implementation will fall far more heavily on community banks.

THIS PROPOSAL GIVES RULE MAKING A BAD NAME

There has been a great deal of criticism of late of government regulation at all levels. As a regulator, I saw many good rules and some bad ones. I understand the importance of rules in carrying out our laws and policies and supported and promulgated a number of them.

This is a bad rule. First, although it has the lofty intent of stopping U.S. tax cheats, in application it will cause far more damage than benefit. Second, the rule will weaken and, in some cases, may cause the failure of financial institutions. Third, it will harm local economies by reducing loan capacity. Fourth, it will add additional expenses to institutions, many of whom can ill afford it. Fifth, the goal of stopping tax cheats will not be advanced by collecting information from depositors in countries which are not associated with U.S. tax cheating.

It is just this type of rule that has universal application, a disconnect between the end and the means, that is costly, and which causes collateral problems that drive businesses and the public crazy.

CONCLUSION

Let me say that I am not without understanding of the reasons for promulgating this rule. The ability of the United States to prevent tax abuse by its own citizens through the use of foreign accounts is very important.

The formulation of the rule before us, however, presents what I believe to be very clear and substantial risks.

Unfortunately, if I am right, the rule will create irreversible damage. Once accounts are moved away, they will not come back.

Before we act on the rule, there should be a very clear vetting that the benefits to be obtained are greater than the damage it will cause.

I would hope we would have a high degree of comfort that we are not doing more damage than good.

I suspect that the goal of international tax transparency can be achieved either without this rule or by more nuanced approaches that avoid the dangers that I fear are ahead.

I appreciate your time and attention and stand ready to respond to any questions you may have.

Testimony of Alex Sanchez

President and CEO

Florida Bankers Association

Before the

House Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

Madame Chairwoman and Members of the Subcommittee:

Thank you for holding this important hearing on the Treasury Department's proposed regulation to require U.S. banks to report interest paid on deposits to nonresident alien individuals (REG-146097-09) and the damaging effect this regulation would have on our economy and U.S. employment.

My name is Alex Sanchez and I am the President and CEO of the Florida Bankers Association ("The FBA"). The FBA was founded in 1888 and it represents most banks in Florida. I am also here on behalf of thousands of Florida small business owners who do business with Non Resident Aliens who reside in our state three to six months a year, and shop, buy real estate, eat in our restaurants and help our overall economy.

As you may know, this Treasury regulation requires all banks located in the United States to report periodically to the Internal Revenue Service the amount of interest paid to nonresident alien individual depositors. We strongly oppose this proposal. This proposed regulation by the Obama Administration would have disastrous consequences for U.S. banks and their customers, especially those in Florida, Texas, California and New York.

At a time when we are trying to create jobs and reduce the burden on businesses, this is the wrong issue at the wrong time. Last January the President announced a plan for fewer regulations on businesses to create jobs, yet that same month, the I.R.S. proposed another new burdensome reg to pile on the others and to make matters worse for our country and for those who are being asked to create jobs. This proposal could result in the flight of tens to hundreds of billions of dollars of capital leaving our country thereby hurting our economy.

All members of the Florida Delegation to the U.S. House of Representatives – 19 Republicans and 6 Democrats, spearheaded by Congressman Bill Posey and Congresswoman Debbie Wasserman Schultz – have **signed a letter to President Obama** urging withdrawal of a proposed **IRS regulation** that would undermine U.S.

financial markets by requiring American banks to put foreign tax law above U.S. Tax law.

Florida Senators, Bill Nelson (D) and Marco Rubio (R) have also written to the Administration asking that this proposal be withdrawn.

Why did Florida's entire Congressional delegation sign the letter to the President, because for more than 90 years the U.S. government has encouraged foreigners to put their money in U.S. banks by exempting these deposits from taxes and reporting. This policy has led to hundreds of billions of foreign deposits in U.S. banks. Each dollar deposit results in $7 to $9 in economic activity. Now the Obama Administration is a advancing a policy that would overturn the century-old policy and discourage such investments.

We should be encouraging foreigners to put their money to work in U.S. banks. But at a time when our economy is struggling and we are seeking to increase capital to lend to small businesses, the real job creators, the Obama Administration's proposal to require reporting of such interest payments would put these deposits at risk, and lead to billions of dollars being withdrawn from U.S. financial institutions.

The IRS has proposed a major policy change without considering the detrimental effects it will have on our struggling economy. Bank funds are easily transferrable, and any adverse development can result in wholesale capital flight.

In my meetings with Treasury officials, I stated to **Treasury Tax Counsel** Ms. Corwin, there are not many Americans if any at all, that have bank accounts in South American Banks. Where is the reciprocity for the U.S.? Our country loses tens to hundreds of billions of dollars in capital and we do not receive any information in return.

Ms. Corwin stated to me they would only exchange this information with countries the U.S. has an exchange treaty with. In our Hemisphere those countries are Venezuela and Mexico. I asked Ms. Corwin would she exchange tax information with the two countries in South America we do have these treaties with: Hugo Chavez's Venezuela and the number one kidnapping country in the world according to most if not all Human Rights Groups: Mexico. She did not answer my question. My response to her was then why are you proposing to collect this information for all countries? No one out there is going to believe us when we tell them the U.S. Federal government is collecting this information but will not exchange it with their home country. Ms. Corwin said it was the banking industry's responsibility to inform and educate all of our customers and potential customers that the I.R.S. would only exchange the information with countries we have a treaty with. That is impossible most people would ask why is the U.S. Government collecting it if it will not exchange it?

Florida, already hard hit by the economic downturn, would be particularly affected given its extensive ties to the Caribbean and Latin America. There is an estimated $60 to $100 billion in foreign deposits in Florida banks. These accounts are longstanding and are not associated with illegal activity. U.S. banks are required to know and disclose the

identity of their customers pursuant to the Bank Secrecy Act, Patriot Act and other anti-money laundering statutes.

Florida could lose these billions in foreign deposits if the IRS program takes effect. Furthermore, due to the fact that these deposits represent as much as 50 to 90 percent of the capital in some Florida banks, even a small percentage change in these deposits could result in bank failures.

While these are difficult times in the U.S. economy, circumstances elsewhere make our country an even greater repository for individuals seeking safety and security. According to data recently released by the Bureau of Economic Analysis (BEA), the value of foreign investments in the United States continued to vastly exceed the value of U.S. investments abroad reflecting an additional $75 billion increase from year-end 2009 to year-end 2010. (www.bea.gov/newsreleases/international/intinv/intinvnewsrelease.htm) The BEA further reports that this change "primarily reflected net foreign acquisitions of financial assets in the United States that exceeded net U.S. acquisitions of financial assets abroad." (*Id.*) In the aggregate, foreign-owned assets in the United States increased by $1.9 trillion in 2009 and now amount to $22.7 trillion.

As would be expected, the bank segment of these foreign investments is very significant, and, again according to the most recent BEA report "liabilities to private foreign residents reported by U.S. banks, increased $166.6 billion and now total $3.7 trillion." The FDIC reports a total of U.S. bank deposits at approximately $10 trillion at the end of the second quarter in 2011, so we are at a loss to understand how the $3.7 trillion figure, no matter how subdivided among public, corporate and individual segments can be considered a "very small percentage.

Because the interest payments in question are not subject to U.S. tax, this additional reporting requirement for banks will not further any U.S. financial interest in collecting revenues from foreign depositors. Nor, in our view, is the requirement an appropriate means to accomplish any other public policy purpose intended to be served by the proposal. In addition, the regulation, for the reasons discussed below, will impose significant costs on the nation as a whole and continue to weigh on an economy trying to recover.

The proposal is in conflict with a longstanding objective of the Treasury Department and the Congress: to encourage nonresident aliens to deposit their money in U.S. banks, so that those funds can, in turn, be used to foster growth and development in our country. We are convinced that adoption of the proposal will place U.S. banks at a competitive disadvantage relative to the banks of our trading partners and will result in significant withdrawals of foreign deposits from U.S. banks. This will ultimately reduce the amount of credit available to local communities and others who traditionally seek bank loans as their chief source of credit. A loss of jobs, jobs and even more jobs.

Because of the security our country offers too many around the world, nonresident aliens deposit their monies in U.S. financial institutions for safety and security reasons. Should this regulation be finalized, economic and academic sources indicate that a

substantial portion of that capital will be withdrawn from the U.S. economy. Some deposits may have already been withdrawn from U.S. financial institutions, as was the case in 2002 when this issue was previously considered. During this time of economic concern, we urge that every effort be made to keep capital within the borders of the United States.

They are concerned that their personal bank account information could be leaked by unauthorized persons in their home country governments to criminal or terrorists groups upon receipt from U.S. authorities, which could result in kidnappings or other terrorist actions being taken against them and their family members in their home countries, a scary scenario that is very real.

To Florida, this issue is critical to our economy. If we lose just half of a potential $100 billion in these deposits, it will kill our economy.

Should this proposed regulation be finalized, economic and academic sources indicate that a substantial portion of the capital will be withdrawn and moved to non-U.S. jurisdictions or non-bank institutions not affected by the regulations. The I.R.S. has failed to do any feasibility study on what impact this proposal would have and how some countries particularly in South America would handle the privacy issues and concerns we have shared with them. These accounts are easily movable to offshore institutions. The loss of these funds means the loss of **jobs, jobs and even more jobs** in this fragile economy. These deposits are used by banks to lend to businesses in their respective communities.

Most of the NRA deposits in Florida banks come from Latin America. Why is that? Well as we know now and learned back then in 2001, South Americans have their monies here in the USA for these primary reasons:

1. They do not trust the privacy of their public or private institutions in their home country;
2. They are afraid of kidnappings of family members if someone in the home country knows of their bank deposits and prefer to have their monies in USA;
3. Are concerned with the economy of their home countries and they view having their monies in the USA as safer and sounder.

These deposits could be used by banks in the U.S. to lend to small businesses, and to all the businesses creating jobs for our nation and economy.

America's financial institutions benefit greatly from deposits of foreigners in U.S. banks. These deposits help finance jobs and generate economic growth mainly benefiting local communities, consumers, families, and small businesses. For more than 90 years, the United States has recognized the importance of foreign deposits and has refrained from taxing the interest earned by them or requiring their reporting.

The regulation could drive job-creating capital out of America and harm U.S. financial markets. According to the Commerce Department, foreigners have $10.6 trillion passively invested in the American economy, including nearly $3.6 trillion "reported by

U.S. banks and securities brokers." In addition, a 2004 study from the Mercatus Center at George Mason University estimated that "a scaled-back version of the rule would drive $88 billion from American financial institutions, and this version of the regulation will be far more damaging."

Madame Chair and members of this Subcommittee this is the wrong issue at the wrong time, as we try to get this economy going again. I know you made our economic recovery a priority, adoption of this rule will not help achieve that goal. Our country since 1922 has welcomed foreign capital to our shores. If this rule is adopted, it would halt that long standing goal of our country that helped create jobs in America by the use of this capital in the form of NRA deposits. IF OUR COUNTRY LOSES THESE DEPOSITS AND THE ACCOUNTS ARE CLOSED, THESE NON RESIDENT ALIENS WHO RESIDE IN OUR COUNTRY three to six months a year, WILL ALSO PROBABLY DIVEST OTHER ASSETS AND MOVE THEM ELSEWHERE. WHAT DOES THIS MEAN, A LOSS OF EVEN MORE JOBS IN THE INDUSTRIES THAT CATER TO THE NRAS, INCLUDING THE FINANCIAL SERVICES INDUSTRY THAT PROVIDES FOR HIGH PAYING JOBS.

We urge to approve legislation that will result in this proposed regulation being withdrawn and send a clear message to existing and potential depositors that the U.S. encourages such deposits and believes America's best interest is served by maintaining current policy.

Thank you Madame Chair and Members of this Subcommittee for this opportunity for me to share the thoughts of Floridians on this issue.

Testimony of Gerry Schwebel

Executive Vice President

IBC Bank, Laredo, Texas

before the

House Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

regarding

Tax Reporting on Interest Paid to Nonresident Aliens

October 27, 2011

Madame Chairwoman and Members of the Subcommittee:

Thank you for holding this important hearing on the Treasury Department's proposed regulation to require U.S. banks to report interest paid on deposits to nonresident alien individuals (REG-146097-09) and the damaging effect this regulation would have on our economy and U.S. employment.

My name is Gerald Schwebel, and I am Executive Vice President of IBC Bank, Laredo, Texas. I oversee our international banking operations. I am also speaking today on behalf of a coalition of depository institutions and industry trade associations including the Texas Bankers Association, the New York Bankers Association and the California Bankers Association.

By way of background on IBC, the bank was founded in 1966 to meet the needs of small businesses in Laredo and serve cross border trade. Today, it serves as the flagship bank of International Bancshares Corporation. Since its opening, IBC has grown from less than $1

million in assets to approximately $12 billion, making it one of Texas' largest banks. IBC now serves 107 communities throughout Texas and Oklahoma with 275 branches.

In 2010, Hispanic Business Magazine ranked IBC as the number one Hispanic-owned financial institution in the nation. We are also the number one Hispanic-owned business in Texas and fourth nationally.

I want to state at the outset that we strongly oppose this Treasury initiative which is actually the resuscitation of a plan proposed by the IRS a decade ago, but eventually withdrawn in the face of substantial Congressional opposition. Because of the extraordinary negative effect it will have on our economy and on job creation, we hope the same result will occur in 2011.

OVERVIEW

One of the great strengths of the American banking system is its openness to *bona fide* depositors from nations all over the world. U.S. based depository institutions are the repository of literally trillions of dollars of foreign deposits throughout the nation. These deposit flows are particularly important in states such as Texas, Florida and California which have international borders, large immigrant populations, and significant volumes of international trade and travel, as well as other states which meet one or more of these characteristics.

American banks and other financial institutions benefit greatly from this international deposit flow. The communities in which they do business benefit immensely from loan generation, job creation and related economic growth which stem from this form of capital investment.

For as long as the federal personal income tax code has existed, the United States has never taxed the interest earned on these accounts or required their reporting except with respect to Canadian residents. Now, even though the interest earned on such accounts has never been

taxed, the IRS is proposing an extensive reporting regimen on U.S. banks. This will risk the loss of these foreign deposits. Realistically, many of these depositors would fear for their personal safety. Kidnapping is not just a theoretical concern for these depositors. Having their deposit information potentially leaked is a real threat to them.

In addition to the massive capital flight which would result from the adoption of such a regulation, there would be serious impairment to the oversight of international financial transactions since U.S. depository institutions operate under comprehensive rules both as to the establishment and ongoing maintenance of deposit accounts. These laws include "know-your-customer" and anti-money laundering procedures as well as other aspects of the Bank Secrecy and USA PATRIOT Acts.

As noted, only nonresident Canadians are currently subject to reporting on their interest earned on deposit accounts held in the U.S. This experience cannot, of course, be realistically compared with the prospect of sharing specific, individualized asset data with countries which do not possess the same level of public safety and political stability as Canada.

STATUS OF PROPOSED REGULATION

On January 17, 2011, the IRS published this proposed rule for public comment due by April 7, 2011 (76 Fed. Reg. 1105). Hundreds of comments were submitted, most of which were overwhelmingly negative. Among the entities submitting comments in opposition to the proposal were the American Bankers Association, California Bankers Association, Credit Union National Association, Conference of State Bank Supervisors, Florida Bankers Association, Florida International Bankers Association, Independent Community Bankers Association, Institute of International Bankers, New York Bankers Association, and the Texas Bankers Association.

I would also like to point out that the FDIC weighed in against the earlier incarnation of this proposal in a 2003 letter suggesting that no action be taken without a careful study of the potential impact on the U.S. banking system as well as a separate evaluation of the proposal's regulatory impact cost.

When the IRS also held a public hearing on the proposed regulation on May 18, 2011, over 80 percent of the witnesses were against the plan; the volume of written submissions had an even higher ratio of opponents to proponents. The unified message of the public commentary was that the adoption of the proposed rule was marginal, at best, to the effective enforcement of cross-border tax evasion, but highly likely to result in tens of billions of dollars in deposit outflow from the United States.

Notwithstanding the overwhelming level of public opposition, there is no reason to believe, on the basis of Treasury Department actions to date, that there is any intent to back off this highly controversial initiative. It is for this reason that we are asking the Congress to oppose this proposal as it successfully did ten years ago.

SERIOUS ADVERSE EFFECTS ON U.S. ECONOMY AND JOBS

It is essential first to appreciate the sheer size of the market which this proposal would fundamentally alter. While these are difficult times in the U.S. economy, circumstances elsewhere make our country an even greater repository for individuals seeking safety and security. According to data recently released by the Bureau of Economic Analysis (BEA), the value of foreign investments in the United States continued to vastly exceed the value of U.S. investments abroad reflecting an additional $75 billion increase from year-end 2009 to year-end 2010 (www.bea.gov/newsreleases/international/intinv/intinvnewsrelease.htm). The BEA further reports that this change "primarily reflected net foreign acquisitions of financial assets in the

United States that exceeded net U.S. acquisitions of financial assets abroad." (*Id.*) In the aggregate, foreign-owned assets in the United States increased by $1.9 trillion in 2009 and now amount to $22.7 trillion.

As would be expected, the bank segment of these foreign investments is very significant, and, again according to the most recent BEA report "liabilities to private foreign residents reported by U.S. banks, increased $166.6 billion and now total $3.7 trillion." Our experience as bankers indicates that a substantial portion of the $3.7 trillion represents individual NRA deposits or business accounts connected to such individual depositors. This is because customers often place their individual and business accounts at the same bank for a number of reasons, including convenience.

The Treasury Department concedes the vast scope of the U.S. based investments, but argues that "deposits held by nonresident alien individuals are a *very small* percentage of the [total] deposits held by U.S. financial institutions." (*Emphasis added*). No matter how it is subdivided among public, corporate and invidual segments, the $3.7 trillion figure should give everyone pause before proceeding any further on this proposed regulation.

There should also be no confusion about the fact that the imposition of a reporting requirement will be a clear and present threat to the retention of these deposits in the United States. I can tell you from personal experience that the mere announcement of the proposed regulation and its widespread publicity has already generated major concerns on the part of our nonresident depositors. Mexican newspaper accounts are stating that interest earned on banking accounts in the U.S. is already being sent to the government of Mexico and up to 30 percent of current customer calls are inquiries related to this matter. This is also a concern in Latin America and many other parts of the world.

The reasons for these calls and the high level of concern being expressed has little or nothing to do with tax compliance, but are occuring for reasons related to the security of the institutions involved, the physical safe-keeping of the funds, and, depending upon the depositors' domicile, the security of the depositors and their families. Indeed, the personal security implications to individuals and families due to the potential leakage of financial information from tax authorities in certain countries cannot be underestimated. As noted, there is no comparison between Canada and the other countries which could come within the scope of this proposed regulation, e.g., Venezuela.

Although, as the IRS and Treasury officials frequently point out, this proposed rule is directed toward individual deposits, these accounts are often interrelated with business and investment accounts, which, as a practical matter, would also be at risk of leaving the U.S. banking system: a massive multiplier effect. The data is clear as to the large amount of investment accounts that are tied to nonresident alien deposits. So, the risk is not only the outflow of deposits; there is also the potential threat of outflow of other types of investment.

Even if the Treasury Department were correct in the estimates of modest deposit outflows in terms of the total banking system, that overlooks the data showing very high concentration levels in individual banks as well as international branches and agencies located in border areas and other areas with high immigration populations. In some cases, NRA accounts can amount to 30-50 percent of an individual bank's total deposits. At these levels, of course, the liquidity impact could be enormous. The concentration of these deposits in Border States and cities with high immigrant populations is very significant.

While IBC is a profitable and highly capitalized institution, there is also the problem that many institutions in affected locations are under supervisory oversight where added liquidity

pressure could lead to even more serious financial strain. Liquidity destruction is nearly as important as asset destruction. As each of you are aware, liquidity crises have engulfed the world and are presently of serious concern in Europe, especially in European domiciled banks. This is no time to add to already difficult liquidity problems facing banks. Given the breadth of supervisory problems already prevalent in the banking system, not to mention the growing level of political instability throughout the world, this proposed regulation makes even less sense in 2011 than it did ten years ago.

It goes without saying that in all situations, the outflow of substantial deposit accounts can only reduce the ability of local banking institutions to recycle these funds into job-creating loans. Deposit losses would result in even larger losses in funds available for mortgage loans, small business loans and other credit availability. Economic texts routinely state for every dollar of deposits lost, there is a loss of nine dollars in credit. Regardless of whether one holds the view that the U.S. economy is near-recession or near-recovery, there is no reason to take any steps which would affirmatively curtail lending activity, reduce economic growth and kill job creation.

LEGISLATIVE ACTIVITY TO DATE

We appreciate the degree to which Congress has once again stepped forward on this issue in a broad and bipartisan manner, beginning with the March 2, 2011 letter of opposition from every Member of the Florida House delegation. The Texas House delegation is likewise broadly on record in opposition to this proposal through the leadership of Representatives Canseco and Hinojosa. It is certainly no coincidence that every Hispanic Member of Congress from these two States has communicated to Secretary Geithner or directly to the President in opposition to this proposal.

In addition to holding this hearing, we appreciate the April 15, 2011 letter which the House Financial Services Committee, through the efforts of Representatives Posey and Meeks sent to the President. The House Ways & Means and Appropriations Committees have also weighed in against this Treasury-IRS initiative for reasons related to both the flight of foreign capital from U.S. banks and the jeopardy posed to foreign nationals.

It is our view, however, that only legislation that blocks the proposed information reporting regulation from taking effect will return confidence to the community of NRA depositors. Thus, we stand in strong support of H.R. 2568 which would specifically prevent the Secretary of the Treasury from expanding the interest reporting requirements to U.S. banks, credit unions and securities firms regarding nonresident aliens. The Senate companion bill to this legislation has been introduced by Senator Rubio (S. 1506) and currently has the support of 16 cosponsors.

We appreciate that H.R. 2568 lies outside the jurisdiction of the House Financial Services Committee, but the liquidity and safety and soundness of depository institutions reside here as do, of course, economic issues in general. For this reason, we thank you again for bringing attention to this issue through today's hearing and look forward to working with you and your colleagues on the Ways and Means Committee to achieve passage of H.R. 2568.

Statement by

Rebecca J. Wilkins
Senior Counsel, Federal Tax Policy
Citizens for Tax Justice

on Proposed Regulations to Require
Reporting of Interest Earned by Nonresident Aliens

before the
House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

October 27, 2011

Madame Chairwoman and Members of the Committee:

Thank you for the opportunity to testify today. My name is Rebecca Wilkins. I am Senior Counsel for Federal Tax Policy at Citizens for Tax Justice (CTJ). Citizens for Tax Justice has been working for over thirty years to promote a fair and sustainable tax system.

We fully support the rules proposed by the Internal Revenue Service to require financial institutions to report interest earned on deposits of nonresident aliens.[1] We hope that it is only one step in the ongoing improvement of the type and quality of information collected by the IRS that can be shared with other governments pursuant to tax treaties and tax information exchange agreements (TIEAs).

Governments around the world are facing budget crises and this is due, in no small part, to the massive amounts of revenue that are lost to the shadow financial system. It is estimated that

[1] Internal Revenue Service, Guidance on Reporting Deposit Interest Paid to Nonresident Aliens, Reg-146097-09, January 7, 2011.

the U.S. Treasury loses in excess of $100 billion annually to tax haven abuses.[2] Secrecy in the financial system facilitates corruption, tax evasion, and money laundering. Shell corporations, anonymous trusts, and bank secrecy in both the United States and abroad make it easy for criminals, terrorists, government officials and even otherwise legitimate multinational companies to hide their money and make it difficult for law enforcement and tax authorities to do their jobs.

CTJ believes it is critical to debunk the myths and false claims of those who want to keep the status quo under the guise of promoting competition and protecting businesses. The status quo, with shadow banking systems, shell companies and widespread secrecy severely damages both the developed and developing worlds.

America should not be a haven for international tax evaders. We do not believe that the United States should be a tax haven for citizens of other countries who wish to evade their tax obligations to their home country. Regardless of the economic benefit from inflows of capital, the United States should not engage in practices that make it easier for the laws of other countries to be broken or evaded.

The international community demands action. As the IRS noted in its preamble to the proposed rules, the international landscape has changed dramatically in the past few years. There is a growing global consensus that responsible governments must cooperate in exchanging tax information about their citizens in order to combat the rampant tax evasion that is facilitated by offshore tax havens. And make no mistake, in this area the U.S. functions as an offshore tax haven for some citizens of other countries.

The scope and content of tax treaties is changing. Recent agreements between governments have acknowledged the importance of cooperation and have removed obstacles such as bank secrecy rules as grounds for refusing requests for information.

The proposed rule will greatly improve the U.S.'s ability to respond to requests from other governments. We have a major stake in assisting other countries to stop tax cheating by their own citizens. Not only is it the moral and ethical thing to do, but we need the help of those other countries in protecting our own tax system. We cannot expect their cooperation if we are not willing to give ours. This regulation is especially important in light of the recently enacted Foreign Account Tax Compliance Act which requires foreign financial institutions to file information reports with respect to accounts owned by U.S. taxpayers. In order to encourage foreign

[2] Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, "Tax Haven Banks and U. S. Tax Compliance," Staff Report, July 17, 2008.

governments to share information, we must be willing to collect and exchange information about their taxpayers. We cannot meet our obligations under tax exchange information agreements if we do not create a process that allows us to do that. These rules are an important step in that direction.

The proposed rules will help the IRS catch cheating by U.S. taxpayers. This type of third-party reporting is critical to our own tax system. A November 2007 report by the Government Accountability Office found that when income is subject to a high level of third-party reporting, such as wages, the income is reported correctly on the recipients' tax returns 98.8 percent of the time.[3] When the amount of third-party reporting on income is low, such as rents, the income is reported correctly only 46 percent of the time. We know that some U.S. taxpayers evade tax on this type of interest income by opening accounts with U.S. financial institutions using a foreign name or foreign entity. We believe this regulation will improve the IRS's ability to catch these tax evaders. Any action that reduces tax cheating not only brings much-needed revenue into the treasury, but also furthers two other important goals: ensuring compliance by other taxpayers and restoring Americans' faith in the equity of the tax system.

Claims of dire economic consequences are completely unfounded. There is no foundation to the argument that billions of dollars of deposits will leave the U.S. if these rules take effect. The regulation only applies to accounts owned by nonresident alien individuals. Much of the foreign capital in the U.S. is, first of all, invested by foreign legal entities (not individuals) that would not be covered by this regulation. Second, the regulations only apply to bank deposits – not stock ownership, not private equity funds, not real estate – not anything else. Of the more than $4 trillion of foreign deposits in U.S. banks, the federal reserve reports that approximately three-fourths of those funds are in accounts held by foreign governments, official institutions, international and regional organizations, and foreign banks.[4] Of the less than $1 trillion left, only the amount held in the name of individuals would be subject to reporting under the new rules. Even for accounts that are covered by these rules, only depositors who are tax evaders, money launderers, drug dealers, human traffickers, and other criminals have an incentive to move their funds. And finally, even in cases where tax evaders and other criminals pull their deposits out of U.S. banks, those funds are likely to wind up back in the U.S. through the depository accounts of

[3] United States Government Accountability Office Report to the Committee on Finance, U.S. Senate, "Tax Administration: Costs and Uses of Third-Party Information Returns," GAO-08-266, November 2007.
[4] Federal Reserve Board, Liabilities to Foreigners Reported by Banks in the United States, available at http://www.federalreserve.gov/econresdata/releases/statbanksus/liabfor20110930.htm.

banks in tax haven jurisdictions. According to Federal Reserve reports, the largest U.S. bank liability to foreigners is to the Cayman Islands.

Objections to these rules on humanitarian grounds are baseless. Opponents argue that providing information about deposits to foreign governments may endanger the lives of people who use U.S. depository institutions to escape problems in their home countries such as crime, persecution, and financial instability. But the proposed rules only give the IRS the ability to collect information on these accounts. They do not require the IRS to turn the information over to foreign governments. Information is not exchanged under a TIEA automatically, but only as a response to a specific, carefully limited request which identifies the nature of the information and the specific evidence being sought. The request must be only for the purposes of tax enforcement. The U.S. government has the ability to refuse to provide the information requested by the foreign jurisdiction in many circumstances. In addition, the U.S. generally does not have TIEAs with rogue governments. The Treasury can add further safeguards it deems necessary to deal with human rights issues.

We do not know of any cases of a protestor, anti-corruption campaigner, trade union official, investigative journalist, or dissident of any kind who has been protected from oppression by virtue of having a secret bank account or offshore trust. On the other hand, we can name any number of their oppressors – for example, Augusto Pinochet, Hosni Mubarak or Muammar Gaddafi – who use and have used secrecy jurisdictions extensively to preserve their power and wealth at the expense of their millions of victims.

We do not believe that the mere collection of interest income information by the IRS poses any security risk to account holders. Residents of developing countries already know who the rich among them are. They don't need any information from the IRS to know who owns the wealth in their country. The reporting of interest income would not change the security concerns of these individuals.

In any case, it is wholly inappropriate to combat unlawful activity in one country through promoting unlawful conduct elsewhere. Problems in the resident country need to be dealt with locally, perhaps with international support. If the elites were subject to the same constraints and laws that ordinary people are under, you could be sure that the elites would soon be pressing for better governance – and because they are the influential players in any developing country, this could be the most powerful pressure of all.

Anti-money laundering, national security, anti-corruption, and anti-terrorism efforts could be enhanced through the implementation of these rules. Unfortunately, financial institutions in the United States have been more than willing to take the deposits of criminals and corrupt government officials, despite extensive anti-money laundering rules. Just this week the Department of Justice unsealed an asset forfeiture claim against a $30 million Malibu house, a $38.5 million Gulfstream jet and other assets owned by the son of the President of Equatorial Guinea, claiming that they were bought with the proceeds of corruption. At least three U.S. financial institutions facilitated the flow of more than $75 million into this country for Mr. Obiang.

The regulation would not overturn any Congressional intent regarding the taxation of this income. Opponents have pointed out that Congress has specifically decided not to tax interest paid to nonresident aliens and claim that the proposed rules would "overturn the outcome of the democratic process." This argument is completely without merit. The mere collection of information about this interest income does not in any way impose tax upon it or conflict with any law enacted by Congress.

The regulation is not overly burdensome on financial institutions. The regulation only applies to accounts owned by nonresident alien individuals, not any foreign entities. Banks, both large and small, are already required to collect this type of information on all their customers. They already must report this information to the IRS for their U.S. and Canadian customers. The new rule only expands the number of customers who are covered by the third-party reporting rules.

Conclusion. Make no mistake—this is about tax evasion. Those who oppose the proposed rules have a vested interest in facilitating tax cheating. The stakes in tax evasion are very high and the forces in favor of maintaining the status quo are well-financed and very politically connected. Corrupt American and international banks have a stake in maintaining tax cheating, since they make money from handling those accounts. Corrupt politicians may appreciate the financial contributions that backing the banks engenders. Wealthy Americans who use tax havens worry that if the U.S. cooperates with other countries, their tax evasion will be discovered. But it's the money of honest, tax-paying citizens of all countries that the tax cheats are stealing.

Thank you. I would be happy to respond to any questions you may have.

TEXAS DEPARTMENT OF BANKING

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Charles G. Cooper
Commissioner

October 25, 2011

The Honorable Shelley Moore Capito
Chairwoman
House Financial Services Subcommittee on Financial Institutions and Consumer Credit
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Carolyn Maloney
Ranking Member
House Financial Services Subcommittee on Financial Institutions and Consumer Credit
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Capito and Ranking Member Maloney:

As the Commissioner of the Texas Department of Banking,[1] I am writing to share my views on the Internal Revenue Service's proposed rule regarding the reporting of interest paid to non-resident alien depositors.[2] I have strong concerns about this proposed rule and commend you and the members of your Subcommittee for holding this hearing.

Most of the institutions that the Department of Banking is charged with regulating are community banks. We are responsible for overseeing these institutions' safety and soundness and for ensuring a competitive financial services industry. Community banks are facing a challenging regulatory and business environment, and I am concerned that the proposed IRS rule could exacerbate this environment without producing meaningful policy benefits.

In Texas, particularly in the border region, we have numerous community banks with deposits from non-resident aliens. Current IRS rules require reporting of U.S. bank deposit interest only if the interest is paid to a U.S. person or a non-resident alien individual who is a resident of Canada. The proposed rule, however, would extend the information reporting requirement to include bank deposit interest paid to non-resident alien individuals who are residents of any foreign country.

In its proposed rule, the IRS solicits information regarding the economic impact of the rule upon small commercial banks, savings institutions, credit unions, and small securities brokerages.

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[1] The Texas Department of Banking regulates 310 state-chartered banks in Texas, safeguarding $132.4 billion in deposits and $164.6 billion in assets. State-chartered banks in Texas employ approximately 36,170 people. In addition, the Texas Department of Banking oversees 21 independent trust companies, 10 foreign bank agencies, and 132 money services businesses.

[2] *Federal Register*, Vol. 76, No. 5, Friday, January 7, 2011, Notice of Proposed Rulemaking 146097-09, Pages 1105-1108.

However, the IRS's analysis of the proposed rule's impact on such institutions takes a cursory look at the reporting requirement without any meaningful analysis of the proposal's business effect on smaller depository institutions. While I recognize the information sharing goals of the IRS's rule, its unintended consequences could adversely affect local banking sectors and local economies in Texas and across the nation.

H.R. 2568 would prohibit the Treasury Secretary from implementing this proposed rule. I strongly support this legislation for a couple of different reasons.

First, the IRS rule raises significant safety and soundness concerns. Requiring banks to report non-resident alien interest income to the IRS without definitively explaining how the information will be used could cause foreign nationals to doubt the wisdom of holding deposits in American banks. Without clear understanding, this uncertainty may lead to deposit withdrawals, removing a source of stable deposits and potentially causing liquidity concerns for smaller institutions with significant non-resident alien deposits.

Secondly, this proposal has not been properly vetted. The Notice of Public Rulemaking (NPR) states that the rule will not have a significant impact on a substantial number of small entities because "[t]he depository accounts . . . tend to be with larger financial institutions operating in the United States, and therefore the number of small entities that will be required to undertake this collection of information is expected to be limited." By presuming that the only impact of the proposal would be the increased regulatory burden of collecting and reporting the information, the NPR fails to address a significant concern: the potential financial impact the withdrawal of such deposits would have on community banks in areas with large non-resident alien populations. As the repercussions of the recent financial crisis continue to be felt, community banks are operating in a challenging business environment. Non-resident alien deposits serve as a stable source of funds for community-based institutions throughout the country giving banks the liquidity needed to support local economies.

In summary, this is just not the time to implement a rule that has the potential to damage or inhibit our already fragile economic recovery. I commend the Committee for holding this important hearing and Representative Posey for introducing H.R. 2568. And, I look forward to working with you and the rest of the Congress as you continue to consider proposals to strengthen our financial system during these difficult and challenging economic times.

Sincerely,

Charles G. Cooper
Commissioner
Texas Department of Banking

October 27, 2011

Statement for the Record

On behalf of the

American Bankers Association

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

United States House of Representatives

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Chairman Capito, Ranking Member Maloney, and members of the Subcommittee, the American Bankers Association (ABA) appreciates the opportunity to submit this statement for the record on the recent IRS proposal to require reporting on the deposits of non-resident aliens (NRA). ABA represents banks of all sizes and charters and is the voice of the nation's $13 trillion banking industry and its two million employees.

ABA appreciates the efforts of this Subcommittee to oversee the development of IRS regulations that affect banks and bank customers. ABA is opposed to the recent effort by the IRS to require that U.S. banks report annually on deposit interest paid to any NRA. Such a requirement jeopardizes foreign deposits in U.S. banks, as many foreign nationals would withdraw their deposits and close their U.S. accounts rather than be 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.

For many banks, the resulting outflow of deposits 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 some community banks to provide much-needed services to their communities. Moreover, new reporting requirements would have no direct benefit to U.S. taxpayers. This income is not taxed, and reports on the deposits are made to foreign governments.

ABA would like to make three points that help to briefly show why the IRS should reconsider this rule:

- **The Flight of Foreign Deposits Would Negatively Impact the U.S. Economy**
- **Reporting Will Not Benefit U.S. Taxpayers**
- **Additional Compliance Would Be an Unnecessary and Costly Burden**

Flight of Foreign Deposits Would Negatively Impact the U.S. Economy

There are legitimate reasons why NRAs place money in U.S. banks. Some are concerned about security risks in their home country and perceive the U.S. as a safer place for funds. Others have a lack of trust in their home governments. Still others are concerned that financial data could be revealed and their personal security would be threatened. These individuals view the U.S. as a reliable and safe place to deposit their money. If the proposed rule were implemented, it is very likely that many of these depositors will look for other alternatives in competing stable financial systems, thus removing deposits from U.S. banks.

NRA deposits are an important source of funding that supports economic growth. This is especially true in states that have large concentrations of these deposits, including Florida, California, New York, and Texas. The flight of substantial deposits will significantly reduce funds available for lending and investment purposes, which will hurt, not help, the economic recovery. The negative impacts from the new rule will reverberate across the U.S.

Reporting Will Not Benefit U.S. Taxpayers

Since nonresident alien interest payments on U.S. deposits are not subject to tax in the U.S., the IRS would not further any U.S. financial interest by requiring this intrusive new reporting. Furthermore, deposit interest data is already available on an as-requested basis under existing information exchange relationships. The successful prosecution of a number of highly sophisticated, foreign tax evasion cases using U.S.-provided data demonstrates that the current information exchange relationships are more than sufficient for tax enforcement. This proposal, which would eventually lead to automatic exchange of deposit interest data, goes further than needed for the purposes of international cooperation.

Additional Compliance Would Be an Unnecessary and Costly Burden

As this reporting does not benefit the taxpayers and is not necessary for foreign tax evasion cases, this additional obligation is an unnecessary and costly burden. It would not be an appropriate policy, regardless of the economic cycle. However, adopting this requirement now has even greater consequences, as noted above. Moreover, 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 burdensome and costly processes for compliance.

Furthermore, 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, would harm community banks with NRA deposits.

Conclusion

ABA thanks the Committee for its leadership in evaluating this recent IRS proposal. The U.S. Treasury reached the correct decision in 2002 when it withdrew a similar proposal, following broad opposition by the financial community and significant concerns raised by Members of Congress. The case against the proposal has only become more compelling since then, as economic conditions are more challenging. Therefore, the IRS proposal to require that U.S. banks report annually on deposit interest paid to any non-resident alien should be rejected and withdrawn.

STATEMENT OF THE CONFERENCE OF STATE BANK SUPERVISORS

On

"PROPOSED REGULATIONS TO REQUIRE REPORTING OF NONRESIDENT ALIEN DEPOSIT INTEREST INCOME"

Before the

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES
Thursday, October 27, 2011, 9:30 a.m.
Room 2128 Rayburn House Office Building

INTRODUCTION

The Conference of State Bank Supervisors[1] ("CSBS") appreciates the opportunity to submit this statement for the record of the Subcommittee's hearing on the Internal Revenue Service's ("IRS") rule requiring the reporting of interest paid to nonresident alien depositors.

State regulators play a central role in ensuring the safety and soundness of the entities we supervise and spurring economic growth in our local communities. To that end, CSBS supports H.R. 2568 to prevent the Treasury from expanding bank reporting requirements with respect to interest on deposits paid to nonresident aliens. If enacted as drafted, this rule could have a significant negative impact upon the community banks operating in several areas around the nation. These institutions are vital to the stability and strength of the U.S. financial system and economic growth. As such, it would be a mistake to enact such a proposal without an analysis of the impact on community banks.

This statement first provides background on the importance of the community banking system. Against this context, the statement then discusses state banking regulators' concerns with the proposed rule by the IRS to require reporting for interest on deposits maintained at banks and paid to nonresident aliens and the negative consequences the proposal could have upon financial institutions, particularly community banks.

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[1] The Conference of State Bank Supervisors is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators supervise approximately 5,500 state-chartered financial institutions. Further, the majority of state banking departments also regulates a variety of non-bank financial services providers, including mortgage lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the federal financial regulatory agencies.

WHY COMMUNITY BANKING STILL MATTERS

Over the past several months, state regulators have heard the very loud concerns of community bankers regarding their future. These concerns come from the feared trickle-down effect of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other regulatory actions deemed necessary to address identified weaknesses in the banking system. In addition, community banks are facing an uncertain future as the structure and role of larger financial institutions in the economy is evolving and the future of mortgage finance is being debated. This proposed rule will undoubtedly exacerbate the already challenging business and regulatory environment facing the industry.

These concerns are very real and are worthy of our collective attention. This should be a serious, national concern. CSBS and its members believe that the viability of the community bank model has significant systemic consequences, which if left unaddressed will cause irreparable harm to local economies and erode critical underpinnings of the broader economy.

The challenges the community banking system is facing are already having an impact upon local economic development, as some local economies remain stalled or even eroded by more limited credit availability. As Members of Congress meet with bankers in your offices and in your districts, it is informative to ask about the loans that are not being made. While some banks are not positioned to lend due to their financial condition, many banks are not making residential real estate loans due to the increased compliance burden. In addition, commercial real estate (CRE) loans are not being made due to the stigma of an entire asset class. We cannot accept this as collateral damage in the interest of consistency and national policy.

A strong community banking system is absolutely critical to the well-being of the United States economy. A diverse financial system characterized by strong community banks ensures local economic development and job creation, provides necessary capital for small businesses, and provides stability and continued access to credit during times of crisis. Therefore, it is critical that policies and decisions made in Washington, D.C. carefully consider the impact on smaller banks and the communities they serve. Put simply, how community banks are impacted by regulatory measures, such as the extended reporting requirements proposed by the IRS, is too important not to understand.

CONCERNS WITH IRS PROPOSED RULEMAKING

In January 2011, the IRS published a notice of proposed rulemaking ("NPR") to "provide guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident alien individuals."[2] Rules currently in effect require reporting of U.S. bank deposit interest only if the interest is paid to a U.S. person or a nonresident alien individual who is a resident of Canada. The proposed rule, however, would extend the information reporting requirement to include bank deposit interest paid to nonresident alien individuals who are residents of *any* foreign country.

[2] *Federal Register*, Vol. 76, No. 5, Friday, January 7, 2011, Notice of Proposed Rulemaking 146097-09, Pages 1105-1108.

In the *Federal Register* notice, the IRS specifically solicits information regarding the economic impact of the rule upon small commercial banks, savings institutions, credit unions, and small securities brokerages. The NPR's request for this information highlights the key challenge with the proposed rule's broad mandate. State regulators fully understand the importance of developing and maintaining cooperative information exchanges with other nations, but the proposed rule's unintended consequences could adversely affect local banking sectors and local economies in Florida and across the United States.

Many nonresident aliens deposit funds in American banks to protect their assets from political instability and the volatility associated with other currencies. U.S. law provides depositors with assurances that such assets will not be nationalized or used against them in a punitive manner—a significant concern for foreign nationals from countries where political and legal conditions lead to concerns over personal safety. Additionally, the U.S. dollar provides a historically unparalleled store of value. While many countries can provide financial safety, the U.S. banking system offers nonresident aliens the stability of denominating their assets in U.S. dollars.

Under the proposed rule, nonresident alien depositors would be informed that their interest income "may be" reported to their resident country. Requiring banks to report nonresident alien interest income to the IRS without definitively explaining how the information will be used could cause foreign nationals to doubt the benefits of holding deposits in U.S. banks. Without clear understanding, this uncertainty may lead to deposit withdrawals, removing a source of stable deposits, and potentially causing liquidity concerns for institutions with significant nonresident alien deposits.

The NPR states that the rule will not have a significant impact on a substantial number of small entities because "[t]he depository accounts ... tend to be with larger financial institutions operating in the United States, and therefore the number of small entities that will be required to undertake this collection of information is expected to be limited." This statement reflects the IRS's failure to understand fully the consequences of the rule. Though the regulatory burden associated with reporting may be small, the potential financial impact resulting from reallocated deposits could disproportionally affect community banks in areas with large nonresident alien populations, such as the state of Florida and the border region in Texas. Community banks are already operating in a challenging business environment as the repercussions of the recent financial crisis continue to be felt. Nonresident alien deposits serve as a stable source of funds for community-based institutions in certain areas, giving banks and their customers the liquidity needed to support local economies and contribute to job growth.

Before moving forward with this proposal, more analysis needs to be conducted to better understand the consequences of such a broad reporting requirement, especially one that lacks specificity regarding the possible uses of the information obtained. CSBS believes that the IRS, in consultation with relevant state and federal banking regulators, should perform an analysis of the expected reduction in deposits held in U.S. banks as a result of implementing this rule, including worst-case, expected-case, and best-case scenarios.

It is for these reasons that CSBS supports H.R. 2568, Congressman Posey's bill which would prohibit the proposed rule from taking effect, and its companion measure in the Senate, S. 1506, authored by Senator Rubio. If enacted, these bills would wisely prevent the Secretary of the Treasury from expanding the current reporting requirements as proposed by the IRS.

CONCLUSION

As regulators, state banking regulators understand and appreciate the importance of government-to-government information sharing to accomplish policy goals. CSBS and its members also recognize that recent international tax issues clearly indicate the need for strong information agreements that encourage reciprocity and usability. However, these arrangements should be established only where there is a clear understanding of the financial and economic consequences and in such a manner that provides affected individuals with certainty about the full ramifications. Without addressing these prerequisites, there is a greater chance that the reporting of interest paid to nonresident aliens could deprive community banks of a source for stable deposit funds, especially for community banks in areas with large nonresident alien populations.

It is for these reasons that CSBS believes it crucial that the IRS perform further analysis to better understand the possible consequences their NPR could have upon financial institutions operating in an already challenging economic and regulatory environment. As President Obama directed in Executive Order 13,563 on January 18, 2011, the IRS should "use the best available techniques to quantify anticipated present and future benefits and costs as accurate as possible."

Thank you for the opportunity to submit this statement. CSBS looks forward to working with the Subcommittee on this issue.

CUNA
Credit Union National Association
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cuna.org
BILL CHENEY
President & CEO

October 27, 2011

The Honorable Shelly Moore Capito
Chairman
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Capito:

On behalf of the Credit Union National Association (CUNA)[1], I commend you for holding today's hearing on the "Proposed Regulations to Require Reporting of Nonresident Alien Deposit Interest Income." CUNA strongly opposes these regulations and we hope that this hearing will help shed more light on the fact that the Internal Revenue Service has not justified the need for the proposal. Earlier this year, we sent a letter to the IRS outlining our significant concerns with this proposal. We have attached a copy of our comment letter for inclusion in the record of the hearing.

Credit unions already shoulder a significant compliance burden as the result of a multiplicity of regulatory requirements, including current IRS reporting requirements. The proposed, unwarranted, rule would increase compliance costs for credit unions and, in turn, their members. Forty-five percent of credit unions have less than $50 million in assets; 25% have less than $5 million in assets and 3,500 have fewer than five employees. The burden of complying with the proposed regulation will only contribute to the tremendous regulatory burdens credit unions face that make it increasingly harder for them to serve their members well.

Additional IRS reporting requirements should be imposed only when the agency has clearly demonstrated that doing so is essential to implement statutory tax code requirements. The IRS has not shown that this rule is necessary to implement any such statutory requirements, nor has it provided a compelling reason why the expanded reporting requirements are necessary.

[1] CUNA is the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,300 state and federally chartered credit unions and their 93 million members.

Representative Posey and Senator Rubio have introduced legislation (H.R. 2568 / S. 1506) to prevent these regulations from going into effect. We strongly support this legislation and encourage Congress to pass these bills.

On behalf of America's credit unions and their 93 million members, thank you very much for holding this hearing.

Best regards,

Bill Cheney
President & CEO

cc: Representative Bill Posey
Senator Marco Rubio

Attachment

CUNA
Credit Union National Association | 601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

April 7, 2011

Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Guidance on Reporting Interest Paid to Nonresident Aliens
[REG–146097–09] RIN 1545–BJ01

To Whom It May Concern:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Internal Revenue Service's (IRS's) proposal on the reporting requirements for interest on deposits held at U.S. financial institutions and paid to nonresident alien individuals. By way of background, CUNA is the largest credit union trade organization in the country, representing approximately 90 percent of our nation's nearly 7,600 state and federal credit unions, which serve approximately 93 million members.

CUNA strongly opposes the IRS's efforts to expand reporting requirements for interest paid to nonresident aliens for the following reasons:

- Credit unions, as financial institutions, already shoulder a significant compliance burden as the result of current IRS reporting requirements and are among the most heavily regulated financial institutions.
- The proposed rule would increase compliance costs for credit unions and, in turn, their members.
- Additional IRS reporting requirements should be imposed only when the agency has clearly demonstrated that doing so is essential to implement statutory tax code requirements.
- The IRS has not shown that this rule is necessary to implement any such statutory requirements, nor has it provided a compelling reason why the expanded reporting requirements are necessary.

Background

In January 2011, the IRS issued a proposal that would require financial institutions, including credit unions, to report on Form 1042-S interest of $10 or more earned annually on deposit accounts held by nonresident aliens who are residents of any foreign country. The proposal would greatly expand the current reporting requirement that applies only to nonresident aliens who are residents of Canada.

The IRS has withdrawn two previous proposals to expand these reporting requirements. In 2001, the IRS proposed expanding the reporting requirement to any nonresident alien. However, in 2002, the IRS and Treasury concluded that the 2001 proposal was overly broad in requiring information to be reported for nonresident aliens residing in any foreign country and issued a refined proposal in 2002.[1] CUNA strongly opposed the 2002 proposal that would have applied the reporting requirement to 15 countries in addition to Canada because of compliance burdens to credit unions, limited benefits to the IRS, and other public policy concerns. Similar to the 2001 proposal, the IRS did not proceed with the 2002 proposal because of strong opposition from Congress, policymakers, and financial institutions.

The current proposal is another attempt to expand the reporting requirement to nonresident aliens that reside in any country, similar to the 2001 proposal. For the same reasons Congress, policymakers, and financial institutions opposed the 2001 and 2002 proposals, and the same reasons that led the IRS and Treasury to abandon the 2001 proposal, the current proposal should also be withdrawn.

CUNA Strongly Urges the IRS to Withdraw the Proposal

CUNA strongly opposes the IRS's efforts to expand the reporting requirement for interest paid to nonresident aliens. Many of the comments below were reflected in our previous letters and testimony on the related proposals.

Credit unions must currently comply with a number of federal tax reporting requirements regarding consumers' income and financial activities. These include but are not limited to reporting regarding payment of interest and dividends, Individual Retirement Account deductions or contributions, interest on loans secured by real property, student loans, discharge of indebtedness, foreclosures and abandonment of property, and others.

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[1] 67 Fed. Reg. 50387 (Aug. 2, 2002).

Credit unions must also comply with IRS requirements for backup withholding and other IRS regulations.

Cumulatively, the burden of compliance with these requirements is substantial, particularly for smaller credit unions. In estimating the burden of the proposed rule, the IRS's Special Analyses notes that roughly half of all credit unions have asset sizes of less than $175 million. However, we believe a much more relevant statistic in the context of compliance burden is that 45% of all credit unions have less than $50 million in assets; further, 25% of credit unions have under $5 million in assets. In addition, about 3,500 credit unions have 5 or fewer employees.

In our view, given the considerable compliance responsibilities imposed under IRS rules that financial institutions are already meeting, we believe the IRS should refrain from developing new reporting obligations for financial institutions, unless such requirements are demonstrated to be essential in order to implement a provision in the federal tax code. We do not believe that the IRS has clearly demonstrated the need for the proposal.

We believe the costs associated with compliance under the proposal will be substantial. Based on information from our members, credit unions that are covered by the agency's requirement to report interest paid to nonresident alien individuals who are residents of Canada have reported significant compliance burdens.

A number of credit unions do not generally have data processing systems that have been programmed to identify nonresident alien individuals' accounts and prepare Form 1042-S. For credit unions that use automated programs, and many smaller ones do not, new software would have to be purchased, or current systems would have to be substantially altered, at an appreciable cost to the credit union.

In addition, we are very cautious about the IRS's estimate of the average annual burden it anticipates the proposal would impose. The 2011 proposal estimates that the average annual burden for each respondent would be 15 minutes, with a total annual reporting burden of 500 hours for 2,000 respondents. This is the same estimate the IRS provided for the 2002 proposal that would only apply to 15 countries, as well as the 2001 proposal that would apply to all countries, causing us to question these estimates.

Also, again the IRS has not provided information as to how it derived these figures, which appear to be very low. We urge the IRS to clarify how it determined these estimates. Further, we question the IRS's Special Analyses accompanying the proposal that indicates the proposal is not a significant regulatory action. We also question the conclusions about the applicability of the Administrative Procedure Act and the applicability of the Regulatory Flexibility Act. We request that the IRS provide the basis for its determinations on these issues before proceeding with this rulemaking.

Perhaps more important for credit unions and their members than the cost of compliance are the concerns that these expanded requirements would divert limited credit union resources away from attention to credit union members. This would be an unfortunate result given the fact that the IRS has not sufficiently stated the need for the report and it may be of marginal use to the IRS.

Under the proposal, the rule would take effect for payments made after December 31 in the year that the rule is promulgated. If the IRS determines that it must proceed with the new proposal, we urge it to give institutions sufficient time to become familiar with these amendments, to arrange for changes to their systems, and to implement reprogramming and other operational changes. Financial institutions should have at least one full year after the rule is published before it becomes effective.

For the reasons discussed above, we strongly oppose this proposal and request that the IRS withdraw it on the grounds that the costs to financial institutions and consumers associated with compliance will far outweigh any benefit to the IRS and that the IRS has not demonstrated that the proposal is necessary to implement a statutory provision of the tax code.

Thank you for the opportunity to share our views on this matter.

Sincerely,

Mary Mitchell Dunn

Mary Mitchell Dunn
SVP and Deputy General Counsel

Florida International Bankers Association

Submission for the Record
To the House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

Hearing on Proposed Regulations to Require Reporting of Nonresident Alien Deposit Interest Income

October 27, 2011

The Florida International Bankers Association ("FIBA") appreciates the opportunity to submit a statement for the record supporting H.R. 2568 and its Senate counterpart bill, S. 1506. These bills would prevent the Treasury Department/IRS from finalizing proposed regulations (REG-146097-09) (the "Proposed Regulations") that would expand U.S. bank reporting requirements with respect to interest on deposits paid to a nonresident alien ("NRA").

FIBA represents more than 70 financial institutions from 18 countries, the vast majority of which are comprised of either the international offices of banks headquartered in the United States or foreign banks which maintain U.S. branches, U.S. agencies or U.S. representative offices. The geographic market of both U.S. and foreign bank FIBA members is Latin America, and the principal services of our members are (i) U.S.-based wealth management/private banking services for non-U.S. persons and (ii) trade finance and supporting activities.

Proposed Regulations

Similar to regulations proposed in 2001 (REG 126100-00, 66 Fed. Reg. 3925-28) that were subsequently withdrawn, the Proposed Regulations would require information returns for interest paid to NRAs from deposits in U.S. financial institutions, regardless of the NRA depositor's country of residence.

FIBA is concerned that the Proposed Regulations would have a dramatic adverse impact on Florida banks (as well as banks throughout the United States). If finalized, the Proposed Regulations would result in (i) potential flight of non-taxable capital from NRAs in the United States, (ii) weakened bank liquidity levels and diminished bank lending capacity, (iii) a loss of jobs in the U.S. banking industry, and (iv) significant compliance burdens on U.S. banks, with no return on this investment.

Harm to U.S. banks and economy

Flight of capital. FIBA is concerned that if the Proposed Regulations are finalized, flight of capital from the United States but especially from Florida would occur. The global market for NRA deposits is highly competitive, and subtle differences in regulatory regimes among countries directly affect the flow of NRA deposits in and out of financial institutions in these countries. Other countries that compete with the United States for these deposits often tout the relative advantages of depositing funds in their country. However, the political and financial instability of Latin and Central American countries have often times resulted in (i) U.S. dollar deposits being nationalized, (ii) forced conversions to local currency at unreasonable rates, or (iii) modifications to exchange controls with little or no warning or reason. Additionally, many of the countries lack adequate confidentiality rules, and those countries with confidentiality rules are either poorly enforced or susceptible to local corruption (and unauthorized leaks). Because these same countries often have significant criminal activity, the lack of confidentiality can lead to devastating results such as extortions, kidnapping and possible assassination of high net-worth individuals. Disclosure of confidential financial information represents a real threat and is an important consideration in where to deposit funds.

NRAs maintain deposits in the United States and particularly in Florida for safety, personal and political reasons, many of which are mentioned above. Customers of FIBA member banks deposit their funds in the United States because of the longstanding political and regulatory stability of the United States. However, irrespective of the IRS' vigilance in the safekeeping of such information, the mere collection of this information will be sufficient to encourage NRAs to move this highly mobile capital to other stable jurisdictions that will protect their privacy and security.

Weakened U.S. banks. The flight of capital has cascading implications – primarily, weakened bank liquidity levels and diminished lending capacity. Each dollar of NRA deposits multiplies the banks' lending capacity. NRA deposits are particularly valuable because they tend to be highly stable—often certificates of deposit that roll over upon maturity, year after year. If the Proposed Regulations are finalized, a sudden withdrawal of NRA deposits might occur, causing some U.S., and especially Florida, banks to experience a lack of liquidity (as a majority of the assets are in the form of illiquid loans). Beyond the immediate problem of liquidity, withdrawal of NRA deposits will cause many banks to shrink because they will not have as many deposits to loan against. These deposits will be highly affected, causing irreparable harm to the financial stability and liquidity of local and regional banks, at a time when many banks are struggling to regain profitability.

Loss of jobs. Weakened bank liquidity levels and diminished lending capacity will lead to a loss of jobs in the U.S. banking industry. The Proposed Regulations threaten not only the economic health of FIBA members, but also the regional economy. For example, growth in Florida international banking industry has been an important contributing factor to South Florida economic growth. With its proximity to the Caribbean and Latin America and its multi-lingual population, South Florida experienced a dramatic increase in international trade beginning in the

1970s. The loss of NRA deposits will not only cause a loss of an important source of financing, but would also inhibit FIBA members from investing in local communities. Although NRA deposits come from abroad, many FIBA members currently use these deposits in their local lending programs or loan the NRA funds to domestic banks. The Proposed Regulations would eliminate an important source of funding to support the growth of the economy.

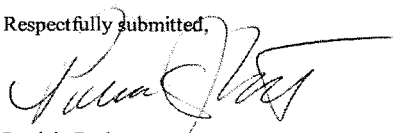
Compliance burden. FIBA is also concerned that the Proposed Regulations, if finalized, would cause a significant compliance burden on U.S. banks, with no corresponding benefit in return, either to the U.S. government or the banks. Developing and implementing the required information reporting systems of the Proposed Regulations would require large investments in time, resources, and training of bank employees. Initially, banks would have to purchase or enhance their current software to produce Forms 1042-S and train their employees to use the software. Then, the banks would have to pull their Form W-8BEN for each NRA depositor to obtain the information necessary to complete the Forms 1042-S and determine the depositor to whom the Forms 1042-S should be sent. Such information would need to be entered into the software, and internal controls would need to be implemented to ensure the accuracy of the information contained in Forms 1042-S. Even after the new system is established, banks would face significant ongoing compliance costs from monitoring and updating the system and preparing and mailing the Forms 1042-S. Many FIBA member banks are small community banks for which the additional burdens of the Proposed Regulations would be material.

Conclusion

In summary, the Proposed Regulations can cause potential and substantial economic harm on NRA deposits in Florida and other U.S. international banking centers. For these reasons, FIBA strongly supports H.R. 2568 and S. 1506, and hopes that the Congress will expedite consideration of this legislation before the Proposed Regulations are finalized.

On behalf of FIBA, thank you again for the opportunity to submit comments on this very important issue.

Respectfully submitted,



Patricia Roth
Executive Director
Florida International Bankers Association (FIBA), Inc.

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October 27, 2011

IRS Nonresident Alien Deposit Reporting Proposal Must be Withdrawn

On behalf of its nearly 5,000 community bank members, ICBA is pleased to submit this statement for the record on "Proposed Regulations to Require Reporting of Nonresident Alien Deposit Interest Income." The Internal Revenue Service's January 2011 proposed rule is a threat to savings, investment, and the economic recovery, and ICBA has formally urged the IRS to withdraw it. We are pleased that the House Financial Services Subcommittee on Financial Institutions and Consumer Credit is holding a hearing to examine this issue, and we urge all members to help stop this counterproductive IRS proposal from becoming final.

Given the fragile state of our nation's economy, ICBA is frankly alarmed that the Treasury is advancing a proposal that would jeopardize deposits at U.S. banks held by nonresident aliens, a vital source of credit to support economic growth, especially in the states where these deposits are concentrated, including Florida, California, New York, and Texas. These deposits, which are largely a function of the confidentiality, privacy, and stability of the U.S. banking system, are at risk of being abruptly withdrawn and future deposits deterred. Individuals have a choice among solvent, stable banking systems in which to keep deposits, which are easily transferred from one country to another. Any adverse change in terms may be enough to make them revisit their choices, or at a minimum, demand higher rates. Let's not make the mistake, especially now, of assuming that nonresident alien depositors are not sensitive to the confidentiality of their banking relationships.

Treasury reached the correct decision in 2002 when they withdrew a similar proposal, following broad concerns raised by the financial community and significant objections raised by members of Congress. The case against the current proposal has only become more compelling since then. Economic conditions are more challenging and the need for banks to support lending is more urgent.

Treasury has defended its proposal by noting that it only affects depositors who are resident in jurisdictions with which the U.S. has an income tax treaty or a tax information exchange agreement (TIEA), and that such agreements generally allow for the exchange of tax information only for the purposes of administering and enforcing tax laws and only if the information is kept confidential and not subject to misuse. However, the list of countries with which the U.S. has such agreements includes a number of decidedly non-democratic regimes with poor records of protecting human rights. Such regimes cannot be relied upon to observe confidentiality agreements or limit their use of data to tax purposes. Depositors who reside in these regimes may have legitimate reasons for the confidentiality they have come to expect from the U.S. bank system. Disclosure of their foreign financial holdings could put them and their families at risk of political persecution or even make them targets of criminals who have obtained their data.

We appreciate that the Treasury proposal is motivated by an effort to foster international cooperation, but, as Treasury has noted, bank deposit interest data is already available on an as-

1615 L Street NW, Suite 900, Washington, DC 20036 ▪ 202-659-8111 ▪ Fax 202-659-9216 ▪ www.icba.org

requested basis under existing information exchange relationships. The successful prosecution of a number of highly sophisticated, foreign tax evasion cases using U.S.-provided data demonstrates that the current information exchange relationships are more than sufficient for tax enforcement. This proposal, providing for *automatic* exchange of deposit interest data, goes further than needed for the purposes of international cooperation. Treasury has also suggested that the proposal will help to detect U.S. taxpayers who pose as nonresident aliens to evade taxation. However, there is already ample authority to pursue any suspected tax evasion. U.S. banks are already required to know the identity of their customers under the Bank Secrecy Act, the USA PATRIOT Act, and other laws. This onerous new Treasury proposal is not needed to prevent this form of tax evasion.

Finally, the additional compliance represented by the proposal would be an expense, a burden, and a distraction to community bankers from the critical business of lending and advancing the economic recovery. This expense is disproportionately large for community banks which have a smaller revenue base over which to spread compliance costs. The proposal is contrary to the President's January Executive Order directing all agencies to modernize regulations and remove those that present a burden unjustified by any benefit.

Community bankers urge Congress's help in forestalling this economically damaging proposal. ICBA is grateful to Representative Bill Posey (R-FL) for introducing H.R. 2568, which would prevent the Secretary of the Treasury from finalizing this proposed rule. We encourage members of this Subcommittee to cosponsor Rep. Posey's bill.

Thank you again for convening this hearing and for the opportunity to share the community banker perspective on this important issue.

INSTITUTE OF INTERNATIONAL BANKERS

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Sarah A. Miller
Chief Executive Officer
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October 26, 2011

The Honorable Shelley Moore Capito
Chairwoman
Subcommittee on Financial Institutions and Consumer Credit
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Capito:

I am writing in advance of your hearing tomorrow on the impact of proposed IRS regulations to require reporting of nonresident alien (NRA) deposit income. The Institute of International Bankers represents the interests of internationally headquartered financial institutions that conduct banking, securities and insurance operations in the United States. The proposed regulations would directly affect our members' U.S. banking operations that are conducted through U.S. branches and U.S. depository institution subsidiaries.

U.S. banks and U.S. branches of international banks are already required to report deposit interest earned by U.S. persons. As interest earned by NRAs on U.S. bank deposits is exempt from U.S. withholding tax, the proposed NRA reporting requirements are not necessary to ensure compliance with U.S. law. Rather, they are intended to strengthen the United States' exchange of information program and be responsive to tax treaty partners requesting information regarding NRAs' interest income from U.S. bank deposits.

Many NRA individuals maintain deposits in the United States with the expectation that their banking relationships will be kept confidential. Unilaterally imposing information reporting requirements with respect to interest paid on deposits, as is contemplated by the proposal, would significantly change the U.S. banking environment for these individuals in ways that we believe would strongly encourage many of them to withdraw their funds, transferring them to the many jurisdictions that do not impose these requirements. Estimates of the amount NRAs have on deposit in the United States vary, but it is evident that for a significant number of institutions, particularly those located in Florida, Texas, California and New York, these deposits

provide a key source of their funding.[1] The outflow of these funds that we anticipate would result from the proposed regulation would be most harmful to those domestic and foreign depository institutions, as well as their local communities, that rely heavily on NRA deposits to fund their small business lending and investment activities and, we believe, more generally, to the U.S. economy.

Such a result would be contrary to the policy underlying the deposit interest exemption from U.S. withholding tax – namely, encouraging foreign investors to deposit funds in U.S. banking operations and thereby provide additional liquidity to the U.S. banking system. Understanding that a withholding tax on deposit interest earned by NRAs would result in those deposits being withdrawn from U.S. banks and U.S. branches of international banks, Congress made permanent the withholding tax exemption for deposit interest in 1976. During this session, Congress was greatly influenced by data regarding the potentially devastating effect that the withdrawal of NRA deposits would have had on such money centers as Miami, where it was estimated that as much as one-third of deposits belonged to NRAs.[2] Recent surveys indicate that that the percentage of NRA deposits held by both domestic and international banks operating in Florida has grown substantially since.[3]

We also believe the policy will have a deleterious impact on those international banking institutions that wish to expand their existing private banking services for NRAs or establish such operations *de novo*. Deposit products form the core of these private banking services. If the Service's proposal is adopted, as proposed, the ensuing potential adverse consequences would create strong incentives for these institutions to forego their business expansion plans and the accompanying addition of U.S. jobs to support these efforts.

Finally, we believe there is a very important issue at stake regarding customer safety and security. Many NRAs who deposit their funds in U.S. banks and U.S. branches of international banks rely on the safety and security of the U.S., its economy and its stable government that enforces meaningful restrictions on the release of personal information by governmental employees. These NRA depositors are sometimes from countries with unstable governments or changing political regimes where laws regarding the security of personal information are lax or not enforced. While we recognize the proposed regulations would only require reporting of

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[1] See, e.g., Letter of March 25, 2011, from Alex Sanchez, President and CEO of Florida Bankers Association to the Department of Treasury ("NRA deposits have grown to account for more than 50 percent of the deposits at some of these banks."); Letter of March 18, 2011, from Patricia Roth, Executive Director, Florida International Bankers Association to the Internal Revenue Service ("...NRA deposits in [FIBA member] institutions... represented between 68% to 100% of their total deposits....").

[2] See 122 Congressional Record S12503 (July 26, 1976).

[3] See *supra* note 1.

interest paid on NRA deposits, it would be disingenuous to infer that a nefarious government official intent on obtaining information regarding an NRA's account balance would therefore be unable to access that information. NRAs deposit their funds in the U.S. specifically to protect their personal information from the risk of breach in their home countries where the unauthorized disclosure of this financial information is often used to target kidnappings for ransom or assassinations. This is a grim reality in many countries that should not be minimized.

The stated purpose for this proposed reporting requirement is to allow the U.S. Treasury to provide this information to its treaty partners upon request. In light of the serious adverse consequences that could result from this proposal, we have urged the IRS to withdraw the proposed regulation and consider other alternatives to providing this information to those treaty partners who may request it.

* * *

I congratulate you for holding this hearing on a very important issue.

Very truly yours,

Sarah A. Miller
Chief Executive Officer
Institute of International Bankers

Congress of the United States
Washington, DC 20515

March 2, 2011

The President
The White House
Washington, D.C. 20500

Dear Mr. President,

America's financial institutions benefit greatly from deposits of foreigners in U.S. banks. These deposits help finance jobs and generated economic growth mainly benefiting local communities, consumers, families, and small businesses. For more than 90 years, the United States has recognized the importance of foreign deposits and has refrained from taxing the interest earned by them or requiring their reporting.

Unfortunately, a rule proposed by the Internal Revenue Service (REG-146097-09) would overturn this practice and would likely result in the flight of hundreds of billions of dollars from U.S. financial institutions. This regulation requires the reporting of bank deposit interest paid to foreign account holders so that this information can be made available to the countries of origin of the nonresident alien account holders.

The regulation could drive job-creating capital out of America and harm U.S. financial markets. According to the Commerce Department, foreigners have $10.6 trillion passively invested in the American economy, including nearly "$3.6 trillion reported by U.S. banks and securities brokers." In addition, a 2004 study from the Mercatus Center at George Mason University estimated that "a scaled-back version of the rule would drive $88 billion from American financial institutions," and this version of the regulation will be far more damaging.

Many nonresident alien depositors are from countries with unstable governments or political environments, where personal security is a major concern. They are concerned that their personal bank account information could be leaked by unauthorized persons in their home country governments to criminal or terrorists groups upon receipt from U.S. authorities, which could result in kidnappings or other terrorist actions being taken against them and their family members in their home countries, a scary scenario that is very real.

Mr. President we have several objections to this initiative, and strongly urge you to permanently withdraw the proposed regulation. Specifically:

The regulation will cause serious irreparable harm to the U.S. economy. Because of the privacy laws of the United States, nonresident aliens are estimated to have deposited over $3 trillion in U.S. financial institutions. Should this regulation be finalized, economic and academic sources indicate that a substantial portion of that capital will be withdrawn from the U.S. economy. During this time of economic concern, we urge that every effort be made to keep capital within the borders of the United States.

The regulation flagrantly violates the intent of Congress. On several occasions, lawmakers have chosen to refrain from taxing the deposit interest paid to nonresident aliens. These actions were made for the explicit purpose of attracting and keeping capital in the U.S. economy. We feel the IRS is abusing its regulatory authority and doing so in a manner that is contrary to Congressional intent and the last ninety years of legislative history.

The regulation will weaken the competitiveness of U.S. financial institutions. Should the proposed rule take effect; American companies will lose hundreds of billions of dollars in deposits to institutions in competing jurisdictions that maintain privacy protections. The purported goal of the regulation will not be achieved, but will instead disadvantage American financial institutions and the U.S. economy.

The regulation will negatively affect the solvency of financial institutions. Should this regulation take effect it will have a negative impact on the balance sheets of U.S. financial institutions and the solvency of those that have a high percentage of non-resident alien deposits may erode. At a time when federal policies should be aimed at enhancing solvency, this regulation would undermine that goal.
This proposal may be good news for high-tax governments, but it is contrary to American economic interest. The jobs of American workers and the competitiveness of U.S. companies should be our top priorities. This regulation works against both. It will put Americans out of work and it will force dollars out of U.S. financial institutions and into foreign financial institutions.

We ask that you withdraw this proposed regulation and send a clear message to existing and potential depositors that the U.S. encourages such deposits and believes America's best interest is served by maintaining current policy.

Sincerely,

Bill Posey
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Mario Diaz-Balart
Member of Congress

Alcee L. Hastings
Member of Congress

Connie Mack
Member of Congress

Kathy Castor
Member of Congress

Richard Nugent
Member of Congress

Allen B. West
Member of Congress

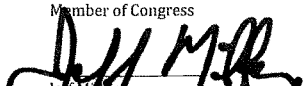
Daniel Webster
Member of Congress

C.W. Bill Young
Member of Congress

John L. Mica
Member of Congress

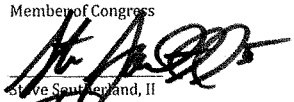
Cliff Stearns
Member of Congress

Vern Buchanan
Member of Congress

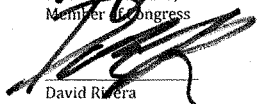


Jeff Miller
Member of Congress

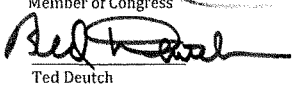
Ander Crenshaw
Member of Congress



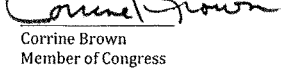
Steve Southerland, II
Member of Congress



David Rivera
Member of Congress

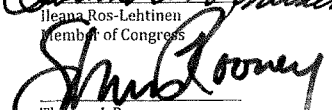


Ted Deutch
Member of Congress



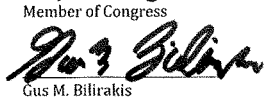
Corrine Brown
Member of Congress

Ileana Ros-Lehtinen
Member of Congress

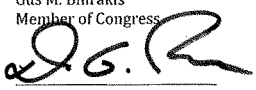


Thomas J. Rooney
Member of Congress

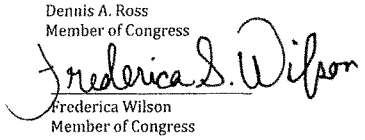
Sandy Adams
Member of Congress



Gus M. Bilirakis
Member of Congress



Dennis A. Ross
Member of Congress



Frederica Wilson
Member of Congress

cc: Timothy Geithner, Secretary
United States Department of Treasury

Douglas H. Shulman, Commissioner
Internal Revenue

Congress of the United States
Washington, DC 20515

April 15, 2011

The Honorable Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

For almost a century, the United States has welcomed the deposits of foreigners in U.S. banks. To attract this capital, the U.S. has refrained from taxing the interest earned on these deposits or requiring interest payments to be reported. Foreign deposits are an asset to America's financial system, helping provide financing for American families and businesses to create jobs and fuel economic growth.

However, the Internal Revenue Service has proposed a rule (REG-146097-09), which puts this system of openness towards foreign deposits at risk. The rule requires that interest payments on foreign deposits be reported back to the IRS, which in turn can share the information with the country of which the depositor is a resident.

At a time of uncertainty in the U.S. financial sector, this proposed rule could jeopardize the role foreign deposits play in our economy by pushing capital away from U.S. banks. Should this rule go into effect, our financial system would suffer a serious loss of capital that would have tremendous negative consequences for our economy.

In the state of Texas, foreign deposits make up a large portion of deposits in our local and community banks. These depositors historically have chosen to use the U.S. banking system over the one in their home country due to the stability of our system. If this rule goes into effect and these depositors take their money out of these banks, the ability of these institutions to help create jobs in communities throughout our districts will be negatively impacted.

Mr. President, we have three primary objections to this rule:

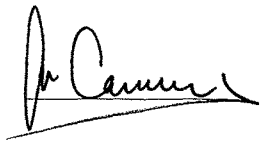
Job creation will be harmed. A Mercatus Center 2004 study of a similar but less damaging rule proposed in 2002 estimated that $88 billion of capital would flee the United States banking system if that rule were implemented. Such a flight of capital from the United States would negatively impact the ability of Americans to access financing that is vital to job creation and economic growth.

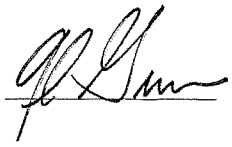
Some foreign depositors will have their personal security put at risk. Many of the foreigners that deposit funds in Texas banks are citizens of nations that do not enjoy the political stability that the United States does. This lack of stability could result in an unauthorized release of their personal financial information by persons in their governments to criminal or terrorist elements after it is shared by the U.S. government. Should information on their finances become available to these undesirable groups in their home countries, they put themselves and their families at risk of kidnapping, extortion, or murder.

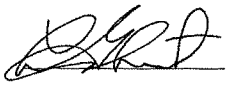
The IRS has exceeded its authority. Foreigners do not pay taxes on the interest earned on deposits in U.S. banks because Congress wanted to attract foreign capital to the United States. There is no reason to have that interest reported back to tax authorities. Such a major change in regulation runs contrary to the intent of Congress.

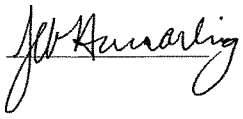
We respectfully ask that you withdraw the proposed rule and maintain the current policy to let foreign depositors know that the United States welcomes their business and that U.S. banking system is open and safe for them to do business with.

Sincerely,







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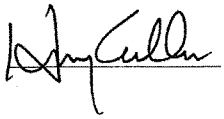

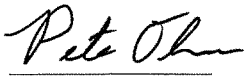

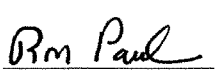


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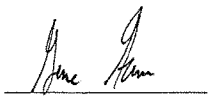
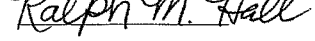
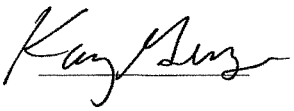



Ralph M. Hall



Congress of the United States
Washington, DC 20515

May 16, 2011

Hon. Timothy F. Geithner
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

Dear Secretary Geithner and Commissioner Shulman:

We are writing to express our concerns regarding a proposed Internal Revenue Service regulation (REG-146097-09) that would force banks to report the deposit interest paid to nonresident aliens.

This regulation is not needed to enforce American tax law. Indeed, the IRS is using the regulatory process to overturn existing law. For 90 years, Congress has sought to attract foreign capital to the U.S. economy with attractive tax and privacy rules. The IRS now wants to disregard Congressional intent solely for the purpose of providing information to foreign tax authorities.

This misguided proposal would compel U.S. banks to put the interests of foreign tax collectors above U.S. law and before the interests of the American economy. If implemented, this regulation will drive bank deposits directly out of U.S. banks and into financial institutions located in other countries. We believe this will put at risk our fragile economic recovery by driving foreign capital from our shores.

The financial sector would be hit particularly hard by this regulation. Losing hundreds of billions of dollars in deposits to foreign financial institutions would disadvantage both American companies and the U.S. economy and adversely impact the solvency of financial institutions. At a time when federal policy should be enhancing stability and encouraging investment in the U.S., it is irresponsible to bypass Congress with regulations that will undermine both of these goals.

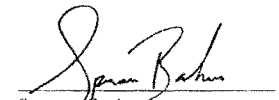
The proposed rule does not collect one dollar in tax revenue owed to the U.S., but puts more than $10 trillion in passive foreign investment in the U.S. economy at risk. Implementing the proposed regulation will force an exodus of much-needed capital, hamper the resurgence of the U.S. financial sector, harm our fragile economic recovery, and cost American jobs.

We request that you permanently withdraw the proposed rule.

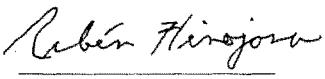
Sincerely,

Bill Posey
Member of Congress

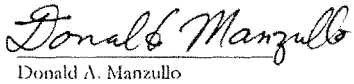
Gregory W. Meeks
Member of Congress



Spencer Bachus
Member of Congress

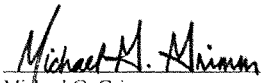


Rubén Hinojosa
Member of Congress

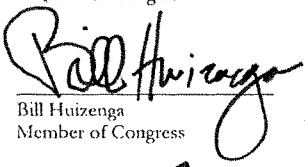


Donald A. Manzullo
Member of Congress

Ileana Ros-Lehtinen
Member of Congress

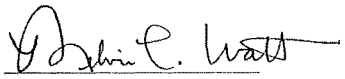


Michael G. Grimm
Member of Congress

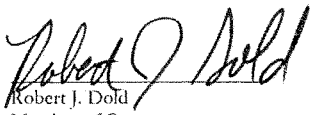


Bill Huizenga
Member of Congress

Gus M. Bilirakis
Member of Congress

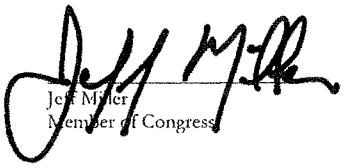


Melvin L. Watt
Member of Congress



Robert J. Dold
Member of Congress

Ron Paul
Member of Congress



Jeff Miller
Member of Congress

Sandy Adams
Member of Congress

Francisco R. Canseco
Member of Congress

United States Senate

WASHINGTON, DC 20510

April 7, 2011

The Honorable Timothy Geithner
Secretary
The Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

Dear Secretary Geithner,

On January 17, 2011, the Internal Revenue Service ("IRS") and Department of the Treasury proposed REG-146097-09, a rule which would require banks in the United States to report to the IRS all deposit interest paid to certain nonresident investors. We are very concerned that this proposed regulation will bring serious harm to the Texas economy, should it go into effect. Out of this concern, we respectfully request that you withdraw the proposed regulation.

According to the Department of Commerce, investors outside the United States hold nearly $3.6 trillion in passive investments in U.S. banks and securities brokers. This capital is multiplied through the U.S. economy, supporting loans to American families and small businesses that help create jobs and spur economic growth in local communities across our state and nation.

Forgoing the taxation of deposit interest paid to certain global investors is a long-standing tax policy that helps attract capital investment to the United States. For generations, these investors have placed their funds in institutions in Texas and across the United States because of the safety of our banks. Another reason that many of these investors deposit funds in American institutions is the instability in their home countries.

Unfortunately, the IRS's proposed regulation flies in the face of our nation's longstanding efforts to attract capital. According to a 2004 study from the Mercatus Center at George Mason University, a scaled-back version of REG-146097-09 would result in an outflow of at least $88 billion in deposits from American financial institutions. Some have reasoned that these investors would withdraw their capital out of concerns that their personal information could end up in the wrong hands, increasing the potential for threats and violence against them and their families.

The proposed regulation also sends mixed signals to community banks and small businesses across Texas. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), as well as the Basel III agreement, U.S. financial institutions are subject to enhanced capital requirements in order to help restore stability in our nation's banking system. We are concerned that REG-146097-09 will drive capital from U.S. financial institutions just as they are taking steps to comply with stricter capital requirements.

With less capital, community banks will be able to extend less credit to working families and small businesses. Ultimately, working families and small businesses will bear the brunt of this

ill-advised rule. Given the ongoing fragility of our nation's economy, we must not pursue policies that will send away job-creating capital.

We ask you to withdraw the IRS's proposed REG-14609-09. The United States should continue to encourage deposits from global investors, as our nation and our economy are best served by this policy.

Sincerely,

Kay Bailey Hutchison
United States Senator

John Cornyn
United States Senator

CC: Douglas H. Shulman
Commissioner of Internal Revenue
Internal Revenue Service

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

April 12, 2011

VIA EMAIL (Notice.Comments@irscounsel.treas.gov)

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

RE: Reporting Bank Deposit Interest Paid to Nonresident Aliens
(REG-146097-09)

Dear Commissioner Shulman:

The purpose of this letter is to express support for the proposed rule to require U.S. banks and broker-dealers to report to the Internal Revenue Service (IRS) any deposit interest income paid on a U.S. account opened in the name of a non-U.S. individual residing in a foreign country. Financial firms operating in the United States already disclose account information to the IRS for all accounts held by U.S. and Canadian residents; the proposed rule would extend the same disclosure requirements to accounts held by individuals residing in other countries as well.[1]

The proposed new disclosure requirement would not only bring parity to how U.S. and non-U.S. resident accounts are disclosed to the IRS, but would also strengthen U.S. tax enforcement efforts in three ways. First, by enabling the United States to provide account information to other countries, the proposed rule would strengthen the ability of the United States to offer cooperative, reciprocal tax information exchange arrangements that would benefit IRS tax enforcement efforts. Second, the expanded disclosure requirements would help detect U.S. taxpayers who are evading U.S. taxes by opening U.S. accounts and fraudulently claiming foreign status. Third, establishing a mechanism to enable the United States to disclose account information to other countries would reaffirm U.S. opposition to international tax evasion, make it clear our country is willing to do its part to stop it, and give moral force to U.S. efforts to convince other countries to share information about U.S. taxpayers with the IRS.

The proposed rule should be further strengthened by making it clear that, if a financial institution knows an individual is the beneficial owner of an account opened in the name of an offshore shell corporation, trust or other entity, it must treat that account as subject to the new disclosure requirement. Without this clarification, the rule could be easily circumvented by individuals who open their accounts in the name of an offshore shell entity.

[1] REG-133254-02, 67 FR 50386.

Going Offshore to Evade Taxes. Tax evasion today often involves the crossing of international boundaries, with U.S. taxpayers using foreign shell companies, offshore financial accounts, and tax havens to hide assets and evade detection. Over the past decade, the U.S. Permanent Subcommittee on Investigations, which I chair, has conducted multiple investigations exposing ways in which U.S. taxpayers use offshore mechanisms to hide taxable income and evade their U.S. tax obligations. In 2003 and 2005, for example, the Subcommittee released reports and held hearings showing how leading accounting firms, such as KPMG, designed, marketed, and implemented abusive tax shelters which, in some instances, made use of offshore financial accounts and transactions to help U.S. taxpayers dodge their tax obligations.[2] In 2006, the Subcommittee presented six case studies showing how financial professionals, including bankers, lawyers, accountants, investment advisors, and others, helped U.S. taxpayers use tax havens to escape U.S. taxes.[3] In 2008, the Subcommittee exposed how some financial institutions helped non-U.S. persons avoid payment of U.S. taxes on U.S. stock dividends by conducting transactions and moving funds through foreign jurisdictions.[4] In 2008 and 2009, the Subcommittee showed how two tax haven banks, UBS AG in Switzerland and LGT Bank in Liechtenstein, assisted tens of thousands of U.S. clients to open hidden foreign accounts that were not disclosed to the IRS.[5] In a recent IRS voluntary tax amnesty program which allowed taxpayers to disclose previously hidden foreign accounts to the IRS with minimal tax penalties, over 15,000 U.S. taxpayers came forward. The Subcommittee has estimated that offshore tax abuse is costing the U.S. Treasury $100 billion in lost revenues each year.

Strengthening Tax Information Exchange. To combat offshore tax abuses by U.S. taxpayers, IRS officials often must obtain information from one or more foreign governments, including information regarding foreign accounts opened by U.S. taxpayers. For years, the United States has been a leading proponent of tax information sharing arrangements that enable the IRS to obtain this information. Its efforts have included developing model tax information exchange agreements,[6] working with multilateral organizations such as the Organization of Economic Cooperation and Development (OECD), the Joint International Tax Shelter Information Centre, and United Nations to address tax evasion issues, and developing the Qualified Intermediary Program to encourage foreign financial institutions to disclose to the IRS U.S. source income in accounts held by U.S. persons and withhold taxes on that income as required by U.S. tax law.[7] The United States has also constructed a network of international agreements, including tax treaties, international tax information exchange agreements (TIEAs),

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[2] "U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals," S.Hrg. 108-473 Nov. 18 and 20, 2003); "The Role of Professional Firms in the U.S. Tax Shelter Industry," S.Rept. 109-54 (April 13, 2005).

[3] "Tax Haven Abuses: The Enablers, The Tools and Secrecy," S.Hrg. 109-797 (Aug. 1, 2006).

[4] "Dividend Tax Abuse: How Offshore Entities Dodge Taxes on U.S. Stock Dividends," S.Hrg. 110-778 (Sept. 11, 2008).

[5] "Tax Haven Banks and U.S. Tax Compliance," S.Hrg. 110-614 (July 17 and 25, 2008); "Tax Haven Banks and U.S. Tax Compliance: Obtaining the Names of U.S. Clients with Swiss Accounts," S.Hrg. 111-30 (March 4, 2009).

[6] See Article 26 of the U.S. Model Income Tax Convention, available on the IRS website at www.irs.gov.

[7] For more information about the Qualified Intermediary Program, see 26 U.S.C. §§1441-43; Treas. Reg. §1.1441-1(e)(5); Revenue Procedure 200-12, 2000-4 I.R.B. 387.

and Mutual Legal Assistance Treaties (MLATs), which include mechanisms for exchanging information related to tax enforcement.[8]

These international arrangements typically enable the IRS to request from the tax authority of another country specific information related to a specific taxpayer. Obtaining the requested information often takes considerable time and can be the subject of lengthy negotiations or even litigation. In addition to these arrangements which allow an information exchange upon request, the United States has established an automated information exchange with Canada, which enables the two countries to exchange information on a routine basis regarding accounts opened by their respective citizens. Other countries, such as members of the European Union (EU), have established more extensive automated tax information sharing agreements, such as the EU Savings Directive which enables more than two dozen countries to exchange information on a routine basis about accounts opened by their respective citizens.

In an effort to strengthen its ability to obtain account information on an automated basis, in 2010, Congress enacted the Foreign Account Tax Compliance Act ("FATCA").[9] FATCA essentially requires foreign financial institutions to disclose to the IRS on an ongoing basis information about any account opened by or for a U.S. person, or pay a 30% withholding tax on any U.S. investment income earned by that institution. While FATCA will strengthen the ability of the U.S. to obtain account information on a routine basis from foreign jurisdictions, it does not take effect for several years and is far from comprehensive. For example, not all foreign financial institutions have U.S. investment income, the effectiveness of the disclosure requirement will depend upon collection of the 30% withholding tax from noncompliant institutions, and some foreign governments may attempt to block their financial institutions from providing the requested account information.

The reality is that the United States will have to continue to rely on tax information exchange arrangements to reduce the billions of dollars in lost tax revenue per year due to offshore tax abuses. On a practical level, if the United States wants to foreign jurisdictions to cooperate with its information requests about account information, it must be able to provide similar information on a reciprocal basis. Currently, the United States has not established the procedures needed to be able to exchange information with other countries on accounts opened by their citizens. The proposed rule would establish those procedures.

Stopping Fraudulent Claims of Foreign Status. A second reason to support the proposed rule is that it would create a new mechanism to help detect U.S. taxpayers who are blocking disclosure of their U.S. accounts to the IRS by falsely claiming foreign status. The IRS believes that extending the disclosure requirement to additional accounts will make it more difficult for taxpayers to avoid the U.S. information reporting system.[10] Past Subcommittee investigations show that some U.S. taxpayers have been making those types of false claims and

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[8] For a list of the U.S. tax treaties and TIEAs now in effect, see the IRS website at www.irs.gov.
[9] The FATCA, enacted as part of the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 11-147 (HIRE Act), was signed into law on March 10, 2010.
[10] 76 FR 1105 - 1108 (January 7, 2011).

using them to conceal U.S. accounts from the IRS. For example, two brothers from Texas, Sam and Charles Wyly, created a network of 58 offshore trusts and corporations over a period of 13 years, and directed those entities to open dozens of accounts at U.S. banks and broker-dealers.[11] The financial institutions that opened the accounts knew that Wyly family members were the beneficial owners of the millions of dollars and securities contained in those accounts, yet accepted W-8 forms declaring the accounts to be owned by foreign accountholders and treated them as exempt from the 1099 reports required to be filed with the IRS. For years, the IRS was unaware of the dozens of accounts and the assets held by the Wylys through accounts opened in the name of various offshore shell entities. If the proposed rule were adopted, when the IRS searched for accounts linked to particular individuals, it would have additional information to detect such hidden U.S. accounts.

Accounts Opened by Shell Entities. As currently drafted, the proposed rule requires disclosure of only those accounts that have been opened by nonresident alien individuals. One critical improvement to the proposed rule would be to make it clear how the new disclosure requirement is to be applied to accounts that are opened in the name of a non-U.S. shell corporation, trust, or other entity, but are beneficially owned by individuals. Under current anti-money laundering laws, U.S. banks and broker-dealers are already required to know their customers, including the beneficial owners behind shell entities. The proposed rule should make it clear that, if a financial institution knows that the beneficial owner of an account is a non-U.S. individual, the financial institution should disclose the account to the IRS, even if the account is nominally held in the name of a foreign entity.

Without that clarification, non-U.S. individuals could easily circumvent the new disclosure requirement simply by opening their U.S. accounts in the name of an offshore corporation, trust, or other entity. In fact, without the proposed clarification, the proposed rule may have the unintended consequence of creating a new incentive for foreign individuals to open their U.S. accounts through offshore shell entities, making it even more difficult for tax and law enforcement officials to identify accounts held by individuals. To avoid that unintended burden on tax and law enforcement authorities and to avoid circumvention of the proposed rule, the rule must make it clear that financial institutions cannot rely on W-8 declarations of foreign status filed by a foreign corporation, trust, or other entity if the financial institution knows or should have known, through its anti-money laundering due diligence or otherwise, that the true accountholders are individuals whose accounts are subject to disclosure to the IRS. This clarification would not only strengthen the effectiveness of the proposed rule, but would also help uncover U.S. taxpayers hiding behind foreign shell entities.

No New Burden. Some have expressed the concern that the proposed rule would impose a costly new administrative burden on U.S. financial institutions, but that is not the case since U.S. banks and brokers already have in place comprehensive automated systems to produce needed information to the IRS on any account. Right now, virtually all U.S. banks and broker-

[11] For more information about the Wyly case history, see "Tax Haven Abuses: The Enablers, The Tools and Secrecy," S.Hrg. 109-797 (Aug. 1, 2006) at 297.

dealers have automated systems to produce 1099 forms for U.S. accountholders and 1042-S forms for Canadian accountholders. Virtually no new infrastructure would be required to program those same systems to produce 1042-S forms for accounts opened by non-U.S. accountholders from other countries. U.S. banks and broker-dealers already collect information from every non-U.S. accountholder regarding their country of residence, since every non-U.S. accountholder is already required to complete a W-8 form declaring their non-U.S. status and the country in which they reside. U.S. financial institutions could easily use the existing W-8 information to produce 1042-S disclosures for the relevant accounts. Those systems are also already designed to produce a disclosure form with the needed account information, send a copy of the form to the IRS, and send another copy to the last known address of the accountholder.

No New Tax. Others have expressed the concern that the new disclosure requirements would lead to the taxation of funds in the accounts held by non-U.S. individuals. This fear is unfounded, however, since new taxes can be imposed only by statute, and not by regulation. Cooperative information exchanges pursuant to tax sharing arrangements would not in any way alter current U.S. law which exempts interest income in those accounts from federal taxation.

Misplaced Concern Regarding Misuse of Information. Still others have expressed the concern that the proposed rule would require the IRS to disclose financial information to corrupt governments that could misuse the information for malicious purposes, such as theft or extortion. This problem is not a new one, however; it has long applied to existing tax information exchange arrangements, which is why the IRS has developed extensive procedures and policies to prevent abuses.[12] Under current law, tax information can be disclosed to another government only if the foreign government has an information sharing arrangement with the United States and its tax authority makes an official written request for the information. Each such request is then reviewed by the IRS Deputy Commissioner (International) in the Large Business and International Division, who is responsible for determining, among other matters, whether the requested information will be used solely for tax enforcement purposes as required by U.S. tax information sharing arrangements or may instead be misused by the requesting government. Due to the extensive U.S. network of tax treaties, TIEAs, and MLATs, the IRS has years of experience determining the circumstances under which tax information can be safely released to a particular jurisdiction and clear legal authority to decline to provide information that may be misused. That same authority, as well as the underlying procedures, policies, and experience of the IRS, would be used to review requests for information collected under the proposed rule.

Misplaced Concern Regarding Capital Outflow. Finally, others have expressed the concern that, if the United States were to collect information on the accounts held by non-U.S. individuals, those accountholders would close their U.S. accounts, resulting in an outflow of foreign capital. That concern is misplaced for several reasons. First, there is no evidence that most foreign accountholders at U.S. financial institutions are tax evaders in their home

[12] See, e.g., Internal Revenue Manual, Section 11.3.25, Disclosure to Foreign Countries Pursuant to Tax Treaties, available at *http://www.irs.gov/irm/part 11,irm_11-003-025.html.*

jurisdictions. Canadians, for example, continue to place substantial funds in U.S. accounts despite the longstanding tax information sharing arrangement between the United States and their government. Second, Federal Reserve data indicates that, of the $4 trillion in foreign deposits in U.S. banks, about three-quarters are in accounts held by foreign governments, official institutions, international and regional organizations, and foreign banks, all of which would be unaffected by the proposed rule.[13] Many of the remaining accounts are held by business corporations and other legal entities doing business in the United States, which would also be unaffected by the proposed rule. Third, the United States remains the world's safest haven for global capital and investment. There is virtually no evidence that new disclosure requirements would overcome the United States' other financial advantages and cause investors to cease making U.S. investments. Fourth, when similar information sharing arrangements were applied to accounts in EU countries, a feared outflow of funds did not materialize.

Finally, to the extent that non-U.S. persons are using U.S. accounts to hide assets from their governments, the United States should not facilitate their misconduct or serve as a safe haven for tax cheats. Tax evasion is a crime in this country, and tax cheats are an affront to the many honest citizens in the United States who pay their fair share. Tax evasion by foreign citizens is no better, and our laws should not make it easy for foreign citizens to use our financial institutions to dodge their tax obligations. If we have decided that a policy of disclosure is appropriate and necessary for our own citizens, it surely is equally appropriate for foreign citizens opening financial accounts in the United States.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Carl Levin
Chairman
Permanent Subcommittee on Investigations

[13] Federal Reserve Board, Liabilities to Foreigners Reported by Banks in the United States, available at *http://www.federalreserve.gov/econresdata/releases/statbanksus/liabfor20110131.htm#fn11r*.

September 19, 2011

The Honorable Bill Posey
U.S. House of Representatives
120 Cannon HOB
Washington DC 20515

Sent via email to: Nicole McCleary [Nicole.Ruth@mail.house.gov]

Dear Congressman Posey:

The Florida International Bankers Association ("FIBA"), Inc., represents more than 70 financial institutions from 18 foreign countries as well as the United States, with international business operations and offices in South Florida. On behalf of FIBA and our member institutions, we would like to thank you for your sponsorship and leadership in connection with your introduction of H.R. 2568.

This legislation would prevent the Treasury Department/IRS from finalizing proposed regulations that would expand Untied States bank reporting requirements with respect to interest on deposits paid to non resident aliens.

At a time when unemployment remains high and the economy struggles to regain strength, the proposed Treasury regulations (if finalized) would results in (i) a a flight of capital in Florida to overseas, (ii) weakened Florida bank liquidity levels, (iii) diminished Florida bank lending capacity – each dollar of deposits can result in $9 of lending capacity, and (iv) a loss of jobs in the Florida banking industry. In addition, the proposed regulations threaten the growth of Florida's international banking institutions and would impose significant new compliance burdens on our banks.

For all of these reasons, FIBA opposes the proposed regulations and strongly supports your efforts to prevent these regulations from being finalized.

Please let me know how FIBA can be of assistance in advancing this important piece of legislation. FIBA remains ready and committed to support you in this mission. Thank you again for your leadership nd your continued support of Florida's financial institutions and banks.

Sincerely,

Patricia Roth/SO

Patricia Roth
Executive Director
Florida International bankers Association (FIBA), Inc.

August 5, 2011

Dear Senator:

The undersigned organizations, representing U.S. financial institutions of all sizes and charter types, write to express our strong support for S. 1506, which would prevent the Secretary of the Treasury from requiring U.S. banks and credit unions to report annually on interest paid on all deposits held by nonresident aliens. Since nonresident alien interest payments on U.S. deposits are not subject to tax in the U.S., the IRS would not further any U.S. financial interest by requiring this destructive new reporting. We urge all Senators to support this important legislation.

Given the fragile state of our nation's economic recovery, it is disturbing to see Treasury advance a proposal that would jeopardize deposits at U.S. banks and credit unions held by nonresident aliens, a vital source of credit to support economic growth, especially in states where they are concentrated, including Florida, California, New York, and Texas. These deposits, which are largely a function of the confidentiality, privacy, and stability of our financial system, are at risk of being abruptly withdrawn and future deposits deterred. Individuals have a choice among stable financial systems in which to keep deposits, which are easily transferred from one country to another. Any adverse change in terms may be enough to make them revisit their choices.

Treasury reached the correct decision in 2002 when it withdrew a similar proposal, following broad rejection by the financial community and significant concerns raised by members of Congress. The case against the proposal has only become more compelling since then. Economic conditions are more challenging and the need for bank capital and liquidity to support lending is more urgent.

Treasury has recently defended its proposal by noting that it will only affect depositors who are resident in jurisdictions with which the U.S. has an income tax treaty or a tax information exchange agreement (TIEA), and that such agreements generally allow for the exchange of tax information only if the information is kept confidential and not subject to misuse. However, the list of countries with which the U.S. has such agreements includes a number of decidedly non-democratic regimes with poor records of protecting human rights that cannot be relied upon to observe confidentiality agreements or to limit their use of data to taxation purposes. Depositors who reside in these regimes may have legitimate reasons for the confidentiality they have come to expect from the U.S. financial system. Disclosure of their foreign financial holdings could put their families and them at risk of political persecution or criminal harm.

We appreciate that the Treasury proposal is motivated by an effort to foster international cooperation, but as Treasury has noted, deposit interest data is already available on an as-requested basis under existing information exchange relationships. The successful prosecution of a number of highly sophisticated, foreign tax evasion cases using U.S. provided data demonstrates that the current information exchange relationships are more than sufficient for tax enforcement. This proposal, providing for automatic exchange of deposit interest data, goes further than needed for the purposes of international cooperation. Notably, U.S. financial institutions are already required to know the identity of their customers under the Bank Secrecy Act, the USA PATRIOT Act, and other laws.

Finally, the additional compliance represented by the proposal would be an unwarranted expense, a burden, and a distraction from the critical business of lending and advancing the economic recovery. It is contrary to the President's January Executive Order directing the agencies to modernize regulations and remove those that present a burden unjustified by any benefit. We need Congress's help to forestall this economically damaging proposal.

We urge all Senators to support S. 1506 in order to prevent undue damage to the U.S. financial and economic recovery.

Sincerely,

American Bankers Association

Credit Union National Association

Financial Services Roundtable

Independent Community Bankers of America

National Association of Federal Credit Unions

INDEPENDENT COMMUNITY
BANKERS of AMERICA

September 20, 2011

U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the nearly 5,000 members of the Independent Community Bankers of America, I write to express our strong support for H.R. 2568, introduced by Rep. Bill Posey (R-FL), which would prevent the Secretary of the Treasury from requiring U.S. banks and credit unions to report annually on interest paid on deposits held by nonresident aliens. Since nonresident alien interest payments on U.S. deposits are not subject to tax in the U.S., the IRS would not further any U.S. financial interest by requiring this destructive new reporting. We urge all members of Congress to support this important legislation.

Given the fragile state of our nation's economic recovery, it is disturbing to see Treasury advance a proposal that would jeopardize deposits at U.S. banks held by nonresident aliens, a vital source of credit to support economic growth, especially in states where they are concentrated, including Florida, California, New York, and Texas. These deposits, which are largely a function of the confidentiality, privacy, and stability of our banking system, are at risk of being abruptly withdrawn and future deposits deterred. In technologically advanced financial systems, individuals have a choice among stable banking systems in which to keep deposits, which are easily transferred from one country to another. Any adverse change in terms may be enough to make them revisit their choices, or at a minimum, demand higher rates. Let's not make the mistake, especially now, of assuming that nonresident alien depositors are not sensitive to the confidentiality of their banking relationships.

Treasury reached the correct decision in 2002 when they withdrew a similar proposal, following its broad rejection by the financial community and significant concerns raised by members of Congress. The case against the proposal has only become more compelling since then. Economic conditions are more challenging and the need for bank capital and liquidity to support lending is more urgent.

Finally, the additional compliance represented by the proposal would be an unwarranted expense, a burden, and a distraction from the critical business of lending and advancing the economic recovery. It is contrary to the President's January Executive Order directing the agencies to modernize regulations and remove those that present a burden unjustified by any benefit. We need Congress's help to forestall this economically damaging proposal.

We urge all members of Congress to support H.R. 2568 in order to prevent undue damage to the U.S. financial and economic recovery.

Sincerely,
/s/
Camden R. Fine
President and CEO

September 21, 2011

The Honorable Bill Posey
United States House of Representatives
120 Cannon House Office Building
Washington, DC 20515

Dear Congressman Posey,

On behalf of the 362,000 members of the National Taxpayers Union (NTU), I write in support of H.R. 2568, a bill to prevent the Secretary of the Treasury from forcing financial institutions to report interest on deposits paid to "nonresident aliens." Your bill would provide relief from pending Internal Revenue Service (IRS) regulations that could have negative consequences for capital flows at a time when our economy can least afford them.

The United States has a long history of encouraging investment by noncitizens from abroad. Beginning with the Revenue Act of 1921 and continuing through the Tax Reform Act of 1986, Congress has demonstrated a desire to attract foreign capital into the American economy by not taxing or issuing reporting requirements for the interest paid on foreign deposits. The Internal Revenue Service's proposed rules, concocted through an unelected bureaucracy, would fly in the face of this Congressional intent.

In addition to undermining democratic accountability, the IRS's scheme could potentially drive billions of dollars in capital out of the United States. Foreigners currently have approximately $10.7 trillion invested in the U.S. economy, including $4.64 trillion in banks and brokerage houses. By decreasing privacy and subjecting U.S.-based nonresident alien deposits to the threat of home-country taxation, the regulations would inevitably result in a substantial migration of assets to friendlier financial climates. A 2004 study from the Mercatus Center at George Mason University found that a scaled-back version of the rule package, which would have only required reporting from a prescribed set of 15 countries, would "trigger a deposit outflow from U.S. depositories of more than $87 billion."

The impacts of such an abrupt contraction of available capital could ripple throughout an already weakened U.S. financial sector and further endanger our meek economic recovery. By dramatically decreasing the banking system's reserve base the regulation could potentially lead to higher interest rates, decreases in liquidity, or even the destabilization of certain banking institutions. Any of these outcomes could push the United States further toward a double dip recession.

For all the reasons above NTU encourages all House Members to work toward passage of H.R. 2568, in order to send a clear and unequivocal message that the United States remains a welcome destination for foreign capital.

Sincerely,

Brandon Greife
Federal Government Affairs Manager

108 North Alfred Street ★ Alexandria, Virginia 22314 ★ Phone: (703) 683-5700 ★ Fax: (703) 683-5722 ★ Web: www.ntu.org

Marco Rubio
United States Senator

Hearing on Proposed Regulations to Require Reporting of Nonresident Alien Deposit Interest Income

Written Testimony Before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit

U.S. House of Representatives

Washington, D.C.

October 27, 2011

Chairwoman Capito, Ranking Member Maloney, and Members of the Subcommittee:

Thank you for the opportunity to submit testimony on REG-146097-09, a proposed mandate from the Internal Revenue Service (IRS) which would require U.S. banks to report to the IRS the amount of deposit interest earned by nonresident aliens (NRA). Foreign deposits play an immensely important role in Florida's economy, and I am deeply concerned that the IRS's proposal will cause these deposits to flee to other nations at a time when unemployment remains high and our financial sector continues to struggle. I urge the IRS to permanently withdraw this ill-advised mandate and to work toward maintaining a pro-growth, pro-investment economic climate.

There is not one member of Congress who does not hear from his or her constituents about the state of the economy and the lack of jobs. Unemployment remains above nine percent nationally and above ten percent in Florida. In fact, 45 percent of the unemployed have been without a job for at least six months. Florida's housing market continues to struggle, and businesses across the country are finding it increasingly difficult to access capital and expand operations.

Fortunately, there is no shortage of steps that Congress can take in a bipartisan manner to help grow the economy. Pro-growth tax reform that broadens the tax base and lowers rates for individuals, families, and businesses will provide a major boost to the economy. Regulatory reform that reduces the burden of red tape on businesses will allow job creators to focus their resources on expanding their businesses instead of on complying with government mandates.

Congress must also push back against policies that will have a negative impact on the economy. That is why I am adamantly opposed to REG-146097-09, a proposed mandate from the IRS related to reporting of the interest earned on foreign deposits. This rule will cause a massive capital flight with no benefit to job creation, and I commend Chairwoman Capito and members of the Subcommittee for convening a hearing to examine this important issue.

Foreign Deposits are a Vital Part of Florida's Economy

For 90 years, the United States has encouraged foreign investment in our economy by exempting interest earned by nonresident aliens (NRA) within our borders from taxation and reporting requirements.[i] As a result of this pro-growth approach towards foreign investment, the Department of Commerce estimates that foreigners have over $3.7 trillion invested with U.S. banks and securities brokers.[ii] These investments spur lending to small businesses, help finance mortgages, and play a vital role in the general health of local communities in Florida. Florida-regulated institutions hold an estimated $14.2 billion in NRA deposits, and many financial institutions rely heavily on foreign deposits to make up their capital base. For example, eleven out of sixteen banks in South Florida surveyed by the Florida Office of Financial Regulation (OFR) hold reserves comprised of over 30 percent of foreign deposits.[iii] Fourteen foreign institutions surveyed by the Florida OFR hold foreign deposits that make up over 90 percent of total reserves. Some have estimated that Florida holds up to $80 billion in NRA deposits in Federal Deposit Insurance Corporation-insured accounts.[iv]

Treasury Did Not Implement 2001 and 2002 Proposals After Widespread Bipartisan Opposition

In 2001 and 2002, the Internal Revenue Service released two separate proposals that would have expanded reporting of deposit interest income earned by nonresident aliens inside the United States to all countries, and 16 countries, respectively. Specifically, the rules would have included expanded reporting through IRS Form 1042-S.[v] As the burden associated with the rules became clear, opposition from members of both parties, public policy groups, and even agencies within the Bush Administration dramatically increased.

For example, in 2002, the Small Business Administration Office of Advocacy noted that the 2002 rule (REG-133254-02) would impose a "significant burden" on small entities, and warned that the rule would "create a barrier to small financial institutions' ability to compete." [vi] A 2004 study from the Mercatus Center at George Mason University found the 2002 proposed rule would have resulted in a capital flight of more than $87 billion.[vii] Stephen Entin, President of the Institute for Research on the Economics of Taxation (IRET), also noted that a capital flight induced from the 2002 rule would have led to a reduction in Gross Domestic Product, wages, employment levels, and tax collections due to lower economic growth.[viii] Even Donald E. Powell, Chairman of the Federal Deposit Insurance Corporation, warned in a 2003 letter that "A shift of even a modest portion of these funds out of the U.S. banking system would certainly be termed a significant economic impact" and that a capital flight "would be of great concern to me and to many financial institutions -- particularly smaller institutions whose survival is dependent on stable sources of deposits." [ix]

Public policy groups including the United States Chamber of Commerce, the American Bankers Association, and the Coalition for Tax Competition, consisting of 30 free-market organizations, strongly opposed the rules. Ultimately, the 2002 rule was not implemented, and to date, only the 1996 reporting regulation requiring interest reporting to Canada remains in effect.

REG-146097-09 is More Burdensome Than Previously-Withdrawn Rules

Congress has on several occasions affirmed that NRA deposit interest shall be exempt from taxation and reporting mandates, and the IRS admits that REG-146097-09 is necessary in part to further "a growing global consensus regarding the importance of cooperative information exchange for tax purposes that has developed," not to help institute a new tax regime. It is highly disappointing that the IRS is seeking to impose this far-reaching new mandate without the consent of Congress. The rule is particularly daunting given the weak state of Florida's economy, which is struggling with an unemployment rate near eleven percent and a financial sector weakened by the 2008 recession. For these reasons, the entire Florida delegation in the House of Representatives recently sent a letter to President Obama asking that the proposal be withdrawn.[x] I have personally requested that REG-146097-09 be abandoned on several occasions.

Unfortunately, the Administration has done the country a disservice by claiming the rule "will not have a significant economic impact on a substantial number of small entities,"[xi] therefore shunning a cost-benefit analysis as required by Executive Order 12866. This position is a puzzling assertion given that various studies and comments (notably the 2002 Small Business Administration Office of Advocacy comments) have clearly illustrated the heavy burden that a similar proposal would have placed on small entities like independent and community banks.

Given that the IRS's latest proposal would apply the new reporting requirements to foreign deposits from every country, not just sixteen as proposed by the 2002 rule, it is difficult to see how REG-146097-09 does not warrant a cost-benefit analysis to better understand the far-reaching costs that the rule would impose on the economy. For example, the American Bankers Association has noted the implementation burdens of establishing new systems to report NRA interest, the large amount of required 1042-S forms mandated by the rule, increased paperwork burdens for customers, and the interaction of the rule with other statutes such as the Foreign Account Tax Compliance Act (FATCA).[xii] Concerns over the rule's regulatory costs were recently echoed by House Ways and Means Committee Oversight Subcommittee Chairman Charles Boustany (R-LA), who requested that Treasury Secretary Timothy Geithner suspend REG-146097-09 rule and answer a variety of questions about the IRS's rulemaking process, including the rule's economic costs, in a letter dated September 27, 2011.[xiii]

The Need to Halt REG-146097-09 and Maintain a Favorable Climate for Foreign Investment

I believe that expanded reporting requirements for NRA interest, as embodied by REG-146097-09, must be stopped in their entirety to protect Florida's economy from ill-advised mandates that place the interests of international tax collectors over the interests of my constituents and over our nation's economic health.

For these reasons, I have introduced S.1506 with Senators John Cornyn (TX) and Kay Bailey Hutchison (TX). This bipartisan legislation would stop the IRS from moving ahead with expanded reporting mandates for NRA deposit interest. As of today, the legislation has 17 co-sponsors, including various members of the Senate Finance and Banking Committees. Congressmen Bill Posey (FL) and Gregory Meeks (NY) have introduced identical legislation in the House of Representatives, H.R. 2568.

These measures have been endorsed by a variety of stakeholders, including: the American Bankers Association, the California Bankers Association, the Credit Union National Association, the Center for Freedom & Prosperity, the Conference of State Bank Supervisors, the Florida International Bankers Association, the Florida Bankers Association, the Financial Services Roundtable, the Independent Community Bankers Association, the National Association of Federal Credit Unions, the National Taxpayers Union, the Small Business & Entrepreneurship Council, and the United States Chamber of Commerce. I will continue working with my colleagues in Congress to shed light on the negative consequences of REG-146097-09.

Conclusion

REG-146097-09 is an unnecessary mandate that would overturn decades of well-established tax policy and impose a disproportionate burden on Florida at a time when our economy is struggling. Previous proposals released in 2001 and 2002 were never implemented because a sweeping coalition of members of Congress and stakeholders expressed their strong concerns that increased NRA reporting would hurt the economy and is not necessary to enforce U.S. tax law.

I urge the Administration to permanently withdraw REG-146097-09 and immediately send a signal to international investors that the United States remains open for business. I thank the Subcommittee for its interest in this important issue and for the opportunity to submit testimony.

Citations for Senator Marco Rubio - Written Testimony Before the House Financial Services Subcommittee on Financial Institutions and Consumer Credit

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[i] Mitchell, Daniel J. *Who Writes the Law: Congress on the IRS?* (February 15, 2003). http://freedomandprosperity.org/2003/publications/who-writes-the-law-congress-or-the-irs/

[ii] Bureau of Economic Analysis, U.S. Department of Commerce. *U.S. Net International Investment Position at Yearend 2010*. (June 28, 2011). http://www.bea.gov/newsreleases/international/intinv/2011/pdf/intinv10.pdf.

[iii] Cardwell, J. Thomas, Commissioner. *Florida Office of Financial Regulation Re: Supplemental Material, Notice of Proposed Rulemaking 146097-09*. (May 9, 2011).

[iv] Sanchez, Alex. *A Wrong Time to Drive Foreign Deposits Away*. American Banker. (September 1, 2011). http://www.americanbanker.com/magazine/121_9/a-wrong-time-to-drive-foreign-deposits-away-1041371-1.html?zkPrintable=true

[v] Internal Revenue Service. *Notice of proposed rulemaking: Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens.(*August 2, 2002). http://www.irs.gov/pub/irs-regs/13325402.pdf.

[vi] Small Business Administration Office of Advocacy. *Letter Re: Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens.* (November 14, 2002). http://archive.sba.gov/advo/laws/comments/irs02_1114.html.

[vii] Cochran, III, Jay. *An Economic Analysis of the Proposed IRS Rule Governing the Reporting of Deposit Interest Paid to Nonresident Aliens*. (March 9, 2004). http://mercatus.org/sites/default/files/publication/Deposit%20Interest.pdf.

[viii] Institute for Research on the Economics of Taxation. *Congressional Advisory: Proposed IRS Regulation a Threat to Foreign Investment, U.S. Banks, the Dollar, and the Economy*. (November 12, 2002). http://iret.org/pub/ADVS-142.PDF.

[ix] Powell, Donald. *Letter to the Honorable Kenneth W. Dam, Deputy Secretary, Department of Treasury*. (January 2, 2003). http://archive.freedomandprosperity.org/fdic.pdf.

[x] Florida House of Representatives Delegation. *Letter to President Obama*. (March 2, 2011). http://posey.house.gov/UploadedFiles/IRS-DelegationLetter-March3-2011.pdf

[xi] Internal Revenue Service. *Notice of Proposed Rulemaking; Notice of Public Hearing; and Withdrawal of Previously Proposed Rulemaking Guidance on Reporting Interest Paid to Nonresident Aliens*. (February 22, 2011). http://www.irs.gov/irb/2011-08_IRB/ar13.html

[xii] American Bankers Association. *Re: IRS Proposed Regulations on Reporting Interest Paid to Nonresident Alien Individuals*. (April 7, 2011). http://www.aba.com/aba/documents/news/NRaliens4811.pdf.

[xiii] Congressman Charles Boustany (R-LA). *Letter to the Honorable Timothy Geithner*. (September 27, 2011). http://waysandmeans.house.gov/UploadedFiles/Letter_on_NRA_taxation_final.pdf

September 20, 2011

The Honorable Bill Posey
United States House of Representatives
120 Cannon HOB
Washington, D.C. 20515
Via electronic mail

Dear Congressman Posey:

On behalf of the Small Business & Entrepreneurship Council (SBE Council) and our nationwide membership of 100,000 small business owners and entrepreneurs, I am writing to thank you for introducing H.R. 2568 -- legislation to prevent the Treasury Secretary from expanding U.S. bank reporting requirements with respect to interest on deposits paid to nonresident aliens. SBE Council strongly supports this legislation.

For more than fifteen years SBE Council has voiced concern and opposition to the proposed reporting regulation in its various forms. Besides being bad for the U.S. economy and our nation's competitiveness, the regulation is pointless.

Collecting such information has nothing to do with the administration of U.S. tax laws. The unnecessary mandate would burden financial institutions (particularly smaller ones) with vast, new compliance costs. Small banks and financial institutions are already dealing with a tough economy, a more intrusive regulatory environment, and new rules from Dodd-Frank that will raise costs and squeeze profits. Our banks and credit unions do not need another new regulation – especially one with sizable costs, and no benefits.

Entrepreneurs continue to experience difficulty securing growth capital and loans for their businesses. Even in the best of times, U.S. policies need to support capital formation. However, these are hardly the best of economic times and the reporting requirement undermines efforts to make capital more available and affordable. Quite simply, the new regulation will drive capital away. Small banks that rely on these deposits to stay competitive and healthy will be hurt, and the small business owners who depend upon loans from these banks will suffer.

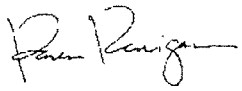
The economy is struggling to regain footing. Sustained growth depends upon a vibrant and job-creating entrepreneurial sector for full recovery. Undermining the availability of capital for small firms, as well as U.S. financial institutions that rely on foreign deposits, fully undercuts economic recovery and growth.

For the above reasons, and more, the regulation has been withdrawn in the past. Now, the stakes are much higher for our economy and for small business. H.R. 2568 is needed to prevent the Treasury Department from moving forward with this destructive requirement.

Let me add, this reporting mandate endangers the well being of foreign individuals who seek the safety and stability of the U.S. banking system to deposit their money. Exposing these individuals to personal risk in unstable regions throughout the world is unconscionable.

Please let SBE Council know how we can help you advance this important piece of legislation. Thank you for your leadership, and your support of America's small business owners and entrepreneurs.

Sincerely,



Karen Kerrigan
President & CEO

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

September 28, 2011

The Honorable Bill Posey
U.S. House of Representatives
Washington, DC 20515

Dear Representative Posey:

The U.S. Chamber of Commerce, the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region, thanks you for sponsoring H.R. 2568, which would prevent the Secretary of the Treasury from requiring U.S. banks and credit unions to report annually on interest paid on deposits held by nonresident aliens. Promulgation of such a regulation could adversely impact U.S. capital markets.

In 2002, the Treasury Department proposed similar regulations that were opposed by the Chamber because of the increased costs upon the financial services sector, as well as potential capital outflows from American banks. Treasury withdrew those proposed regulations, yet the proposal has recently been revived.

Given the fragile state of America's economic recovery, it is disturbing to see actions by the Treasury that could jeopardize deposits at U.S. banks and credit unions held by nonresident aliens. These deposits, which are not subject to U.S. taxes, are at risk of being abruptly withdrawn and future deposits deterred, which could lead to a reallocation of deposits out of the U.S. banking system and, thus, reduce lending to businesses.

Furthermore, complying with the proposed regulation places additional reporting requirements and expenses upon financial firms. Without any real benefit stemming from the collection of this information, imposition of this reporting requirement seems to be a solution in search of a problem.

The Chamber supports H.R. 2568, and looks forward to working with you on these issues and to securing the passage of this important legislation that would help to ensure the vibrancy of American capital markets.

Sincerely,

R. Bruce Josten

R. Bruce Josten

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