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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The IRS has withdrawn two previous proposals to expand these reporting requirements.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