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April 1, 2011

Department of the Treasury
Internal Revenue Service
CC:PA:LPD:PR (REG – 146097- 09)
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: IRS REG – 146097 09 Guidance on Reporting Interest Paid to Nonresident Aliens

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA) appreciates the opportunity to comment on the Internal Revenue Service's (IRS) notice of proposed rulemaking on extending information reporting requirements to include bank deposit interest paid to nonresident alien individuals who are residents of any foreign country. ICBA opposes this proposal because it is burdensome, costly and would have a negative impact on community banks, their customers and their communities.

The IRS first proposed regulations in 2001, which would require a bank to report annually interest paid to any nonresident alien individual. In 2002, after overwhelming opposition to the proposal, the Treasury Department and the IRS withdrew the regulations and proposed regulations that were narrower in scope, yet more burdensome. The agency issued a proposal requiring banks to report only on interest payments made to nonresident alien individuals that are residents of certain designated countries or, at the option of the payor, on interest payments to all nonresident alien recipients of bank deposit interest. Under the regulations currently in effect, banks must report interest paid to a U.S. person or a nonresident alien individual who is a resident of Canada. The IRS is now proposing to extend the information reporting requirement to include bank deposit interest paid to nonresident alien individuals who are residents of any foreign country.

ICBA strongly opposes this proposal. At a time when our country needs to return to a regulatory environment that promotes lending and economic growth, this proposal would have the unintended adverse consequence of significant

withdrawals of foreign deposits, thus reducing the funds available for lending in local communities as well as negatively impacting the liquidity, and therefore the safety and soundness, of the U.S. banking system.

This reporting requirement would likely result in significant shifts of foreign deposits to banks located in countries that give more reverence to depositors' privacy. It would not only discourage nonresident aliens from depositing their assets in U.S. financial institutions but also encourage the withdrawal of existing deposits. Foreign deposits in U.S. banks are largely a function of the confidentiality, privacy, and stability of our banking system. These deposits are generally a stable source of funds, which banks use to support their lending activities. Such significant withdrawals, particularly in small and mid-sized banks in border states, would reduce the availability of capital needed for lending to consumers and small businesses. Reducing credit flow and thwarting economic development in these communities is contrary to the President's and Treasury's goal to stimulate lending to the small business sector, recharge our economy and create jobs.

Because nonresident alien individual interest payments on U.S. deposits are not subject to U.S. tax,¹ there is no direct benefit in requiring banks to report this interest income. Additionally, these burdensome methods are not necessary to achieve the purposes stated in the proposal, such as to help improve voluntary compliance by U.S. taxpayers. Oversight methods currently exist to verify possible tax avoidance, such as through false claims of alien status. Banks comply with strict documentation requirements to ensure that persons claiming exemptions from U.S. tax qualify for their tax-exempt status.² Compliance with these regulations for nonresident aliens is also open to audit and inspection by both the Internal Revenue Service and bank regulators at any time. Therefore, the benefits stated in the proposal can be more effectively achieved by less burdensome methods.

In the Supplementary Information of its proposed rule, the IRS states that this notice of proposed rulemaking will not have a significant economic impact on small entities. The IRS based its assessment on the assumption that the depository accounts affected by the proposed regulations, tend to be with larger financial institutions operating in the United States.³ The ICBA disagrees with the IRS's assessment and believes the depository accounts affected by this regulation tend to be geographically based – not based on the size of the institution. Significant foreign deposits are held in community banks and smaller institutions located along the U.S. border. These institutions would be severely impacted by these proposed regulations.

The IRS also states that there will be no change in the collection of information because banks are already required to gather the underlying information from

¹ U.S. Code section 871 (i)

² Treasury Reg. Sections 1.6049-5(b)(12)

³ 76 Federal Register 5 (7 January 2011), pp. 1107

nonresident aliens on IRS Form W-8.⁴ Again, ICBA disagrees with this assessment. While banks collect certain information on IRS Form W-8, that information is limited and may not include certain information that may become required in the proposed new collection, such as taxpayer identification numbers. Furthermore, the frequency of information collection would also be increased significantly. While the proposed regulations would require banks to collect information and report annually on nonresident aliens, banks are required to collect information and complete IRS Form W-8 once, if a taxpayer identification number is provided, and every three years if no taxpayer identification number is provided. Contrary to the IRS's statement, this proposal is a significant change in the collection of information from the current reporting requirement.

Thank you for the opportunity to comment. If you have any questions or need additional information, please feel free to contact me by telephone at 202-659-8111 or by e-mail at lilly.thomas@icba.org.

Sincerely,

/s/

Lilly Thomas
Vice President and Regulatory Counsel

⁴ Id.