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April 19, 2023

The Honorable Janet Yellen  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Daniel Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable Lily Batchelder  
Assistant Secretary (Tax Policy)  
Office of Tax Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Jason Smith  
Chairman  
Ways and Means Committee  
United States House of Representatives  
1102 Longworth House Office Building  
Washington, DC 20515

Ron Storhaug  
Deputy Assistant Secretary  
(Legislative Affairs, Tax and Budget)  
Office of Legislative Affairs  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Holly O. Paz  
Acting Commissioner  
Large Business & International Division  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Lindsey Kitzinger  
Acting International Tax Counsel  
Office of Tax Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

RE: Regulatory treatment to improve FATCA compliance and address issues of bank and financial account lockout.

Dear Secretary Yellen, Commissioner Werfel, Assistant Secretary Batchelder, Chairman Smith, Deputy Assistant Secretary Storhaug, Acting Commissioner Paz and Acting International Tax Counsel Kitzinger,

[American Citizens Abroad, Inc.](#) (ACA) is a leading advocacy organization representing US citizens living and working overseas. Headquartered in Washington, DC, ACA is nonpartisan, non-profit (section 501(c)(4)), with a 40-plus-year history of advocating on behalf of the community of Americans living and working overseas. Alongside ACA is its sister charitable (section 501(c)(3)) research and education organization [American Citizens Global Foundation](#) (ACAGF).



ACA is once again requesting that the US Treasury consider regulations to alleviate the burdensome reporting requirements and fall out from the Foreign Account Tax Compliance Act (FATCA) that locks-out many US citizens from maintaining bank accounts and financial investment accounts overseas in the foreign jurisdictions where they are legitimate residents. These accounts are not “off-shore” for US citizens who are legitimate residents in these countries and should be viewed differently than US citizens resident in the United States and holding accounts in foreign jurisdictions which should clearly be considered “off-shore.”

ACA understands the US Treasury Department’s interest in combating tax evasion through legislation that requires US citizens to report on off-shore financial accounts. However, ACA’s recent research estimates that there are 5.2 million (4 million non-military and 1.2 military) US citizens living and working overseas who, in order to live their day to day lives, need to have banking and financial accounts to manage their affairs.<sup>1</sup> For these individuals a bank or investment account in the country in which they are legitimately resident is not an “off shore” account. These accounts are being used to pay rent, monthly bills and invest in pension funds and savings vehicles. These financial accounts, and transactions linked to them, cannot in any way be characterized as facilitating tax evasion. ACA’s research is supported by a recent IRS study [“The Offshore World According to FATCA: New Evidence on the Foreign Wealth of U.S. Households”](#) which supports that the majority of US citizens with overseas account are immigrants to the U.S. or Americans working abroad and they generally hold relatively small accounts that rarely are in tax havens.

ACA is aware that the US Treasury Department has heard of the financial account lock-out that is transpiring because of US citizens having to report their foreign financial accounts on a Foreign Account Tax Compliance (FATCA) form 8938 and having their financial institutions subsequently provide a matching filing for these accounts. Many of these foreign financial institutions, given the penalty assessments associated with harboring an undeclared US citizen, have simply decided that the easiest way to manage their risk is to deny US citizens financial services. This policy affects all US citizens living and working overseas including many accidental Americans who simply because they were born in the United States (but may have never lived there for any significant time) or acquired US citizenship from a US parent (some are not even aware that they are US citizens because of this). The problem is exacerbated for those US citizens who may have never acquired a US Social Security number and face procuring one from overseas through the US Social Security Administration and/or the Federal Benefits Units (FBUs) located at US Embassies and Consulates. Not a straightforward, easy, or expedient process under normal circumstances however, now complicated by the lack of customer servicing at many of the FBUs in a post-COVID world.

ACA is appreciative of the efforts of the US Treasury is addressing the forementioned concerns evidenced in the recent announcement of Notice 2023-11 which deals with technical reporting issues relating to FFIs/banks and the governments of Model 1 IGA jurisdictions, and the handling of the lack of Tax Identification Numbers (TINs), in most cases a Social Security number. Notice 2023-11 builds on previous guidance that the US Treasury has issued in relation to the problem of missing TINs. Although these efforts will assist both Foreign Financial

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<sup>1</sup> ACA/DEG Analysis of Revenue Effects of Residence-based Taxation:  
<https://www.americansabroad.org/articles/aca-deg-analysis-of-revenue-effects-of-residence-based-taxation/>



Institutions (FFIs) and taxpayers, ACA believes that adopting a “safe harbour” ruling would put a stop to the financial lock-out problems and give foreign financial institutions the confidence they need to maintain and accept US citizen clients.

ACA has long advocated for the adoption its “safe harbour” recommendation of [Same Country Exemption \(SCE\)](#), beginning in [2013](#) and again in [2016](#) when ACA wrote to the US Treasury recommending the application of Same Country Exemption (SCE). This would remove from the reporting of both Foreign Financial Institutions (FFIs) through the IRS and the IGAs and individuals (Form 8938), bank and investment accounts in the country where they are legitimately resident thus alleviating the many problems US citizens overseas face due to FATCA reporting. ACA believes that SCE is an easy to adopt regulation that mirrors in concept what other organizations and groups and the National Taxpayer Advocate (NTA), in her recent [Report to Congress](#), have suggested. Similar SCE legislation was introduced in the 117<sup>th</sup> Congress by Representative Carolyn Maloney ([H.R.5799 Overseas Americans Financial Act](#)). The goal in these "safe harbour" recommendations is to remove or ease from the reporting regime individuals who clearly are not presenting a tax compliance risk and are simply in need of in-country financial tools; pensions, mortgages, savings and checking accounts, to manage their affairs. ACA's suggestion for Same Country Exemption would not increase the risk of tax evasion as individuals would need to attest under penalty of perjury that they are US tax compliant and only their in-country (country of their residence) financial accounts would be exempt from reporting. The US Treasury Department could easily adopt SCE through regulations giving immediate relief to millions of US citizens overseas currently facing financial lock-out and complex and confusing filing requirements due to the overlap of FATCA reporting with the Financial Bank Account Report (FBAR) reporting.

ACA's recent research fielded with District Economic Group (DEG) and presented earlier this year to the Office of Tax Analyst (OTA), estimates the community of overseas taxpayers (non-military) at 4 million as noted earlier. Our research is critical to understanding the community of US citizens living and working overseas as it documents the asset and investment make-up and tax reporting behavior of the community. Our research supports that the ultimate corrective measure for all the tax and compliance issues facing US citizens living and working overseas is a move to [Residence-based taxation \(RBT\)](#).

ACA strongly believes that the Congress and offices of the Administration should support the call for hearings on all the tax and compliance issues facing US citizens overseas. Only in this manner can the Congress and the Administration understand the extent of the problems and the issues and create legislation and regulations with corrective measures that address the problems. The need for a complete airing of the problems is reinforced by several hearings where the IRS is unable to define the number of US citizens overseas, the exact number of tax returns filed by these citizens nor the number that should be filing from overseas. Most distressing are the comments by Department of Justice (DOJ) at hearings before the Supreme Court ([Bittner vs. IRS](#)) that the “*FBAR filing requirement of \$10,000 (cumulative) affects very few US citizens living and working overseas*”. Although FBAR is a separate issue from FATCA, the lack of understanding that FBAR filings affect nearly every US citizen living and working overseas indicates that lack of data and information that the government so desperately needs to evaluate legislative and regulatory provisions affecting this community.



Congressman Holding at the House Ways and Means Committee hearings held on May 9<sup>th</sup> 2017, "[Understanding the Tax Gap and Taxpayer Noncompliance](#)", noted that in evaluating the tax gap there was a need to "fully understand the problems faced by Americans around the world and craft solutions that simplify the code and encourage compliance for Americans overseas." Decisions that affect the community need to be based on a full understanding of the community; who they are, where are they located, what jobs they hold, etc.

Congressman Holding's questioning of the Chief Research and Analytics Officer of IRS, Benjamin Herndon, as well as Treasury Inspector General for Tax Administration (TIGTA), J. Russell George, indicates that US Congressional and Administrative offices lack accurate data and information on the community of US Citizens living and working overseas.

Throughout the past 116<sup>th</sup> and 117<sup>th</sup> Congress ACA has called on the Chairman and the House Ways & Means Committee to hold hearings, and we will continue to do so in the new 118<sup>th</sup> Congress under the leadership of Chairman Jason Smith. Through ACA's write-in campaign, past Chairman Neal and the Committee received hundreds of thousands of requests from the community to hold hearings. Never in the history of the US Congress have hearings been held specifically on all the tax and compliance issues for this community of US citizens 4 million strong. It is time for this community's issues to be heard by their elected officials and put on record with the Congress.

Again, ACA encourages the US Treasury to revisit Same Country Exemption as a corrective measure to the problems of FATCA. Your offices have been presented with ACA's 2017 and 2021 research which will be invaluable in assisting them in evaluating an SCE type regulatory change. We urge your offices to add your voices to the call for hearings as well.

Regards.

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Executive Director  
American Citizens Abroad

Charles Bruce  
Legal Counsel  
American Citizens Abroad

CC: Representative Dina Titus  
Chair, Americans Abroad Caucus

Representative Donald S. Beyer, Jr.  
Member, Americans Abroad Caucus

Representative Maria Salazar  
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Erin M. Collins  
National Taxpayer Advocate