

Internal Revenue Service (IRS)

OMB Number: 1545–2169.

Type of Review: Extension without change to a currently approved collection.

Title: NOTICE–2010–30 (NOTICE 107632–10) Transitional Guidance for Taxpayers Claiming Relief Under the Military Spouses Residency Relief Act for Taxable Year 2009.

Abstract: This notice provides relief for tax year 2009 to civilian spouses of servicemembers who claim the benefits of the taxation provisions under the Military Spouses Residency Relief Act (“MSRRA”). This notice provides certain civilian spouses working in a U.S. territory during 2009 but claiming a residence or domicile in one of the 50 States or the District of Columbia for paying the tax due for their 2009 Federal income tax returns.

Additionally, this notice provides certain civilian spouses working in one of the 50 States or the District of Columbia during 2009 but claiming a residence or domicile in a U.S. territory under MSRRA with guidance on filing claims for refund of Federal income taxes that their employers withheld and remitted to the IRS or estimated tax payments the taxpayers paid to the IRS during 2009.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 6,200 hours.

OMB Number: 1545–1610.

Type of Review: Revision to a currently approved collection.

Title: Application for Reward for Original Information.

Form: 5500 and schedules.

Abstract: Form 5500 is an annual information return filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 320,000 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

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DEPARTMENT OF THE TREASURY**Determination of Foreign Exchange Swaps and Forwards**

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Exchange Act (“CEA”), as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),¹ permits the Secretary of the Treasury to issue a written determination exempting foreign exchange swaps, foreign exchange forwards, or both, from the definition of a “swap” under the CEA. The Secretary has made no determination whether an exemption is warranted. Although not required under the Dodd-Frank Act, the Department of the Treasury invites comment on whether such an exemption for foreign exchange swaps, foreign exchange forwards, or both, is warranted and on the application of the factors that the Secretary must consider in making a determination regarding these instruments.

DATES: Written comments must be received on or before November 29, 2010, to be assured of consideration.

ADDRESSES: *Submission of Comments:* Please submit comments electronically through the Federal eRulemaking Portal—“Regulations.gov.” Go to <http://www.regulations.gov> to submit or view public comments. The “How to Use this Site” and “User Tips” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

Please include your name, affiliation, address, e-mail address and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Office of Financial Institutions Policy, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–2730, ofip@do.treas.gov.

SUPPLEMENTARY INFORMATION: Section 721 of the Dodd-Frank Act² amends section 1a of the CEA which, in relevant part, defines the term “swap” under the

CEA. Section 1a(47)(E) of the CEA authorizes the Secretary of the Treasury to make a written determination that “foreign exchange swaps”³ or “foreign exchange forwards,”⁴ or both, should not be regulated as swaps under the CEA,⁵ as amended by the Dodd-Frank Act, and are not structured to evade the Dodd-Frank Act in violation of any rule promulgated by the Commodity Futures Trading Commission (“CFTC”).⁶

In making the determination whether to exempt foreign exchange swaps and/or foreign exchange forwards,⁷ the Secretary of the Treasury must consider the following factors:

(1) Whether the required trading and clearing of foreign exchange swaps and foreign exchange forwards would create systemic risk, lower transparency, or threaten the financial stability of the United States;

(2) Whether foreign exchange swaps and foreign exchange forwards are already subject to a regulatory scheme that is materially comparable to that established by the CEA for other classes of swaps;

(3) The extent to which bank regulators of participants in the foreign exchange market provide adequate supervision, including capital and margin requirements;

(4) The extent of adequate payment and settlement systems; and

(5) The use of a potential exemption of foreign exchange swaps and foreign exchange forwards to evade otherwise applicable regulatory requirements.⁸

The Treasury Department is soliciting comments on the above factors, and any relevant information that may bear on the regulation of foreign exchange swaps and foreign exchange forwards as “swaps” under the CEA, to assist in the Secretary’s consideration of whether to issue a determination under section 1a(47) of the CEA.

³ 7 U.S.C. 1a(25) (“a transaction that solely involves—(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.”).

⁴ 7 U.S.C. 1a(24) (“a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.”).

⁵ 7 U.S.C. 1(a)(47)(E)(i)(I).

⁶ 7 U.S.C. 1(a)(47)(E)(i)(II).

⁷ Notwithstanding any such determination by the Secretary of the Treasury, all foreign exchange swaps and forwards must be reported to a swap data repository, and swap dealers and major swap participants that are parties to foreign exchange swaps and forwards transactions must conform to business conduct standards pursuant to the requirements of the Dodd-Frank Act and implementing regulations thereunder.

⁸ 7 U.S.C. 1b(a).

¹ Public Law 111–203, 124 Stat. 1376 (2010).

² Public Law 111–203, 124 Stat. 1376 (2010).

In addition, the Treasury Department is particularly interested in comments on the questions set forth below:

(1) Are foreign exchange swaps and/or foreign exchange forwards qualitatively different from other classes of swaps in a way that makes them ill-suited for regulation as “swaps” under the CEA?⁹ Are there similarities between foreign exchange swaps and/or foreign exchange forwards and other products not defined as swaps under the CEA?

(2) Are there objective differences between swaps and foreign exchange swaps and/or foreign exchange forwards that warrant an exemption for either or both of these instruments?¹⁰

(3) Are there objective differences between long-dated and short-dated foreign exchange forwards and swaps such that one class may be less suited to regulation as “swaps” under the CEA than the other? Is the same true for dealer to dealer transactions versus transactions where one counterparty is a non-dealer? Similarly, does one or more of the above-referenced, five statutory factors support the application of certain requirements set forth in the CEA, but not others (e.g., centralized clearing, but not exchange trading), to foreign exchange swaps and/or foreign exchange forwards?

(4) What are the primary risks in the foreign exchange swaps and forwards market, how significant are these risks, and how are these risks currently managed by market participants? Would centralized clearing and exchange trading address these risks? To what extent do current payment-versus-payment settlement arrangements address settlement risk?

(5) To what extent is counterparty credit risk a significant concern in the foreign exchange swaps and forwards markets? If so, to what extent do current market practices (including netting and bilateral collateral support arrangements) mitigate these risks? What evidence, particularly during the period between 2007 and present, illustrate how current market practices have either addressed, or failed to respond, to these risks?

(6) Are there ways to mitigate the risks posed by the trading of foreign exchange swaps or foreign exchange forwards without subjecting these instruments to regulation under the CEA?

(7) Are there existing safeguards or systems that should be enhanced in order to protect against systemic or other risks in the foreign exchange swaps and forwards markets? What considerations are relevant to the application of Title VIII of the Dodd-Frank Act to the foreign exchange swaps

and forwards markets, specifically to enhance supervision, strengthen risk management, and lower systemic risk?

(8) Given that the Dodd-Frank Act requires all foreign exchange swaps and forwards be reported to a swap data repository, what is the current standard or practice in the foreign exchange market for reporting trades?

(9) What would be the likely effects of mandatory U.S. clearing of foreign exchange swaps and/or forwards on foreign exchange market liquidity in the U.S. dollar? What would be the impact on the operations of U.S. end-users and U.S. dealers?

(10) What other factors should the Secretary of the Treasury consider in determining whether to exempt foreign exchange swaps and/or forwards pursuant to section 1a(47) of the CEA?

In addition, commenters are encouraged to submit supporting materials, including relevant transactional data, that would assist the Secretary's consideration of the issues relating to an exemption for foreign exchange swaps or foreign exchange forwards, or both, under section 1a(47) of the CEA.

Dated: October 19, 2010.

Mary J. Miller,

Assistant Secretary for Financial Markets.

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⁹ 7 U.S.C. 1b(b)(1).

¹⁰ 7 U.S.C. 1b(b)(2).