

Investor Groups Ask IRS to Suspend E-File Rule for Foreign Filers

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By William Hoffman

Recently announced changes to the IRS's electronic filing system may make proposed regulations to expand e-filing unworkable for some qualified intermediaries and foreign financial institutions, an IRS public hearing was told.

The proposed e-filing regulations ([REG-102951-16](#)), in combination with the new Filing Information Returns Electronically (FIRE) system access rules, "will add onerous requirements for QIs and [FFIs] that have filing obligations to the IRS," Adrian Walrath of the Investment Industry Association of Canada (IIAC) said in testimony at the [September 22 hearing](#).

The proposed regs would expand electronic filing for many information returns, including Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," and Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," and lower the mandatory e-filing threshold of information returns to 100 in 2022, and to 10 in 2023.

"If implemented as drafted, a significant number of QIs and [FFIs] would not be able to file forms such as the 1042-S and 1099 electronically" as required under the proposed rules, Walrath said in a September 21 letter to the IRS.

[Starting September 26](#), new applicants to the FIRE system and taxpayers needing new transmitter control codes to e-file information returns to the IRS will need to procure an IRS Secure Access account. That account requires identity authentication through Social Security numbers, individual taxpayer identification numbers, and U.S.-based phone numbers and addresses, which many foreign individuals and corporations may have problems securing.

Non-U.S. users of the FIRE procedure should be exempted from the Secure Access process until the IRS can accommodate international users, the Securities Industry and Financial Markets Association (SIFMA) said in a [September 21 letter](#) to the IRS on the e-filing changes that were brought on by the [Taxpayer First Act](#).

No Other Solution?

The lack of access to the FIRE system also affects compliance with the new IRS requirement for transmitter control codes to be revalidated in late summer or early fall of 2022, the IIAC's

letter said.

“The same issue with respect to the requirements for new users to have a U.S. TIN, U.S. phone number, U.S. financial account and other personal information will apply to prevent revalidation for existing users,” the letter said.

Both SIFMA and the IIAC noted that the IRS in previous conversations recommended that taxpayers seek third-party assistance or software solutions to their FIRE and Secure Access issues.

“SIFMA does not believe it is feasible to require all non-U.S. filers to engage outside parties in order to ‘file on their behalf’ where requirements of the enhanced [Secure Access] Account process cannot be satisfied,” the broker-dealers’ association responded.

“Our members are not aware of any vendor or technology solutions at this time that address the new FIRE requirements” while complying with the proposed rules, the IIAC added.