

EXPANDED EXAMINATION OVERVIEW AND PROCEDURES FOR PERSONS AND ENTITIES

Nonresident Aliens and Foreign Individuals — Overview

Objective. *Assess the adequacy of the bank’s systems to manage the risks associated with transactions involving accounts held by nonresident aliens (NRA) and foreign individuals, and management’s ability to implement effective due diligence, monitoring, and reporting systems.*

Foreign individuals maintaining relationships with U.S. banks can be divided into two categories: resident aliens and nonresident aliens. For definitional purposes, an NRA is a non-U.S. citizen who: (i) is not a lawful permanent resident of the United States during the calendar year and who does not meet the substantial presence test,²⁶⁶ or (ii) has not been issued an alien registration receipt card, also known as a green card. The IRS determines the tax liabilities of a foreign person and officially defines the person as a “resident” or “nonresident.”

Although NRAs are not permanent residents, they may have a legitimate need to establish an account relationship with a U.S. bank. NRAs use bank products and services for asset preservation (e.g., mitigating losses due to exchange rates), business expansion, and investments. The amount of NRA deposits in the U.S. banking system has been estimated to range from hundreds of billions of dollars to about \$1 trillion. Even at the low end of the range, the magnitude is substantial, both in terms of the U.S. banking system and the economy.

Risk Factors

Banks may find it more difficult to verify and authenticate an NRA accountholder’s identification, source of funds, and source of wealth, which may result in BSA/AML risks. The NRA’s home country may also heighten the account risk, depending on the secrecy laws of that country. Because the NRA is expected to reside outside of the United States, funds transfers or the use of foreign automated teller machines (ATM) may be more frequent. The BSA/AML risk may be further heightened if the NRA is a politically exposed person (PEP). Refer to the expanded examination procedures, “Politically Exposed Persons,” page 294, for further information.

²⁶⁶ A foreign national is a resident alien if the individual is physically present in the United States for at least 31 days in the current calendar year and present 183 days or more based on counting: all days present during the current year, plus one-third of the days present in the preceding year, plus one-sixth of the days present in the second preceding year. Certain days of presence are disregarded, such as (i) days spent in the United States for a medical condition that developed while the foreign national was present in the United States and unable to leave, (ii) days regular commuters spend traveling to or from Canada or Mexico, (iii) a day of less than 24 hours spent while in transit between two locations outside the United States., and (iv) days when the foreign national was an exempt individual. The individual is considered a resident alien for federal income and employment tax purposes from the first day of physical presence in the United States in the year that the test is satisfied. Refer to the [IRS Web site](#).

Risk Mitigation

Banks should establish policies, procedures, and processes that provide for sound due diligence and verification practices, adequate risk assessment of NRA accounts, and ongoing monitoring and reporting of unusual or suspicious activities. The following factors are to be considered when determining the risk level of an NRA account:

- Accountholder's home country.
- Types of products and services used.
- Forms of identification.
- Source of wealth and funds.
- Unusual account activity.

NRA customers may request W-8 status for U.S. tax withholding. In such cases, the NRA customer completes a W-8 form, which attests to the customer's foreign and U.S. tax-exempt status. While it is an IRS form, a W-8 is not sent to the IRS, but is maintained on file at the bank to support the lack of any tax withholding from earnings.²⁶⁷

The bank's CIP should detail the identification requirements for opening an account for a non-U.S. person, including an NRA. The program should include the use of documentary and nondocumentary methods to verify a customer. In addition, banks must maintain due diligence procedures for private banking accounts for non-U.S. persons, including those held for PEPs or senior foreign political figures. Refer to the core overview and examination procedures, "Private Banking Due Diligence Program (Non-U.S. Persons)," pages 125 and 130, respectively, and the expanded overview and examination procedures, "Politically Exposed Persons," pages 290 and 294, respectively.

²⁶⁷ Additional information can be found at www.irs.gov/formspubs. Also refer to IRS Bulletin 515 *Withholding of Tax on Nonresident Aliens and Foreign Entities*.