

Supporting Statement  
OMB Control Number 1506-0009

Reports of Foreign Financial Accounts Regulations and FinCEN Form 114

1. Circumstances Necessitating Collection of Information.

The Bank Secrecy Act (“BSA”), Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury (the Secretary), among other things, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. Regulations implementing Title II of the BSA, (codified at 31 U.S.C. 5311-5330) appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary has determined that the records and reports required by the BSA have a high degree of usefulness in criminal, tax, or regulatory investigations. All of this required information aids in creating a paper trail to trace funds through the financial system; the information is essential for tracing drug and other illegal proceeds back to their illegal sources and helping to identify the sources, volume, and movements of domestic and international currency. The information collected and retained under the regulation addressed in this notice assists Federal, state, and local law enforcement as well as regulatory authorities in the identification, investigation, and prosecution of money laundering and other matters.

Under 31 U.S.C. 5314, the Secretary is authorized to require any “resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.” The term “foreign financial agency” encompasses the activities found in the statutory definition of “financial agency,” which means, in pertinent part, “a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.” The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out section 5314.

Pursuant to the authority in section 5314, 31 CFR 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. Section 1010.350 provides certain exceptions from reporting. FinCEN Form 114 (the FBAR) is the form used to file the required information. The recordkeeping requirements associated with foreign financial accounts required to be reported under section 1010.350 are set forth in 31 CFR 1010.420. Specifically, filers must retain records of such accounts for a period of 5 years and make the records available for inspection as authorized by law.

## 2. Method of Collection and Use of Data.

The FBAR is filed electronically through the FinCEN BSA E-Filing system. FBARs can be filed as individual, discrete reports or as a batch of multiple reports.

The information collected and retained under this regulation assists Federal, state and local law enforcement in the identification, investigation, and ultimately the prosecution of individuals involved in a variety of financial crimes. Without this information the proceeds from illegal activity and unreported tax income would be difficult to detect, could become more easily "legitimized" in the U.S. economy, and could be more easily exported to other countries or offshore bank havens. All of these factors would result in greater profits for the criminal elements involved and preclude law enforcement from effectively attacking the prime motivation for all criminal activity.

## 3. Use of Improved Information Technology to Reduce Burden.

The FBAR is filed electronically through the FinCEN BSA E-Filing system. FBARs can be filed as individual, discrete reports or as a batch of multiple reports.

## 4. Efforts to Identify Duplication.

The respondents are the only source of this information. Certain foreign financial account information reported on the FBAR is also reportable to the Internal Revenue Service ("IRS") on Form 8938 for purposes of the Foreign Account Tax Compliance Act ("FATCA"). However, FinCEN does not have the statutory authority to access FATCA information. For that reason, it is not possible to avoid any potential duplication.

## 5. Methods to Minimize Burden on Small Businesses or Other Small Entities.

The reporting and recordkeeping requirements of these regulations and form should not pose any adverse impact on small businesses because the majority of the requirements are directed at individuals and businesses that have foreign financial accounts that exceed \$10,000 at any time during the reporting period. Nonetheless, should a small business have to report, the recordkeeping impact should be minimal as these businesses generally retain these records as part of their regular business practice.

With respect to the impact on individuals, the information required to be reported on the FBAR is basic information U.S. persons will have generally received on account statements from the foreign financial institutions where the accounts are opened and maintained. Those statements will provide a U.S. person with the information about an account needed to file the FBAR. No special accounting or legal skills will be necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR.

## 6. Consequences to the Federal Government of Not Collecting the Information.

Because the information is collected annually and identifies foreign financial accounts owned by individuals and organizations, a failure to collect this information could hamper law enforcement efforts to detect illegal activity while it is still ongoing and discernible. The timely reporting of this information provides law enforcement with important investigative leads in order to take appropriate action, including tracing criminal proceeds, gathering additional evidence, seizing funds, and stopping the movement of funds before the criminal elements have changed their schemes for disposing of the profits of their illegal activity.

7. Special Circumstances Requiring Data Collection to be Inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

The recordkeeping requirements specify that individuals and entities retain records for five years. This retention period is necessary to substantiate violations that have occurred within the Statute of Limitations (5 or 6 years).

8. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements.

On December 20, 2018, FinCEN published in the *Federal Register* a notice inviting public comment for 60 days on the renewal of FBAR reporting and recordkeeping requirements. (See 83 FR 65394). There was one response to the request for comment. The response, summarized below, does not address the burden estimate, or offer a different estimate of the burden.

- a. The respondent believes that the FBAR requirement is difficult to interpret, as a taxpayer is required to determine what qualifies as an account, what qualifies as a financial interest, what qualifies as signature authority, and how to calculate the maximum account value in accordance with the regulation. In an effort to clarify the FBAR regulatory requirements, FinCEN published line-by-line item instructions for completing the FBAR on FinCEN's website. The line item instructions include a definition of financial account, foreign financial account, financial interest, and signature authority. The line item instructions also outline the steps to calculate the maximum account value for a foreign financial account. See <https://www.fincen.gov/sites/default/files/shared/FBAR%20Line%20Item%20Filing%20Instructions.pdf>.
- b. The respondent felt that the collection was redundant, as the respondent feels the same information is required on IRS Form 8938 and IRS Form 3520. The respondent recommended creating a single-filing requirement that covers both IRS and FinCEN reporting. Certain foreign financial account information reported on the FBAR is also reportable to the IRS on Form 8938 for purposes of FATCA. However, FinCEN does not have the statutory authority to access FATCA information. For that reason, it is not possible to avoid any potential duplication. Further, different types of foreign financial assets are reportable, and different dollar thresholds are applicable for reporting on the FBAR, as opposed to reporting for purposes of FATCA. The IRS website includes a detailed comparison of the similarities and differences in FBAR reporting versus FATCA

reporting. See <https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements>.

- c. The respondent alternatively suggested a simplified FBAR filing procedure for taxpayers who hold only basic foreign accounts. As discussed above, the information required to be reported for all types of foreign financial accounts on the FBAR is basic information U.S. persons will have received on account statements from the foreign financial institutions where the accounts are opened and maintained. Those statements will provide a U.S. person with the information about an account needed to file the FBAR. No special accounting or legal skills will be necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR. The account information reported on the FBAR provides law enforcement and regulatory agencies critical information to aid in criminal and regulatory investigations involving tax evasion, money laundering, terrorism and other crimes.

These suggestions for modifications to the applicable regulations will be included in FinCEN's regulatory reform project review and FinCEN will continue to evaluate ways to clarify FBAR reporting requirements further and minimize burden to the public.

9. Explanation of Decision to Provide Any Payment or Gift to Respondents.

No payments or gifts are made to respondents.

10. Assurance of Confidentiality of Responses.

There is no assurance of confidentiality; however, the information contained in BSA reports is subject to stringent dissemination restrictions and is not subject to disclosure under the Freedom of Information Act.

11. Justification of Sensitive Questions.

There are no questions of a sensitive nature in the collection of information. The information requested concerns the identification of foreign financial accounts owned by individuals and businesses. 31 U.S.C. 5314 requires that reports contain the identity and address of participants in a transaction or relationship. Personally identifiable information, such as tax identification numbers and social security numbers, are necessary to identify individuals and entities that maintain foreign financial accounts reportable on the FBAR. Any personally identifiable information collected under the BSA is strictly controlled as outlined in FinCEN's Systems of Records Notice. [http://www.fincen.gov/foia/files/FinCEN\\_79\\_FR\\_20969.pdf](http://www.fincen.gov/foia/files/FinCEN_79_FR_20969.pdf)

12 & 13. Estimated Burden & Cost of Information Collection.

Frequency: Annually

Estimated Number of Respondents: 1,076,145.<sup>1</sup>

Estimated Number of Annual Responses: 1,076,145.

Estimate of Burden: The estimated average burden associated with the recordkeeping requirement in this rule will vary depending on the number of reportable accounts. We estimate that the recordkeeping burden will range from five minutes to sixty minutes, and that the average burden will be 30 minutes. The estimated average burden associated with the reporting requirement (FBAR form completion) will also vary depending on the number of reportable accounts and whether the filer will be able to take advantage of the exceptions provided in the rule. We estimate that the average reporting burden will range from approximately 15 minutes to 50 minutes and that the average reporting burden will be approximately 30 minutes. The total burden per response is estimated to be one hour.

- Estimated Total Annual Burden on Respondent: 1,076,145 hours (one hour per report).
- Estimates were based on time taken to read the instructions and complete the form.
- Estimated Burden Cost: Of the 1,076,145 FBARs filed in calendar year 2017, 1,021,832 were filed by individuals and 54,313 were filed by entities. FinCEN will not quantify the cost to individuals who file FBARs on their own behalf. For entities, FinCEN estimates the following annual burden cost: 54,313 hours X \$49.52<sup>2</sup> per hour = \$2,689,580.

Information Collection	# of Respondents	Annual # of Responses per Respondent	Total Responses	Hours per Response	Total Hours	Total Hours per FBAR Filed by an Entity	Labor Cost per Hour	Total Labor Costs
FBAR	1,076,145	1	1,076,145	1	1,076,145	54,313	\$49.52	\$2,689,580
<b>TOTAL</b>			<b>1,076,145</b>		<b>1,076,145</b>	<b>54,313</b>		<b>\$2,689,580</b>

#### 14. Estimated Annual Cost to the Federal Government.

Electronic processing cost to the Federal government for 1,076,145 responses X \$0.08 per response<sup>3</sup> = \$86,092.

#### 15. Reason for Change in Burden.

<sup>1</sup> The total number of FBARs reported for foreign financial accounts reported for calendar year 2017 is 1,076,145.

<sup>2</sup> The above Average Hourly Wage Rate is calculated from the May 2017 Bureau of Labor Statistics average hourly wage for “13-1041 Compliance Officer” of \$34.39, plus an additional 44% for benefits to produce a fully-loaded rate of \$49.52.

<sup>3</sup> The estimated cost per electronic response is calculated as part of an annual report FinCEN creates and provides to the Department of the Treasury and OMB, entitled the Cost per BSA Filing Transaction.

The total number of FBARs for foreign financial accounts reported for calendar year 2017 is 1,076,145. This adjustment in agency estimates reflects a reduction of 14,629 hours from the previously approved figures. The reduction represents a decrease in the number of FBARs filed in calendar year 2017, as compared to calendar year 2016. There were 1,090,774 FBARs filed in calendar year 2016.

16. Plans for Tabulation, Statistical Analysis, and Publication.

The information will not be tabulated or compiled for publication.

17. Request not to Display the OMB Expiration Date.

FinCEN believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading FBAR filers to believe that the forms sunset as of the expiration date. FBAR filers are not likely to be aware that FinCEN intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. Exceptions to the Certification Statement.

There are no exceptions to the certification statement.