

Supporting Statement
OMB Control Number 1506-0009

Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)

1. Circumstances Necessitating Collection of Information.

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.¹ Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.²

31 U.S.C. 5314 authorizes the Secretary 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 outside the United States of an entity that meets the statutory definition of “financial agency,”³ notably, “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, or a service provided with respect to money, securities, futures, precious metals, stone and jewels, or value that substitutes for currency.”⁴ The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out 31 U.S.C. 5314.

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.360, and 1010.420. 31 CFR 1010.350 generally requires each U.S. person having a financial interest in, or

¹ Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism. Section 6101 of the Anti-Money Laundering Act of 2020 added language further expanding the scope of the BSA but did not disturb these longstanding purposes.

² Treasury Order 180-01 (re-affirmed Jan. 14, 2020).

³ 31 U.S.C. 5312(b)(2).

⁴ 31 U.S.C. 5312(a)(1), as amended by section 6102(d)(1)(A) of the Anti-Money Laundering Act of 2020. The statute exempts from this definition any person acting for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member.

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 such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. The FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR), is used to file the information required by this section. The FBAR must be filed electronically with FinCEN.⁵ 31 CFR 1010.306(c) requires the FBAR to be filed for foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.⁶ No FBAR is required to be filed if the aggregate account value of foreign financial accounts maintained during the previous calendar year is below \$10,000.

31 CFR 1010.420 outlines the recordkeeping requirements associated with foreign financial accounts required to be reported under section 1010.350. Specifically, filers must retain records of such accounts for a period of five years and make the records available for inspection as authorized by law.⁷

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 containing multiple reports.

The information collected and retained under this regulation assists Federal, state and local law enforcement in tracing the proceeds of illegal activity and in identifying, investigating, and prosecuting individuals and entities involved in a variety of financial crimes.

3. Use of Improved Information Technology to Reduce Burden.

The BSA E-filing system supports electronic filing of BSA reports, including FBARs (either individually or in batches)⁸ through a FinCEN secure network. BSA E-filing provides a faster and more convenient, secure and cost-effective method for submitting BSA reports. Discrete and batch versions are available on the FinCEN BSA E-File website at <http://bsaefiling.fincen.treas.gov/main.html>. FinCEN also upgraded to the industry standard of XML file format for both discrete and batch filers of FBARs.

4. Efforts to Identify Duplication.

⁵ Formerly Form TD-F 90-22.1. FinCEN Report 114 can be completed by accessing FinCEN's BSA E-Filing System website at <http://bsaefiling.fincen.treas.gov/main.html>.

⁶ In accordance with section 2006(b)(11) of Public Law 114-41 the filing due date for the report is April 15 effective as of the 2016 reporting year. The statute permits the Secretary to extend the filing due date for up to 6 months. Filers who submit complete and accurate reports to FinCEN no later than October 15 of the year the report is due will be deemed to have timely filed. FinCEN issued a statement on its website in 2016 noting the FBAR date change as a result of the statutory change. FinCEN intends to revise the FBAR regulations at 31 CFR 1010.306(c) to reflect the statutory date change in the near term.

⁷ The penalties provided in the BSA apply to both the FBAR reporting and recordkeeping requirements.

⁸ In batch-filing, a filer submits a single electronic file containing several reports. In discrete-filing, the filer fills in an electronic form individually, using a data entry screen that FinCEN provides.

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, nor is FATCA information accessible to law enforcement in the same manner as the FBAR. For that reason, it is not possible to avoid any potential duplication. In addition, for the FBAR, the threshold for reporting is a cumulative value of \$10,000 in any accounts at any time during the year. For FATCA, the reporting thresholds are much higher.⁹

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

The reporting and recordkeeping requirements of these regulations and report 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 criminal elements can change their schemes for disposing of the profits of illegal activity.

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

⁹ Unmarried taxpayers: \$50,000 in assets on the last day of the year or \$75,000 at any time during the year (or \$200,000 and \$300,000 respectively for foreign residents). Married taxpayers (filing jointly): \$100,000 in assets on the last day of the year or \$150,000 at any time during the year (or \$400,000 and \$600,000 respectively for foreign residents).

Under 31 CFR 1010.420, FBAR filers must retain records relating to accounts required to be reported for a period of five years. This retention period is necessary in order to allow for verification of compliance with the reporting requirement and to keep available records that may be pertinent to other civil penalty actions that are subject to statutes of limitation longer than three years.

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

The 60-day notice was published on November 16, 2020.¹⁰ The notice requested public comments on the proposed renewal, without change, of currently approved information collections relating to the FBAR regulations and report. FinCEN received 90 public comments in response to the notice.

Almost all of the comments were on behalf of, or directly from, U.S. persons living abroad. The consistent theme in these comments was that the FBAR requirement for U.S. persons living abroad is unnecessary and burdensome. Some of these comments also suggested certain exemptions to provide relief. The comments are summarized in the following four categories.

i. Unnecessary for U.S. Persons Living Abroad:

- The FBAR requirements are duplicative of the FATCA requirements.
- Almost all U.S. persons living abroad, even those with modest incomes, have to file the FBAR because the \$10,000 threshold is too low.
- U.S. persons living abroad need financial accounts in their country of residence for practical purposes. Maintaining these accounts is not suspicious.

ii. Burdensome for U.S. Persons Living Abroad:

- There is confusion regarding the filing requirements for the FBAR, because the FBAR and FATCA requirements are different as they relate to the thresholds and types of accounts to be reported. This can lead to misinterpretation and filer errors.
- The FBAR penalty for filing errors is excessive.
- There is concern for data privacy because of U.S. government systems being compromised.
- Foreign spouses are required to report their financial information along with the U.S. spouse living abroad.
- U.S. persons living abroad are not afforded certain professional and charitable opportunities because of the FBAR requirements that they need to report on any financial interest in, or signature or other authority over, a bank, securities, or other financial account. For example, a company or a non-profit does not want to hire a U.S. person living abroad for certain financial roles, because that would obligate the U.S. person to report on the company or non-profit's financial accounts to the extent the U.S. person had any financial interest in, or signature or other authority over, a

¹⁰ See 85 FR 73129 at <https://www.federalregister.gov/documents/2020/11/16/2020-25216/agency-information-collection-activities-proposed-renewal-comment-request-renewal-without-change-of>.

- bank, securities, or other financial account of the company or non-profit.
- It can be challenging to determine the highest account value for certain accounts, because the statements do not always provide that information.
- It is costly to hire a tax professional to assist with FBAR and FATCA filing requirements.

iii. Recommendations for Modification to FBAR Regulations and Exemptions for U.S. Persons Living Abroad:

- Remove FBAR requirements, and permit U.S. Government sharing of FATCA information.
- Make the FBAR thresholds the same as the FATCA thresholds.
- Adjust the FBAR dollar threshold for inflation. The initial threshold of \$10,000 has not been changed in over 40 years. It should be at least \$70,000.
- Exempt U.S. persons living in specific countries.
- Exempt U.S. persons from reporting the financial accounts in their country of residence.
- Exempt U.S. persons abroad with modest incomes or with modest total assets.
- Exempt U.S. persons that have lived abroad for a long period of time.

iv. Estimate of Time to Complete the FBAR for U.S. Persons Living Abroad:

- Determining the maximum value of one account may take an hour or two to determine because the information is not always readily available on account statements.
- U.S. persons living abroad may have 15 to 20 accounts for practical reasons. For example, many U.S. persons living abroad have a checking account, a savings account, lines of credit, investment accounts, retirement accounts, and business accounts. With this many accounts, it may take such a filer well over an hour to complete the FBAR.

A different commenter noted that in light of the Panama Papers, it is clear tax evasion and money laundering are an issue, and that in addition to requiring the FBAR, more should be done to prevent hiding assets offshore.

These suggestions for modifications to the applicable regulations will be taken into account in FinCEN's review of existing regulations, consistent with Treasury's 2011 Plan for Retrospective Analysis of Existing Rules, and as part of the formal review of regulations implementing the BSA and BSA-related guidance, as required by Section 6216 of the Anti-Money Laundering Act of 2020 ("the AML Act").¹¹ FinCEN will continue to evaluate ways to clarify FBAR reporting requirements further and minimize burden to the public.

FinCEN appreciates the recommendations and intends to use that information as part of

¹¹ The AML Act is Division F of Pub. L. 116-283 (January 1, 2021).

a larger project FinCEN is undertaking to better understand the PRA hourly burden and cost of the BSA as a whole.

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.

The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA reports.¹²

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 Privacy Act Systems of Records Notice.¹³

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

Frequency: Annually

Estimated Number of Respondents: 1,273,579 FBAR filers.¹⁴

Estimated Number of Annual Responses: 1,273,579 FBARs.

Estimate of Burden:

The estimated average burden associated with the FBAR reporting and recordkeeping requirements will vary depending on the number of reportable foreign financial accounts and the applicability of special rules provided in the regulations which provide some relief from the full scope of the reporting obligations.¹⁵

¹² See FinCEN's System of Records Notice for the BSA System at 79 FR 20974, April 14, 2014. <https://www.federalregister.gov/documents/2014/04/14/2014-08254/privacy-act-of-1974-as-amended-system-of-records-notice>.

¹³ Id.

¹⁴ The total number of FBARs reported for foreign financial accounts held during calendar year 2018, and reported in 2019 is 1,273,579. Each U.S. individual or entity that maintains foreign financial accounts reportable on the FBAR can report all of their foreign financial accounts on one FBAR report.

¹⁵ 31 CFR 1010.350(g).

The information required to be reported 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 needed to complete and file the FBAR. No special accounting or legal skills are 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. FinCEN acknowledges that in some cases, filers may need additional time to calculate the maximum value of an account due to the type of financial statements provided. However, filers should note that the instructions to Form 114 only require a “reasonable” approximation of the maximum value, which should alleviate burden in those cases. Likewise, while some filers may maintain several foreign financial accounts, requiring additional time to complete the basic information in the FBAR, FinCEN has attempted to account for the variation in the burden range identified below.

The special rules located at 31 CFR 1010.350(g) provide a variety of relief to FBAR filers by (1) limiting the information reported in the FBAR to the number of accounts and certain other basic identifying information where the filer has financial interest in or signature authority over 25 more reportable accounts; (2) allowing for entities to file consolidated FBARs on their own behalf and on behalf of entities for which they have a direct or indirect ownership interest over 50%; and (3) exempting reporting of foreign financial interest in accounts involving certain trust and retirement plans. However, filers reporting financial interest in, or signature authority over, 25 or more foreign financial accounts, are required to maintain a record of the detailed account information on each of their foreign financial accounts, including the account number, the name of the foreign financial institution that holds the account, the address of the foreign financial institution, the maximum value of the account during the calendar year, and the type of account.¹⁶

For the reasons noted above, FinCEN estimates that the approximate FBAR reporting burden will vary depending on the number of reportable foreign financial accounts, and will range from approximately 20 minutes to 90 minutes. As a result, FinCEN estimates the average reporting burden per FBAR filer will be 55 minutes.

Past estimates of the FBAR recordkeeping requirement took into account time to store paper copies of the FBAR form and estimated that the approximate recordkeeping burden was 30 minutes. Since 2011, FBARs have been filed electronically. Electronically filing the FBAR allows a filer to save an electronic copy of the report, which satisfies the recordkeeping part of the requirement. FinCEN estimates it would take a filer five minutes to save an electronic copy of the FBAR.¹⁷ In addition to maintaining a copy of the form, those filers who take advantage of the special rules provisions involving 25 or more accounts are required to maintain detailed

¹⁶ Filers availing themselves of special rules under 31 CFR 1010.350(g)(1) and (2) involving 25 or more reportable foreign financial accounts are required to maintain and provide detailed account information for each foreign financial account, if requested by the Secretary or his delegate.

¹⁷ Although filings have been electronic since 2011, this is the first renewal notice in which FinCEN has reconsidered the burden of storing reports electronically.

information on those accounts. However, FinCEN believes that in most cases, such information would be maintained by filers in the ordinary course of business in the form of periodic account statements and other business records which would be maintained mostly electronically. In addition, there is no requirement in the FBAR regulations to maintain such information in any particular format. For these reasons, FinCEN estimates that the approximate FBAR recordkeeping burden will be approximately five minutes.

FinCEN estimates the total annual reporting and recordkeeping burden per FBAR filer will be one hour (55 minutes for FBAR reporting, and five minutes for FBAR recordkeeping).

Estimated Total Annual Burden on Respondent: 1,273,579 hours (one hour per report).

Estimated Burden Cost: Of the 1,273,579 FBARs filed for foreign financial accounts held during calendar year 2018, 1,209,287 were filed by individuals, and 64,292 were filed by entities. FinCEN cannot quantify the cost to individuals who file FBARs on their own behalf. For entities, FinCEN estimates the following annual burden cost: 64,292 hours X \$48.30¹⁸ per hour = \$3,105,303.60.

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	1,273,579	1	1,273,579	1	1,273,579	64,292	\$48.30	\$3,105,303.60
TOTAL			1,273,579		1,273,579	64,292		\$3,105,303.60

There are no out-of-pocket expenses for respondents. Filing the FBAR through BSA E-Filing is free.

14. Estimated Annual Cost to the Federal Government.

Electronic processing cost to the Federal government for 1,273,579 responses X \$0.10 per response¹⁹ = \$127,357.90.

15. Reason for Change in Burden.

¹⁸ The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at <https://www.bls.gov/oes/tables.htm>. The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer’s Cost per Employee Compensation as of December 2019, available at <https://www.bls.gov/news.release/ecec.nr0.htm>. The ratio between benefits and wages for financial activities is \$15.95 (hourly benefits)/\$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position. The May 2019 Bureau of Labor Statistics average hourly wage for “13-1041 Compliance Officer” is \$32.20. (\$32.20 x 1.50 = \$48.30).

¹⁹ 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 2018 is 1,273,579. This adjustment in agency estimates reflects an increase of 197,434 hours from the previously approved figures. The addition represents an increase in the number of FBARs filed in calendar year 2018, as compared to calendar year 2017. There were 1,076,145 FBARs filed in calendar year 2017.

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 requests that the expiration date of the control number of the FBAR not be displayed on the report so that there is no confusion as to whether the report is still valid. This request will not affect the normal 3-year PRA renewal process.

18. Exceptions to the Certification Statement.

There are no exceptions to the certification statement.