

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 Foreign 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)<sup>1</sup> and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).<sup>2</sup> The BSA is codified at 12 U.S.C. 1829b and 1951–1960 and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury (Secretary) to, *inter alia*, require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.<sup>3</sup> The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>4</sup>

Under 31 U.S.C. 5314, the Secretary “shall require a 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,”<sup>5</sup> 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.”<sup>6</sup> 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.

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1 USA PATRIOT Act, Pub. L. 107–56.

2 The AML Act was enacted as Division F, sections 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 Stat. 3388 (NDAA).

3 Section 358 of the USA PATRIOT Act expanded the purpose of the BSA by including a reference to reports and records “that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.” See 12 U.S.C. 1829b(a). Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing. See 31 U.S.C. 5311.

4 Treasury Order 180-01 (Jan. 14, 2020).

5 31 U.S.C. 5312(b)(2).

6 See 31 U.S.C. 5312(a)(1), which exempts from the definition of financial agency a 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.

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.306, and 1010.420. Section 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 such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. The FBAR is used to file the information required by this section and must be filed electronically with FinCEN.<sup>7</sup> 31 CFR 1010.306(c) requires the FBAR to be filed for foreign financial accounts exceeding \$10,000 maintained during the previous calendar year. No FBAR is required to be filed if the aggregate value of foreign financial accounts did not exceed \$10,000 at any time during the previous calendar year. The FBAR must be filed on or before April 15 of each calendar year for accounts maintained during the previous calendar year.<sup>8</sup>

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, to include type of account, account number, name of foreign financial institution maintaining the account, address of the foreign financial institution, and maximum value of the account during the calendar year, for a period of five 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 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)<sup>9</sup> 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

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<sup>7</sup> Formerly Form TD-F 90-22.1. FinCEN Form 114 can be completed by accessing FinCEN's BSA E-Filing System website at <http://bsaeiling.fincen.treas.gov/main.html>.

<sup>8</sup> 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 six 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.

<sup>9</sup> 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.

<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.

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.<sup>10</sup>

5. Methods to minimize burden on small businesses or other small entities.

Small businesses are less likely than larger businesses to maintain foreign financial accounts that exceed \$10,000 at any time during the reporting period. Should a small business be required to file an FBAR, the impact should be minimal, as small businesses generally retain the information needed to complete the report 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 that 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, 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, allowing law enforcement to trace criminal proceeds, gather additional evidence, seize funds, and stop the movement of funds before criminal elements can change their schemes.

7. Special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

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<sup>10</sup> 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 to allow for verification of compliance with the reporting requirement and because such records may relate to substantive violations of law 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.

On August 10, 2023, FinCEN published in the Federal Register a notice and request for comments concerning its intention to renew, without change, information collection requirements related to the FBAR regulations and form.<sup>11</sup> The comment period closed on October 10, 2023. FinCEN received 46 public comments in response to the notice.

Most of the comments were submitted by or on behalf of U.S. persons living abroad. A few comments were received from financial and legal associations. 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 revisions to, or exemptions from, the regulations. The comments are summarized in the following five 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, must 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.
- 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 FBAR requirements. For example, a company or a non-profit may not want to hire a U.S. person living abroad for certain financial roles, particularly those that involve granting the U.S. person signature or similar authority, because the U.S. person would be obligated to report on the company or non-profit's financial

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<sup>11</sup> See FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts*, [88 FR 54397](#) (Aug. 10, 2023).

- accounts.
  - 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:
- Remove FBAR requirements, and permit U.S. Government sharing of FATCA information.
  - Adjust the FBAR dollar threshold for inflation. The initial threshold of \$10,000 has not been changed in over 40 years.
  - Exempt employees from reporting signature authority over, but no financial interest in, their employers' foreign financial accounts.
  - Maintain special rules for reporting limited account information on 25 or more foreign financial accounts for entities that are highly regulated.
  - Eliminate duplicative reporting of foreign accounts held by global custodians.
  - Revise the FBAR instructions to account for the ruling in *Bittner vs. United States*.
  - Change the maximum account value to the account balance as of December 31 of the calendar year to eliminate burden.
  - Articulate how FBAR reporting is highly useful to the U.S. government.
- iv. Exemptions for U.S. Persons Living Abroad:
- Exempt U.S. persons living abroad from reporting the financial accounts in their country of residence.
  - Exempt U.S. persons that have lived abroad for a long period of time.
- v. Estimate of Time to Complete the FBAR for U.S. Persons Living Abroad:
- Determining the maximum value of an account can be time consuming 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.

These comments will be considered as part of FinCEN's review of regulations and guidance required by section 6216 of the AML Act. As part of this review, FinCEN will evaluate ways to clarify FBAR reporting requirements and minimize burden to the public, while retaining reports or records that are highly useful in countering financial crime. FinCEN also intends to conduct, pursuant to the Paperwork Reduction Act of 1995 (PRA), additional assessments of the burden associated with BSA requirements, including FBAR requirements.

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.

Information collected on the FBAR is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice (SORN) relating to BSA reports.<sup>12</sup>

11. Justification of sensitive questions.

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 taxpayer 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 SORN.<sup>13</sup>

12. Estimated annual hourly burden.

Frequency: Annually

Estimated Number of Respondents: 1,503,807 FBAR filers.<sup>14</sup>

Estimated Number of Annual Responses: 1,503,807 FBARs.

Estimate Total Annual Burden Hours:

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.<sup>15</sup>

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,

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<sup>12</sup>See FinCEN, *Privacy Act of 1974, Systems of Records Notice*, [79 FR 20969](#) (Apr. 14, 2014).

<sup>13</sup> Id.

<sup>14</sup> The total number of FBARs filed in 2022 for foreign financial accounts held during calendar year 2021 is 1,503,807. Multiple foreign financial accounts may be reported on a single FBAR.

<sup>15</sup> 31 CFR 1010.350(g).

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, if the filer has financial interest in, or signature authority over, 25 or 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 of over 50 percent; and (3) exempting participants and beneficiaries in certain retirement plans and certain trust beneficiaries. However, filers reporting a financial interest in, or signature authority over, 25 or more foreign financial accounts, are required to maintain records containing detailed 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.<sup>16</sup>

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. FinCEN estimates the average reporting burden per FBAR filer will be 55 minutes.

Past estimates of the FBAR recordkeeping requirement accounted for 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. In addition to maintaining a copy of the form, those filers who take advantage of the special rules related to a financial interest in or signature authority over 25 or more accounts would be required to respond to requests for detailed 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, and that these records would be maintained mostly electronically. There is no requirement in the FBAR regulations to maintain such information in a specific format. For these reasons, FinCEN estimates that the 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).

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<sup>16</sup> 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 provide detailed records concerning each account to the Secretary or his delegate upon request.

Estimated Total Annual Burden Hours: 1,503,807 hours (one hour per report).

13. Estimated annual cost to respondents.

Of the 1,503,807 FBARs filed in calendar year 2022, 1,434,362 were filed by individuals, and 69,445 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: 69,445 hours x \$48.95<sup>17</sup> per hour = \$3,399,332.75.

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 1,503,807 responses X \$0.10 per response<sup>18</sup> = \$150,380.70.

15. Reason for change in burden.

The total number of FBARs filed in calendar year 2022 was 1,503,807. The adjustment in agency estimates reflects an increase in burden hours from the previously approved figures. The addition represents an increase in the number of FBARs filed in calendar year 2022, as compared to calendar year 2018. There were 1,273,579 FBARs filed in calendar year 2018.

16. Plans for tabulation, statistical analysis, and publication.

The information will not be tabulated or compiled for publication.

17. Request not to display the expiration date of the OMB control number.

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

18. Exceptions to the certification statement.

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17 The average hourly wage rate is calculated from the May 2022 U.S. Bureau of Labor Statistics (BLS) median hourly wage for “13-1041 Compliance Officer” of \$34.47. See BLS, *Occupational Employment and Wages Statistics* (May 2022), available at <https://www.bls.gov/oes/tables.htm>. The ratio between benefits and wages for private industry workers is \$12.19 (hourly benefits)/\$29.34 (hourly wages) = 0.42, as of September 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. See BLS, *Employee Costs for Employee Compensation* (September 2023), available at [ECEC Home : U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/ecec/). The fully-loaded wage rate is \$48.95 (\$34.47 multiplied by 1.42).

18 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.

There are no exceptions to the certification statement.