This comment is by the Board of Directors of the Association of Americans Resident Overseas (AARO), founded in 1973 to assist Americans abroad* with their rights and obligations vis-à-vis the United States. AARO is a registered non-profit association under French law with members in 40 countries.

In conformity with periodic Paperwork Reduction Act requirements, FINCEN has invited public comments on whether its FBAR activities fulfill the agency's purposes.

AARO's response, with respect to Americans abroad, is negative.

According to 44 USC 3508, the consequence is that FBAR reporting must cease to apply to these persons:

"Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. . . ==> To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information."

1) AARO submits the following reasons why FBAR information collection from Americans abroad is unnecessary, and even counterproductive:

– While foreign accounts held by resident Americans may raise eyebrows, local financial accounts are the necessary norm in the country where non-residents live. Moreover, the choice not to index the FBAR threshold for almost 50 years makes that threshold a minor portion of most families' assets. This combination subjects nearly all Americans abroad to FBAR. Full compliance, should it ever be achieved, would inundate FINCEN, not with useful information, but with white noise. FBAR could become the instrument that conceals the signals being sought.

– Renewing FBAR obligations on Americans abroad would ignore national and international developments, especially since 9/11, that make FBAR increasingly irrelevant and redundant. These include FATCA (which also yields money flow information that FBAR does not), improved and expanded money-tracking by other countries, and international cooperation -- plus the IT improvement program by FINCEN and other US agencies.

2) "Practical utility" can be measured by reports that form the database, consultation of those reports, investigations launched and successful resolutions or prosecutions of anti-money laundering/counter-terrorist financing (AML/CTF). AARO's search found no supportive data.

– The 266 pages of the 2016 FATF report, "Anti-money laundering and counter-terrorist financing measures United States," showcase the methods and results of AML and CTF activities. FBAR is mentioned just 8 times, but only as a part of lists, except for giving the average number of filings in 2012-2014.

Of the average 18.4 million reports FINCEN received annually (2012-2014), 95% were about active movement of money, such as SARs and CTRs. The remaining 5% were passive "reports": required FBARs stating that accounts exist. There are no reported actions associated with FBAR filings.

– FINCEN's FY 2020 Congressional Budget Justification and Annual Performance Report and Plan does not even mention FBAR. It states there were about 12,000 BSA database users (of 20.4 million reports) in FY 2019 and that they were satisfied with their use for detecting illicit activity, but no statistics show the number or percentage of FBAR filings consulted or instances in which an FBAR was the source motivating an investigation, let alone the discovery and prosecution of AML or CTF activities.

– The GAO (GAO-19-180) has called attention to the overlap and redundancy of information being fed to Treasury and called for consolidation and simplification to relieve the burden on Americans abroad. AARO concurs with these GAO findings: https://aaro.org/position-papers-2020/financial-reporting

Without evidence of serving its AML and CTF purposes, FBAR is consuming resources needed for serious financing measures with that aim, but has not shown the required practical utility that would justify its continuation.

Even absent the legal requirements of 44 USC 3508 to cease information collection, under 31 USC 5314, the Secretary can prescribe:

– to which countries FBAR should apply
– a "reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section,"
– "the magnitude of transactions subject to a requirement or a regulation . . ."
– "the kind of transaction subject to or exempt from a requirement or a regulation . . ."
– "and other matters the Secretary considers necessary . . ."

These available authorities should be used while FBAR is wound down to relieve this redundant burden on both Americans abroad and FINCEN, which is trying to perform its important service with a modest budget and limited personnel resources.

*We use "Americans abroad" to include U.S. citizens and long-term residents who are residing outside the U.S., but not legal entities.