



September 30, 2023

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Response to FinCEN Notice and Request for Comments
Docket No. FINCEN-2023-0008 / OMB Control No. 1506-0009

American Citizens Abroad, Inc. (ACA) is a non-partisan, non-profit, 501(c)(4) organization representing the legislative and regulatory interests of US citizens living and working overseas. For over 45 years ACA has educated Congress and the Administration through our advocacy efforts, educational events and research. ACA respectfully submits the following commentary regarding the FinCEN Form 114 or the Foreign Bank Account Report (FBAR).

US citizens overseas are required to file two separate financial disclosure documents, the Foreign Bank Account Report (FBAR) and the Foreign Account Tax Compliance Act (FATCA) Form 8938. The overlap in reporting on these two forms creates confusion and often leads to errors for individuals filing their own US tax returns as well as professional tax preparers.

Whereas the FATCA Form 8938 requires the reporting of certain foreign financial accounts at a much higher threshold - accounting for the fact that most US citizens living and working overseas are required to have foreign financial accounts in order to manage their financial affairs, the FinCEN Form 114-FBAR filing requirements are much lower, \$10,000 aggregate for all foreign financial accounts held.

The filing threshold for FinCEN Form 114-FBAR has not been revised since the inception of the form in 1970 and is not annually adjusted for inflation. The aggregate of \$10,000 in "foreign financial accounts" that is the basis for reporting on an FBAR was established in 1970. In today's dollars this figure would equate to \$80,000. ACA recommends that the reporting threshold be raised and consideration given to the overlap in the foreign financial account reporting regimes.

Many individuals make errors in reporting solely due to the confusion between the two reports and understanding the requirements for what is considered a "foreign financial account" subject to FBAR reporting. Many individuals, and some professionals, are not aware that foreign pensions may qualify for reporting on an FBAR because they are not recognized as a US equivalent pension account by the US tax code. Additional complicating factors are whether accounts such as prepaid debit cards and payment applications are to be reported. The default for most individuals is to over report in order to avoid the stiff penalties associated with errors in reporting. This results in the IRS receiving more information than necessary and could lead to unnecessary audits. ACA recommends that the IRS provide further clarification on the reportable accounts and exclude certain accounts such as foreign pension accounts and/or



align the reporting with FATCA Form 8938.

Given the history of the creation of FBAR as a tool to combat terrorist financing, money laundering and other illicit behavior, the penalties associated with non-reporting or making errors in reporting are quite onerous. Penalties are not subject to deficiency procedures and the criteria to determine "willfulness" is not clearly established. Many individuals, again fearful of making errors and being confronted with ruinous penalty applications, will over report, and those who may make simple filing errors; transposition of account numbers, failure to include small accounts (including zero balance accounts), if determined to be willful and penalties applied, may have to adjudicate these with the IRS from distance or hire professionals to represent them before the IRS.

Currently, it is difficult, if not impossible, for US citizens living overseas to create online accounts with the IRS to pay taxes and receive refunds as well as consult on their annual tax filing. Communications with the IRS are done exclusively by hard copy mail, a process which in some cases means that individuals receive notifications for penalty applications and payments due well after the deadline for action. As long as reporting regimes such as FBAR are in vigour, a more robust electronic or online system of communication between taxpayers and the IRS is needed. In particular, for issues arising from FBAR reporting for which most of the community of US citizens overseas is a result of confusion and simply filing errors, many can easily be explained and adjudicated if a simpler more direct line of communication existed between the taxpayer and the IRS and if IRS agents are afforded wide discretion necessary to identify non-willful filing errors for US citizens legally resident overseas.

ACA strongly recommends that if the US Treasury continues to require the extensive reporting of foreign financial accounts on FBAR that the IRS simplify filing for FinCEN Form 114-FBAR and Form 8938. While we appreciate that FBAR reporting is a result of bank secrecy rules, while Form 8938 reporting fits within the IRS matrix of tax rules, the existence of these two sets of rules, which differ only slightly as to many details, is very confusing. The Treasury Department and the IRS with their forms and instructions could allow for the importation of data from an individual's FBAR filing to their Form 8938. This might be done with hardcopy workbooks inserted into Form 1040 or Form 8938 or simply an online program.

ACA has provided these recommendations and more to the National Taxpayer Advocate, see our letter here: <https://www.americansabroad.org/news/aca-submits-response-to-nta-discussing-recent-objectives-report-to-congress-fy-2024/>

Thank you for this opportunity to provide commentary and recommendations and for your attention to this important subject.

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