Comment re: Reports of Foreign Financial Accounts Regulations and FinCEN Form 114
***OMB Control No.** 1506-0009 / ICR Reference No. 202403-1506-001 / Federal Register Docket No. 2024-06697*

Office of Information and Regulatory Affairs
Office of Management and Budget
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I am a citizen of the United States of America, duly registered to vote in the 3rd Congressional District of Pennsylvania. I live in Japan, where I moved in May 2001, immediately after graduating from college. While I am proud to be an American and enjoy visiting the United States once a year to see family and friends, I have made my life in Japan and this is my permanent home, where I have lived for my entire adult life.

Since my employment income is generated in Japan and denominated in Yen, as are all of my living expenses, I need to organize my financial and retirement planning in Japan. However, due to my U.S. citizenship, I am subjected to an unreasonable burden as a result of unnecessarily complex reporting required for all types of non-U.S. financial products under both tax and anti-moneylaundering regulations.

Since the passage of the Currency and Foreign Transactions Reporting Act (more commonly known as the Bank Secrecy Act) in 1970, U.S. citizens living abroad have increasingly become caught up in ongoing efforts against tax evasion and malicious actors. While battling money laundering and terrorist financing should remain critical priorities, substantial adjustments to FinCEN Form 114, the Report of Foreign Bank and Financial Accounts or "FBAR," are needed to ensure that the impact to ordinary law-abiding citizens is proportional to the financial law enforcement benefits.

Japan-based financial and retirement accounts aren't "foreign" to me. They are necessities to protect my family and responsibly prepare for retirement. The equivalent financial products in the U.S. are not subject to onerous reporting requirements. Those of us living abroad are punished by tax and financial reporting rules which don't fit our financial lives. This compliance burden (both on me and on the financial institutions with which I want to do business) make it burdensome for me to save, invest, protect myself with insurance,

participate in pension plans and generally behave in a financially responsible way. This is because all of these essential activities are taking place in my country of residence and not in the United States. My financial accounts may be foreign to the United States, but they are local to me.

The FBAR is one example of a duplicative, burdensome and confusing information report, which no longer seems to serve a meaningful purpose given the availability to the Treasury Department of similar information from multiple other sources. **FBAR information collection from U.S. citizens who reside outside the United States is an undue burden** for the following reasons:

- Awareness of the FBAR filing requirement is low among ordinary middle-class citizens who reside outside the United States. Filing follows a multi-step online process that is completely separate from tax return preparation and filing, and many professional tax preparers do not routinely ask questions that would identify whether an individual has a filing requirement.
- The filing requirements and definitions are difficult to understand. Every year I print out the instructions and highlight the relevant passages, but it is difficult to determine whether reporting of certain account types (such as non-U.S. pensions, prepaid transit cards, or cashless payment apps) is required or not. Professional tax preparers are often hesitant to offer advice on these questions, other than to say that conservatism is prudent given the extraordinarily high penalties for compliance failures, even if non-willful.
- Filing thresholds have not been revised in over 50 years and are inordinately low. Once an individual has triggered the filing requirement as a result of having aggregate financial assets greater than $10,000, then all non-U.S. financial accounts must be declared, with no de minimis exemption. For instance, even dormant accounts with zero balances must be reported.
- FBAR filings are largely duplicative with the information collected on IRS information returns such as Form 8938 (“Statement of Foreign Financial Assets”), Form 8621 (“Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”), and Form 3520A (“Annual Information Return of Foreign Trust with a U.S. Owner”).
- In addition to the duplicative information reporting required of individuals, FATCA requires foreign financial institutions to file Form 8966 disclosing balances and income associated with accounts owned by U.S. citizens.

- Finally, FBAR's requirement for information on accounts for which the U.S. citizen does not have a beneficial interest but only signature authority is also a major cause of misunderstanding and unintentional compliance failures. It also leads overseas corporations to remove U.S. citizens from positions of authority over financial matters, limiting the career opportunities for those impacted.

If all of the 9 million U.S. citizens who reside outside the United States actually complied fully with the FBAR filing requirements, FinCEN would be inundated with an overload of useless information about the everyday financial activities of ordinary people. This would not support FinCEN's mission of combatting money laundering, but rather drown out the indicia of risk in a tidal wave of unnecessary information.

The Government Accountability Office ("GAO") 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.[1] In addition, the "challenges" identified by the GAO in 2018 with "...complying with US tax reporting requirements on their foreign retirement savings"[2] can be very onerous, often requiring expensive professional assistance, which further induces fear of punitive sanctions and stresses caused by forcing unwilling non-US spouses and business associates into US reporting further discourage compliance.

In conformity with Paperwork Reduction Act requirements, the Treasury Department and the Office of Management and Budget have invited comments on whether the FBAR form is fit for purpose. According to 44 USC § 3508, "before approving a proposed collection of information, the [OMB] 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."

"Practical utility" can be measured by reviewing FinCEN's data reporting, consultation of those reports, investigations launched and successful resolutions or prosecutions of anti-

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[1] Foreign Asset Reporting, Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persona Abroad, [GAO-19-180], April 2019

[2] Workplace Retirement Accounts: Better Guidance and Information Could help Plan Participants at Home and Abroad Manage Their Retirement Savings, [GAO-18-19], January 2018, "Highlights"

money laundering/counter-terrorist financing (AML/CTF). Research conducted by the Association of Americans Resident Overseas found no data to demonstrate that data from FBAR filings is actually being leveraged in a meaningful way.

- 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": FBARs which simply state that accounts exist. No enforcement actions have been reported as having resulted from FBAR filings.
- FinCEN's fiscal year 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.

Without evidence of serving any purpose for combatting money laundering and terrorist financing activities, administering the FBAR regime is consuming resources which could be deployed to other activities, and has not shown the practical utility that is required to justify its continuation.

Even absent the legal requirements of 44 USC § 3508 to cease information collection, under 31 USC § 5314(b), 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"
- "other matters the Secretary considers necessary"

These available authorities should be used to relieve this redundant burden on both Americans abroad and on FinCEN itself. **The Treasury Department should modify the regulations in 31 CFR § 1010.350 and 31 CFR § 1010.306** to help FinCEN achieve

proportionality while simultaneously providing relief for non-resident citizens and improving FBAR's effectiveness as a law enforcement tool. Specific recommendations are detailed in the table attached at the end of this letter.

Currently, FBAR reporting is **redundant, disproportionate to risk, and fails to take into account the necessity for non-resident citizens to hold foreign bank accounts** in order to responsibly manage their financial affairs. At the same time, enforcement efforts are generally disproportionate, with FinCEN and the IRS exercising little discretion and often pursuing statutory-maximum penalties even for infractions deemed non-willful. This results in highly regressive penalties that disproportionately harm the middle and working class.

Thank you for this opportunity to provide commentary and recommendations. The reform proposals outlined in the table below are intended to reduce paperwork burdens for both the public and FinCEN, align reporting to accounts that are large enough to pose a substantial risk relating to financial crimes, and to ensure that enforcement serves a public benefit.

FBAR Regulation Changes to reflect the Intent of Congress

The statutory authority for the FBAR filing requirement is found in 31 USC §5314(a) and begins with the statement: "**Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency**, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or 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."

	Statutory Authority	**Current Regulation**	**Changes requested**
Inflation Adjusted Thresholds	The Secretary may prescribe -- • "the magnitude of transactions subject to a requirement or a regulation under this section;" 31 USC §5314(b)(3)	Current reporting threshold was set in 1970 with no adjustments for inflation since then: • "Reports required to be filed by § 1010.350 shall be filed with FinCEN on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year." 31 CFR §1010.306(c)	• Raise FBAR reporting threshold to $80,000 in order to adjust for inflation since 1970 • Annually adjust for inflation going forward
De Minimis threshold		• Not addressed by current regulation. • Once the reporting threshold is triggered by an aggregate balance of $10,000, then all accounts must be reported, including zero balance accounts and payment accounts with minimal balances	• Exclude accounts with a balance under a de minimis threshold such as $1,000 (indexed to inflation), even when the reporting obligation is triggered based on aggregate foreign bank account balances

	Statutory Authority	Current Regulation	Changes requested
Consider geographic risk when applying FBAR reporting requirements	The Secretary may prescribe -- • "a reasonable classification of persons subject to or exempt from a requirement under this section or a regulation under this section;" 31 USC §5314(b)(1) • "a foreign country to which a requirement or a regulation under this section applies if the Secretary decides applying the requirement or regulation to all foreign countries is unnecessary or undesirable;" 31 USC §5314(b)(2) • "the kind of transaction subject to or exempt from a requirement or a regulation under this section;" 31 USC §5314(b)(4)	• "Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists" 31 CFR §1010.350(a) • "For purposes of this section, the term "United States person" means - (1) A citizen of the United States; (2) A resident of the United States" 31 CFR §1010.350(b) • Narrow exceptions for US / State / Tribal government accounts, accounts of international financial institutions of which the US is a member, US military banks and bank-to-bank settlement accounts are detailed in 31 CFR §1010.350(c)(4)	Take into account geographic risk by either: • Exempting non-resident citizens from reporting, • Excluding accounts held in one's country of residence from the scope of reportable accounts, or • Raising the reporting threshold for non-residents to be the same as for IRS Form 8938, and also excluding any accounts which are duly reported on a Form 8938 from the FBAR reporting requirement.

	Statutory Authority	Current Regulation	Changes requested
Reportability of accounts based on signatory authority only	The Secretary may prescribe -- • "the kind of transaction subject to or exempt from a requirement or a regulation under this section;" 31 USC §5314(b)(4) • "other matters the Secretary considers necessary to carry out this section or a regulation under this section." 31 USC §5314(b)(5)	• "Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists" 31 CFR §1010.350(a) • "Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained." 31 CFR §1010.350(f) subject to certain exceptions detailed in 31 CFR §1010.350(f)(2)	• For non-resident U.S. citizens, exclude accounts where they only have signatory authority on the account but no financial interest.