

Comment to the Office of Management and Budget on the Department of Treasury proposal to renew, without change, information collection requirements related to regulations concerning Reports of Foreign Bank and Financial Accounts (FBARs) and FinCEN Form 114

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This comment is by the Association of Americans Resident Overseas (AARO), an international, non-partisan, non-profit association founded in France in 1973, which seeks fair treatment for Americans abroad by advocating the issues that negatively affect their lives.

The issue at hand is whether OMB should approve the Treasury’s proposal to renew, without change, information collection requirements related to FBAR regulations and FinCEN Form 114, that is the Report of Foreign Bank and Financial Accounts (“FBAR”). The Director of OMB should refuse to authorize this renewal.

On August 10, 2023, FinCEN sought comments from the public, in conformity with Paperwork Reduction Act requirements, on this question. In [our submission](#) on October 9, 2023, AARO set out, in some detail, our reasons for maintaining that the collection of FBARs serves no known purpose¹. The information collected from FBARs is redundant, apart from accounts that have been deemed to be too small to merit reporting by foreign banks under FATCA, and make no known contribution to either FinCEN’s or the Treasury’s proper performance. A more coherent financial information reporting

¹ Our comment last October substantially reiterates various earlier submissions relating to the design of the anti-money laundering framework, and specifically the FBAR.

framework that integrates the various other financial reporting requirements into a consolidated whole is needed.

Following the implementation of FATCA, FBARs have outlived any usefulness they might have had. Awareness of the FBAR and the obligation to file is low, leading to poor compliance². Given the overlap and duplication of reporting requirements, FBARs add little to what FATCA reporting (Forms 8938 and 8966) provides beyond some everyday checking and savings accounts too small to reach FATCA reporting thresholds. This is particularly the case for Americans resident abroad.

In addition, penalties levied for reporting failures or oversights have too often been grossly disproportionate.

All of this calls for simplification and consolidation of reporting requirements.³ Given increased demands on FinCEN resources, notably associated with the Corporate Transparency Act, collecting and managing a data base of FBARs are distractions. Without evidence of serving its AML and CFT purposes, FBARs have not shown the required practical utility that would justify their continuation.

Given FATCA reporting by financial institutions, notably the foreign bank reporting Form 8966, it is unclear why such filings by individuals are required at all. At minimum, the two individual bank account filing requirements (FATCA Form 8938 and FBAR) should be consolidated and shared by FinCEN as need be, with the threshold reflecting current FATCA rules and indexed for future inflation.

A fully coherent framework for financial information reporting would require more than this. Numerous other obscure financial information reporting requirements (among them Form 3520, 3520A, 5471 and 5472) should be identified and consolidated into a single, simplified reporting requirement.

² Although FBARs do not derive from the tax code and are not part of tax returns, taxpayer awareness relies heavily on a tick-the-box question found at the end of Schedule B, which a relatively small share of taxpayers (13.2% of the total in 2020) attach to their returns. However, courts have consistently ruled that this is sufficient.

³ See, for example, the GAO Report published in 2019 “Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on US Persons Abroad”, [GAO-19-180].

Finally, and most importantly, the awareness problem needs to be addressed by ensuring that taxpayers receive "...fair warning... in language that the common world will understand..."⁴ of their reporting obligations.

Until consolidation of financial reporting is effected, AARO believes that one or more of the following interim improvements should be made to a separate FBAR filing:

1. Applying the "same country exemption", i.e., excluding FBAR reporting for accounts held by individuals in their country of residence.
2. Adjusting FBAR reporting thresholds to \$80,000 to account for inflation since FBAR's inception, to be followed thereafter by annual inflation adjustments.
3. Clearly defining the criteria for willful.
4. Excluding FBAR reporting of accounts under a de-minimis threshold.
5. Restoring paper FBAR filings and allowing popular tax-filing software and IRS Direct File to include FBAR e-filing.
6. Excluding FBAR reporting of accounts of non-resident U.S. citizens with signatory authority on the account but no beneficial interest.

Respectfully submitted by:

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About AARO:

The Association of Americans Resident Overseas (AARO) is an international, non-partisan non-profit association formed under the laws of France with members over 40 countries from over 40 States. AARO seeks fair treatment for Americans abroad by advocating the issues that negatively affect their lives and informs its members of their rights and responsibilities as Americans. See [AARO](#).

⁴ Justice Oliver Wendell Holmes, "McBoyle v. United States, 283 U.S.25 (1931), cited by Justice Gorsuch in [Bittner v. United States](#), No. 21-1195 (U.S. Feb. 28, 2023), relating to FBAR penalties.