



AMERICAN CITIZENS ABROAD
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AMERICAN CITIZENS ABROAD
global foundation FOR EDUCATION AND RESEARCH

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Re: The Department of the Treasury notice for an information collection request to the Office of Management and Budget (OMB) for review of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

OMB Control Number: 1506-0009.

American Citizens Abroad, Inc. (ACA) is a non-partisan, non-profit, 501(c)(4) organization representing the legislative and regulatory interests of U.S. 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 on the request by the US Treasury for renewal of authorization for information collection for FinCEN Form 114 or the Foreign Bank Account Report (FBAR).

ACA recommends these reforms to address the information collection problems with the FinCEN Form 114:

- Eliminate the duplicate reporting between FinCEN-114 and FATCA Form 8938
- Increase the reporting threshold to be inline with FATCA Form 8938 reporting or at the very least adjusted to inflation.
- Provide greater clarification of accounts subject to reporting and consider removing the requirement to report pension accounts.
- Provide greater clarification on the determination of willfulness for unreported accounts and better processes for resolving non-willful reporting errors.
- Provide information on paper filing and expand foreign language forms.

FATCA Form 8938 and FinCEN-114 Reporting

Most U.S. citizens living and working overseas are required to have foreign financial accounts to manage their financial affairs. U.S. citizens overseas are required to file two separate financial account disclosure documents, the Foreign Bank Account Report (FBAR or FinCEN-114) and the Foreign Account Tax Compliance Act (FATCA) Form 8938. The FATCA Form 8938 requires the reporting of certain foreign financial accounts at a much higher threshold than the FinCEN Form 114-FBAR filing requirements. The overlap in reporting on these two forms creates confusion and often

leads to errors for individuals filing their own U.S. tax returns as well as professional tax preparers.

Reporting threshold and determination of "Foreign Financial Accounts"

The filing threshold for FinCEN Form 114 has not been revised since the introduction of the filing by the 1970 Bank Secrecy Act and is not annually adjusted for inflation. The aggregate of \$10,000 in "foreign financial accounts" is the basis for reporting on an FinCEN-114. 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 two 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 FinCEN-114 reporting. Many individuals, and some professionals, are not aware that foreign pensions may qualify for reporting on an FinCEN-114 because they are not recognized as a U.S. equivalent pension account by the U.S. 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 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.

The Treasury Department and the IRS with their forms and instructions could allow for the importation of data from an individual's FinCEN-114 filing to their Form 8938. This might be done with hardcopy workbooks inserted into Form 1040 of Form 8938 or simply an online program.

Paper filing and wider range of languages

FinCEN-114 Form is generally filed online however, many individuals in particular retirees overseas, are unable to file electronically. Paper filing is allowed, however the government website, [Individuals Filing the Report of Foreign Bank and Financial Accounts \(FBAR\) \(treas.gov\)](https://www.treas.gov/individuals-filing-the-report-of-foreign-bank-and-financial-accounts-fbar), does not give clear instructions on this process. Individuals must find this information on the Small Business and Self Employment website of the IRS, [Report of Foreign Bank and Financial Accounts \(FBAR\) | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/individuals/international/individuals-filing-the-report-of-foreign-bank-and-financial-accounts-fbar) and must contact the FinCEN resource center and file for an exemption. Additionally, with many U.S. citizens coming into compliance from foreign jurisdictions, FinCEN-114 should be made available in a wider range of languages. Many of these individuals were either born overseas or left the U.S. as infants. They

may not only be unaware of the filing requirements and may not have the language skills to understand the filing itself.

Penalties and determining willfulness in making errors.

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. Those who may make simple filing errors, such as transposition of account numbers or failure to include small accounts (including zero balance accounts), may be determined to be willful and penalties applied. They may then be forced 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 many U.S. 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 FinCEN-114 are in vigour, a more robust and accessible electronic or online system of communication between taxpayers and the IRS is needed. In particular, for issues arising from FinCEN-114 reporting - for which most of the community of U.S. citizens overseas is a result of confusion and simply filing errors - many can easily be explained and adjudicated if, 1) a simpler, more direct line of communication existed between the taxpayer and the IRS and, 2) IRS agents are afforded wide discretion necessary to identify non willful filing errors for U.S. citizens legally resident overseas.

Summary

ACA strongly recommends that if the U.S. Treasury continues to require the extensive reporting of foreign financial accounts on FinCEN-114 that the IRS simplify filing for FinCEN Form 114 (FBAR) and FATCA 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.

ACA has provided the recommendations outlined herein and more to the National Taxpayer Advocate, see our letter

[ACA Response to NTA Annual Report to Congress FY 2023 \(published 2024\) 240220.pdf \(nationbuilder.com\).](#)

Legislation currently introduced in Congress, The Tax Simplification for Americans Abroad Act, calls for harmonization of the FBAR and FATCA reporting regimes, [H.R.5432 - 118th Congress \(2023-2024\): Tax Simplification for Americans Abroad Act | Congress.gov | Library of Congress](#) which would greatly simplify foreign financial account reporting.

Further, it is our expectation that the Overseas Americans Financial Access Act [H.R.5799 - 117th Congress \(2021-2022\): Overseas Americans Financial Access Act | Congress.gov | Library of Congress](#) will be reintroduced; this legislation exempts from FATCA reporting the accounts of US citizens overseas held in the countries where they live and are tax resident. This legislation mirrors ACA's proposal for regulatory change to FATCA reporting calling for the same treatment with our Same Country Exemption (SCE) [Same Country Exemption - American Citizens Abroad \(americansabroad.org\)](#)

This treatment was presented to the US Treasury for consideration in 2015 and 2016: <https://assets.nationbuilder.com/americansabroad/pages/2172/attachments/original/1707057533/same-country-exemption-letter.pdf?1707057533>
<https://assets.nationbuilder.com/americansabroad/pages/2166/attachments/original/1707057585/treasury-letter-same-country-aca-2016-08-10.pdf?1707057585>

ACA would like to thank you for this opportunity to provide commentary and recommendations and for your attention to this important subject.

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