



OMB Control No: [1506-0009](#) / ICR Reference No: [202403-1506-001](#) / Federal Register: [2024-06697](#)

Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)

Democrats Abroad appreciates the opportunity to comment on the request submitted by the Department of the Treasury (the “Agency”) for renewal of authorization for information collection on FinCEN Form 114, the Report of Foreign Bank and Financial Accounts (“FBAR”).

We, like other public commentators, have commented that the FBAR Information Collection is:

- *Unnecessary* given the Secretary’s authority to adjust reporting under 31 U.S. Code § 5314(b);
- Does not serve any *practical utility* given the lack of indicia of suspicious activity associated with maintaining financial accounts where one resides;
- Poses an undue *burden* given the disparate impact on Americans abroad, who have an inherent need to maintain multiple such accounts, in comparison to U.S. residents, whose ownership of or financial interest in a foreign account would be unusual and rarely a necessity.
- Inherently stigmatizing because accounts essential for daily life are reported to Treasury’s Financial Crimes Enforcement Network, giving filers a feeling of implied guilt.

While Supporting Statement A¹ submitted by the Agency accurately summarizes the comments it received from the public, we do not agree with its conclusion that the Director of the Office of Management and Budget (“OMB”) should approve the *extension without change of a currently approved collection*. The analysis conducted by the Agency lacks *specific* responses to the summarized comments received and indicates no intention to reduce paperwork burdens. Prior filings indicate that it has been aware of serious problems with this information collection since *at least* 2019, opting to request *extension without change* in the two subsequent OMB processes without addressing problems previously raised. In particular, the disparate impact of this information collection on Americans abroad, and the failure of the Agency to explain how it has used the collected information, are **sufficient grounds for the OMB Director to disapprove the renewal of authorization pursuant to 44 USC §3507(h)(2) and instruct the Agency to undertake a rulemaking to establish a more proportionate, better targeted, more transparent, and more effective collection of information.**

Public Comments per Paperwork Reduction Act Requirements

In seeking renewed authorization for information collection, 44 USC §3506(c)(2)(A) obliges federal agencies to seek comment on and evaluate the *necessity, practical utility, and burden* associated with the collection, and, according to 44 USC §3508, “before approving a proposed collection of

¹ [ICR Reference No. 202403-1506-001](#)

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.”

The public comments that were collected in the current request, like public comments collected in 2021² and 2019³, do not support the necessity and practical utility of the information collection, or that the burden on the impacted public (primarily Americans residing outside the United States) is reasonable.

In its Supporting Statement A, the Agency summarizes the “consistent themes” of the collected comments as follows:

- *FBAR information collection is unnecessary for U.S. persons living abroad* due to the low reporting threshold, the clear need for Americans abroad to maintain local accounts in their country of residence, and the redundancy of the information reported with FATCA data also collected by the Treasury.
- *FBAR information collection is burdensome for U.S. persons living abroad*, due to the effort required to determine maximum annual balances, the cost of hiring professional assistance to support the filing, and the excessive penalty for filing errors.
- *Modifications to FBAR regulations are recommended*, including adjusting the reporting threshold for inflation, eliminating duplicative reporting, expanding reporting exceptions, updating the instructions to reflect the Supreme Court’s ruling in *Bittner vs. United States*, etc.
- *Exemptions should be provided for U.S. persons living abroad.*
- *Estimates of the time to complete the FBAR are inaccurate* because they do not take into account the number of accounts typically maintained by an ordinary person living abroad or the time required to determine the maximum value of each account.

Public opinion is crystal clear in stating that this Information Collection is in urgent need of a complete overhaul to reduce the public paperwork burden. Appendix A, re-stating our prior comment to the Agency, provides ample suggestions for how this may be achieved.

Recurring Feedback from Government Watchdogs

In addition to the strong criticism from the public concerning FBAR, the National Taxpayer Advocate – the IRS’s internal watchdog – has vocally criticized this information collection many times.

² [ICR Reference No. 202101-1506-001](#)

³ [ICR Reference No. 201904-1506-001](#)

Recommendations have included consolidation of redundant information collection^{4 5 6 7}, exercising restraint when assessing penalties^{8 9}, and to reduce the complexity, ambiguity, and redundancy of international information reporting that Treasury expects from overseas taxpayers of ordinary income and wealth.¹⁰

The Government Accountability Office has also commented on overlap and redundancy in information reporting.¹¹

Unambiguous signals are coming from within the government that this Information Collection is in need of revision and that there is substantial ability for the Agency to reduce the public paperwork burden.

Lack of Agency Response to Feedback

These concerns have been expressed to Treasury and the Financial Crimes Enforcement Network (“FinCEN”) via multiple OMB renewal comment periods, a request for information mandated by the Anti-Money Laundering Act of 2020 (the “AML Act”)¹², and by the government watchdogs cited above.

The Agency has dutifully ticked procedural boxes outlined in the Paperwork Reduction Act, but has not proposed or initiated changes in response to the comments received, nor has it substantively responded to public comments. In the current and previous requests to OMB, the Agency has simply affirmed that comments and suggestions will be considered. This is only a minor improvement from the Agency’s failures in 2010 and 2016 to “include a description of how the agency has responded to any public comments on the ICR, including comments on maximizing the practical utility of the collection and minimizing the burden” that led OMB to withhold approval in the past.^{13 14}

In addition, Section 6216 of the AML Act requires the Secretary of the Treasury to solicit public comment on ways to streamline and modernize risk-based guidelines and regulations issued pursuant to the Bank Secrecy Act. While the Secretary has initiated a process of consulting with stakeholders, she has failed to meet the January 1, 2022 deadline for submitting a report to Congress.

⁴ [NTA 2022 Purple Book Recommendation #8](#)

⁵ [NTA 2021 Purple Book Recommendation #9](#)

⁶ [NTA 2020 Purple Book Recommendation #11](#)

⁷ [NTA 2019 Purple Book Recommendation #12](#) (PDF Page 30 / Book Page 25)

⁸ [NTA 2021 Purple Book Recommendation #35](#)

⁹ [NTA 2023 Most Serious Problem #8: The IRS’s Approach to International Information Return Penalties is Draconian and Inefficient](#)

¹⁰ [NTA 2023 Most Serious Problem #9: Compliance Challenges for Taxpayers Abroad](#)

¹¹ [GAO: Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad](#)

¹² [Comment on FR Doc #2021-27081 by Democrats Abroad](#)

¹³ [ICR Reference No. 201608-1506-001](#)

¹⁴ [ICR Reference No. 201006-1506-005](#)

We note further that, while the Agency has published its findings on the utility of a number of BSA reports such as SAR and CTR, to the best of our knowledge, no similar analysis has been provided for FBAR. At the moment, the only public insight into FBAR's utility is through a number of highly publicized court cases involving mind-bogglingly large penalties against individuals who *failed to file* a FBAR. Few, if any, public statistics or other artifacts demonstrate utility for enforcement or prosecution efforts. We believe that compliance efforts are not well-served when it appears that the most useful FBAR for the Treasury is an unfiled FBAR for which a penalty can be assessed.¹⁵

Given the Agency's failure to timely meet its obligations under the AML Act, the lack of transparency from the Agency on the necessity and practical utility of FBAR for law enforcement purposes, and taking into account the clear feedback from both the public and government watchdogs, **OMB should exercise its authority under 44 USC §3507(h)(2) to disapprove the renewal of authorization and instruct the Agency to undertake a new rulemaking to establish a more proportionate, better targeted, more transparent, and more effective collection of information.**

Paperwork Reduction Opportunities

As cited in comments in response to both the 2024 and 2021 requests, the Secretary of the Treasury has broad statutory authority under 31 U.S. Code § 5314(b) to adjust who must participate in FBAR information collection and for which accounts. The Secretary may 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."

The Agency should use these authorities to modify the regulations in 31 CFR §1010.306 and §1010.350.

Specific recommendations for changes under these statutory authorities were included in the public comment submitted by Democrats Abroad on October 9, 2023 and are summarized in Appendix A. Similar recommendations urging the Agency to exercise its statutory authority in order to maximize the utility and minimize the burdens of FBAR were made by the Association of Americans Resident Overseas in the 2021 public comment period¹⁶ and by the American Bar Association's Tax Section in 2024.¹⁷

We additionally include, as Appendix B, feedback on various sections of the Agency's Supporting Statement A, which call into question the appropriateness of the Agency's recommendation in favor of approval without change.

¹⁵ Appendix C of this comment further scrutinizes assertions that information collection has utility

¹⁶ [Comment on ICR Reference No. 202101-1506-001 by Association of Americans Resident Overseas](#)

¹⁷ [Comment on ICR Reference No. 202403-1506-001 by the Tax Section of the American Bar Association](#)

Conclusion

While the Bank Secrecy Act serves an important purpose to establish tools for monitoring and combating crime, the Agency's information collection requirements conflate the 9 million United States citizens residing abroad with criminals simply because they need to maintain moderate balances in "foreign" bank accounts, which are actually local to them.

The current information collection is **unnecessary, lacking in utility, burdensome, and stigmatizing**. Though the Agency is aware of both public and government criticism of this information reporting, it has taken no action despite the Secretary possessing **broad authority to adjust reporting under 31 U.S. Code § 5314(b)** to be **more effective, less burdensome, and better targeted**.

To continue the current FBAR information collection in its current form, without changes and despite clear feedback, especially in light of the ever-increasing high stakes penalties involved, appears irrational and should be subjected to scrutiny.

We urge the Director of the Office of Management and Budget to exercise her authority under 44 U.S. Code § 3507(h)(2) to disapprove this request for extension, and to instruct the Agency to undertake a rulemaking to make substantive changes in the information collection requirements.

Sincerely,

Martha McDevitt-Pugh
International Chair
Democrats Abroad
chair@democratsabroad.org

Rebecca Lammers
Chair, Taxation Task Force
Democrats Abroad
rebecca_lammers@democratsabroad.org

Appendix A: Recommended changes to FBAR

In order of priority, we advocate:

- 1. Eliminating the FBAR filing requirement for non-resident U.S. citizens altogether, or excluding accounts held by individuals in their country of residence from FBAR reporting.** Taking into account the recent decision in *Aroeste v. U.S.*, which confirmed that green card holders with dual residency are not required to file FBARs¹⁸, we note that no similar exception exists for U.S. citizens who are residents and taxpayers of other countries. The Secretary has authority under 31 U.S. Code § 5314(b) to grant non-resident U.S. citizens the same exemption from filing obligations.
- 2. Customizing thresholds to take into account “geographic risk.”** The motivations and justifications for holding non-U.S. accounts differ greatly between U.S. citizens residing in the U.S. and those living abroad. Americans abroad need local bank accounts in order to receive salaries and make payments for local bills, rent, mortgages, etc. If the reporting requirement for non-resident citizens continues, then the reporting threshold should be raised to \$400,000 (consistent with IRS Form 8939) and adjusted for inflation going forward.
- 3. Adjusting FBAR reporting thresholds to \$80,000 -** Which accounts for inflation in the 50 years since FBAR’s introduction – to be followed thereafter by annual inflation adjustments.
- 4. Improving the proportionality of enforcement / penalties for FBAR violations and clearly defining willful vs. non-willful criteria.** This has long been a point of feedback from the IRS National Taxpayer Advocate.¹⁹
- 5. Excluding accounts under a de-minimis threshold,** even when the reporting obligations are triggered based on aggregate foreign bank account balances.
- 6. Restoring paper FBAR filings and improving e-filing options to allow popular tax-filing software and IRS Direct File to include FBAR e-filing.** We have received reports from seniors living abroad who struggle to file the FBAR, given there is no paper-file option and it has to be e-filed. Many are forced to pay an accountant to file the FBAR for them, and in some cases we’ve heard of accountants charging \$100 per account, imposing an enormous burden on our most vulnerable citizens.²⁰
- 7. For non-resident U.S. citizens, excluding accounts where they have only signatory authority on the account but no beneficial interest.** This will ensure that Americans abroad are not excluded from work or community leadership that may require being added as a signatory.

¹⁸ [22-682 - Aroeste et al v. The United States of America et al](#)

¹⁹ [NTA 2021 Purple Book Recommendation #35](#)

²⁰ [Once Uncomfortable. Now Suffocating: A 2022 Update on Tax and Financial Access Issues of Americans Abroad. Pg. 13-14](#)

Appendix B: Feedback on the Agency's Supporting Statement A

Section	Feedback
1. Circumstances necessitating collection of information	<p>The Agency cites the relevant statutes and regulations that authorize the collection of information. However, given their wide scope and the Secretary's authority under 31 U.S. Code § 5314(b), along with feedback from various stakeholders, including affected individuals and government authorities, the Agency fails to provide a thorough explanation as to why such a broad collection of information is necessary. We urge the Agency to consider the Secretary's authority to exempt classes of persons, countries, transactions, and other matters when evaluating the necessity of the collection of information.</p>
2. Method of collection and use of data	<p>The elimination of paper filing for the FBAR has posed a burden for elderly members of the public who are unable to or uncomfortable with electronic filing via the BSA E-Filing system.</p> <p>Furthermore, the E-Filing system requires either the use of proprietary software (Adobe Acrobat) or foregoing the ability to save and work on the form over more than one session.</p> <p>Both problems should be addressed.</p>
3. Use of improved information technology to reduce burden	<p>While FinCEN promotes the BSA E-filing system as fast and convenient, we note that the inability to e-file the FBAR together with tax returns is confusing, limits public awareness of the information filing requirement, and is inconvenient because it prevents the form from being prepared by user-friendly tax filing software instead of imposing a jargon-heavy PDF form.</p>
4. Efforts to identify duplication	<p>We respond to this section in detail in Appendix C.</p>
5. Methods to minimize burden on small businesses or other small entities	<p>The Agency claims that small businesses are less likely than larger businesses to maintain foreign financial accounts that exceed \$10,000. The account balance of \$10,000 at any time during a year is <i>low</i> for individuals and <i>extraordinarily low</i> for an actual and functioning business. For small business owners who operate entirely outside the United States, it is almost certain that such foreign accounts will be maintained and therefore required to appear on FBAR filings.</p> <p>The Agency notes that no special accounting or legal skills will be necessary to transfer the basic information required to be reported. We disagree. A number of public comments submitted to the</p>

	<p>Agency describe difficulties in understanding the filing requirements and obtaining the necessary financial statements to accurately file. Given the broad definition of foreign financial account and the high-stakes penalties involved, there may be a tendency to over-report or hire professional assistance to ensure compliance.</p> <p>The requirement to report beneficial owners and/or account balances on accounts where a U.S. person has signatory authority but no beneficial interest discourages or outright prevents the employment of U.S. citizens in certain job functions and industries and may even render a U.S.-owned business unviable compared to local competitors.</p> <p>We refer to the Secretary's broad authority to exempt classes of persons, countries, transactions, and other matters.</p>
12. Estimated annual hourly burden	<p>We believe that <i>most, if not all</i>, Americans residing abroad are required to file an FBAR due to the reality that the "\$10,000 at any point in the calendar year" threshold is increasingly common.</p> <p>The estimated number of respondents should be based on an accurate estimate of the number of U.S. citizens that reside overseas rather than the number of FBARs actually filed in 2022.</p> <p>This would also help OMB develop Total Annual Burden Hour estimates for IRS Forms 1116, 2555, 3520, 8621, 8833, and 8938.</p>
13. Estimated annual cost to respondents	<p>While the Agency states that it "cannot quantify the cost to individuals who file FBARs on their own behalf", we highlight that professional tax preparers commonly quote anywhere from \$100 per form to \$100 per account to file an FBAR each year.</p> <p>Many respondents report incurring annual costs in excess of \$100 to comply with this information collection requirement.</p>

Appendix C: Is FBAR Duplicative with FATCA?

Section 4 of the Agency request to OMB makes two claims as to why FBAR is not duplicative with FATCA:

1. FATCA reporting thresholds are higher than FBAR reporting thresholds, which would cause a loss of utility;
2. FinCEN lacks statutory authority to access FATCA data, which would hinder law enforcement capabilities.

Would a higher threshold *really* be a problem?

While the Agency cites higher reporting thresholds for the FATCA data, we note that the Agency has not applied any indexation of reporting thresholds for inflation during the past 50 years despite having authority to do so.

FATCA reporting thresholds are loosely aligned with where the original FBAR reporting threshold would be today had it been indexed to inflation.²¹ The Agency's decision to keep the \$10,000 threshold despite calls for an increase suggests that they believe "more is better," while former IRS Commissioner Rettig was clear in his statements that broadly applied information reporting on bank accounts without adequate processing capability simply creates a "bigger haystack" to search for misconduct.²²

We believe that overly broad information collection actually *reduces* the utility of reports, by drowning out useful signals and consuming agency resources that could be spent on more effective programs.

As inflation has expanded the scope of FBAR information collection while increasing penalty revenue (which is indexed to inflation), the Agency has not substantiated that its persistently low filing threshold serves a purpose.

Is FBAR utilized by law enforcement?

The Agency's OMB requests over the years consistently cite a \$0.10-per-FBAR processing cost to the federal government, an amount so low as to preclude analysis by a human, suggesting that the only processing that occurs on FBAR data is intake and storage. FinCEN's 2025 budget justification does not discuss the FBAR (while it does extensively cover other information collection activities)²³, indicating a lack of intent to utilize FBAR information.

²¹ FBAR filing thresholds remain at \$10,000 while non-willful penalties are increased yearly for inflation.

²² [Tax Notes: Rettig Warns Against New Info Reporting Rules Without Funding, April 14, 2022](#)

²³ [Department of the Treasury Financial Crimes Enforcement Network \(FinCEN\): Congressional Budget Justification and Annual Performance Plan and Report FY 2025](#)

While penalty enforcement for inaccurate FBARs and failure-to-file is outsourced to the IRS, this concerns the collection of civil penalties and should not be regarded as a law enforcement activity, making any budget allocation there irrelevant to the law enforcement utility analysis.

The comment in response to this year's OMB request by the American Bar Association's Tax Section also highlights that FinCEN has not published statistics on the number of FBARs that have actually been utilized for law enforcement purposes.²⁴

The only support that the Agency provides to the public for the utility of FBAR information collection is an empty statement that they believe that it is useful. In the absence of demonstrable utility to law enforcement and active usage, it would be more appropriate for the Secretary to amend regulations to eliminate reporting that is duplicative, goes beyond what is mandated by statute, and is not effectively utilized.

²⁴ [Comment on ICR Reference No. 202403-1506-001 by the Tax Section of the American Bar Association](#)