



## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a renewal, without change, of existing information collection requirements concerning reports of foreign financial accounts and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). This request for comments is made pursuant to the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Written comments are welcome and must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2023-0008 and the Office of Management and Budget (OMB) control number 1506-0009.

- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2023-0008 and OMB control number 1506-0009.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA<sup>1</sup> and applicable OMB regulations and guidance. All comments

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<sup>1</sup> Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** FinCEN’s Regulatory Support Section (RSS) at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

**SUPPLEMENTARY INFORMATION:**

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).<sup>2</sup> The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the “Secretary”), *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.<sup>3</sup> Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.<sup>4</sup>

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<sup>2</sup> The AML Act was enacted as Division F, sections 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 stat. 3388 (2021).

<sup>3</sup> Section 358 of the USA PATRIOT Act expanded the purpose of the BSA by including a reference to reports and records “that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.” Section 6101 of the AML Act further expanded the purpose of the BSA to cover such matters as preventing money laundering, tracking illicit funds, assessing risk, and establishing appropriate frameworks for information sharing.

<sup>4</sup> Treasury Order 180-01 (Jan. 14, 2020).

Under 31 U.S.C. 5314, the Secretary “shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to . . . 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.” The term “foreign financial agency” encompasses the activities found in the statutory definition of “financial agency,”<sup>5</sup> notably, “a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.”<sup>6</sup> The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out 31 U.S.C. 5314.

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.306, and 1010.420. Section 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. The FBAR is used to file the information required by this section and must be filed electronically with FinCEN.<sup>7</sup> 31 CFR 1010.306(c) requires the FBAR to be filed for foreign financial accounts exceeding \$10,000 maintained during the previous calendar year. No FBAR is required to be filed if the aggregate value of foreign financial accounts did not exceed \$10,000 at any time during the previous calendar year.

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<sup>5</sup> 31 U.S.C. 5312(b)(2).

<sup>6</sup> See 31 U.S.C. 5312(a)(1), which exempts from the definition of financial agency a person acting for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member.

<sup>7</sup> Formerly Form TD-F 90-22.1. FinCEN Form 114 can be completed by accessing FinCEN’s BSA E-Filing System website at <http://bsae filing.fincen.treas.gov/main.html>.

The FBAR must be filed on or before April 15 of each calendar year for accounts maintained during the previous calendar year.<sup>8</sup>

31 CFR 1010.420 outlines the recordkeeping requirements associated with foreign financial accounts required to be reported under section 1010.350. Specifically, filers must retain records of such accounts, to include type of account, account number, name of foreign financial institution maintaining the account, address of the foreign financial institution, and maximum value of the account during the calendar year, for a period of five years and make the records available for inspection as authorized by law.

## II. Paperwork Reduction Act of 1995

Title: Reports of foreign financial accounts (31 CFR 1010.350), records to be made and retained by persons having financial interests in foreign financial accounts (31 CFR 1010.420), filing of reports (31 CFR 1010.306(c)), and FinCEN Form 114 - FBAR.

OMB Control Number: 1506-0009.

Form Number: FinCEN Form 114 - FBAR.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the FBAR regulations and form.

Affected Public: Individuals, businesses or other for-profit institutions, and non-profit institutions that qualify as U.S. persons.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: Annual.

Estimated Number of Respondents: 1,503,807 FBAR filers.<sup>9</sup>

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<sup>8</sup> In accordance with section 2006(b)(11) of Public Law 114-41, the filing due date for the report is April 15 effective as of the 2016 reporting year. The statute permits the Secretary to extend the filing due date for up to six months. Filers who submit complete and accurate reports to FinCEN no later than October 15 of the year the report is due will be deemed to have timely filed. FinCEN issued a statement on its website in 2016 noting the FBAR date change as a result of the statutory change. FinCEN intends to revise the FBAR regulations at 31 CFR 1010.306(c) to reflect the statutory date change.

<sup>9</sup> The total number of FBARs filed in 2022 for foreign financial accounts held during calendar year 2021 is 1,503,807. Multiple foreign financial accounts may be reported on a single FBAR.

### Estimated Reporting and Recordkeeping Burden:

The estimated average burden associated with the FBAR reporting and recordkeeping requirements will vary depending on the number of reportable foreign financial accounts and the applicability of special rules provided in the regulations which provide some relief from the full scope of the reporting obligations.<sup>10</sup>

The information required to be reported on the FBAR is basic information U.S. persons will have received on account statements from the foreign financial institutions where the accounts are opened and maintained. Those statements will provide a U.S. person with the information needed to complete and file the FBAR. No special accounting or legal skills are necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR.

The special rules located at 31 CFR 1010.350(g) provide a variety of relief to FBAR filers by (1) limiting the information reported in the FBAR to the number of accounts and certain other basic identifying information, if the filer has a financial interest in, or signature or other authority over, 25 or more reportable accounts; (2) allowing for entities to file consolidated FBARs on their own behalf and on behalf of entities for which they have a direct or indirect ownership interest of over 50 percent; and (3) exempting reporting of foreign financial interest in accounts involving certain trust and retirement plans. However, filers reporting financial interest in, or signature authority over, 25 or more foreign financial accounts are required to maintain a record of the detailed account information on each of their foreign financial accounts, including the account number, the name of the foreign financial institution that holds the account, the

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<sup>10</sup> 31 CFR 1010.350(g).

address of the foreign financial institution, the maximum value of the account during the calendar year, and the type of account.<sup>11</sup>

For the reasons noted above, FinCEN estimates that the approximate FBAR reporting burden will vary depending on the number of reportable foreign financial accounts and will range from approximately 20 minutes to 90 minutes. FinCEN estimates the average reporting burden per FBAR filer will be 55 minutes.

Past estimates of the FBAR recordkeeping requirement took into account time to store paper copies of the FBAR form and estimated that the approximate recordkeeping burden was 30 minutes. Since 2011, FBARs have been filed electronically.

Electronically filing the FBAR allows a filer to save an electronic copy of the report, which satisfies the recordkeeping part of the requirement. FinCEN estimates it would take a filer five minutes to save an electronic copy of the FBAR. In addition to maintaining a copy of the form, those filers who take advantage of the special rules related to financial interests in or signature authority over 25 or more accounts would be required to respond to requests for detailed information on those accounts. However, FinCEN believes that in most cases, such information would be maintained by filers in the ordinary course of business in the form of periodic account statements and other business records which would be maintained mostly electronically. There is no requirement in the FBAR regulations to maintain such information in any particular format.

For these reasons, FinCEN estimates that the FBAR recordkeeping burden will be approximately five minutes.

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<sup>11</sup> Filers availing themselves of special rules under 31 CFR 1010.350(g)(1) and (2) involving 25 or more reportable foreign financial accounts are required to maintain and provide detailed account information for each foreign financial account, if requested by the Secretary or their delegate.

FinCEN estimates the total annual reporting and recordkeeping burden per FBAR filer will be one hour (55 minutes for FBAR reporting, and five minutes for FBAR recordkeeping).

Estimated Total Annual Reporting and Recordkeeping Burden: The estimated total annual PRA burden is 1,503,807 hours (1,503,807<sup>12</sup> FBARs multiplied by one hour).

Estimated Total Annual Reporting and Recordkeeping Cost: Of the 1,503,807 FBARs filed in calendar year 2022, 1,434,362 were filed by individuals, and 69,445 were filed by entities. FinCEN cannot quantify the cost to individuals who file FBARs on their own behalf. For entities, FinCEN estimates the following annual burden cost: 69,445 hours x \$52.55<sup>13</sup> per hour = \$3,649,334.75.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the

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<sup>12</sup> FinCEN received 1,503,807 FBARs in calendar year 2022.

<sup>13</sup> The average hourly wage rate is calculated from the May 2022 U.S. Bureau of Labor Statistics average hourly wage for "13-1041 Compliance Officer" of \$37.01, plus an additional 42% for benefits to produce a fully-loaded rate of \$52.55. The ratio between benefits and wages for private industry workers is \$11.86 (hourly benefits)/\$28.37 (hourly wages) = 0.42, as of March 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. \$37.01 multiplied by 1.42 equals \$52.55. See U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation: Private Industry dataset* (March 2023), available at <https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx>.

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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