



Reporting Foreign Financial Accounts on the Electronic FBAR

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The information contained in this presentation is current as of the date it was presented. It should not be considered official guidance.

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FBAR Background

- Bank Secrecy Act enacted in 1970
- Codified primarily in Title 31 of U.S. Code
- Requires reporting of Foreign Financial Accounts
- Severe civil and criminal penalties for failure to comply

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FBAR Authorities

- Overall Title 31 responsibility is delegated to the Financial Crimes Enforcement Network (FinCEN)
- IRS has FBAR examination and enforcement authority under a delegation from FinCEN



FBAR Regulations

- FBAR filing governed by 31 C.F.R. 1010.350
 - Comprehensive revision in 2011
 - Preamble gives additional guidance and answers to questions received during public comment period
- FBAR record retention at 31 C.F.R. 1010.420
- Civil penalty provisions in the statute at 31 U.S.C. 5321
- Criminal penalty provisions at 31 U.S.C. 5322



Mandatory E-Filing of FBARs

Effective July 1, 2013, electronic filing on FinCEN's BSA E-File System

- Reduces filer burden
- Quick and secure
- Filing from domestic and foreign locations
- Instantaneous acknowledgement of receipt
- Batch-filing capabilities for preparers



E-Filing System Requirements

- Discrete filers do not need to register
- Batch filers must register for filing multiple FBARS
- FBAR filing now at FinCEN, not IRS
- Contact FinCEN for E-Filing help, including requests for exemption
- Filing due June 30 for prior calendar year
- No filing extension available



E-Filing Forms

- FinCEN Form 114 supersedes TD F 90-22.1
 - Page one allows explanation of late filing and special-program filing
 - No attachments allowed
 - Third-party signature block
- FinCEN Form 114a, *Authorization to Electronically File FBARs*



FBAR Filing Basics

Four Elements of FBAR Filing

1. “United States Persons” must file if,
2. They have a financial interest in or signature authority over an account,
3. That account is a Foreign Financial Account(s), and
4. The aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year.



FBAR Filing: “U.S. Persons”

“U.S. Persons” means

- U.S. citizens (no matter where they reside)
- U.S. residents - IRC 7701(b)
- U.S. entities – any entity created or organized in U.S. or under U.S. law. Tax status disregarded.



FBAR Filing: “U.S. Residents”

“U.S. Residents” mean

- “U.S. Resident” determined under IRC 7701(b)
- Green Card and Substantial Presence tests
- Those who elect to be treated as residents under 7701(b) file only FBARs on accounts held during the election period
- Tax treaty or IRC 6013(g) or (h) elections disregarded for FBAR purposes



FBAR Filing: “Financial Interest”

“Financial Interest” means:

- U.S. person is record owner or holds title directly
- Someone else holds title for benefit of U.S. person
- U.S. person is record owner or holds title indirectly
 - U.S. person owns >50% of the entity that holds title
 - Apply to tiered entities
 - See instructions for details



FBAR Filing: “Signature Authority”

“Signature Authority” means:

- Individual(s) can control disposition of account assets
 - Can be in conjunction with another
- By direct communication (oral or written)

Signature authority does not mean:

- Supervisory approvals
- Attributed to entities



FBAR Filing: “Foreign”

“Foreign” means

- Outside the United States, which is:
 - States
 - D.C.
 - Territories and Possessions
 - Indian lands
- Physical location of account governs



FBAR Filing: “Financial”

“Financial” means

- Both monetary and non-monetary assets
- Bank, brokerage, and investment accounts; insurance and annuity policy cash values; and mutual funds are specifically named
- Generally not real and personal property



FBAR Filing: “Account”

“Account” means

- Relationship with financial institution or person acting as a financial institution
- Not assets directly held



FBAR Filing: “Aggregation”

“Aggregate Value Exceeds \$10,000”

- Aggregate accounts with financial interest and those with signature authority
- Aggregate accounts owned “directly” and those owned “indirectly”
- Do not use family attribution of Title 26



Reportable Accounts

- Bank accounts (checking, savings, CDs)
- Securities or brokerage accounts (buying, selling, holding or trading stocks, bonds, etc.)
- Other financial accounts
 - Other deposit accounts
 - Cash value of insurance or annuities
 - Commodity futures or options accounts
 - Mutual funds, or similar pooled funds



Mutual Fund Definition

“Mutual Fund” is defined as:

- Issues shares to the general public
- Shares have a regular net asset value determination, and
- Regular redemptions



Reportable Account Exceptions

- U.S. military banking facility
- Accounts of U.S. governmental entities
- International financial institutions
- Correspondent or “nostro” accounts
- Held in a U.S. IRA (if owner or beneficiary)
- Held in a tax-qualified retirement plan (if participant or beneficiary)
- Consolidated filing



Custodial Accounts

- “Omnibus” foreign accounts held by U.S. banks or other financial institutions to hold investments of multiple persons
- If U.S. Person can only access account through U.S. entity and cannot directly access the foreign account, no FBAR reporting is required.



Valuing Accounts for FBAR

- Each account valued separately at its highest value
- Periodic statements may be relied upon
- Value in local currency is converted to U.S. dollars at 12/31 rate
- Aggregate all accounts
- Do not double count for determining threshold

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Example 1

Bank A account = \$8,000

(Move entire amount to new account)

Bank B account = \$8,000

Total accounts are \$16,000

However, not more than \$10,000 at any given time during the year.

Therefore: Filing not required.

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Example 2

Bank A account = \$8,000

Bank C account = \$4,000

(move Bank A account to new Bank B account)

Bank B account = \$8,000

Now accounts exceed \$10,000.

Therefore: Filing required reporting all three accounts.



Signature Authority Exceptions

Officer or employee (no financial interest) of:

- Bank examined by U.S. federal regulators
- SEC or CFTC registered institution
- Authorized Service Provider (SEC registered)
- U.S. listed entity (foreign or domestic)
- A U.S. subsidiary of a U.S. listed entity
- Entity registered under 12(g) of SEC



Trust Beneficiary Exceptions

- Trust beneficiary does not need to file if trust, trustee, or agent is a U.S. person and files an FBAR disclosing the trust's foreign financial accounts
- Reportable beneficial interest does not include remainder interest
- Discretionary beneficiary filing not required based on discretionary status



Special Filing Rules

- Truncated filing for 25 or more accounts
 - Financial interest filers
 - Check box 14a "yes" and provide number of accounts
 - No account detail required in Parts II or III (maintain records – See Consolidated Filing rules in next slide)
 - Signature authority filers
 - Check box 14b "yes" and provide number of accounts
 - Provide account owner's information in Part IV (items 34-43 and maintain records)



Special Filing Rules (continued)

Consolidated Filing (Part V)

- Allowed for all types of entities
- Parent information in Part I
- All foreign accounts, owned directly or indirectly by parent or any subsidiary, must be shown in Part V (except for 25 or more)
- All domestic account owners, direct and indirect, must be shown in Part V



Special Filing Rules (continued)

Spouses allowed to file one combined FBAR if:

- Non-filing spouse has only joint accounts with the filing spouse
- All joint accounts reported on single FBAR
- Spouses use FinCEN Form 114a, *Authorization to Electronically File FBARs*, to authorize one spouse to file for both spouses



FBAR Record Keeping Requirements

- Account records must be maintained for five years
- Exception: officers or employees who file an FBAR because of signature authority over the foreign financial account of their employers are not expected to personally maintain the records of these foreign financial accounts.
- FinCEN 114a - *Record of Authorization to Electronically File FBARs*



Administrative Guidance

- FinCEN Notice 2011-1
 - Filing extension to June 30, 2012 for certain employees with signature authority only
- FinCEN Notice 2011-2
 - Extended due date for filing to June 30, 2012, for certain officers or employees of investment advisors
- FinCEN Notice 2012-1
 - Extended the deadline to file to June 30, 2013, for those persons identified in Notice 2011-1 and Notice 2011-2.
- FinCEN Notice 2012-2
 - Further extended the due date for filing to June 30, 2014
- FinCEN Notice 2013-1
 - Further extended the due date for filing to June 30, 2015.



Question 1

How do I file an amended FBAR?

- Check the “Amended” box in the upper right-hand corner of the FBAR on page 2
- Complete the entire Form 114 with the corrected information
- Explain the reason for amending on page 1 of the form



Question 2

How is a Certificate of Deposit account reported when it acquires a new account number upon each renewal?

The issuance of a new certificate with a new account number upon each renewal, by itself, is not treated as a transfer of funds to a new financial account for FBAR purposes. The funds are considered to be deposited in only one financial account, a CD with the bank.



Question 3

Do I need to file an FBAR for my infant son who is a U.S. citizen and has foreign financial accounts, but is not required to file a tax return?

Yes. There are no age limitations on FBAR filing. An FBAR should be filed on behalf of your son if he has reportable foreign financial accounts. Remember - tax filing status is not a consideration for FBAR.



Question 4

An individual has the power to direct how an account is invested, but cannot make dispositions from the account. Is that individual required to file the FBAR?

No. The FBAR is not required because the person who cannot make dispositions from an account is not considered to have signature authority over the account.



Question 5

Is the FBAR required by a U.S. resident with power of attorney over his parents' reportable financial accounts in Canada, even when that authority has never been exercised?

Yes. The person holding power of attorney is a U.S. person who is required to file FBARs on the reportable accounts, as long as the authorization remains in force. Whether that authority has ever been exercised is not relevant to the FBAR filing requirement.



Question 6

Are Canadian RRSP and TFSA accounts reportable on the FBAR? Are accounts administered by Mexico's AFORE?

Yes. Even though they are similar to the U.S. IRA and Roth IRA, the exemption provided in the new regulations for IRAs is for U.S. accounts. It does not extend to similar foreign accounts. In general, foreign defined contribution retirement accounts are reportable on the FBAR.



Question 7

Is an account holding certificates representing an interest in gold bullion considered a reportable account?

Yes. An account with a financial institution, located in a foreign country, is a reportable account, whether the account holds cash or non-monetary assets.



FBAR Help

- IRS.gov, keyword search “FBAR”
- Call FBAR hotline at 866-270-0733, toll free, or 313-234-6146 (toll for callers outside the U.S.), option 2
- E-mail FBARquestions@irs.gov
- Call the BSA E-Filing Help Desk at 866-346-9478 or e-mail BSAEFilingHelp@fincen.gov
- Contact FinCEN's Regulatory Helpline at 800-949-2732 toll free, or 703-905-3975 (toll for callers outside the U.S.) for questions regarding BSA regulations, or to discuss acceptable alternatives to electronic filing
- Submit an Administrative Ruling – 31 C.F.R. 1010.711



Thank You for Watching

Send us your questions by selecting the “Ask a Question” link under the PowerPoint window and then select the submit button.