



Foreign Bank Account Reporting (FBAR)

Frequently Asked Questions

What is FBAR

The Bank Secrecy Act (BSA) gives the Department of Treasury authority to collect information from United States persons who have financial interests in, or signature authority over, financial accounts maintained with financial institutions located outside of the United States. This provision of the BSA requires that a FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) be filed if the aggregate maximum values of the foreign financial accounts exceed \$10,000 at any time during the calendar year.

Who must comply with FBAR

Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country must report that relationship to the Commissioner of Internal Revenue for each year in which the relationship exists.

What is a “United States Person”

A “United States person” means:

- A citizen or resident of the United States
- An entity created or organized in the United States or under the laws of the United States; the term “entity” includes, but is not limited to, a corporation, partnership or limited liability company
- A trust formed under the laws of the United States
- An estate formed under the laws of the United States.

Individual citizens of the U.S., whether at home or abroad, foreign citizens that are living in the U.S. and just about any U.S. legal entity are considered U.S. persons and must report foreign accounts even if they are not otherwise required to file any sort of tax return.

What is a “Foreign Financial Account”

As far as FBAR is concerned a financial account is basically any financial asset, including but not limited to:

- Bank accounts, including savings deposits, demand deposits, checking, or any other account maintained with a person engaged in the business of banking
- Securities accounts including brokerage accounts, derivatives accounts or any other account held with a person or company engaged in the business of buying, selling, holding or trading stock or other securities
- An account with a person that is in the business of accepting deposits as a financial agency
- Insurance accounts or annuity policies with a cash value
- Futures or options accounts with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association
- Mutual funds or similar pooled funds which issue shares available to the general public that have a regular net asset value determination and regular redemptions
- Any other investment funds

The regulation further specifies that the account must be maintained with a “financial institution” located outside of the United States or its territories. So foreign securities purchased through a brokerage account held in Chicago would not be included since the actual account is in the U.S. even though the securities are those of a foreign company.

What is meant by “financial interest”

Generally speaking, a person has a financial interest in an account if they own directly or indirectly more than 50% of a foreign account. But this also includes anyone who holds a beneficial interest of more than 50% of a foreign account or who is the owner of record of more than 50% of a foreign account even if the assets in the account belong to someone else. As a result, it is very possible that more than one person must report “financial interest” in a given account. For example, John is the owner of record of a French bank account, but the money in the account actually belongs to his daughter, Jill. Both John and Jill must report a financial interest in the account if it otherwise meets reporting requirements. This is also true for jointly held accounts, since all holders are responsible for FBAR reporting.

What is meant by “signature or other authority”

Signature authority is the authority of an individual to control the disposition of the assets held in a foreign financial account by direct communication to the bank or institution that holds the account. This includes check signers but also includes any individual who can initiate or authorize transfers or payments whether in writing or electronically, whether they can do it alone or need to do it in conjunction with someone else. This would include anyone who can initiate or release wire transfers through an online banking system, whether or not they ever actually initiate a transfer. Whether or not the authority is ever used is irrelevant for FBAR. It would not include an individual who has the internal authority to authorize payments but must tell someone else to actually contact the bank and initiate the payment. In other words, internal approval authority over payments and invoices does not translate into signature authority unless the person also has the authority to directly tell the bank to make the payment.

Are corporate signers required to file FBAR reports

There are exceptions for persons who only have signature authority over corporate accounts but have no direct personal interest in the account themselves. Officers or employees of banks are exempt from FBAR filing. In addition, officers and employees of publicly traded companies or subsidiaries of publicly traded companies registered on a US exchange are not required to file an FBAR as long as the company itself files an FBAR. But this exception may not be as broad as it seems. It does not apply to officers or employees of U.S. subsidiaries of foreign corporations, officers or employees of U.S. publicly traded companies who have authority over a foreign account owned by controlled foreign corporations, officers or employees of a U.S. company who have authority over foreign accounts of a foreign subsidiary or officers or employees of a subsidiary who have authority over foreign accounts of the parent company.

Are there any other exceptions

Trust beneficiaries are not required to file an FBAR as long as the trustee or agent of the trust files. Participants in retirement plans as well as owners of IRA accounts are also not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

How do I determine if I meet the FBAR filing requirements

An FBAR must be filed for any year in which an individual or business has an aggregate total of more than \$10,000 in foreign accounts at any time during the year. This total is determined by converting the highest balance in each account at any point during the year into US dollars and aggregating these sums. If the threshold is crossed, then you must report the highest number for each account even if any individual account balance is zero.

When do I have to file an FBAR

While the Form 114 is filed separately from all other tax reports, the current filing date is April 15 of each year for accounts held the prior year. There is currently an automatic extension until October 15. This has changed from the original requirement which was June 30.

How do I file an FBAR Report

All FBAR reports must be filed electronically with FinCEN, the Financial Crimes Enforcement Network. They can be filed online at <https://bsaefiling.fincen.treas.gov/main.html>. FinCEN also allows batch filing of electronic reports. Further details are available on the FinCEN website.

What information must be reported

Filing requires reporting specific information about each foreign account, including:

- Type of account
- Account number, if any
- Financial Institution name and address
- Maximum balance during the year

Filers with more than 25 accounts will complete the first part of the electronic FBAR but do not need to report the detailed information for each account. They must, however, maintain the detailed information on each account for FinCEN review if required.

What records do I need to keep

FinCEN rules require that filers must keep records of accounts reported for at least five years from the due date of the original FBAR. The records should contain:

- Name maintained on each account
- Number or other designation of the account
- Name and address of the foreign bank or other person with whom the account is maintained
- Type of account
- Maximum value of each account during the year

This record keeping requirement may be managed by keeping copies of the filed FBARs or through automated systems such as treasury management systems.

What are the penalties for failing to file

Failure to properly file a required FBAR and or maintain the required records can result in significant civil and criminal penalties. In some cases, the penalties can exceed the actual balances in the related foreign accounts. Penalties for non-willful violation of the rules, in other words simple negligence, can be as high as \$12,459 per account per year. Penalties for willful violations can be up to \$100,000 or 50% of the value in the account per account per year. Criminal penalties for willful violations are up to \$250,000 and up to 5 years in prison. Under certain circumstances, e.g. while violating other laws, criminal penalties can be doubled.

What if I have unfiled reports

If you have reports that have not been properly filed and you have not yet been contacted by the IRS, you should file the appropriate information in the E-filing system as soon as possible. The system allows a filer to enter the calendar year reported, including past years, on the online FinCEN Form 114. It also offers an option to “explain a late filing” or to select “Other” to enter up to 750-characters within a text box where the filer can provide a further explanation of the late filing or indicate whether the filing is made in conjunction with an IRS compliance program. If the foreign financial account is properly reported on a late-filed FBAR, and IRS determines that the FBAR violation was due to reasonable cause, penalties can be waived.

If you have already been contacted by the authorities, you should consult your tax or legal representative concerning the various alternatives that are open to you. These may include the Offshore Voluntary



Disclosure Program (OVDP), a program designed for individuals, businesses and trusts that knowingly or intentionally failed to report their foreign account information and foreign income earnings and the Modified Streamlined Reporting Program (MSRP) intended for persons who were non-willful in their failure to file. Both programs require filing prior reports and amended returns and do not necessarily eliminate fines and penalties.

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