



American Institute of CPAs  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1081

May 6, 2013

Attn: PRA Comments – Update to the FBAR Report  
Regulatory Policy and Programs Division  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

RE: Request for Comments Regarding Proposed Changes to the Report of Foreign Bank and Financial Accounts Report

To Whom It May Concern:

The American Institute of Certified Public Accountants (AICPA) respectfully submits comments related to the Financial Crimes Enforcement Network Notice titled “Agency Information Collection Activities; Comment Request of Proposed Changes to the Report of Foreign Bank and Financial Accounts Report.”

These comments were developed by the Foreign Asset and Account Disclosure Task Force of the AICPA International Taxation Technical Resource Panel, and approved by the AICPA Tax Executive Committee.

The AICPA is the world’s largest member association representing the accounting profession, with nearly 386,000 members in 128 countries and a 125-year heritage of servicing the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

### **Background**

The Financial Crimes Enforcement Network (FinCEN) Notice<sup>1</sup> which proposes changes to the Report of Foreign Bank and Financial Accounts (FBAR) indicates that the changes focus on the following areas: (i) the taxpayer’s tax number (ii) maximum account value, (iii) suffix to the taxpayer’s name, and (iv) signature line. Specifically, the proposed

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<sup>1</sup> Federal Register, Volume 78, No. 43, March 5, 2013.

revisions to the FBAR request that taxpayers indicate if their tax number is an individual taxpayer identification number (ITIN), social security number (SSN), employer identification number (EIN) or foreign taxpayer identification number (TIN). The proposed changes also permit taxpayers to indicate that the maximum account value is unknown and authorize third party preparers to file the FBAR on behalf of their clients. These changes are being made to have the FBAR more closely resemble other Bank Secrecy Act filings, which are filed electronically and permit third party preparers to file on behalf of owners.

Our comments are divided into two parts. Part I provides comments on the proposed revisions to the FBAR. Part II provides suggested additions to the FBAR.

### **PART I – Comments on Proposed Revisions to the FBAR**

1. Lines 15 and 15(a) - Maximum Value. The AICPA commends FinCEN for the proposed addition of Line 15(a), which permits taxpayers to indicate that the maximum value of the account is unknown.
  - We believe however, that Line 15 should be revised throughout the FBAR to read as follows: “Maximum value of the account during calendar year reported in USD at the end of the year conversion rate.” Because the form does not currently reflect that the value is to be reported in United States (US) currency, it invites confusion. For example, IRS Form 8938, Statement of Specified Foreign Financial Assets, has resolved similar confusion by requiring that taxpayers report the value of the account, the foreign currency and the foreign exchange rate used to convert to USD. We believe that for FBAR purposes, clarifying Line 15 to indicate the maximum account value should be expressed “in USD at the end of the year conversion rate” is sufficient to notify filers of the currency in which the value is to be expressed.
2. Lines 44-46 - Filer Signature. The instructions make clear that both spouses do not have to file separate FBARs to report jointly owned accounts provided that all accounts owned by the non-filing spouse are jointly owned, the filing spouse reports the accounts, and both spouses sign Line 44.
  - We recommend that Line 44 be expanded or in the alternative Line 44(a) added to provide sufficient space for the non-filing spouse to sign his/her name. Additionally, Line 44(b) could be added to request the SSN or TIN of the non-filing spouse.

3. Line 52 and 52(a) - Third-Party Preparer. We believe that foreign preparers are eligible to prepare the FBAR. If our understanding is correct, there is inconsistency between reporting items on the FBAR.
  - We believe it would be helpful if Lines 52 and 52(a) (the preparer's TIN and TIN type) were consistent with Lines 3 and Line 3(a) (taxpayer identification number and type). If the FBAR is prepared by a US preparer, the FBAR should request the preparer's TIN and then clarify if it is a SSN or ITIN. However, SSNs should only be provided if no other registration number is available.
  - It appears that preparers have a choice in which identifying number is used on Box 52a; a domestic preparer could enter in either a preparer tax identification number (PTIN) or a SSN/EIN. We recommend that a separate line/box be provided for the preparer's PTIN, versus requesting it in Line 52(a) to provide complete and consistent information from each preparer.
  - If the FBAR is prepared by a foreign preparer, the addition of a line consistent with Line 4 would be helpful.
  - We recommend that tax return preparers be instructed to only provide their name, address, phone number and PTIN. We further recommend that tax return preparers be directed to complete the firm information, Lines 54–60, if the FBAR is prepared within the scope of their employment.
  - We recommend that FinCEN consider adding a fourth option, allowing third party preparers possessing a Centralized Authorization File Number (CAF) to provide the CAF in lieu of providing a social security number, if and only if the third party preparer does not possess a PTIN. Similarly we recommend that third party preparers with a CAF but not a PTIN be instructed to provide only their name, address, phone number and CAF and to complete the firm information, Lines 54-60, if the FBAR is prepared within the scope of their employment.
4. Line 34 in Part V - Consolidated Reports. When a taxpayer is filing a consolidated FBAR, Line 34 requests the name of the Corporate Account Owner.
  - We suggest that Line 34 be revised to read as follows: “Entity Name of Account Owner.” This language will be consistent with the

instructions which permit any domestic entity that is more than 50 percent owned to have its accounts reported by its majority owner.

## **PART II – Suggested Additions to the FBAR**

The greater detail FinCEN has regarding account ownership, the more it will “assist Federal, state, and local law enforcement in the identification, investigation, and prosecution of individuals involved in money laundering, the financing of terrorism, tax evasion, narcotics trafficking, organized crime, fraud, embezzlement, and other crimes. The information also assists in tax collection, examination, and other regulatory matters.”<sup>2</sup> The suggestions below are meant to add clarity to the form, improve the quality of compliance, ease filer burden, and assist FinCEN in achieving its stated goals.

### 1. More Than 25 Signature Authority Accounts.

- We recommend adding a new Line 14(a) which asks the question: Does the filer have signature or other authority over 25 or more foreign financial accounts? Blocks for ‘Yes’ or ‘No’ similar to the current Line 14 should be included. An instruction indicating “If ‘Yes’, enter the total number of accounts\_\_\_\_\_” will be needed. Similarly further instructions should be added that state: “If ‘Yes’ is checked complete only items 34-43 for each person on whose behalf the filer has signature authority.”

### 2. Indirect Account Ownership. The instructions define financial interest as including persons who not only have direct ownership of a foreign account, but also certain taxpayers with indirect ownership.

- We recommend adding a new question to Part II of the form where individual ownership is reported or a new Part VI to the FBAR that would be completed by persons reporting indirect ownership of a foreign account pursuant to 2(a)-2(f) of the definition. In addition, we recommend Line 34 should be revised to read as follows: “Entity Name of Account Owner.”
- We further suggest that since consolidated reports may be filed by any type of entity, a Part V Exhibit A be created which lists the name and TIN/EIN of each US person filing as an entity controlled by the consolidated filer. Currently, it is difficult to determine which entities are included in the consolidated report particularly when the filer is not a corporation.

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<sup>2</sup> Supplemental Information in Notice.

3. Joint Account Ownership. The instructions provide an exception for accounts owned jointly by spouses. However, the instructions do not define the term “joint account” although the term is used on the form and throughout the instructions. In the case of indirect ownership, as discussed above, the indirect owner and the direct owner both have financial interests in the account and the account can be viewed as having joint ownership.
  - We recommend that a definition be provided for the term “joint account” that clarifies whether or not, in the case of indirect ownership, that the account is a joint account.
  
4. Late Filing. The instructions indicate that there is no extension of time to file the FBAR. If a taxpayer files the FBAR late, a statement should be attached explaining the reason why it is filed late.
  - Recommendation 1: Since there is a high likelihood and opportunity for items supplemental to a tax or informational filing to be separated from the underlying document, we recommend that there be a box on Page 1 of the FBAR that reads “Filed Late” directly above “Amended.” There could then be a statement directing the taxpayer to attach documentation of the reason for filing late. This is consistent with the approach used on IRS Form 8832, Entity Classification Election, which provides a check box to indicate whether the filer is requesting late election relief. It also provides several lines at Part II of the form for the filer to explain why the election was not timely filed.
  - Extensions of time to file are allowed for certain filers according to FinCEN Notices 2011-1, 2011-2, 2012-1 and 2012-2. It would be helpful if a box was added to the form stating “Extension granted by FinCEN Notice\_\_\_\_\_.” Checking the box should also relate to amended returns if the filer also has ownership in foreign financial interests. No explanation would be necessary.
  - Recommendation 2: If adding the additional lines to provide space for the taxpayer to explain why the FBAR is filed late is not possible, it would be helpful if FinCEN permitted attachments to be filed with the electronic FBAR. This would permit the late filing statement to accompany the FBAR filing.

5. Minor Children.

We believe FinCEN should consider simplifying the filing requirements for minor children. We recommend that FinCEN provide for the ability of a custodial parent or legal guardian to include a minor child's foreign financial accounts in the parent's or legal guardian's FBAR.

6. Subsequent Filings.

If FinCEN retains its current e-filing format, we believe that it would be beneficial if FinCEN developed the ability to retain and display prior year financial information once the filer populated certain identifying information. This approach would assist taxpayers and tax practitioners in the preparation of FBARs in subsequent years.

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We appreciate your timely consideration of our recommendations, and we welcome further discussion. If you have any questions, please contact Christine Ballard, Chair of the AICPA International Taxation Technical Resource Panel, at (703) 970-0424, or [Christine.ballard@dhgllp.com](mailto:Christine.ballard@dhgllp.com); or Kristin Esposito, AICPA Technical Manager, at (202) 434-9241, or [kesposito@aicpa.org](mailto:kesposito@aicpa.org).

Sincerely,



Jeffrey A. Porter, CPA  
Chair, Tax Executive Committee

cc: Steven Musher, Associate Chief Counsel (International)