

## REPORTS OF FOREIGN FINANCIAL ACCOUNTS

**Objective:** *Assess the bank's compliance with the BSA regulatory requirements for the reporting of foreign financial accounts.*

### Regulatory Requirements for Reports of Foreign Financial Accounts

This section outlines the regulatory requirements for banks in 31 CFR Chapter X regarding reports of foreign financial accounts. Specifically, this section covers:

- [31 CFR 1010.306\(c\)](#)
- [31 CFR 1010.350](#)
- [31 CFR 1010.420](#)

A United States (U.S.) person<sup>1</sup> (including a bank) must file a Report of Foreign Bank and Financial Accounts (FBAR) if that person has a financial interest in, or signature or other authority over, one or more bank, securities, or other financial accounts<sup>2</sup> in a foreign country, and the aggregate maximum value of the accounts exceeds \$10,000 at any time during the calendar year.<sup>3</sup> A bank may have a financial interest in, or signature or other authority over, accounts maintained or administered for its customers.<sup>4</sup> It is important to note that the federal tax treatment of an entity does not determine whether the entity has an FBAR filing requirement. U.S. persons may maintain foreign accounts for a variety of legitimate reasons, including convenience and access. The FBAR is a tool used by the U.S. government to identify persons who may be using foreign financial accounts to circumvent U.S. law. Information contained in FBARs can be used to identify or trace funds used for illicit purposes or to identify unreported income maintained or generated abroad.<sup>5</sup>

FinCEN's Filing Instructions further describe FBAR reporting requirements, including instructions for which accounts a bank would be required to report on the FBAR.<sup>6</sup> For example, correspondent or nostro accounts (which are maintained by banks and used solely for bank-to-bank settlements) are not required to be reported.<sup>7</sup> An officer or employee of a bank need not report signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.<sup>8</sup> However, a bank may

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<sup>1</sup> [31 CFR 1010.350\(b\)](#) defines "United States person" for purposes of this section. [IRS guidance](#) establishes that the term "United States person" includes U.S. citizens; U.S. residents; entities, including but not limited to, corporations, partnerships, or limited liability companies, created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

<sup>2</sup> [31 CFR 1010.350\(c\)](#).

<sup>3</sup> [31 CFR 1010.306\(c\)](#), [31 CFR 1010.350](#), and [31 CFR 1010.420](#). See also Internal Revenue Service, "[IRS FBAR Reference Guide](#)."

<sup>4</sup> See [31 CFR 1010.350\(e\)](#) for the definition of "financial interest" and [31 CFR 1010.350\(f\)](#) for the definition of "signature or other authority."

<sup>5</sup> Internal Revenue Service, "[IRS FBAR Reference Guide](#)."

<sup>6</sup> FinCEN (October 2019), "[Report of Foreign Bank and Financial Accounts \(FBAR\) Electronic Filing Requirements](#)," Attachment C – Electronic Filing Instructions, pp. 86-88.

<sup>7</sup> [31 CFR 1010.350\(c\)\(4\)](#).

<sup>8</sup> [31 CFR 1010.350\(f\)\(2\)\(i\)](#).

be obligated to file an FBAR for customer accounts in which the bank has a financial interest, or over which it has signature or other authority.<sup>9</sup>

FBARs must be filed electronically through the [BSA E-Filing System](#), in accordance with FinCEN form instructions, with respect to foreign financial accounts whose aggregate value exceeded \$10,000 at any time during the previous calendar year. Additional information concerning FBAR requirements, including filing due dates and any extensions, can be found on the FinCEN website.<sup>10</sup>

## **Examiner Assessment of Compliance with FBAR Requirements**

Examiners assess the adequacy of the bank's policies, procedures, and processes (internal controls) related to the bank's filing of FBARs. Specifically, examiners should determine whether these internal controls are designed to mitigate and manage ML/TF and other illicit financial activity risks, and comply with FBAR requirements. Examiners may review information, such as independent testing or audit reports, to aid in their assessment of the bank's filing of FBARs.

Examiners should also consider general internal controls concepts, such as dual controls, segregation of duties, and management approval for certain actions, as they relate to the bank's process for FBAR filing. For example, employees who complete FBARs generally should not also be responsible for the decision to file the reports. Other internal controls may include BSA compliance officer or other senior management approval for staff actions where segregation of duties cannot be achieved.

When assessing internal controls and compliance with FBAR requirements, examiners should keep in mind that the bank may have a limited number of instances of noncompliance with the regulation (such as isolated or technical violations) or minor deviations from the bank's policies, procedures, and processes without resulting in an overall failure of internal controls. These instances should be considered in the context of all examination findings and the bank's risk profile. Examiners should determine whether the bank's internal controls for filing FBARs are designed to assure ongoing compliance with the requirements and are commensurate with the bank's risk profile. Refer to the [Assessing the BSA/AML Compliance Program - BSA/AML Internal Controls](#) section for more information.

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<sup>9</sup> [31 CFR 1010.350\(e\)](#) for the definition of "financial interest" and [31 CFR 1010.350\(f\)](#) for the definition of "signature or other authority."

<sup>10</sup> [Filing Information](#) – FBAR (Foreign Bank Account Report) 114 and [Report Foreign Bank and Financial Accounts](#).

## **REPORTS OF FOREIGN FINANCIAL ACCOUNTS EXAMINATION AND TESTING PROCEDURES**

**Objective:** *Assess the bank's compliance with the BSA regulatory requirements for the reporting of foreign financial accounts.*

1. Determine whether the bank has a financial interest in, or signature or other authority over, bank, securities, or other financial accounts in a foreign country. Additionally, determine whether the bank is required to file a Report of Foreign Bank and Financial Accounts (FBAR) for customer accounts, including trust accounts, in which the bank has a financial interest or over which it has signature or other authority.
2. Review the bank's policies, procedures, and processes for filing annual FBARs to determine whether they meet the BSA regulatory requirements for FBAR reporting.
3. Determine whether the bank's internal controls are designed to assure ongoing compliance with FBAR filing requirements and are commensurate with the bank's risk profile.
4. Select a sample of accounts subject to FBAR filing requirements to determine whether:
  - FBARs are filed in accordance with FinCEN form instructions.
  - FBARs filed contain accurate and complete information.
  - Any discrepancies exist between the bank's records of FBARs and the FBARs reflected in the BSA reporting database.
  - The bank has taken corrective action where errors are identified.
  - The bank retains copies (electronic format or paper copies) of FBARs for five years from the date of the report.
5. On the basis of examination and testing procedures completed, form a conclusion about the adequacy of policies, procedures, and processes the bank has developed to meet BSA regulatory requirements associated with FBARs.