



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.21.6

FEBRUARY 18, 2016

EFFECTIVE DATE

(02-18-2016)

PURPOSE

- (1) This transmits a revision of IRM 5.21.6, *International and Insular Issues - Foreign Financial Account Reporting*, for Collection employees.

MATERIAL CHANGES

- (1) IRM 5.21.6.5 changed title to Reporting.
- (2) Updated FBAR form to FinCEN Report 114 throughout.
- (3) IRM 5.21.6.2(1) deleted Note.
- (4) IRM 5.21.6.4 Note clarified Delegation Order 25-13.
- (5) IRM 5.21.6.5(1) added reference to IDRS IRPTR.
- (6) IRM 5.21.6.5(2), removed reference to Currency Banking Retrieval System (WebCBRS) and added the FinCEN Query System.
- (7) IRM 5.21.6.5(3)(b) moved to IRM 5.21.6.8(1).
- (8) Deleted IRM 5.21.6.6..
- (9) IRM 5.21.6.8(1) added reference to assessment of FBAR penalties.
- (10) IRM 5.21.6.8(1) Note added information regarding FBAR penalties as part of an Offer in Compromise.
- (11) IRM 5.21.6.9(3) added reference to IDRS command code RTVUE to view Form 8938.
- (12) Exhibit 5.21.6-1 added information regarding non-resident aliens of American Samoa and Puerto Rico.
- (13) Updated references and renumbered, as appropriate, throughout.

EFFECT ON OTHER DOCUMENTS

IRM 5.21.6, dated November 27, 2013, is superseded.

AUDIENCE

SB/SE Revenue Officers

Kristen E. Bailey
Director, Collection Policy

5.21.6

Foreign Financial Account Reporting

Table of Contents

- 5.21.6.1 Introduction
- 5.21.6.2 Reporting Requirements
- 5.21.6.3 Penalties
- 5.21.6.4 Delegated Authority
- 5.21.6.5 Reporting
- 5.21.6.6 CSED
- 5.21.6.7 Collection of FBAR Penalties
- 5.21.6.8 Foreign Account Tax Compliance Act (FATCA)

Exhibits

- 5.21.6-1 Comparison of Form 8938 and FBAR Requirements

5.21.6.1
(02-18-2016)
Introduction

- (1) Report of Foreign Bank and Financial Accounts (FBAR) is authorized by statute.
 - 31 U.S.C. §5314(a) directs the Secretary to require residents or citizens of the United States, or a person in and doing business in the United States, to keep records and/or file reports when the person makes a transaction or maintains a relationship with a foreign financial agency.
 - Section 5314(b) authorizes the Secretary of the Treasury to carry out this mandate by issuing regulations prescribing the application of the reporting requirements, including to whom the requirements apply.

5.21.6.2
(02-18-2016)
Reporting Requirements

- (1) Each U.S. person who has a financial interest in, or signature or other authority over, one or more foreign financial accounts that has an aggregate value greater than \$10,000 at any time during a calendar year is required to confirm the existence of the foreign account on Schedule B of Form 1040, and on similar schedules of other federal tax forms, as well as report the foreign accounts on FinCEN Report 114, *Report of Foreign Bank and Financial Accounts* (FBAR), formerly form TD F 90-22.1. The FBAR is due on or before April 15 of the year immediately following the calendar year being reported.
- (2) Beginning with the filing season starting July 1, 2013, FinCEN requires that all FBAR reports be electronically filed through their website <https://www.fincen.gov/>.
- (3) Each person who is required to report an interest in foreign financial accounts must also maintain certain records of any foreign accounts.
- (4) See 31 C.F.R. 1010.350, *Reports of foreign financial accounts, and 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts*, for additional information regarding records.
- (5) See IRM 5.1.18.16, *Foreign Bank and Financial Account Report*, for information on locating records of FBAR reports filed by the taxpayer.

5.21.6.3
(02-18-2016)
Penalties

- (1) Failure to file the required report or maintain adequate records is a violation of Title 31. For each violation a penalty may be asserted.
- (2) Violations Occurring Prior to October 23, 2004 (Willful). 31 U.S.C. §5321(a)(5) authorizes a civil monetary penalty for any person who willfully violates (or willfully causes any violation of) 31 U.S.C. §5314, not to exceed the greater of:
 - a. an amount equal to the balance in the account at the time of the violation up to \$100,000, or
 - b. \$25,000.
- (3) Violations Occurring on or after October 23, 2004 (Willful):

31 U.S.C. §5321(a)(5)(C) authorizes a civil monetary penalty for any person who willfully violates (or willfully causes any violation of) 31 U.S.C. §5314 not to exceed the greater of:

 - a. an amount equal to 50% of the balance in the account at the time of the violation, or
 - b. \$100,000.

Note: The penalty can be for each violation.

(4) Violations Occurring on or after October 23, 2004 (Non-Willful):

- 31 U.S.C. §§ 5321(a)(5)(A) & (B) authorize a civil monetary penalty for any person who violates (or causes any violation of) 31 U.S.C. §5314 in an amount not to exceed \$10,000.
- The penalty should not be asserted if there was reasonable cause for the violation.

Note: The penalty can be for each violation.

5.21.6.4
(11-27-2013)

Delegated Authority

- (1) Even though the penalty imposed under 31 U.S.C. §5321(a)(5) for failing to report these foreign financial interests (commonly called the FBAR penalty) is not a tax debt, the IRS has been delegated the authority to assess and collect the penalty for the government. Delegation Order 4-35, revised on March 24, 2008, authorizes revenue officers grade 9 and above to investigate possible civil violations of the FBAR requirements. This delegation order also authorizes insolvency units to protect the government's interest in bankruptcy, state and federal receiverships, and other state and federal insolvency actions.

Note: Delegation Order 25-13 eliminates the reference to Delegation 4-35.

- (2) Collection is not delegated any enforcement authority with respect to FBAR penalties.
- (3) See IRM 5.9.4.20, *Report of Foreign Bank and Financial Accounts (FBAR)*, for information on filing claims in a bankruptcy proceeding.

5.21.6.5
(02-18-2016)

Reporting

- (1) The filing of FinCEN Report 114 by or for the taxpayer will generate an IDRS IRPTR transcript. IRPTR will only reflect the filing of the form and does **not** provide any specific information such as name of the bank, account number, account balance, other owners etc.,.
- (2) Information reported on FBARs is entered into a database known as the FinCEN Query System (FCQ). Additional information such as the name of the bank where the account is located, the amount in the account, co-owners, and other useful information may be obtained by researching the FCQ. See IRM 5.1.18.16, *Accessing Information on the FinCEN Query System*.
- (3) For additional information on FBARs, see IRM 5.9.4.20, *Report of Foreign Bank and Financial Accounts (FBAR)*.

5.21.6.6
(02-18-2016)

CSED

- (1) The government has two years in which to file a civil action to recover an FBAR penalty beginning on the later of the date the penalty was assessed or the date any judgment becomes final in any criminal action under 31 U.S.C. §5322 in connection with the same transaction with respect to which the civil penalty was assessed. Currently, IRS has no procedures for soliciting a waiver of this two-year statute of limitations.
- (2) See IRM 5.9.4.20, *Report of Foreign Bank and Financial Accounts (FBAR)*, for CSED considerations in bankruptcy.

5.21.6.7
(02-18-2016)
**Collection of FBAR
Penalties**

- (1) FBAR penalties are asserted under Title 31 as a non-tax debt and do not appear on IDRS. They are tracked on a separate database at Detroit and that is where payments are posted and notices generated.

Note: FBAR penalties cannot be included on an Offer in Compromise.

- (2) The Bureau of Fiscal Service (BFS), formerly Financial Management Service (FMS), which is a bureau of the Department of the Treasury, is responsible for collecting all non-tax debts. This includes FBAR penalties.
- (3) Advise all taxpayers who have questions or need to pay an FBAR penalty to write to:
Internal Revenue Service
Detroit Federal Building
P.O. Box 33115
Detroit, MI 48232

5.21.6.8
(02-18-2016)
**Foreign Account Tax
Compliance Act (FATCA)**

- (1) Foreign Account Tax Compliance Act (FATCA) is a statute written subsequent to the FBAR statute. Some taxpayers who file FBAR forms have a further requirement to file Form 8938, *Statement of Specified Foreign Financial Assets*, if they have specified foreign financial assets with an aggregate value exceeding \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year, with higher thresholds for married individuals filing jointly and individuals living abroad.
- (2) The Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file an FBAR form. Individuals must file each form for which they meet the relevant reporting threshold. See IRM Exhibit 5.21.6-1 for a comparison of these two foreign account reporting requirements.
- (3) Use IDRS command code RTVUE to view if a taxpayer filed Form 8938. The "CC CD" indicator (or Computer Condition Code) will include an "H" to indicate that Form 8938 was filed. If Form 8938 has been filed, ESTAB the return to view the return information. This may lead to the identification of a foreign asset or account.

This Page Intentionally Left Blank

Exhibit 5.21.6-1 (02-18-2016)

Comparison of Form 8938 and FBAR Requirements

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR)
Who Must File?	Specified individuals, which include U.S. citizens, resident aliens, and certain non-resident aliens that have an interest in specified foreign financial assets and meet the reporting threshold. For non-residents of American Samoa and Puerto Rico, see below.	U.S. persons, which include U.S. citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
Does the United States include U.S. territories?	No. However, non-resident aliens that are bona fide residents of American Samoa, and Puerto Rico have a Form 8938 requirement.	Yes, resident aliens of U.S. territories and U.S. territory entities are subject to FBAR reporting
Reporting Threshold (Total Value of Assets)	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
When do you have an interest in an account or asset?	If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or would be required to be reported, included, or otherwise reflected on your income tax return.	Financial interest: you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title. Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account. See instructions for further details.
What is Reported?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country

Exhibit 5.21.6-1 (Cont. 1) (02-18-2016)**Comparison of Form 8938 and FBAR Requirements**

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR)
How are maximum account or asset values determined and reported?	Fair market value in U.S. dollars in accord with the Form 8938 instructions for each account and asset reported. Convert to U.S. dollars using the end of the taxable year exchange rate and report in U.S. dollars.	Use periodic account statements to determine the maximum value in the currency of the account. Convert to U.S. dollars using the end of the calendar year exchange rate and report in U.S. dollars.
When Due?	By due date, including extension, if any, for income tax return	Received by June 30 (no extensions of time granted)
Where to File?	File with income tax return pursuant to instructions for filing the return	Beginning with the filing season starting July 1, 2013, FBAR reports must be electronically filed with FinCEN. See IRM 5.21.6.2(1) above.
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply
Types of Foreign Assets and Whether They are Reportable		
Financial (deposit and custodial) accounts held at foreign financial institutions	Yes	Yes
Financial account held at a foreign branch of a U.S. financial institution	No	Yes
Financial account held at a U.S. branch of a foreign financial institution	No	No
Foreign financial account for which you have signature authority	No, unless you otherwise have an interest in the account as described above	Yes, subject to exceptions
Foreign stock or securities held in a financial account at a foreign financial institution	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
Foreign stock or securities not held in a financial account	Yes	No

Exhibit 5.21.6-1 (Cont. 2) (02-18-2016)

Comparison of Form 8938 and FBAR Requirements

	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR)
Foreign partnership interests	Yes	No
Indirect interests in foreign financial assets through an entity	No	Yes, as to foreign accounts if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity. See instructions for further detail.
Foreign mutual funds	Yes	Yes
Domestic mutual fund investing in foreign stocks and securities	No	No
Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts
Foreign-issued life insurance or annuity contract with a cash-value	Yes	Yes
Foreign hedge funds and foreign private equity funds	Yes	No
Foreign real estate held directly	No	No
Foreign real estate held through a foreign entity	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
Foreign currency held directly	No	No
Precious Metals held directly	No	No
Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles	No	No
'Social Security'- type program benefits provided by a foreign government	No	No

