



FLORES GROUP ATTORNEYS & ADVISORS

Member of



REPORTING FOREIGN BANK ACCOUNTS IN THE USA



I. Overview

Per the Bank Secrecy Act, every year you must report certain foreign financial accounts, such as bank accounts, brokerage accounts and mutual funds, to the Treasury Department and keep certain records of those accounts. You report the accounts by filing a Report of Foreign Bank and Financial Accounts (FBAR) on Financial Crimes Enforcement Network (FinCEN) Form 114.

II. Who Must File

A U.S. person, including a citizen, resident, corporation, partnership, limited liability company, trust and estate, must file an FBAR to report:

1. a financial interest in or signature or other authority over at least one financial account located outside the United States if
2. the aggregate value of those foreign financial accounts exceeded \$10,000 at any time during the calendar year reported.

Generally, an account at a financial institution located outside the United States is a foreign financial account. Whether the account produced taxable income has no effect on whether the account is a foreign financial account for FBAR purposes.

But, you don't need to report foreign financial accounts that are:

- Correspondent/Nostro accounts,
- Owned by a governmental entity,
- Owned by an international financial institution,
- Maintained on a U.S. military banking facility,
- Held in an individual retirement account (IRA) of which you're an owner or beneficiary,
- Held in a retirement plan of which you're a participant or beneficiary, or
- Part of a trust of which you're a beneficiary, if a U.S. person (trust, trustee of the trust or agent of the trust) files an FBAR reporting these accounts.

You don't need to file an FBAR for the calendar year if:

- All your foreign financial accounts are reported on a consolidated FBAR, or
- You jointly own all your foreign financial accounts with your spouse and:
 - You completed and signed FinCEN Form 114a authorizing your spouse to file on your behalf, and your spouse reports the jointly owned accounts on a timely-filed signed FBAR.

Note: Income tax filing status, such as married-filing-jointly and married-filing-separately, has no effect on your qualification for this exception.

III. **When to File**

The FBAR is an annual report, due April 15 following the calendar year reported. You're allowed an automatic extension to October 15 if you fail to meet the FBAR annual due date of April 15. You don't need to request an extension to file the FBAR.

If you're affected by a natural disaster, the government may further extend your FBAR due date. It's important that you review relevant FBAR relief notices for complete information.

The government continues to extend the FBAR due date for certain employees or officers with signature or other authority over, but no financial interest in certain foreign financial accounts.

IV. **How to File**

You must file the FBAR electronically through FinCEN's BSA E-Filing System. You don't file the FBAR with your federal tax return.

If you want to paper-file your FBAR, you must call FinCEN's Resource Center to request an exemption from e-filing. See Contact Us below to reach this resource center. If FinCEN approves your request, FinCEN will send you the paper FBAR form to complete and mail to the IRS at the address in the form's instructions. IRS will not accept paper filings on TD F 90-22.1 (obsolete) or a printed FinCEN Form 114 (for e-filing only).

If you want someone to file your FBAR on your behalf, use FinCEN Report 114a, Record of Authorization to Electronically File FBARs, to authorize that person to do so. You don't submit FinCEN Report 114a when filing the FBAR; just keep it for your records and make it available to FinCEN or IRS upon request.

V. **Keeping Records**

For each account you must report on an FBAR, you must keep records with this information:

- Name on the account,
- Account number,
- Name and address of the foreign bank,

- Type of account, and
- Maximum value during the year.

The law doesn't specify the type of document to keep with this information. Documents may include bank statements or a copy of a filed FBAR if they have the required information.

Generally, you must keep these records for five years from the due date of the FBAR.

Exception: An officer or employee who files an FBAR to report signature authority over an employer's foreign financial account doesn't need to personally keep records on these accounts. The employer must keep the records for these accounts.

VI. Penalties

You may be subject to civil monetary penalties and/or criminal penalties for FBAR reporting and/or recordkeeping violations. Assertion of penalties depends on facts and circumstances. Civil FBAR penalty maximums in Title 31 of the United States Code are adjusted annually for inflation. Publication 5569, Report of Foreign Bank & Financial Accounts (FBAR) Reference Guide contains information about criminal penalties.

VII. Filing Delinquent FBARs

Filing an FBAR late or not at all is a violation and may subject you to penalties. If the IRS hasn't contacted you about a late FBAR and you're not under civil or criminal investigation by the IRS, you should file late FBARs as soon as possible to keep potential penalties to a minimum.

VIII. Representation for FBAR Issues

You can file Form 2848, Power of Attorney and Declaration of Representative, if the IRS begins an FBAR examination as a result of an examination under the Internal Revenue Code, such as an income tax exam. Complete Line 3, Acts Authorized, as follows:

- Under Description of Matter - Matters relating to Report of Foreign Bank and Financial Accounts or "FBAR Examination"
- Under Tax Form Number - FinCEN Form 114

- Under Year(s) or Period(s) – applicable calendar year(s)

Note: Disregard previous guidance to complete Line 5a, additional acts authorized.

Don't use Form 2848 if a related examination under the Internal Revenue Code doesn't apply. You may use a general power of attorney form executed under applicable state law.

We hope this alert has been informative to you. As always, we strive to provide our clients with the highest quality of legal representation in the complex area of tax law. This alert has provided only general information and specific factual scenarios may change any legal conclusions that would apply.

Please call to discuss your specific situation with our legal and accounting experts.

Should you need additional information it will be our pleasure to assist you.

Sincerely,

Ruben Flores, Attorney & CPA

As requirement of the United States Treasury Regulations, you should be conscious of the fact that this notice has not been written to be used and it should not be used by the recipient to prevent penalties that could be imposed by U.S. Federal Law.