



## Workbook on the Report of Foreign Bank and Financial Accounts (FBAR)

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### Introduction

The Bank Secrecy Act (BSA) gave the Department of Treasury authority to establish recordkeeping and filing requirements for United States persons with financial interests in or signature authority, or other authority over financial accounts maintained with financial institutions in foreign countries. This provision of the law requires that a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) be filed if the aggregate balances of such foreign accounts exceed \$10,000 at any time during the year. (See Exhibit 1, Form TD F 90-22.1)

On April 10, 2003, the Financial Crimes and Enforcement Network (FinCEN) delegated enforcement authority to the Internal Revenue Service (IRS). The IRS is now responsible for:

- Investigating possible civil violations.
- Assessing and collecting civil penalties.
- Issuing administrative rulings.

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### Objectives

- Learn the purpose of the FBAR regulation.
- Determine who must file the FBAR.
- Determine the FBAR filing requirements.
- Understand the civil and criminal penalties that may be applicable for noncompliance with the FBAR filing requirements.
- Determine who is exempt from the FBAR filing requirements.

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### Purpose of the FBAR

The FBAR rules were established because of the utility of the information required in criminal, tax, and other regulatory matters and in the conduct of intelligence or counterintelligence activities including analysis to protect against international terrorism.

The reports filed as a result of this regulation provide leads to investigators that facilitate the identification and tracking of illicit funds or unreported income, as well as providing additional prosecutorial tools to combat money laundering and other crimes.

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### Who Must File the FBAR?

A United States person must file an FBAR report if that person has financial interest in, signature authority or other authority over any financial account (s) in a foreign country and the aggregate value of these account(s) **exceeds \$10,000 at any time** during the calendar year.

The **account value** is the largest amount of currency and/or monetary instruments that appear on any quarterly or more frequently issued account statement for the applicable year. If a periodic account statement is not issued, the maximum account value is the largest amount of currency and/or monetary instruments in the account at any time during the year. If the account value **exceeds \$10,000** on any **account statement at any time** during the calendar year an FBAR must be filed.

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### Definition of a United States Person

A "United States person" is:

- A citizen or resident of the United States.
- A person in, and doing business in, the United States.

The term "person" includes individuals and all forms of business entities, trusts, and estates.

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### Definition of Foreign Financial Accounts

Foreign financial accounts are accounts that are located outside of the:

- United States
  - Northern Mariana Islands
  - District of Columbia
  - American Samoa
  - Guam
  - Puerto Rico
  - U.S. Virgin Islands
  - Trust Territories of the Pacific Islands
- and include:
- Bank accounts such as savings accounts, checking accounts, and time deposits.
  - Securities accounts such as mutual funds, brokerage accounts, and securities derivatives accounts.
  - Accounts where the assets are held in a commingled fund and the account owner holds an equity interest in the fund.
  - Any other account(s) maintained in a foreign financial institution or with a person doing business as a financial institution.

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### Definition of Financial Interest

Financial interest includes accounts for which the U.S. person is the owner of record or has legal title, whether the account is maintained on his or her own benefit or for the benefit of others including non-United States persons.

Financial interest also includes accounts where the owner of record or holder of legal title is a person acting as an agent, nominee, or in some other capacity on behalf of a U.S. person.

**Example:** John, a U.S. citizen who resides in Mexico, granted his brother Paul, a U.S. citizen, a Power of Attorney to access his Mexican bank accounts. Paul is the owner of record.

John has a financial interest in the account. Paul is acting only as an attorney on behalf of John. Paul also has a financial interest in the account, since he is the owner of record. Both John and Paul must file an FBAR.

**Example:** Given the information in the above example, if Paul is a Mexican citizen, must he file the FBAR?

No, Paul is not considered to be a U.S. person.

Financial interest in an account also includes a corporation in which a U.S. person directly or indirectly owns more than 50 percent of the total value of the shares of stock.

**Example:** A Florida corporation that owns 100% of a foreign company that has foreign financial accounts has to file an FBAR because the corporation is a U.S. person and the owner of record or holder of legal title is a corporation that directly owns more than 50% of the total value of the shares of stock.

**Example:** A U.S. person who owns 75% of the Florida corporation in the previous example has to file an FBAR because he indirectly owns more than 50% of the total value of shares of stock of the foreign corporation.

Financial interest also includes an account where the owner of record or holder of legal title is:

- a partnership in which the U.S. person owns interest in more than 50% of the profits.
- a trust in which the U.S. person either has a present beneficial interest in more than 50% of the assets or receives more than 50% of the current income.

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### Definition of Signature Authority

A U.S. person has account signature authority if that person can control the disposition of money or other property in the account by delivery of a document containing his signature to the bank or other person with whom the account is maintained.

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### Definition of Other Account Authority

A person with other authority over an account is one who can exercise power that is comparable to signature authority over an account by direct communication, either orally or by some other means to the bank or other person with whom the account is maintained.

**Example:** A person who has the power to direct how an account is invested but cannot make disbursements or deposits to the account does not have to file an FBAR because the person has no power of disposition.

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### Reporting for Joint Accounts

If two persons jointly maintain an account, or if several persons each own a partial interest in an account, then each U.S. person has a financial interest in that account and each person must file an FBAR.

A spouse having a joint financial interest in an account with the filing spouse should be included as a joint account

owner in Part III of the FBAR. The filer should write (spouse) on line 26 after the last name of the joint spousal owner. If the only reportable accounts of the filer's spouse are those reported as joint owners, the filer's spouse need not file a separate report. If the accounts are owned jointly by both spouses, the filer's spouse should also sign the report. It should be noted that if the filer's spouse has a financial interest in other accounts that are not jointly owned with the filer or has signature or other authority over other accounts, the filer's spouse should file a separate report for all accounts including those owned jointly with the other spouse.

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**Recordkeeping**

FBAR records should be kept for five years from the due date of the report which is June 30 of the following calendar year. The records should contain the following:

- 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 reporting period.

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**Exemptions from Filing**

The following types of accounts and persons are exempt from the FBAR filing requirement.

- Accounts held in a military banking facility operated by a United States financial institution designated by the United States Government to serve U.S. Government installations located abroad.
- Officers or employees of a bank under the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation are exempt from filing the FBAR, if that officer or employee has NO personal financial interest in the account.
- Officers or employees of a domestic corporation whose equity securities are listed on national securities exchanges, or which has assets exceeding \$10 million and 500 or more shareholders of record, need not file an FBAR concerning the other signature authority over a foreign financial account of the corporation, if:
  1. the officer or employee has NO personal financial interest in the account, and
  2. has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report which includes that account.

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**Penalties**

The following chart highlights the civil and criminal penalties that may be asserted for not complying with the FBAR reporting and recordkeeping requirements.

Violation	Civil Penalties	Criminal Penalties	Comments
Negligent Violation	Up to \$500	N/A	31 U.S.C. § 5321(a)(6)(A) 31 C.F.R. 103.57(h).
Non-Willful Violation	Up to \$10,000 for each negligent violation	N/A	31 U.S.C. § 5321(a)(5)(B)
Pattern of Negligent Activity	In addition to penalty under § 5321(a)(6)(A) with respect to any such violation, not more than \$50,000	N/A	31 U.S.C. 5321(a)(6)(B)
Willful - Failure to File FBAR or retain records of account	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$250,000 or 5 years or both	31 U.S.C. § 5321(a)(5)(C) 31 U.S.C. § 5322(a) and 31 C.F.R. § 103.59(b) for criminal. The penalty applies to all U.S. persons.
Willful - Failure to File FBAR or retain records of account while violating certain other laws	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$500,000 or 10 years or both	31 U.S.C. § 5322(b) and 31 C.F.R. § 103.59(c) for criminal The penalty applies to all U.S. persons.
Knowingly and Willfully Filing False FBAR	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	\$10,000 or 5 years or both	18 U.S.C. § 1001, 31 C.F.R. § 103.59(d) for criminal. The penalty applies to all U.S. persons.
Civil and Criminal Penalties may be imposed together. 31 U.S.C. § 5321(d).			

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**Putting It All Together**

In this lesson you learned:

- What is the purpose of the FBAR regulation.
- Who must file the FBAR.
- What are the FBAR filing requirements.
- What civil and criminal penalties may be assessed for noncompliance with FBAR filing and recordkeeping requirements.
- Who is exempt from the FBAR filing requirement.

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All foreign accounts of U. S. persons must be reported to the Department of Treasury.

**2) Which of the following is a U.S. person? (Circle all that apply)**

- a. a citizen
- b. a domestic corporation
- c. a domestic partnership
- d. a domestic trust or estate
- e. all of the above

**3) True or False**

A savings account may be a type of foreign financial account.

**4) True or False**

An FBAR is not required if the foreign account generates neither interest nor dividend income.

**5) True or False**

If a person has a foreign account in the year 2008 that requires reporting, the FBAR is due April 15, 2009.

**6) How long should account holders keep a copy of the filed FBAR?**

- a. 3 years
- b. 5 years
- c. 7 years
- d. 10 years

**7) Does a U.S. person need to file an FBAR for his Eurodollar account in the Cayman Islands?****8) A N.Y. corporation owns a foreign company that has foreign accounts. The corporation will file an FBAR for the foreign company's accounts. Does a shareholder who owns 65% of the company's stock need to file an FBAR?****9) True or False**

Accounts in U.S. military banking facilities, operated by a United States financial institution to serve U.S. Government installations abroad, are not reportable on a FBAR.

(See Exhibit 2 for answers to exercises.)

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[Form TD F 90-22, Report of Foreign Bank and Financial Accounts \(PDF\)](#)

**Exhibit 2, Answers to Exercises****1) False**

Only foreign accounts with an aggregate value of more than \$10,000 at any time during the calendar year must be reported.

**2) e.**

All of the choices are a U.S. person. A United States person is:

- A citizen or resident of the United States
- A domestic partnership
- A domestic corporation
- A domestic estate or trust

**3) True**

A "financial account" includes bank, securities, securities derivatives, or other financial instruments accounts. The term also means any savings, demand checking, deposit, or any other account maintained with a financial institution.

**4) False**

An FBAR must be filed whether or not the foreign account generates any income.

**5) False**

The FBAR is due by June 30, 2009. The FBAR is due by June 30 of the subsequent year after the

account holder meets the more than \$10,000 threshold.

**6) b.**

Copies of the FBAR must be kept for a period of five years.

**7) Yes**

The Cayman Islands account is a foreign account.

**8) Yes**

An FBAR must be filed by any owner that directly or indirectly owns more than 50 percent of the total value of the shares of stock.

**9) True**

Accounts in U.S. military banking facilities, operated by a United States financial institution to serve U.S. Government installations abroad, are not reportable.

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