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# More Account Detail, Fewer Agent Filings in FBAR Proposal

**Development:** FinCEN proposed rules would require all FBAR filers to provide complete data for all accounts.

**Takeaway:** Employees with signatory authority would be exempt from filing Form 114.

By [Laura Davison](#)

March 3 — The Treasury Department's Financial Crimes Enforcement Network is seeking to both broaden and narrow the requirements for individuals and companies filing a Report of Foreign Bank and Financial Accounts (FBAR).

The group, known as FinCEN, released proposed rules ([RIN 1506-AB26](#)) March 2 that would require filers with at least 25 foreign financial accounts to submit a complete Form 114, Report of Foreign Bank and Financial Accounts, for each account, including account number, financial institution and maximum value, rather than the streamlined filing excluding these details.

More than half of the foreign financial accounts reported in 2013—approximately 5.4 million—were tied to a filer who was exempt from providing all the information, limiting the data available to FinCEN and law enforcement to combat those seeking to launder money, finance terrorist acts or engage in other financial crimes, the proposal said.

“There has to be some upper limit to how many accounts a person is required to type onto the electronic Form 114,” Charles Ruchelman, a member at Caplin & Drysdale Chartered in Washington, told Bloomberg BNA March 3. “Obviously, if an FBAR gets selected for examination, the person should have and turn over all the information relating to the 25 or more accounts. But most returns are not examined and one has to wonder whether this added burden on taxpayers is actually helping with tax reporting enforcement or is this just needless paperwork.”

## Form of the Hour.

Ruchelman calculated that a taxpayer with financial stakes in 25 or more accounts could file a “check-the-box” version of the form in an hour or less. Filing the full form can take several hours. About 10,800 taxpayers with more than 25 foreign accounts filed Form 114 in 2013 claiming nearly 5.4 million accounts, according to the FinCEN proposal. That means these taxpayers have about

500 accounts on average they would need to report, he said. Ruchelman suggested the government should instead raise the number of accounts needed to qualify for the exemption.

FBARs are filed by U.S. taxpayers with foreign financial accounts that exceed \$10,000 at any time. If the proposed rules were to be made final, it would be the first time since 1977 that FinCEN and law enforcement receive detailed information on all foreign financial accounts in which a U.S. person has financial interest, the proposal said.

“My sense is that FinCEN is creating a reactionary database. Other governmental agencies are requesting information from them and that’s how it is used. They’re not going out and developing leads and making cases,” said Bryan Skarlatos, a partner at Kostelanetz & Fink LLP.

The proposed rules would also eliminate the requirement for officers, employees and agents, such as employees of authorized service providers, to report accounts they have signature authority over solely because of their employment. This expanded exemption applies to individuals who don't have a financial stake in the account and when their employer, or another U.S. business within the same business structure, is already reporting the account.

FinCEN is seeking to add clarity to 2011 final FBAR rules, which some filers interpreted as “broader than they actually were,” the proposed rules said. Employers are required to maintain lists of employees and agents who have signature authority over the accounts but are exempted from filing Form 114. Lists should be stored for five years and FinCEN could request to see the records ([37 DTR GG-1, 2/24/11](#))([37 DTR GG-1, 2/24/11](#))([14 IRS Practice Adviser Report 171, 3/11/11](#))([19 BCMU 34, 3/9/11](#))([38 BPR 466, 3/8/11](#))([0302 PBGCN, 3/2/11](#))([96 BBR 367, 3/1/11](#))([40 PBD, 3/1/11](#))([38 Banking Daily, 2/25/11](#)).

## Penalty Box Problem.

Ruchelman said the rules don't address which party is penalized if an employee with signatory authority doesn't file an FBAR and if the company doesn't keep a list.

This proposal will affect only a small fraction of FBAR filers, said Dennis Brager of the Brager Tax Law Group in Los Angeles, Calif. The group of banks and financial institutions that requested the government to provide the exemption for employees and agents might have ended up with a provision—the removal of the exemption for filers with 25 or more accounts—that they dislike more, he said.

“If the government is going to track these foreign accounts why not track this enormous group of them?” Brager said. “This brings about parity to what those who have less than 25 accounts have to file.”

The proposal also revises the FBAR due dates to align with the tax-filing season. Forms 114 would be due via electronic filing April 15, with the ability to request an extension until Oct. 15, starting in the 2017 filing year under the proposed regulations. FBAR submissions are currently due June 30.

Comments on the proposal are due by May 2.

*By Laura Davison*

To contact the reporter on this story: Laura Davison in Washington at [ldavison@bna.com](mailto:ldavison@bna.com)

To contact the editor responsible for this story: Brett Ferguson at [bferguson@bna.com](mailto:bferguson@bna.com)