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**DEPARTMENT OF THE TREASURY**

**Financial Crimes Enforcement Network**

**31 CFR Part 1010**

**RIN 1506-AB26**

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Reports of Foreign Financial Accounts**

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Notice of proposed rulemaking (“NPRM”).

**SUMMARY:** FinCEN, a bureau of the Department of the Treasury (“Treasury”), is proposing to revise the regulations implementing the Bank Secrecy Act (“BSA”) regarding Reports of Foreign Bank and Financial Accounts (“FBAR”). The proposed rule would expand and clarify the exemptions for certain U.S. persons with signature or other authority over foreign financial accounts. In addition, the proposed rule would remove the special rules permitting limited account information to be reported when a U.S. person has financial interest in or signature authority over 25 or more foreign financial accounts. The proposed rule would also make several other changes, including a change to the filing date for FBAR reports due in 2017 and a revision to reflect electronic filing of FBARs.

**DATES:** Written comments on the notice of proposed rulemaking may be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments may be submitted, identified by Regulatory Identification Number (“RIN”) 1506-AB26, by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Include RIN 1506-AB26 in the submission. Refer to Docket Number FINCEN–2014–0006.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506-AB26 in the body of the text. Please submit comments by one method only. All comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.
- *Inspection of comments:* The public dockets for FinCEN can be found at [Regulations.gov](http://www.regulations.gov). *Federal Register* notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of the notice. FinCEN uses the electronic, Internet-accessible dockets at [Regulations.gov](http://www.regulations.gov) as their complete, official-record docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket. In general, FinCEN will make all comments publicly available by posting them on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** FinCEN Resource Center at 1-800-767-2825 or 1-703-905-3591 (not a toll free number) and select option 3 for regulatory questions. E-mail inquiries can be sent to [FRC@fincen.gov](mailto:FRC@fincen.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The potential misuse of foreign financial accounts to evade domestic criminal, tax, and regulatory laws has been a long-held congressional concern. The House report on the bill leading to the enactment of the BSA described the use of undisclosed foreign

financial accounts for a wide range of abuses.<sup>1</sup> More than four decades after the BSA’s enactment, foreign financial accounts can still be used for many of the abuses Congress catalogued when it passed the BSA, and transparency with respect to the foreign accounts of U.S. persons continues to aid law enforcement and deter illicit use.

## **II. Background**

### *A. Statutory and Regulatory Background*

The BSA, Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, authorizes the Secretary of the Treasury (“Secretary”), among other things, to issue regulations requiring persons to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, regulatory, and counter-terrorism matters. The regulations implementing the BSA appear at 31 CFR chapter X. The Secretary’s authority to administer the BSA has been delegated to the Director of FinCEN.<sup>2</sup>

Under 31 U.S.C. 5314 the Secretary is authorized to require any “resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.” The term “foreign financial agency” encompasses the activities found in the statutory definition of “financial agency,”<sup>3</sup> which means, in pertinent part, “a person acting for a person as a

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<sup>1</sup> The House report states:

Considerable testimony was received by the Committee from the Justice Department, the United States Attorney for the Southern District of New York, the Treasury Department, the Internal Revenue Service, the Securities and Exchange Commission, the Defense Department and the Agency for International Development about serious and widespread use of foreign financial facilities located in secrecy jurisdictions for the purpose of violating American law. H.R. Rep. No 975 91<sup>st</sup> Cong. 2d Sess. 12 (1970).

<sup>2</sup> Treasury Order 180-01 (Sept. 26, 2002).

<sup>3</sup> 31 U.S.C. 5312(b)(2).

financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.”<sup>4</sup>

The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out section 5314.<sup>5</sup>

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.306, and 1010.420. Section 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists, and provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. Section 1010.306 requires the form to be filed with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year. The form must be filed on or before June 30 of each calendar year for accounts maintained during the previous calendar year.<sup>6</sup> The form used to file the report required by section 1010.350 is the Report of Foreign Bank and Financial Accounts – FinCEN Form 114 (“FBAR”), which, since July 1, 2013, must be filed electronically.<sup>7</sup> Section 1010.420 requires records of foreign financial accounts to be maintained for each U.S.

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<sup>4</sup> See 31 U.S.C. 5312(a)(1), which exempts from the definition of financial agency a person acting for a country, a monetary or financial authority acting as a monetary or financial authority or an international financial institution of which the United States government is a member.

<sup>5</sup> FinCEN is proposing to replace the term exception, as was previously used in the FBAR regulation text, with the term exemption to reflect the language in 31 U.S.C. 5314 more accurately. For that reason, the preamble will refer to signature authority exemptions, as opposed to signature authority exceptions.

<sup>6</sup> In accordance with section 2006(b)(11) of Public Law 114-41 the filing due date for the report will be April 15 effective with the 2016 reporting year. Extensions to October 15 of the reporting year are available upon request.

<sup>7</sup> Formerly Form TD-F 90-22.1. FinCEN Form 114 can be completed by accessing FinCEN’s BSA E-Filing System website -<http://bsaefiling.fincen.treas.gov/main.html>.

person having a financial interest in or signature or other authority over such accounts. The records must be maintained for a period of five years.<sup>8</sup>

The authority to enforce the provisions of 31 U.S.C. 5314 and its implementing regulations has been re-delegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and the Internal Revenue Service (“IRS”) dated April 2, 2003.<sup>9</sup> With this delegation, FinCEN conferred upon the IRS the authority to enforce the FBAR provisions of the BSA and its implementing regulations, investigate possible violations, and assess and collect civil penalties in connection therewith. The delegation also conferred upon the IRS the authority to: (1) respond to public inquiries and requests for advice, (2) issue administrative rulings, and (3) provide related assistance to the public with respect to compliance with FBAR requirements. Finally, the delegation conferred upon the IRS the authority to revise the FBAR form and instructions, and to propose to FinCEN revisions of the applicable regulations for the purpose of enhancing FBAR compliance and enforcement.<sup>10</sup>

#### *B. Signature Authority Exemptions Provision*

Prior to 2011, FinCEN’s FBAR regulation text referred filers to the FBAR form instructions for guidance as to the specific information to be reported on the FBAR. The detailed requirements for reporting were included in the FBAR form instructions previously issued by the IRS and FinCEN. A revised FBAR form, which modified several aspects of the instructions to the form, was issued in October 2008. In the ensuing months, a number of questions and comments were received from the public

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<sup>8</sup> The penalties addressed in the BSA apply to both the FBAR reporting and recordkeeping requirement.

<sup>9</sup> See 31 CFR 1010.810(g).

<sup>10</sup> Beginning in March 2011, with the implementation of mandatory electronic filing, FinCEN has managed and instituted all changes to the FBAR and related line item and electronic instructions. FinCEN and the IRS collaborate on FBAR actions regardless of the nature of these actions.

seeking guidance on compliance with the revised instructions. In response to these questions and comments, FinCEN, in consultation with the IRS, issued a Notice of Proposed Rulemaking revising the reporting rules.<sup>11</sup> The proposal was finalized in 2011 (the “2011 FBAR regulations”).<sup>12</sup>

As part of the 2011 FBAR regulations, FinCEN included changes to exemptions, which previously appeared only in the instructions to the FBAR form, for certain U.S. persons with signature or other authority over the foreign financial accounts of certain types of federally regulated entities. These changes expanded the exemptions so that they applied to accounts held by more types of federally regulated entities.

As a result, officers and employees of the federally regulated entities (“covered entities”) listed below, are currently exempt from FBAR reporting for their signature authority over the entities’ foreign financial accounts if the officer or employee has no financial interest in the foreign account:

- a bank examined by a Federal banking agency;
- a financial institution registered with and examined by the Securities and Exchange Commission (“SEC”) or the Commodity Futures Trading Commission (“CFTC”);
- an Authorized Service Provider with signature authority over a foreign financial account owned or maintained by an investment company registered with the SEC;<sup>13</sup>

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<sup>11</sup> See 75 FR 8844 (February 26, 2010).

<sup>12</sup> See 76 FR 10234 (February 24, 2011).

<sup>13</sup> “Authorized Service Provider” means an entity that is registered with and examined by the SEC and that provides services to an investment company registered under the Investment Company Act of 1940. See 31 CFR 1010.350(f)(2)(iii).

- an entity with a class of equity securities listed (or American depository receipts listed) on any U.S. national securities exchange (“listed corporation”) or a U.S. subsidiary if the subsidiary is included in the consolidated report the parent filed;<sup>14</sup> or
- an entity that has a class of equity securities registered (or American depository receipts registered) under section 12(g) of the Securities Exchange Act (“section 12(g) corporation”).<sup>15</sup>

Subsequent to the publication of the 2011 amendments to the FBAR regulation, FinCEN received several questions from industry with respect to the signature authority exemptions. In particular, many filers asked how the exemptions applied with respect to scenarios involving overlapping signature authority.<sup>16</sup> Many filers were unsure of the breadth of the amended exemptions as they applied to scenarios involving over-lapping signature authority. “Over-lapping” signature authority occurs when an officer or employee of a *parent* entity also has signature authority over the foreign financial accounts of the parent’s controlled *subsidiary* entity and vice versa. Under a literal reading of the regulation, the exemption only applies if the individual is actually “an officer or employee of” the particular corporate entity that holds the account, and not to situations in which the individual may have control over accounts held by affiliated corporate or other business entities that do not employ the individual.<sup>17</sup>

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<sup>14</sup> A U.S. entity that owns directly or indirectly more than a 50-percent interest in one or more entities required to report is permitted to file a consolidated report on behalf of itself and such other entity. *See* 31 CFR 1010.350(g)(3).

<sup>15</sup> Section 12(g) corporations must have more than \$10 million in assets and a class of equity security held of record by either 2,000 persons, or 500 persons who are not accredited investors (as defined by the SEC).

<sup>16</sup> FinCEN received letters from six large trade associations and 12 of the largest financial institutions, all raising similar concerns regarding the signature authority exemptions.

<sup>17</sup> As clarified at 31 CFR 1010.350(g)(3), an entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this

Some filers believed that the pre-2011 exemptions, outlined in the FBAR form instructions, were broader than they actually were, with many filers treating the pre-2011 signature authority exemptions as being applicable to all instances of an officer or employee's over-lapping signature authority within a corporate or other business structure.<sup>18</sup> The 2011 FBAR regulations made it clear that the signature authority exemptions did not apply to all instances of over-lapping signature authority. Following the 2011 FBAR regulations, FinCEN received requests from industry to exempt officers or employees of covered entities and their controlled subsidiaries for instances in which the officers or employees have over-lapping signature authority with respect to foreign financial accounts owned by the employer, as well as foreign financial accounts of the employer's parent and subsidiaries.<sup>19</sup>

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section will be permitted to file a consolidated report on behalf of itself and such other entities. FinCEN considers all entities permitted to be reported together on a consolidated FBAR to be entities within the same corporate or other business structure.

<sup>18</sup> FinCEN was made aware that many large companies may have one "treasury group," which may be either at the parent corporation level or the controlled subsidiary level where employees have signature authority over the foreign financial accounts of both the parent corporation and its controlled subsidiaries, domestic and foreign.

<sup>19</sup> In response to ongoing questions regarding the scope of the signature authority exemptions, and in order for FinCEN to assess the full extent of the impact of the revised signature authority exemptions, FinCEN, in close coordination with the IRS, issued FinCEN Notices 2011-1 and 2011-2 (collectively, the "2011 Notices") on May 31 and June 17, 2011, respectively, to extend to June 30, 2012 the FBAR filing due date for certain individuals affected by the signature authority exemptions. On February 14, 2012, FinCEN further extended the FBAR due date to June 30, 2013 via FinCEN Notice 2012-1, for filers that met the requirements of the original 2011 Notices. On December 26, 2012, FinCEN again extended the FBAR due date to June 30, 2014 via FinCEN Notice 2012-2, for those same filers. Again on December 20, 2013, FinCEN extended the FBAR due date to June 30, 2015 via FinCEN Notice 2013-1, for those same filers. Once more on December 10, 2014, FinCEN extended the FBAR due date to June 30, 2016 via FinCEN Notice 2014-1, for those same filers. Due to the strong possibility of a regulatory change to the signature authority exemptions, the complexity of this issue, along with the need to coordinate with the IRS, FinCEN further extended the FBAR due date to April 15, 2017 via FinCEN Notice 2015-1, dated December 8, 2015, for filers that met the requirements of the previous Notices. *See* FinCEN Notice 2015-1. <https://www.fincen.gov/whatsnew/pdf/20151208.pdf>. Note that the FBAR is a calendar year report ending December 31 of the reportable year. Beginning with the 2016 tax year, the due date for FBAR reporting is April 15 of the year following the December 31 report ending date as changed by section 2006(b)(11) of Public Law 114-41. If requested, this change also provided for a six-month extension of time to file the form (for tax years beginning after 2015).

FinCEN believes that the exemptions, in practice, may impose greater obligations on filers than necessary given the nature of the reporting.<sup>20</sup> As a result, FinCEN, in consultation with the IRS, has made a policy decision to provide a simplified and expanded exemption.<sup>21</sup> Additionally, FinCEN proposes to use the term “agent” to incorporate entities and individuals, such as authorized service providers and their employees, within the scope of the proposed exemption.<sup>22</sup> The proposed exemption would eliminate the requirement for officers, employees, and agents of U.S. entities to report on accounts owned by the entity over which the officer, employee, or agent has signature authority solely due to their employment when those accounts are already required to be reported by their employer, or any other U.S. entity within the same corporate or other business structure as their U.S. employer. This proposed exemption is intended to address instances in which employees have over-lapping signature authority with respect to U.S. parent and subsidiary accounts within the same corporate or other business structure. However, the exemption for employees to report their signature authority over the foreign financial accounts of their employer would not extend to U.S. persons in instances in which no entity within their employer’s corporate or other business structure has an obligation to report to FinCEN its financial interest in such accounts. For example, in instances in which a U.S. person is employed by a non-U.S.

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<sup>20</sup> FinCEN has learned that up to 100 employees may have signature authority over one foreign financial account during a calendar year in order to perform their jobs. In such a scenario under the present rule, FinCEN would receive over 100 FBARs regarding the same foreign financial account information.

<sup>21</sup> This proposed amendment is consistent with Executive Order 13563, “Improving Regulation and Regulatory Review,” issued by the President on January 18, 2011. Section 6 of Executive Order 13563 emphasizes the importance of retrospective analysis of rules to determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.

<sup>22</sup> Note that the exemption would only apply to “agents” who are not owners of record or holders of legal title, as described in 31 CFR 1010.350(e)(1), and that have no financial interest in the foreign financial account over which they have signature authority.

entity with no obligation to report its foreign financial accounts, and the foreign entity is not included as a subsidiary of a U.S. entity that is filing, the U.S. person would have an obligation to report his or her signature authority over the non-U.S. entity's foreign financial accounts.<sup>23</sup> In this regard the scope of the reporting obligation remains unchanged.

In the past, FinCEN saw value in having these individuals report on the same foreign financial accounts as their employers as a check to ensure that the employers themselves had reported their financial interest in these accounts. It should be noted that in accordance with the 2011 FBAR regulations this dual reporting did not absolve either party from filing an FBAR as required under the regulation, except in those instances in which an officer or employee qualified for the signature authority exemptions. However, FinCEN now believes that such a check on a non-filing employer may be of limited practical value because FinCEN was made aware, particularly during the first required FBAR e-filing season, due by June 30, 2014, that employers often file FBARs on behalf of their employees with signature authority because the employers maintain the account information.<sup>24</sup> This is in keeping with the report's instructions prior to the 2011 FBAR

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<sup>23</sup> See Item Instructions-Part IV of the BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114) for certain instances of truncated filing as it relates to signature authority over the foreign financial accounts of a foreign located employer. The instructions specifically note the following: "a United States person who (1) resides outside of the United States, (2) is an officer or employee of an employer who is physically located outside of the United States, and (3) has signature authority over a foreign financial account that is owned or maintained by the individual's employer should only complete Part I and Items 34-43 of Part IV." Such U.S. persons are excluded from reporting items 15-23 regarding account information, including the account number, the name of the foreign financial institution that holds the account, the address of the foreign financial institution, the maximum value of the account during the calendar year, and the type of account.  
<http://www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf>.

<sup>24</sup> Due to a number of requests from employers to e-file FBARs on behalf of their employees, on March 28, 2014, FinCEN revised the FBAR E-filing FAQs to clarify the following: **FBAR E-Filing FAQs 6 - Can an employer submit an FBAR via the BSA E-Filing System on behalf of its employee, who has an obligation to file an FBAR due to their signature authority over the employer's account(s)?**

regulations with respect to officers and employees of U.S. entities who had signature authority over, but no financial interest in, foreign financial accounts owned by the U.S. employer, which stated that if an employer notified the employee, in writing, that the required FBAR had been filed, the employee was relieved of filing on his or her own behalf.

To maintain transparency with respect to U.S. persons eligible for the exemption for officers, employees, or agents of U.S. entities, employers would be required to maintain information identifying all officers, employees, or agents with signature authority over, but no financial interest in, those same accounts. FinCEN proposes to require that this information be made available to FinCEN upon request and that such records be maintained for a period of 5 years. In instances in which a U.S. parent entity is filing a consolidated FBAR on behalf of itself and its controlled (i.e., greater than 50-percent owned) subsidiaries required to file an FBAR, the U.S. parent entity would be responsible for maintaining information identifying all of its employees and its subsidiaries' employees with signature authority over such foreign financial accounts. In instances in which the U.S. parent entity and its controlled subsidiaries choose to file

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Yes. An employer may assist its employees in the preparation of electronic FBAR forms for BSA E-Filing. Consistent with FinCEN's instructions that provide for approved third-party filing of the FBAR, if an employer has been provided documented authority (Form 114a) by the legally obligated filers (employees with signature authority over the employer's foreign financial account(s)) to sign and submit FBARs on their behalf through the BSA E-Filing System, that employer can do so through a single BSA E-Filing institutional account established on the BSA E-File System for the employer. Form 114a (<http://www.fincen.gov/forms/files/FBARE-FileAuth114aRecordSP.pdf>) should be completed designating the employer as the filer/preparer of the employee's FBAR. A copy of the Form 114a should be retained by the filer/employer and not sent to FinCEN. Employers can establish their institution accounts by accessing the BSA E-Filing System enrollment page (<http://bsaeifiling.fincen.treas.gov/Enroll.html>), selecting the Institution option, and following the steps to enroll. If the employee does not provide its employer with the Form 114a the filings must be signed and submitted by the employee. An employee signing and submitting his or her own FBAR may use the BSA E-Filing System by accessing the No Registration FBAR page (<http://bsaeifiling.fincen.treas.gov/NoRegFBARFiler.html>). If such authority is not provided, the filings must be signed and submitted by the employee. In this case, the employee would be filing as an individual (*See* FAQ 1 above). [http://bsaeifiling.fincen.treas.gov/docs/FBAR\\_EFILING\\_FAQ.pdf](http://bsaeifiling.fincen.treas.gov/docs/FBAR_EFILING_FAQ.pdf)

separate FBARs regarding their respective financial interest in foreign financial accounts, each such entity would be responsible for maintaining information identifying all employees with signature authority over such accounts, regardless of whether the employees are their own employees or are employed by another entity within the same corporate structure.

*C. Special Rules Provisions – 25 or More Foreign Financial Accounts*

While assessing options to address concerns raised by industry regarding the signature authority exemptions, FinCEN determined that the provisions limiting information reported with respect to situations where a filer has 25 or more foreign financial accounts also should be reevaluated. Under the “special rules” provisions at 31 CFR 1010.350(g)(1)-(2), when a person or entity has a financial interest in, or signature authority over, 25 or more foreign financial accounts, the filer is required to report the number of accounts and the filer’s identifying information (name, address, taxpayer identification number, and for individual filers date of birth).<sup>25</sup> However, these filers are exempted from providing detailed account information on each of their foreign financial accounts. For instance, filers submitting FBARs covered by the special rules are not required to provide the account number, the name of the foreign financial institution that holds the account, the address of the foreign financial institution, the maximum value of the account during the calendar year, or the type of account.

In 2013, approximately 10,800 FBARs were filed by individuals or entities with financial interest in 25 or more foreign financial accounts. Those individuals or entities had a combined total of approximately 5,366,000 foreign financial accounts, which

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<sup>25</sup> U.S. persons reporting signature authority over 25 or more foreign financial accounts are also required to report the name, address, and taxpayer identification number of the account owner.

represents approximately 56% of the total number of all foreign financial accounts reported in 2013.<sup>26</sup> As a result, FinCEN and law enforcement did not have detailed account information on any of these accounts because of the exemption for FBAR filers with 25 or more foreign financial accounts.

The FBAR regulations, originally issued in April 1972, 37 FR 6913, and amended in December 1977, 42 FR 63774, *previously* provided:

*Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Secretary for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

The preamble amending the FBAR regulation in 1977 noted the following:

*[P]ersons having a financial interest in 25 or more foreign accounts will be required to provide detailed information concerning each account only when so requested by the Secretary or his delegate. This modification in filing procedure is designed to minimize the practical difficulties of reporting a large number of accounts by taxpayers having extensive international interests.*

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<sup>26</sup> In 2013, approximately 4,167,000 foreign financial accounts were reported by filers with less than 25 foreign financial accounts.

Since the implementation of this provision of the FBAR regulations over 35 years ago, the ease with which individuals can establish overseas accounts has increased and foreign accounts remain vulnerable to exploitation by those seeking to launder money, finance terrorist acts, or engage in other financial crimes. In addition, the implementation of BSA E-filing has made the technological limitations and practical difficulties of reporting the required information less burdensome to industry and individuals.

The provisions limiting information reported with respect to situations where a filer has 25 or more foreign financial accounts has created a significant gap in FinCEN's and law enforcement's ability to analyze a comprehensive set of data on all otherwise reportable foreign financial accounts. A lack of account numbers limits the applicability and efficacy of link analysis that can be done to expand investigations of potential criminal and civil violations of law. Moreover, the enhancement of FinCEN's analytical tools allows it to analyze larger amounts of data more effectively, therefore making account information reported on FBARs that much more accessible. These are just a few examples resulting from the information gap.

For these reasons, FinCEN is proposing to remove the provisions that limit the information reported with respect to situations when a filer has financial interest in, or signature authority over, 25 or more foreign financial accounts. Instead, all U.S. persons will be required to report detailed account information on all foreign financial accounts for which they have a financial interest or signature authority in those instances in which a signature authority exemption does not apply. This will enable FinCEN and law enforcement to receive detailed account information on *all* foreign financial accounts in which a U.S. person has financial interest for the first time since 1977.

### **III. Section-by-Section Analysis**

In an effort to strike the balance of providing FinCEN and law enforcement with the foreign financial account information useful to their investigations, while taking into consideration the burdens upon industry associated with employee-related signature authority reporting, FinCEN is proposing to:

- Amend the FBAR regulations by eliminating the requirement for officers, employees, and agents of U.S. entities to report signature authority over entity-owned foreign financial accounts for which they have no financial interest, if those accounts are already required to be reported by their employer or any other entity within the same corporate or other business structure as their employer.<sup>27</sup> Instead, entities/employers would be required to maintain information identifying all officers, employees, or agents with signature authority over those same accounts; this information would be maintained for a period of 5 years and made available to FinCEN upon request.
- Remove the provisions that limit the information required to be reported with respect to situations when a filer has 25 or more foreign financial accounts. As a result, U.S. persons with 25 or more foreign financial accounts would be required to provide the detailed account information that is already being provided by those U.S. persons with fewer than 25 foreign financial accounts.
- Make several other changes including a change to the filing date for FBARs to be filed in 2017 and a revision to reflect the electronic filing of FBARs.

#### *A. Signature Authority Exemption Provision*

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<sup>27</sup> See *supra* note 17.

FinCEN proposes to amend 31 CFR 1010.350(f)(2) by removing the current signature authority exemptions and adding a single, broader signature authority exemption. The current signature authority exemptions at 31 CFR 1010.350(f)(2) apply to the following persons:

- An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has 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.
- An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.
- An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. “Authorized service provider” means an entity that is registered with and examined by the Securities and Exchange

Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

- An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.
- An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.

Under the proposed signature authority exemption an officer, employee, or agent of an entity need not submit a report to FinCEN regarding signature or other authority over a foreign financial account in which such entity, or a subsidiary, parent entity, or other entity within the same corporate or other business structure of such entity has a financial interest, if the officer, employee, or agent has no financial interest in the account

and the account is required to be reported under 31 CFR 1010.350 by the entity or any other entity within the same corporate or other business structure.<sup>28</sup> An entity will be required to maintain information identifying all officers, employees, and agents with signature or other authority over a foreign financial account in which it has financial interest and to provide this information when so requested by the Financial Crimes Enforcement Network. Such information regarding officers, employees, and agents shall be identified, and maintained by the entity, and shall be deemed to have been filed with FinCEN Form 114. Such records shall be retained for a period of 5 years.

This exemption would be available to all U.S. persons that currently have a reporting obligation solely due to their signature or other authority over the foreign financial accounts of their employers or any other entities within the same corporate or other business structure as their employers, except in those instances in which the entity that has a financial interest in the foreign financial account over which the officer, employee, or agent has signature authority does not have an obligation to report to FinCEN its financial interest in such accounts. This may be the case in instances in which a U.S. person is employed by a foreign entity and has signature authority over the foreign financial accounts of the foreign entity in which case the foreign entity/employer has no obligation to report its financial interest to FinCEN under the FBAR regulations. If the officer, employee, or agent is eligible for this signature authority exemption, the employer that is required to report the account details of the foreign financial account on an FBAR due to its financial interest in the account would be required to maintain information identifying those officers, employees, or agents with signature or other

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<sup>28</sup> See *supra* note 17.

authority over such account, which would be made available to FinCEN upon request. Such records would be required to be retained for a period of 5 years.<sup>29</sup>

*B. Special Rules Provisions – 25 or More Foreign Financial Accounts*

FinCEN proposes to remove 31 CFR 1010.350(g)(1) and (2). Under those existing provisions, a United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate. Similarly, under those existing provisions, a United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

Under the proposal, detailed account information on all foreign financial accounts in which a U.S. person has financial interest would be reported for the first time, due to the removal of the special rules.<sup>30</sup> As noted above, in 2013, approximately 10,800 FBARs were filed by individuals or entities with financial interest in 25 or more foreign financial accounts. Those individuals or entities had a financial interest in a combined total of approximately 5,366,000 foreign financial accounts. U.S. persons are already required to maintain and make available upon request detailed account information on all

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<sup>29</sup> FinCEN understands that, as part of a final rule, it would need to determine the effect of the provisions of this proposed rule on earlier FBAR deferrals pursuant to FinCEN Notices 2011-1; 2011-2; 2012-1; 2012-2; 2013-1; 2014-1; and 2015-1. *See* IV. Questions for Public Comment.

<sup>30</sup> As discussed above, detailed account information includes: the account number, the name of the foreign financial institution that holds the account, the address of the foreign financial institution, the maximum value of the account during the calendar year, and the type of account.

foreign financial accounts in which they have financial interest or signature authority, which may assist in filing the FBARs that the proposed rule would require of U.S. persons with 25 or more foreign financial accounts.<sup>31</sup>

*C. Other Proposed Revisions*

The revisions to the signature authority exemption provision and the special rules provisions require certain other revisions to the regulation text for the purpose of consistency and order throughout §§ 1010.350, 1010.306, and 1010.420.

*Revise §1010.350(a); §1010.306(c) and (e); and §1010.420*

Paragraph (a) of § 1010.350 is being revised to strike the last sentence of the paragraph which makes reference to the current special rules regarding persons with 25 or more foreign financial accounts.

Paragraph (a) of § 1010.350 is also being revised to reflect the change in the name of the FBAR form from TD-F 90-22.1 to FinCEN Form 114 and to reflect the reporting, electronically through BSA E-Filing, of the FBAR form to FinCEN as well as the reporting, on a return, to the Commissioner of Internal Revenue. This technical change will also be reflected in §§ 1010.306(c) and (e) and 1010.420. Section 1010.306(c) is being revised to reflect the new FBAR filing due date of April 15, effective with the 2016 reporting year, in accordance with section 2006(b)(11) of Public Law 114-41. In addition, § 1010.306(c) is being revised to reflect that extensions to October 15 of the reporting year are available upon request, also in accordance with section 2006(b)(11) of Public Law 114-41. Section 1010.420 is also being revised to include a few other minor changes.

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<sup>31</sup> See 31 CFR 1010.420.

*Re-designate paragraphs (g)(3) through (5) of §1010.350 as paragraphs (g)(1) through (3)*

Because § 1010.350(g)(1) and (2) special rules regarding reporting on 25 or more foreign financial accounts are being removed, the remainder of the special rules designated as paragraph (g)(3) Consolidated reports; paragraph (g)(4) Participants and beneficiaries in certain retirement plans; and paragraphs (g)(5) Certain trust beneficiaries are being re-designated as paragraphs (g)(1) through (3).

*D. Revisions to FinCEN Form 114*

If the proposed rule is finalized, consistent with the proposed removal of special rules provisions regarding 25 or more foreign financial accounts, FinCEN would remove FinCEN Form 114 data field 14a (Does the filer have a financial interest in 25 or more financial accounts?); and data field 14b (Does the filer have signature authority over, but no financial interest in, 25 or more foreign financial accounts?). No other FinCEN Form 114 data fields would need to be amended as a result of the proposed revisions to the FBAR regulations. While no other data fields will be changed, several existing data fields in each section will be designated as “critical” requiring completion for the FBAR to be accepted by BSA E-Filing. The batch filing electronic filing specifications will also require updating to the same standard. Upon finalizing the revisions to the FBAR as proposed in this NPRM, FinCEN would also amend the FinCEN Form 114 instructions consistent with the revisions to the FBAR regulations.<sup>32</sup>

**IV. Questions for Public Comment**

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<sup>32</sup> FinCEN Form 114 instructions - <http://www.fincen.gov/forms/files/FBAR%20Line%20Item%20Filing%20Instructions.pdf>.

- A. FinCEN requests comment on whether expanding the signature authority exemption provision as proposed will reduce burden, and if so, by how much.
- B. FinCEN requests comment on whether it should allow entities and individuals to rely upon the provisions of this proposed rule, if finalized, with regard to FBAR filings properly deferred pursuant to FinCEN Notices 2011-1; 2011-2; 2012-1; 2012-2; 2013-1; 2014-1; and 2015-1.
- C. FinCEN requests comment on whether removing the special rules provisions regarding reporting on 25 or more foreign financial accounts will increase burden on impacted entities and individuals, and if so, by how much. Specifically, will technological costs be incurred to implement systems to transfer account information to the BSA E-filing system for FBAR reporting?
- D. If technological modifications are necessary to report 25 or more foreign financial accounts, FinCEN requests comment on the estimated timeframe to implement those modifications.
- E. FinCEN requests comment on whether the amendments in this proposed rule regarding broadening signature authority exemptions combined with the removal of the special rules regarding 25 or more foreign financial accounts will increase or decrease burden on those entities and individuals impacted by both amendments to the FBAR regulation, and if so, by how much.

**V. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FinCEN certifies that these proposed regulation revisions will not have a significant economic impact on a substantial number of small entities. The proposed rule applies to U.S. persons, a term which includes entities of all sizes and individuals, if they have reportable

accounts under this rule. However, we expect that small entities will be less likely to have reportable foreign financial accounts or to have many such accounts, unlike larger entities, which likely have a broader base of business operations. In addition, we expect a reduction in burden for individuals, because FinCEN is exempting all individuals that currently have a reporting obligation solely due to their signature authority over the foreign financial accounts of their employers or any other entities within the same corporate or other business structure as their employers, except in those instances in which no such entity has an obligation to report to FinCEN its financial interest in such accounts.

With regard to the proposed amendment to remove the provisions that limit the information required to be reported with respect to situations when a filer has 25 or more foreign financial accounts, FinCEN expects that most U.S. persons reporting on 25 or more foreign financial accounts will be large entities. U.S. persons with 25 or more foreign financial accounts reportable on the FBAR will be required to provide the same account information currently required to be provided by U.S. persons with less than 25 foreign financial accounts. The information required to be reported on the FBAR is basic information U.S. persons will have received on account statements from the foreign financial institutions at which the accounts are opened and maintained. Those statements will provide a U.S. person with the information about an account needed to file the FBAR. No special accounting or legal skills would be necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR. FinCEN requests comment

on the accuracy of the statement that the regulations in this document will not have a significant economic impact on a substantial number of small entities.

**VI. Executive Order 13563 and 12866**

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

**VII. Paperwork Reduction Act (“PRA”) Notices**

The reporting requirements contained in this proposed rule (31 CFR 1010.350) are being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments concerning the estimated burden and other questions should be sent to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, D.C. 20503 with a copy to FinCEN by mail, or comments may be submitted by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please submit comments by one method only. Comments are welcome and must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. In accordance with

requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information of the *Amendment to the Bank Secrecy Act Regulations – Reports of Foreign Financial Accounts* is presented to assist those persons wishing to comment on the information collection.

*Signature authority exemption provision*

The proposed rulemaking seeks to expand and clarify the exemption to the signature authority reporting requirement. By making the signature authority exemption broader and clearer there is potential for a reduction in signature authority reporting by individuals with signature authority over, but no financial interest in, foreign financial accounts.

The proposed rulemaking also seeks to clarify that entities/employers would be required to maintain information identifying all officers and employees with signature authority over the foreign financial accounts in which the entities/employers have financial interest; this information would be retained for a period of 5 years and be made available to FinCEN upon request. FinCEN expects there will be little to no effect on burden as a result of this recordkeeping requirement since these entities/employers, in all likelihood, maintain this information in the normal course of business.

Description of Affected Filers: Individuals/agents with signature authority over, but no financial interest in, foreign financial accounts reportable by the individual/agent under 31 CFR 1010.350 solely due to their employment.

Estimate Number of Affected Filing Individuals: 5,660. Approximately 11,600 FBARs were filed by U.S. persons in 2013 solely due to reporting on signature authority, but no

financial interest. Of those FBARs, approximately 280 were filed by a U.S. person who was reporting signature authority over the foreign financial account of an account owner with a foreign address. As a result of questions raised by industry, we estimate that at least 50 percent of the remaining FBARs (11, 600 – 280 = 11,320) were filed by individuals with signature authority over, but no financial interest in, a foreign financial account, solely due to their employment.<sup>33</sup>

Estimate Average Annual Burden Hours Reduction Per Affected Filer: The estimated average burden reduction associated with the reporting requirement in this rule will vary depending on the number of reportable accounts. Based on past filings, we estimate that the average reporting burden will range from approximately twenty minutes to one hour and that the average reporting burden will be approximately 45 minutes. The reporting burden is reflected in the burden listed for completing FinCEN Form 114 (See OMB Control Number 1506-0009).

Estimated Total Annual Burden Reduction: 4,245 hours.<sup>34</sup>

*Removal of special rules provisions – 25 or more foreign financial accounts*

The proposed rulemaking also seeks to remove the special rules permitting limited account information to be reported on the FBAR when a person has financial interest in or signature authority over 25 or more foreign financial accounts. There should not be a net increase in the number of FBARs filed, although there will be a net increase in the time it takes to file an FBAR when reporting 25 or more accounts.

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<sup>33</sup> FinCEN is excluding FBARs filed by a U.S. person who was reporting signature authority over the foreign financial account of an account owner with a foreign address because such scenarios likely include individuals reporting signature authority solely due to their employment with a foreign parent corporation. In such a scenario, the proposed signature authority exemption would not apply because a foreign parent corporation does not have a requirement to report its financial interest in a foreign financial account on the FBAR.

<sup>34</sup> 5,660 filers multiplied by 45 minutes and converted to hours is 4,245 hours.

However, individuals are already required to maintain records regarding account information for such foreign financial accounts under the rule, therefore there will be no impact on the recordkeeping requirement, and these records can be leveraged to obtain the information necessary to report.

Description of Affected Filers: Individuals and entities that maintain 25 or more foreign financial accounts reportable under 31 CFR 1010.350.

Estimate Number of Affected Filing Individuals and Entities: 12,580.<sup>35</sup>

Estimate Average Annual Burden Hours Per Affected Filer: The estimated average burden associated with the reporting requirement (FBAR form completion) will vary depending on the number of reportable accounts. FinCEN estimates that the average increase in the reporting burden will be approximately 2 minutes per foreign financial account reported on the FBAR. In 2013, approximately 10,800 FBARs were filed by individuals or entities with financial interest in 25 or more foreign financial accounts. Those entities had a combined total of approximately 5,366,000 foreign financial accounts. The average number of foreign financial accounts reported per FBAR filed was 497. This translates to

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<sup>35</sup> This figure represents the actual number of FBARs filed in calendar year 2013 when 25 or more foreign financial accounts were reported. 10,800 FBARs were filed by U.S. persons reporting financial interest in 25 or more foreign financial accounts. 8,900 FBARs were filed by U.S. persons reporting signature authority over 25 or more foreign financial accounts. FinCEN estimates that at least 80 percent of these FBARs were filed by individuals with signature authority over, but no financial interest in, a foreign financial account, solely due to their employment. Based on questions raised by industry following the issuance of the 2011 FBAR final rule, FinCEN believes that most FBAR reporting on signature authority over 25 or more foreign financial accounts is by individuals who are reporting solely due to their signature authority over their employers' foreign financial accounts. Because FinCEN is proposing to exempt all of those FBAR filers due to such scenarios, so long as those accounts are already required to be reported by their employer or another entity with the same corporate structure as their employer, we have factored that into our estimate of the number of FBARs we expect to be filed by U.S. persons with 25 or more foreign financial accounts due to signature authority. (8,900 FBARs X 0.2 = 1,780). The estimated total FBARs to be reported with 25 or more foreign financial accounts due to financial interest and signature authority is 12,580 (10,800 + 1,780).

approximately 16.6 burden hours per affected filer.<sup>36</sup> The reporting burden is reflected in the burden listed for completing FinCEN Form 114 (See OMB Control Number 1506-0009).

Estimated Total Annual Burden: 208,828 hours (12,580 FBARs X 16.6 hours per FBAR filer).

Summary Total of Estimated Annual Burden: 204,583 hours (208,828 – 4,245)

*Questions for comment*

FinCEN specifically invites comment on the accuracy of FinCEN's estimate of the burden on respondents and any other aspects of our PRA estimates. Comments are specifically requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of FinCEN, including whether the information will have practical utility; (b) the accuracy of the estimated burden associated with the proposed collection of information; (c) how the quality, utility, and clarity of the information to be collected may be enhanced; and (d) how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

**VIII. Unfunded Mandates Act of 1995 Statement**

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100

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<sup>36</sup> 497 accounts multiplied by 2 minutes per account and converted to hours is 16.6 hours.

million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance the proposals in the Notice of Proposed Rulemaking provide the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

### **List of Subjects in 31 CFR Part 1010**

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

### **Proposed Amendments to the Regulations**

For the reasons set forth above in the preamble, 31 CFR part 1010 is proposed to be amended as follows:

#### **PART 1010 –GENERAL PROVISIONS**

1. The authority citation for part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307; sec. 2006, Pub. L. 114-41, 129 Stat. 457.

2. Amend § 1010.306 by revising paragraphs (c) and (e) to read as follows:

#### **§ 1010.306 Filing of reports.**

\* \* \* \* \*

(c) Reports required by §1010.350 are to be filed electronically through BSA E-File with the Financial Crimes Enforcement Network and shall be filed on or before April 15 of each calendar year with respect to foreign financial accounts that had an aggregate value

in excess of \$10,000 at any time during the previous calendar year. Extensions to October 15 of the reporting year are available upon request.

\* \* \* \* \*

(e) Forms to be used in making the reports required by §1010.311, §1010.313, §1010.350, §1020.315, §1021.311, or §1021.313 of this chapter may be obtained from the Financial Crimes Enforcement Network BSA E-Filing system. Forms to be used in making the reports required by §1010.340 may be obtained from the U.S. Customs and Border Protection or the Financial Crimes Enforcement Network.

3. Amend § 1010.350 as follows:

a. Revise paragraphs (a) and (f)(2);

b. Remove paragraphs (g)(1) and (2); and

c. Redesignate paragraphs (g)(3) through (5) as paragraphs (g)(1) through (3).

The revisions read as follows:

**§ 1010.350 Reports of foreign financial accounts.**

(a) *In general.* Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue on a return for each year in which such relationship exists and shall provide the Financial Crimes Enforcement Network, through BSA E-Filing, with such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (FinCEN Form 114).

\* \* \* \* \*

(f) \* \* \*

(2) *Exemption.* An officer, employee, or agent of an entity need not submit a report to the Financial Crimes Enforcement Network regarding signature or other authority over a foreign financial account in which such entity, or a subsidiary, parent, or another entity within the same corporate or other business structure of such entity has a financial interest, if the officer, employee, or agent has no financial interest in the account and the account is required to be reported under 31 CFR 1010.350 by the entity or any other entity within the same corporate or other business structure. An entity will be required to maintain information identifying all officers, employees, and agents with signature or other authority over a foreign financial account in which it has financial interest and to provide this information when so requested by the Financial Crimes Enforcement Network. Such information regarding officers, employees, and agents shall be identified, and maintained by the entity, and shall be deemed to have been filed with FinCEN Form 114. Such records shall be retained for a period of 5 years.

\* \* \* \* \*

4. Revise § 1010.420 to read as follows:

**§ 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.**

Records of accounts required by §1010.350 to be reported to the Financial Crimes Enforcement Network and the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such

account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign financial institution, or other foreign person engaged in the business of a financial institution, with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of a willful attempt to evade or defeat Federal income tax, the filing of a false or fraudulent Federal income tax return, or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

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Jennifer Shasky Calvery,  
Director,  
Financial Crimes Enforcement Network.

**Note:** The following appendix will not appear in the Code of Federal Regulations.

### **Appendix**

The following changes to the current Report of Foreign Bank and Financial Account(s) (FBAR), FinCEN 114, report are required in order to implement the proposed changes outlined in the above Notice of Proposed Rule Making (NPRM). Comments to the proposed changes are welcome. Please identify them separately from comments regarding the NPRM.

Part I. a. Filer Information; Add item 2g Primary Federal Regulator (this will be a dropdown box containing a list of primary Federal Regulators). This item is required when item 2e “Fiduciary or other – Enter type” is completed.

b. Remove items 14a and 14a. These items are no longer required.

Part II. No changes are required.

Part III. a. Change current item 26 to reflect two checkboxes to indicate “Individual” or “Entity” that applies to the information entered in item 26a.

b. Rename the current item 26 to 26a “Last name or organization name of principal joint owner.

Part IV. a. Change current item 34 to reflect two checkboxes to indicate “Individual” or “Entity” that applies to the information entered in item 26a.

b. Rename the current item 34 to 34a “Last name or organization name of account owner.

Part V. No changes are required.