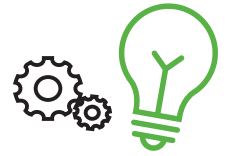


# FBAR REGULATIONS FOR PRIVATE INVESTMENT FUNDS

## Frequently Asked Questions



U.S. persons with a financial interest or signature authority over a foreign financial account exceeding \$10,000 at any time during a calendar year (with limited exceptions) must file a Report of Foreign Bank and Financial Accounts (FBAR) with the Treasury Department by June 30th of the succeeding year. This requirement often applies to investment funds and/or officers or employees of such funds. Currently, there is an exception to filing for employees and officers of certain financial institutions who have signature or other authority, but no financial interest in the foreign account.

In 2013, the Financial Crimes Enforcement Network (FinCEN) introduced FinCEN Form 114, which supersedes TD F 90-22.1, the FBAR form used in 2012 and prior tax years. U.S. taxpayers with FBAR filing requirements must electronically file Form 114 by the deadline or face civil penalties, including fines of up to \$10,000 per violation. Willful non-filing violations could result in criminal penalties and fines of \$100,000 or 50% of the balance in the account (whichever is greater).

*The following is an overview of the Report of Foreign Bank and Financial Accounts with frequently asked questions to help you understand its impact on you and your business.*

### What constitutes a U.S. person?

A U.S. person includes: a citizen or resident of the United States; a domestic partnership; a domestic corporation; a limited liability company; and a domestic estate or trust.

### What constitutes a financial interest?

A "U.S. person" will be treated as having a "financial interest" in an account if:

1. The person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others; or
2. The person is not the owner of record or legal title but the owner of record or legal title is either:
  - A person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person
  - A corporation in which the U.S. person owns directly or indirectly more than 50% of the total value of shares of stock or the voting power of all shares of stock

- A partnership in which the U.S. person owns an interest in more than 50% of the profits or capital, or
  - A trust in which the U.S. person either has a present beneficial interest, either directly or indirectly, in more than 50% of the assets or from which such person receives more than 50% of the current income;
3. The person is owner of record or the holder of legal title is a trust, or a person acting on behalf of a trust, that was established by the U.S. person and for which a trust protector has been appointed.

### What constitutes a financial account?

The types of financial accounts reportable for purposes of the FBAR include securities, brokerage, savings, demand, checking, deposit, and other accounts maintained with a financial institution.

A financial account specifically includes a commodity futures or options account, an insurance policy with a cash value, an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund. A "mutual fund or similar pooled fund" means a fund that is available to the general public with a regular net asset value determination and regular redemptions. As of now, hedge funds and private equity funds are not deemed to be reportable accounts, but FinCEN is still in the process of examining them.

Please note that an account held in Puerto Rico is not considered a foreign account.

*Exceptions for Certain Accounts:* The revised regulations provide that U.S. persons with a financial interest in, or signature or other authority over certain accounts are exempt from FBAR reporting. These "exempt accounts" include: qualified retirement plans, IRAs, correspondent/nostro accounts, accounts of governmental entities, and certain other accounts.

### What constitutes a signature authority?

Signature authority is the authority of an individual (alone or in conjunction with another individual) to control the disposition of assets held in a foreign financial account by direct communication (whether in writing or otherwise) to the bank or other financial institution that maintains the financial account.

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## Frequently Asked Questions



### *What is the deadline to file an FBAR?*

A U.S. person having met the above criteria for a financial interest must electronically file an FBAR, Form 114, by June 30th of the year following any calendar year when the person meets the dollar threshold.

### *What is the dollar threshold for a FBAR filing obligation?*

If the aggregate balance of the foreign financial accounts exceeds \$10,000 at any time during the calendar year, then there is an FBAR filing obligation.

### *What are the penalties for failing to file an FBAR when there is a filing requirement?*

U.S. taxpayers with FBAR filing requirements who fail to properly file may be subject to a civil penalty not to exceed \$10,000. If there is reasonable cause for the failure and the balance in the account is properly reported, no penalty will be imposed. A person who willfully fails to report an account or account identifying information may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50% of the balance in the account at the time of the violation. Willful violations may also be subject to criminal penalties, which include a fine of up to \$250,000 and/or imprisonment of not more than five years.

### *Are there any Form 1040 reporting requirements?*

In addition to the filing requirements listed above, an individual taxpayer with a Form 114 filing requirement will also need to disclose that they have an interest in or a signature or other authority over a foreign financial account and list the foreign country the account is in on line 7 of Schedule B of their Form 1040.

### *Is an extension available for filing an FBAR?*

No. Many taxpayers incorrectly assume that a filing extension, granted by the IRS for the filing of an income tax return, extends the FBAR filing deadline. Because Form 114 is a Treasury form under the Bank Secrecy Act (BSA), extensions granted by the IRS have no effect on the FBAR deadline. In fact, there is no provision to request an extension of time to file an FBAR form.

### *What should I do to prepare and how can ALPS help?*

Please review all foreign accounts (if any) that your fund has an interest in to determine if the fund and/or any of the officers or employees of the fund are required to file a Report of Foreign Bank Accounts. If you've determined that there is an FBAR filing requirement, or that there may be one, please contact your fund accountant immediately to address this important, time-sensitive regulation.

For clients of ALPS Alternative Investment Services, preparation of the FBAR, Form 114, is included as part of your fund's tax preparation fee. If additional forms for related entities are required, there may be a separate fee per form/entity.

*The information contained herein is current as of January 20, 2015. It is based upon information provided by the U.S. Internal Revenue Service and is subject to change as more detail on the FBAR is published. This information should not be construed as legal advice or legal opinions, and clients, prospective clients and others should consult with their own counsel on the implications of these and any other regulatory requirements as they apply to each individual situation.*

*If you have any questions about FBAR regulations or filing requirements, please contact your ALPS professional.*

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