

REQUIREMENTS FOR THE FBAR AND FORM 8938

A COMPARISON GUIDE for Form 8938 and the FBAR

It's easy to confuse reporting requirements for Form 8938 – the Statement of Specified Foreign Financial Assets – with those of Foreign Bank and Financial Account Report, FinCEN Form 114 (formerly known as TD F 90-22.1), also referred to as the FBAR. This side-by-side comparison will help you understand your obligation to report assets to the IRS and the Treasury Department.

	Form 8938	FinCEN Form 114 (FBAR)
Who must file?	Specified individuals, which include US citizens, resident aliens, and certain non-resident aliens who have an interest in specified foreign financial assets and meet the reporting threshold	US persons, which include US citizens, resident aliens, trusts, estates, and domestic entities that have an interest in foreign financial accounts and meet the reporting threshold
Does the United States include US territories?	No	Yes, resident aliens of US territories and US territory entities are subject to FBAR reporting
Reporting threshold (total value of assets)	For those living abroad, if the total is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the year; or if filing a joint return and the value of your asset is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the year (lower threshold amounts apply to individuals living in the US)	\$10,000 at any time during the calendar year—this amount is aggregate (i.e., you have 2 accounts, one with \$7000 and one with \$4000 as its highest value, you will need to file)
When do you have an interest in an account or asset?	If any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset are or need to be reported, included, or otherwise reflected on your income tax return	Financial interest: you are the owner of record or holder of legal title, the owner of record or holder of legal title is your agent or representative, you have a sufficient interest in the entity that is the owner of record or holder of legal title Signature authority: you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account See instructions for further details
What is reported?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions and certain other foreign non-account investment assets	Maximum value of financial accounts maintained by a financial institution physically located in a foreign country
How are maximum account or asset values determined and reported?	Fair market value in US dollars in accord with the Form 8938 instructions for each account and asset reported; convert to US dollars using the end of the taxable year exchange rate and report in US dollars.	Use periodic account statements to determine the maximum value in the currency of the account; convert to US dollars using the end of the calendar year exchange rate and report in US dollars

REQUIREMENTS FOR THE FBAR AND FORM 8938

	Form 8938	FinCEN Form 114 (FBAR)
When is it due?	By income tax due date, including extension, if any	Received by June 30 (no extensions granted)
Where to file?	File with income tax return pursuant to instructions for filing the return	ALL individuals file electronically through BSA E-Filing System ; it is not filed with your Federal Tax Return
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply. NOTE: If not filed by the due date, the statute is open forever and there is no limit as to when the IRS can perform an audit.	If non-willful, up to \$10,000; if willful, up to the greater of \$100,000 or 50 percent of account balances; criminal penalties may also apply

Types of Foreign Assets and Whether They Are Reportable

Financial (deposit and custodial) accounts held at foreign financial institutions	Yes	Yes
Financial account held at a foreign branch of a US financial institution	No	Yes
Financial account held at a US branch of a foreign financial institution	No	No
Foreign financial account for which you have signature authority	No, unless you otherwise have an interest in the account as described above	Yes, subject to exceptions
Foreign stock or securities held in a financial account at a foreign financial institution	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
Foreign stock or securities not held in a financial account	Yes	No
Foreign partnership interests	Yes	No
Indirect interests in foreign financial assets through an entity	No	Yes, if sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity; see instructions for further detail
Foreign mutual funds	Yes	Yes
Domestic mutual fund investing in foreign stocks and securities	No	No



REQUIREMENTS FOR THE FBAR AND FORM 8938

	Form 8938	FinCEN Form 114 (FBAR)
Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor	Yes, as to both foreign accounts and foreign non-account investment assets	Yes, as to foreign accounts
Foreign-issued life insurance or annuity contract with a cash-value	Yes	Yes
Foreign hedge funds and foreign private equity funds	Yes	No
Foreign real estate held directly	No	No
Foreign real estate held through a Foreign entity	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
Foreign currency held directly	No	No
Precious metals held directly	No	No
Personal property held directly, such as art, antiques, jewelry, cars and other collectibles	No	No
Social Security- type program benefits provided by a foreign government	No	No

STILL HAVE QUESTIONS?

Let us help you!

If you have questions about your reporting requirements or would like assistance preparing your financial reports or expat taxes, please contact us. Our expert CPAs and IRS Enrolled Agents can assess your specific situation and ensure that you have completed the necessary reporting, making it one less thing for you to worry about. To get started, simply visit www.greenbacktaxservices.com or email info@greenbacktaxservices.com.

Note:

The information provided on these pages was made available on the IRS website at www.irs.gov and is accurate as of February 2014.