



# DEMOCRATS ABROAD

Policy Division  
Financial Crimes Enforcement Network  
P.O. Box 36  
Vienna, VA 22183  
Attn: AnnaLou Tirol,  
Deputy Director, FinCEN

May 5, 2021

Dear Ms Tirol,

**RE: Docket Number FINCEN-2021-0005 and RIN 1506-AB49**

Democrats Abroad is pleased to respond to the invitation of the Financial Crimes Enforcement Network ("FinCEN") to comment on the implementation of the Corporate Transparency Act ("CTA") enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021. Our submission responds most to question 48 of the Advance Notice of Proposed Rulemaking.<sup>1</sup> We suggest alterations to the Report of Foreign Bank and Financial Accounts ("FBAR"), a FinCEN system that complements the system to identify, collect, and permit authorized uses of beneficial ownership information. Our FBAR reform recommendations could sensibly be introduced as the CTA is implemented.

The CTA will become a key component of the U.S. tax and financial law enforcement infrastructure and expand on the system of oversight that includes FBAR. Americans living abroad who hold financial accounts in the countries where they live have long been subject to FinCEN oversight. Although the bank accounts we use to pay our bills and save for the future are "local" to us, they are included in the category of Foreign Financial Accounts that concern the U.S. government.

Democrats Abroad understands that non-resident Americans are bystanders in an on-going war against tax cheats and other malign actors who abuse anonymous shell companies and foreign financial accounts. We know that those seeking to hide assessable income from the IRS or crimes from law enforcement engage legions of clever lawyers, bankers, accountants, and formation agents to collaborate on the development of ever-more complex, illicit schemes. The fight against their tireless efforts routinely results in policy that makes life harder for the vast majority of ordinary Americans abroad. 2019 research indicates one in three Americans abroad have reported impaired access to even ordinary financial products and services in the countries where they live.<sup>2</sup> This "lockout" of Americans abroad by foreign banks and financial institutions has been enormously disruptive for those affected, as notably evidenced in sworn testimony from Donna Lane Nelson in the April 26, 2017 hearing, "Reviewing the Unintended Consequences of FATCA" in the House Subcommittee on Government Operations.<sup>3</sup>

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<sup>1</sup> <https://www.federalregister.gov/documents/2021/04/05/2021-06922/beneficial-ownership-information-reporting-requirements#print>

<sup>2</sup> Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation, [bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

<sup>3</sup> <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/workingpaper/52199-wp-taxcompliance.pdf>

Americans abroad need government officials to understand who we are, so that they can strike a better balance in policy-making between, on the one hand, discouraging and apprehending financial criminals - which we strongly support - and, on the other hand, caring for the welfare of ordinary Americans living abroad.

## **WHO ARE AMERICANS ABROAD**

The State Department estimates there are 9 million Americans living outside the United States. Unfortunately, we suffer from the stubborn misperception - driving the development of tax policy and regulations - that Americans abroad are uniformly high-rollers, living a life of luxury in low- or no-tax countries. Research published at the behest of Congressional staff demonstrates that we live abroad primarily because a relationship, employment, education, or adventure took us abroad, and we decided to stay.<sup>4</sup> The research also indicates that the majority of us are middle-class Americans, working, raising families, and retiring in countries with a higher overall tax-burden than the U.S. However, the tax policies and regulations that affect Americans abroad do not reflect this reality. Foreign financial account reporting requirements are foremost among them.

The implementation of the CTA gives rise to an opportunity to FinCEN to revisit the FBAR and consider adjustments that provide some relief to ordinary Americans living abroad without sacrificing law enforcement strength. Court cases involving FBAR violations are not rare. The foreign financial account reporting requirement is clearly instrumental in the apprehension of criminals abusing offshore financial accounts. The perpetrators, however, are invariably citizens living inside of the U.S. rather than living abroad.<sup>5</sup>

Rules guiding compliance with FBAR have not been adjusted since the law was passed in 1970. Reasonable updates can both improve the report's focus on bad actors and simplify compliance for Americans abroad.

### **PROPOSAL: We propose the following reforms to the FBAR:**

1. Index the \$10,000 reporting threshold for inflation
2. Create a second, higher reporting threshold for Americans living abroad<sup>6</sup>
3. Address the duplication of reporting on FBAR and FATCA as recommended by the National Taxpayer Advocate
4. Modify out-of-proportion penalties for non-willful failure to disclose accounts
5. Restore the option to submit FBAR paper filings
6. Provide for FBAR reporting in Spanish and other languages

These recommendations could be modified to exempt higher income individuals from eligibility and ensure that they enhance existing tax and law enforcement mechanisms. They will put policy focus on bad actors while providing relief to those who have for a long time suffered unintended adverse consequences. We are in an on-going discussion with members of Congress about these proposals.

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<sup>4</sup> Tax Filing From Abroad: 2019 Research on Non-Resident Americans and U.S. taxation, [bit.ly/FilingFromAbroad](https://bit.ly/FilingFromAbroad)

<sup>5</sup> <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/workingpaper/52199-wp-taxcompliance.pdf>

<sup>6</sup> Americans living abroad can be defined as those that comply with the IRS Substantial Overseas Presence test.

## CONCLUSION

The CTA adds a powerful new tool for discouraging and apprehending financial criminals. The disclosure of beneficial interest in anonymous shell companies will illuminate the activities of tax cheats and other bad actors that foreign financial account disclosures do not. We strongly endorse that.

Thank you for the opportunity to provide these comments and recommendations.

Please contact Carmelan Polce of our Taxation Task Force (+61 404 767 088 or [carmelan@democratsabroad.org](mailto:carmelan@democratsabroad.org)) or the undersigned with any questions about the information and recommendations provided.

Sincerely,

/S/

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