



April 2019

# FOREIGN ASSET REPORTING

Actions Needed to  
Enhance Compliance  
Efforts, Eliminate  
Overlapping  
Requirements, and  
Mitigate Burdens on  
U.S. Persons Abroad

# GAO Highlights

Highlights of [GAO-19-180](#), a report to congressional committees

## Why GAO Did This Study

Concerns over efforts by U.S. taxpayers to use offshore accounts to hide income or evade taxes contributed to the passage of FATCA in 2010, which sought to create greater transparency and accountability over offshore assets held by U.S. taxpayers.

House Report 114-624 included a provision for GAO to evaluate FATCA implementation and determine the effects of FATCA on U.S. citizens living abroad. GAO—among other things—(1) assessed IRS’s efforts to use FATCA-related information to improve taxpayer compliance; (2) examined the extent to which Treasury administers overlapping reporting requirements on financial assets held overseas; and (3) examined the effects of FATCA implementation unique to U.S. persons living abroad.

GAO reviewed applicable documentation; analyzed tax data; and interviewed officials from IRS, other federal agencies and organizations, selected tax practitioners, and more than 20 U.S. persons living overseas.

## What GAO Recommends

GAO is making one matter for congressional consideration to address overlap in foreign asset reporting requirements. GAO is making seven recommendations to IRS and other agencies to enhance IRS’s ability to leverage FATCA data to enforce compliance, address unnecessary reporting, and better collaborate to mitigate burdens on U.S. persons living abroad. State and Social Security Administration agreed with GAO’s recommendations. Treasury and IRS neither agreed nor disagreed with GAO’s recommendations.

View [GAO-19-180](#). For more information, contact James R. McTigue, Jr. at (202) 512-9110 or [mctiguej@gao.gov](mailto:mctiguej@gao.gov).

April 2019

## FOREIGN ASSET REPORTING

### Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad

## What GAO Found

Data quality and management issues have limited the effectiveness of the Internal Revenue Service’s (IRS) efforts to improve taxpayer compliance using foreign financial asset data collected under the Foreign Account Tax Compliance Act (FATCA). Specifically, IRS has had difficulties matching the information reported by foreign financial institutions (FFI) with U.S. taxpayers’ tax filings due to missing or inaccurate Taxpayer Identification Numbers provided by FFIs. Further, IRS lacks access to consistent and complete data on foreign financial assets and other data reported in tax filings by U.S. persons, in part, because some IRS databases do not store foreign asset data reported from paper filings. IRS has also stopped pursuing a comprehensive plan to leverage FATCA data to improve taxpayer compliance because, according to IRS officials, IRS moved away from updating broad strategy documents to focus on individual compliance campaigns. Ensuring access to consistent and complete data collected from U.S. persons—and employing a plan to leverage such data—would help IRS better leverage such campaigns and increase taxpayer compliance.

Due to overlapping statutory reporting requirements, IRS and the Financial Crimes Enforcement Network (FinCEN)—both within the Department of the Treasury (Treasury)—collect duplicative foreign financial account and other asset information from U.S. persons. Consequently, in tax years 2015 and 2016, close to 75 percent of U.S. persons who reported information on foreign accounts and other assets on their tax returns also filed a separate form with FinCEN. The overlapping requirements increase the compliance burden on U.S. persons and add complexity that can create confusion, potentially resulting in inaccurate or unnecessary reporting. Modifying the statutes governing the requirements to allow for the sharing of FATCA information for the prevention and detection of financial crimes would eliminate the need for duplicative reporting. This is similar to other statutory allowances for IRS to disclose return information for other purposes, such as for determining Social Security income tax withholding.

According to documents GAO reviewed, and focus groups and interviews GAO conducted, FFIs closed some U.S. persons’ existing accounts or denied them opportunities to open new accounts after FATCA was enacted due to increased costs, and risks they pose under FATCA reporting requirements. According to Department of State (State) data, annual approvals of renunciations of U.S. citizenship increased from 1,601 to 4,449—or nearly 178 percent—from 2011 through 2016, attributable in part to the difficulties cited above.

Treasury previously established joint strategies with State to address challenges U.S. persons faced in accessing foreign financial services. However, it lacks a collaborative mechanism to coordinate efforts with other agencies to address ongoing challenges in accessing such services or obtaining Social Security Numbers. Implementation of a formal means to collaboratively address burdens faced by Americans abroad from FATCA can help federal agencies develop more effective solutions to mitigate such burdens by monitoring and sharing information on such issues, and jointly developing and implementing steps to address them.

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**Abbreviations**

BSA	Bank Secrecy Act of 1970
CDW	Compliance Data Warehouse
CRS	Common Reporting Standard
FATCA	Foreign Account Tax Compliance Act

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FBAR	<i>Report of Foreign Banks and Financial Accounts</i>
FBU	Federal Benefits Unit
FDB	FATCA Database
FFI	foreign financial institution
FinCEN	Financial Crimes Enforcement Network
Form 8938	IRS Form 8938, <i>Statement of Specified Foreign Financial Assets</i>
Form 8966	IRS Form 8966, <i>FATCA Report</i>
GIIN	Global Intermediary Identification Number
HCTA	Host Country Tax Authority
ICMM	International Compliance Management Model
ICMM-FIR	International Compliance Management Model-FATCA International Returns
IGA	intergovernmental agreement
IMF	Individual Master File
IPM	Integrated Production Model
IRC	Internal Revenue Code
IRS	Internal Revenue Service
IRTF	Individual Returns Transaction File
IT	Information Technology
MTRDB	Modernized Tax Return Database
NFE	Nonfinancial Entity
OECD	Organisation for Economic Co-operation and Development
RAAS	Research, Applied Analytics and Statistics
SSA	Social Security Administration
SSN	Social Security Number
State	Department of State
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
Treasury	Department of the Treasury

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April 1, 2019

The Honorable John Kennedy  
Chairman  
The Honorable Christopher Coons  
Ranking Member  
Subcommittee on Financial Services and General Government  
Committee on Appropriations  
United States Senate

The Honorable Michael Quigley  
Chairman  
The Honorable Tom Graves  
Ranking Member  
Subcommittee on Financial Services and General Government  
Committee on Appropriations  
House of Representatives

By law, U.S. individuals—regardless of whether they live in the United States or abroad—are required to report and pay applicable taxes on worldwide income to the Internal Revenue Service (IRS), including income from offshore accounts and other assets. While taxpayers can hold offshore accounts for a number of legitimate reasons, some taxpayers have also used such accounts to hide income and evade taxes. IRS does not have an estimate of the revenue loss due to offshore noncompliance. However, international tax policy experts believe that the losses are in the billions of dollars annually. These losses contribute to the tax gap—the difference between tax amounts that taxpayers should pay and what they actually pay voluntarily and on time—that has been a problem for decades. In 2016, IRS estimated that the average annual gross tax gap for tax years 2008 to 2010 was \$458 billion, of which \$319 billion was from individual taxpayers.

The passage of the Foreign Account Tax Compliance Act (FATCA) sought to reduce tax evasion by creating greater transparency and accountability with respect to offshore accounts and other assets held by U.S. taxpayers.<sup>1</sup> However, since FATCA's enactment in 2010, we and

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<sup>1</sup>Subtitle A of Title V of the Hiring Incentives to Restore Employment Act is commonly referred to as FATCA. Pub. L. No. 111-147, §§ 501-541, 124 Stat. 71, 97-117 (2010).

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others have identified compliance burdens and other challenges FATCA has created for U.S. persons living abroad, foreign financial institutions, and other stakeholders.<sup>2</sup> For example, in our past work, we highlighted that some of the information reporting requirements for taxpayers subject to FATCA result in duplicative reporting to the Department of the Treasury (Treasury). This increases complexity and creates confusion for taxpayers.<sup>3</sup>

House Report 114-624 included a provision for us to evaluate IRS's implementation of FATCA and determine the effects of FATCA on U.S. citizens living abroad.<sup>4</sup> To address House Report 114-624, this report (1) assesses IRS's efforts to use information collected under FATCA to improve taxpayer compliance; (2) examines available foreign financial asset reports submitted by U.S. persons, including submissions that were below required filing thresholds; (3) examines the extent to which Treasury administers overlapping reporting requirements on foreign financial assets; (4) describes similarities and differences between FATCA and Common Reporting Standard (CRS) reporting requirements; and (5) examines the effects of FATCA implementation that are unique to U.S. persons living abroad.<sup>5</sup>

For our first objective, we identified criteria from our prior work identifying key practices for risk management.<sup>6</sup> We applied these criteria to assess

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<sup>2</sup>For example, see GAO, *Workforce Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings*, [GAO-18-19](#) (Washington, D.C.: Jan. 31, 2018); and *Reporting Foreign Accounts to IRS: Extent of Duplication Not Currently Known, but Requirements Can Be Clarified*, [GAO-12-403](#) (Washington, D.C.: Feb. 28, 2012). See also National Taxpayer Advocate, *Fiscal Year 2018 Objectives Report to Congress, Volume 2: Foreign Account Tax Compliance Act (FATCA): The IRS's Approach to International Tax Administration Unnecessarily Burdens Impacted Parties, Wastes Resources, and Fails to Protect Taxpayer Rights* (Washington, D.C.: June 28, 2017), p. 122-130.

<sup>3</sup>[GAO-12-403](#).

<sup>4</sup>H.R. Rep. No. 114-624, at 22 (2016).

<sup>5</sup>The term "U.S. persons," as used in this report, refers to specified individuals categorized in 26 C.F.R. § 1.6038D-1(2) as (1) U.S. citizens; (2) resident aliens of the United States for any portion of the taxable year; (3) nonresident aliens for whom an election under 26 C.F.R. §§ 6013(g)-(h) is in effect; or (4) nonresident aliens who are bona fide residents of Puerto Rico or a section 931 possession as defined in 26 C.F.R. § 1.931-1(c)(1)).

<sup>6</sup>GAO, *Information Technology: IRS Needs to Take Additional Actions to Address Significant Risks to Tax Processing*, [GAO-18-298](#) (Washington, D.C.: June 28, 2018).

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steps IRS has taken to manage risks in not receiving complete and valid Taxpayer Identification Numbers (TIN) from foreign financial institutions (FFI). We also applied criteria from our prior work on use of documented frameworks to IRS documentation on FATCA compliance activities to determine the extent to which IRS implemented a comprehensive plan to maximize the use of collected data to enforce compliance with FATCA.<sup>7</sup>

For our second objective, we identified total maximum account values reported by individual filers of the Financial Crimes Enforcement Network (FinCEN) Form 114s (commonly known as the *Report of Foreign Bank and Financial Accounts*, or FBAR) in calendar year 2015 and 2016, using lower and upper bounds of foreign financial accounts reported for each year. See appendix III for more details on our methodology to evaluate these data. We summarized the numbers of IRS Forms 8938, *Statement of Specified Foreign Financial Assets* (Form 8938) filed in tax year 2016—the most recent year for which data were available—accounting for data limitations described in appendix I. We also identified Forms 8938 filed in tax year 2016 with available residency and asset information that reported specified foreign financial assets with aggregate values at or below end-of-year tax thresholds, which vary depending on the location of residence and filing status of such filers.

For our third objective, we reviewed IRS and FinCEN documentation, and applied criteria from *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide* to identify the extent to which IRS and FinCEN were engaged in overlapping activities, and collecting duplicative foreign financial asset information held by U.S. persons.<sup>8</sup> We assessed the extent to which individual filers who submitted a Form 8938 in 2015 and 2016 also submitted an FBAR for the same year.

For the three objectives described above, we assessed the reliability of data submitted on Forms 8938 filed by individuals for tax years 2015 and 2016, and FBARs for calendar years 2015 and 2016.

For our fourth objective, we reviewed documentation and interviewed officials from Treasury, IRS, and the Organisation for Economic Co-

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<sup>7</sup>GAO, *Tax Preparer Regulation: IRS Needs a Documented Framework to Achieve Goal of Improving Taxpayer Compliance*, [GAO-11-336](#) (Washington, D.C.: Mar. 31, 2011).

<sup>8</sup>GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide*, [GAO-15-49SP](#) (Washington, D.C.: Apr. 14, 2015).

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operation and Development (OECD) to compare and contrast FATCA and CRS reporting requirements.

For our fifth objective, we collected documentation and conducted focus groups and semi-structured interviews with Treasury, IRS, Department of State (State), and Social Security Administration (SSA) officials, and more than 20 U.S. persons subject to FATCA requirements, tax practitioners and various organizations in the United States and five other countries (Canada, Japan, Singapore, Switzerland, and the United Kingdom). We selected these countries based on geography, relatively high numbers of U.S. expatriates and Form 8938 filers, and tax information sharing agreements and other tax treaties with the United States. The findings from the focus groups and interviews are not generalizable to other U.S. persons, tax practitioners, or organizations.

We collected documentation from and interviewed Treasury, IRS, State, and SSA officials on steps to monitor and mitigate the effects of FATCA on U.S. persons living abroad. We also identified criteria from our prior work on key practices to enhance and sustain interagency collaboration and mechanisms to facilitate coordination.<sup>9</sup> We applied the criteria to agencies' collaborative efforts addressing issues U.S. persons living abroad faced from FATCA's implementation, and identified the extent to which agencies established effective collaborative mechanisms to identify, assess, and implement cross-agency solutions to such issues.

We conducted this performance audit from August 2017 to April 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See appendix I for more detailed information on our objectives, scope, and methodology.

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## Background

The United States has many international agreements that require treaty partners to provide certain information to IRS, which can help prevent the

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<sup>9</sup>GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012); and *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

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use of foreign bank accounts to facilitate tax evasion. FATCA goes much further, requiring FFIs to report more detailed information to IRS about their U.S. customers annually. These provisions are important developments in efforts to combat tax evasion by U.S. persons holding investments in offshore accounts. FATCA generally requires certain taxpayers to report foreign financial accounts and other specified foreign financial assets whose aggregate value exceeds specified thresholds to IRS on Form 8938.<sup>10</sup> These taxpayers must report these assets and income generated from such assets to IRS with their tax return on Form 8938. These thresholds vary by filing status—such as single or married filing jointly—and by domestic or foreign residency.<sup>11</sup>

FATCA also promotes third-party reporting of foreign financial assets by requiring a withholding agent to withhold 30 percent on certain payments to an FFI unless the FFI or the jurisdiction in which the FFI is located has entered into an agreement with the United States to report certain account information of their U.S. customers.<sup>12</sup> Under such an agreement, participating FFIs report detailed information to IRS annually about accounts held by their U.S. customers using an IRS Form 8966, *FATCA Report* (Form 8966).<sup>13</sup> According to IRS, FATCA improves visibility into taxable income from foreign sources, and enhances the agency's ability to identify and pursue taxpayer noncompliance. For example, FATCA allows IRS to compare information reported by FFIs on Forms 8966 to information reported by U.S. persons on Forms 8938. According to IRS, this comparison can be used to ensure taxpayers and FFIs are properly reporting foreign financial assets and income from international investments. This type of comparison is a common IRS enforcement technique. For example, IRS can directly compare information it receives

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<sup>10</sup>26 U.S.C. § 6038D; 26 C.F.R. § 1.6038D-2. Taxpayers required to report specified foreign financial assets to IRS under IRC section 6038D include U.S. citizens, U.S. resident aliens (even if resident for only part of the year), nonresident aliens who elect to be treated as resident aliens for purposes of filing a joint tax return, and nonresident aliens who are bona fide residents of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands.

<sup>11</sup>See appendix IV for thresholds of value of foreign assets making them reportable on Form 8938 by residency and filing status.

<sup>12</sup>26 U.S.C. §§ 1471-1474.

<sup>13</sup>In general, information participating FFIs are required to report on the Form 8966 includes the name, address, and TIN of accountholders who are specified U.S. persons; and the account number, balance or value, gross receipts, and gross withdrawals or payments from each account held by such persons.

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from financial institutions' IRS Form 1099-INT, *Interest Income*, against a tax return to determine if the taxpayer reported income generated from interest earned.

To facilitate FATCA implementation for FFIs operating in jurisdictions with laws that would prohibit FFIs from complying with the terms of the FFI agreement, Treasury developed two alternative intergovernmental agreements (IGA)—Model 1 and Model 2—to facilitate the effective and efficient implementation of FATCA by removing partner jurisdictions' legal impediments to comply with FATCA reporting requirements, and reducing burdens on FFIs located in partner jurisdictions. FFIs from countries with Model 1 IGAs report information on U.S. persons' accounts to their respective host country tax authorities (HCTAs). The HCTAs, in turn, compile the information from FFIs and transmit it to IRS. In contrast, FFIs from countries with Model 2 IGAs, or countries treated as not having an IGA in effect, directly report information on U.S. persons' accounts to IRS.

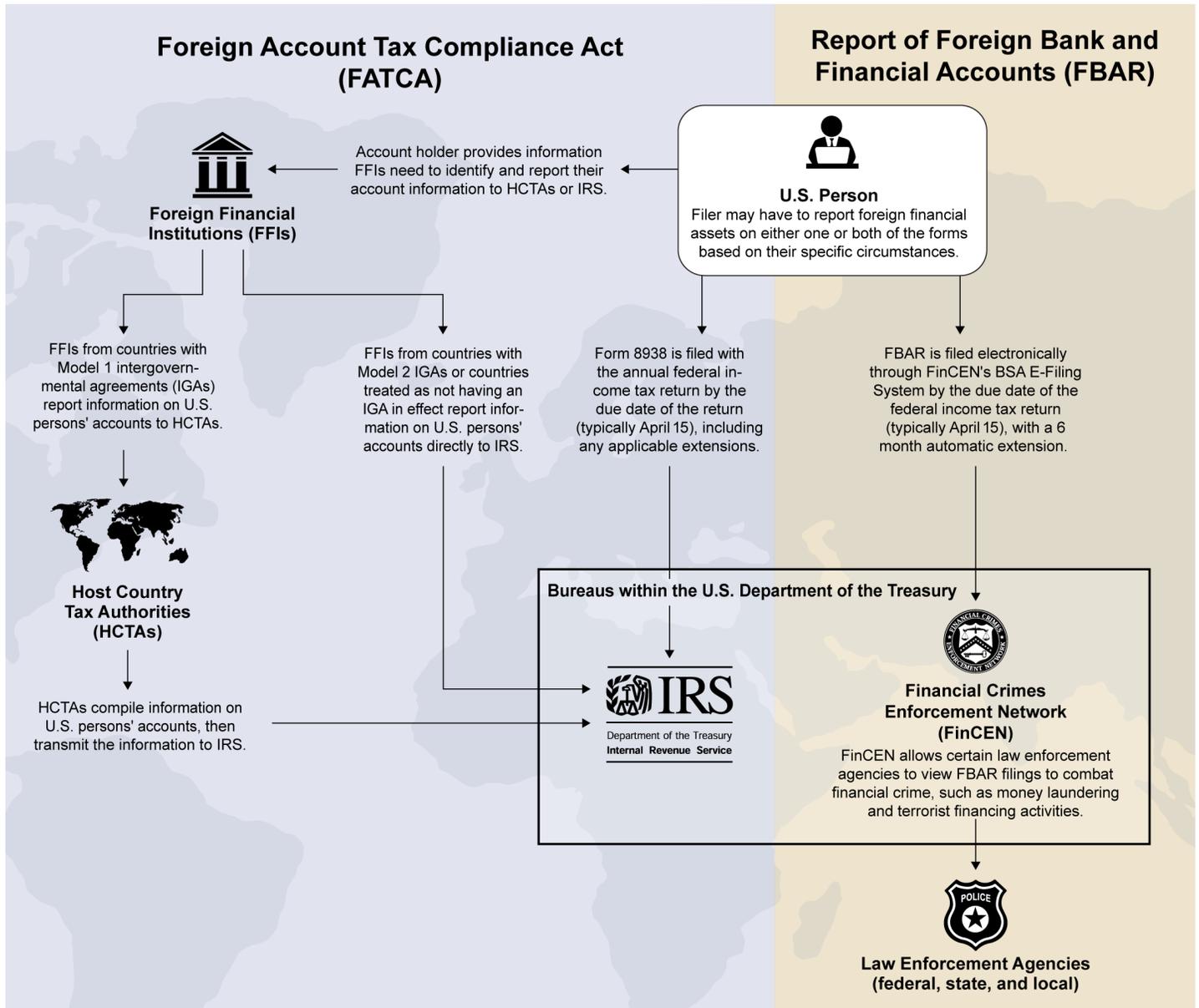
Separate from the FATCA requirements, regulations implementing the Bank Secrecy Act of 1970 (BSA) also impose a separate self-reporting requirement for foreign accounts.<sup>14</sup> Specifically, certain taxpayers and residents are required to file an FBAR with FinCEN annually if they have financial interest or signature or other authority over one or more foreign financial accounts with a total of more than \$10,000, regardless of whether they reside within or outside the United States. Federal, state, and local law enforcement agencies can use information from these reports to combat financial crimes, including terrorist financing and tax evasion. Appendix IV provides a comparison of Form 8938 and FBAR reporting requirements.

Figure 1 depicts the flow of foreign financial account information from U.S. persons and FFIs to IRS and FinCEN through the FATCA and FBAR reporting processes.

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<sup>14</sup>31 C.F.R. § 1010.350.

**Figure 1: Illustration of Foreign Financial Account Reporting by U.S. Persons and Foreign Financial Institutions to Meet FATCA and BSA Reporting Requirements**



Source: GAO analysis of FATCA and FBAR reporting requirements. | GAO-19-180

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## FATCA Data Limitations and Lack of a Comprehensive Strategy Have Hampered IRS Efforts to Increase Compliance

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### Incomplete and Inaccurate Reporting of Taxpayer Identification Numbers by FFIs Has Limited IRS's Efforts to Match Account Information for Compliance Purposes

As part of the FATCA reporting requirements, IRS collects information on financial accounts through forms and reports submitted by both taxpayers and FFIs. As part of this effort, IRS requires taxpayers to identify their TINs on Forms 8938 they submit. IRS also requires participating FFIs to report the TINs of each account holder who is a specified U.S. person on Forms 8966. IRS intends to use reported TINs to link Form 8938 data filed by taxpayers to Form 8966 data filed by the FFIs to ensure that taxpayers and FFIs are properly reporting foreign financial assets.

However, IRS often could not link account information collected from FFIs to the account's owner because of incorrect or missing TINs.<sup>15</sup> In July 2018, the Treasury Inspector General for Tax Administration (TIGTA) found that almost half of new Forms 8966 filed by FFIs did not include a TIN or included an invalid TIN.<sup>16</sup> A consulting firm working with FFIs to implement FATCA reporting requirements told us that FFIs encountered significant challenges obtaining accurate TINs from U.S. persons as part of the self-certification process. For instance, FFIs encountered situations where U.S. persons provided incomplete or inaccurate TINs—such as Social Security Numbers (SSN) with less than nine digits—on forms used to self-certify their status as U.S. persons. FFIs also encountered

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<sup>15</sup>For individuals filing taxes, a TIN would be a Social Security Number (SSN), Individual Taxpayer Identification Number, or Adoption Taxpayer Identification Number.

<sup>16</sup>See Treasury Inspector General for Tax Administration, *Despite Spending Nearly \$380 Million, the Internal Revenue Service Is Still Not Prepared to Enforce Compliance With the Foreign Account Tax Compliance Act*, 2018-30-040 (Washington, D.C.: July 5, 2018). As of September 30, 2017, IRS had received approximately 8.8 million new Form 8966 records on files stored in its International Compliance Management Model database, of which more than 4.3 million had either lacked a TIN or had an invalid TIN.

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situations where U.S. persons may not have obtained TINs or were unwilling to provide them to FFIs.<sup>17</sup>

Additionally, banking associations told us that it has taken time, effort, and expense for FFIs to report TINs, as they had to upgrade computer systems to collect and record TINs from U.S. customers. Finally, Treasury told us that jurisdictions that have an IGA with the United States but no legal requirement to collect TINs are not in compliance with the requirements of the IGA.

Treasury and IRS determined that some FFIs reporting from countries with Model 1 IGAs needed additional time to implement procedures to obtain and report required U.S. TINs for preexisting accounts that are U.S. reportable accounts. Consequently, IRS provided a transition period, through the end of 2019, for compliance with the TIN requirements for FFIs under Model 1 IGAs. Specifically, in September 2017, IRS issued a notice modifying procedures for FFIs reporting from countries with Model 1 IGAs to become compliant with TIN reporting requirements for preexisting accounts. For calendar years 2017-2019, IRS will not determine that certain FFIs in countries with Model 1 IGAs are significantly noncompliant with their obligations under the IGA solely as a result of a failure to report U.S. TINs associated with the FFI's U.S. reportable accounts, providing they (1) obtain and report the date of birth of each account holder and controlling person whose TIN is not reported, (2) make annual requests for missing TINs from each account holder, and (3) search electronically searchable data maintained by such FFIs for missing required U.S. TINs before reporting information that relates to calendar year 2017 to a partner jurisdiction.<sup>18</sup> As a result, even without any further extensions, calendar year 2020 is the earliest IRS will be

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<sup>17</sup>Officials from two organizations representing Americans living overseas said that U.S. persons living abroad might not possess an SSN because their parents did not obtain one for them as a minor. Often, this may have been due to the parents leaving the United States when the child was young. Additionally, State officials said that U.S. citizens applying for U.S. passports while overseas frequently forget their SSN or do not know if their parents ever applied for an SSN on their behalf. See below for challenges U.S. persons living abroad encountered when applying for an SSN.

<sup>18</sup>The U.S. reportable accounts covered under the IRS notice include those accounts maintained as of the determination date specified in the applicable Model 1 IGA. Under this rule, according to Treasury officials, many accounts would still be subject to U.S. TIN reporting because (1) they are not preexisting accounts, or (2) the FFI obtains the U.S. TIN through the annual request process. In addition, date of birth reporting is required; Treasury anticipates the date of birth may be used by IRS (along with other available information) to help to identify a taxpayer, even in the absence of a TIN.

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enforcing requirements for FFIs from countries with Model 1 IGAs to provide accurate and complete information on U.S. account holders' TINs to IRS.

Without valid TINs on Forms 8966 submitted by FFIs, according to IRS officials, IRS faces significant hurdles in matching accounts reported by FFIs to those reported by individual tax filers on their Forms 8938. As a result, IRS must rely on information such as names, dates of birth, and addresses that the filers and/or FFIs may not consistently report. Without data that can be reliably matched between Forms 8938 and 8966, IRS's ability to identify taxpayers not reporting accurate or complete information on specified foreign financial assets is hindered, interfering with its ability to enforce compliance with FATCA reporting requirements, and ensure taxpayers are paying taxes on income generated from such assets.

In July 2018, TIGTA reported that IRS lacked success in matching FFI and individual taxpayer data because reports FFIs filed did not include or included invalid TINs. This, in turn, affected IRS's ability to identify and enforce requirements for individual taxpayers.<sup>19</sup> TIGTA recommended, among other things, that IRS initiate compliance efforts to address and correct missing or invalid TINs on Form 8966 filings from FFIs from countries with Model 2 IGAs or without any IGAs with the United States. IRS management said it disagreed with this recommendation because a system to ensure validation of every TIN upon submission of a Form 8966 would be cost prohibitive. However, IRS management said that IRS would address invalid TINs as they are uncovered on other compliance efforts, such as initiating development of a data product to automate risk assessments across the FATCA filing population. IRS also said it continues efforts to systematically match Form 8966 and Form 8938 data to identify nonfilers and underreporting related to U.S. holders of foreign accounts. However, IRS management told us they are waiting until they have a full set of data, including TINs, before doing analysis to develop a compliance strategy. According to TIGTA, IRS management believed that having the FFI's Global Intermediary Identification Number (GIIN) on Form 8938, which is filed by the taxpayer, would help with matching records. However, Form 8938 instructions identify that the field is optional for taxpayers to complete.<sup>20</sup> TIGTA recommended that to reduce taxpayer

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<sup>19</sup>TIGTA, 2018-30-040.

<sup>20</sup>As part of FATCA, all relevant FFIs located in partner jurisdictions with Model 2 IGAs—and most FFIs located in jurisdictions with model 1 IGAs—must obtain a GIIN.

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burden in obtaining GIINs from FFIs, IRS add guidance to Form 8938 instructions to inform taxpayers on how to use the FFI List Search and Download Tool on the IRS's website to obtain an FFI's GIIN.<sup>21</sup> IRS agreed with this recommendation. However, even if an individual taxpayer provided GIINs, IRS may continue to have difficulty matching accounts with U.S. taxpayers if the TIN and name of the account holder reported on the Form 8966 do not match the TIN and name of the taxpayer on the Form 8938.

IRS officials said they are aware of these difficulties and have attempted to match Forms 8938 and 8966 based on other criteria such as dates of birth. In its response to our draft report, IRS said that all financial institutions and foreign tax authorities that file required account information receive a notification listing administrative and other minor errors contained in their reporting. According to IRS, its Large Business and International division follows up with foreign tax authorities regarding these errors to ensure the tax authorities are working with financial institutions to correct these errors in compliance with the countries' IGAs. IRS added it has initiated a campaign addressing FFIs that do not meet their compliance responsibilities with respect to account opening requirements. Additionally, IRS drafted a risk acceptance form and tool addressing risks in implementing FATCA compliance and business process capabilities. This risk assessment focused on the limitations IRS faces due to budget constraints, but did not address the specific risks it faces from not receiving complete and valid TINs on U.S. account holders. We previously reported that risk management could help stakeholders make decisions about assessing risk, allocating resources, and taking actions under conditions of uncertainty.<sup>22</sup> Key management practices for risk management we identified from our prior work include identifying, analyzing, and prioritizing risks; developing a mitigation plan to address identified risks; implementing the plan; and monitoring, reporting, and controlling risks.<sup>23</sup> Without developing a risk mitigation plan to address risks IRS faces from not receiving complete and valid TINs moving forward, IRS may lose opportunities to adjust its compliance

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<sup>21</sup>TIGTA, 2018-30-040. TIGTA also made several recommendations to improve Model 2 IGA FFI reporting.

<sup>22</sup>GAO, *DOD Financial Management: Ineffective Risk Management Could Impair Progress toward Audit-Ready Financial Statements*, [GAO-13-123](#) (Washington, D.C.: Aug. 2, 2013).

<sup>23</sup>[GAO-18-298](#).

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programs to better identify U.S. persons who are not fully reporting specified foreign financial assets as required under FATCA.

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### IRS Databases Lack Consistent and Complete FATCA and Taxpayer Data Useful for Compliance Enforcement and Research

Several IRS databases store data collected from individuals' electronic and paper filings of Form 8938 and/or elements of parent individual tax returns to which the Form 8938 is attached—the filer's country of residence and filing status—used to determine specified reporting thresholds for Form 8938 filers.<sup>24</sup> Additionally, data from these databases and other sources are transferred downstream to IRS's Compliance Data Warehouse (CDW)—a database used for research and analytical purposes.<sup>25</sup>

We extracted data from copies of Individual Return Transaction File (IRTF) and Modernized Tax Return Database (MTRDB) data copied into CDW to obtain information reported on Forms 8938 and relevant information from parent tax returns, such as filing status and filers' country of residence. We found that IRTF and MTRDB had inconsistent and incomplete data. For example, neither database had consistent and complete information on foreign financial account and other asset information submitted by Form 8938 filers. While IRS officials told us that IRTF is the authoritative source for filers of Form 8938, it does not store account and other asset information submitted on Forms 8938.

Additionally, IRS officials said MTRDB is not designed to store information submitted on paper filings of Forms 8938 and parent tax returns. Officials from IRS's Research, Applied Analytics and Statistics (RAAS) division also noted that CDW did not have reliable information from Form 8938 paper filings. Because of the lack of foreign financial asset information from such filings, we could not report complete information on assets reported by Form 8938 filers.<sup>26</sup>

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<sup>24</sup>Databases storing data collected from Form 8938 filings and related elements of parent individual tax returns include the Individual Master File (IMF), IRTF, MTRDB, International Compliance Management Model-FATCA International Returns, FATCA Database, and Integrated Production Model. Appendix II includes descriptions of the purposes of each database.

<sup>25</sup>CDW includes a copy of IMF data and provides access to a variety of other tax return, enforcement, compliance, and other data.

<sup>26</sup>See appendix II for more detailed information on problems we identified with the consistency and completeness of Form 8938 and relevant parent tax return data stored in IRS databases.

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Further, IRS does not provide instructions to CDW users on how to extract appropriate data from CDW—such as data copied from IRTF and MTRDB—leading to confusion on which databases to use for extracting Form 8938 and relevant parent tax return data. For example, five distinct tables within CDW are required to identify the TIN, parent form, filing status, country of residence, and amount of foreign assets accurately. Without clear explanations of how data in each of these tables relate to each other and to the underlying filings, errors could be introduced into CDW users' analyses of foreign asset information.

*Standards for Internal Control in the Federal Government* notes that management should use quality information to achieve the entity's objectives.<sup>27</sup> One attribute of this principle includes processing data into quality information that is appropriate, current, complete, accurate, accessible, and provided on a timely basis. Additionally, the Internal Revenue Manual states that IRS needs to measure taxpayer compliance so that customer-focused programs and services can be enhanced or developed so that compliance information and tools can be improved.<sup>28</sup>

According to IRS officials, IRS researchers have been taking additional steps to obtain and review Form 8938 and parent tax return data stored in the Integrated Production Model (IPM) database. They said IPM is the only database that contains complete data from individuals' electronic and paper filings of Forms 8938 and relevant elements of parent tax returns. IRS officials said that RAAS has been working with IRS's information technology (IT) division to obtain read-only access to IPM, and import Forms 8938 and 8966 data from IPM into CDW for analysis. However, as of February 2019, this effort has been delayed due to budget constraints. In its response to our draft report, IRS said that obtaining read-only access would require a new technical process and plans to continue working with IT on the feasibility and timeframe for enabling this access. Enabling access to consistent and complete Form 8938 and parent tax return data for compliance staff and researchers from RAAS and other IRS business units would help IRS strengthen its efforts to enforce compliance with FATCA reporting requirements and conduct research to

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<sup>27</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>28</sup>Internal Revenue Service, Internal Revenue Manual, IRM § 4.22.1.2(4). Accessed November 11, 2018, <https://www.irs.gov/irm/>. The Internal Revenue Manual is an official compendium of internal guidelines for IRS personnel.

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bolster enforcement efforts. However, such efforts may be hampered until IRS can ensure readily available access to such data.

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## IRS Stopped Pursuing a Comprehensive Plan to Leverage FATCA Data to Improve Taxpayer Compliance

We previously recommended that IRS develop a broad strategy, including a timeline and performance measures, for how IRS intends to use FATCA information to improve tax compliance.<sup>29</sup> IRS agreed with this recommendation and developed a strategy for FATCA in July 2013. IRS updated the strategy in 2016 by creating the FATCA Compliance Roadmap as a comprehensive plan to articulate IRS's priorities to facilitate compliance with FATCA reporting requirements. The roadmap also provided an overview of compliance activities used solely for enforcing FATCA reporting requirements or enhancing existing compliance efforts. However, in July 2018, TIGTA reported that IRS had not updated the FATCA Compliance Roadmap since 2016, and had taken limited or no action on a majority of the planned activities outlined in it.<sup>30</sup>

We also found that IRS had not yet evaluated the effects of FATCA, including the effects on voluntary tax compliance. IRS documentation states that only 7 of 31 capabilities outlined in the FATCA Compliance Roadmap were delivered due to funding constraints. As of October 2018, IRS has stopped using the FATCA Compliance Roadmap and has not developed a revised comprehensive plan to manage efforts to leverage FATCA data to improve taxpayer compliance. According to IRS officials, IRS moved away from updating broad strategy documents, such as the FATCA Compliance Roadmap, to focus on individual compliance campaigns. These include a campaign to match individual tax filers to the reports from FFIs, and another campaign to identify FFIs with FATCA reporting requirements who are not meeting all of their obligations.

According to what IRS told us, with the passage of time and as FATCA is becoming more integrated into agency operations, it has moved from updating the broad strategy documents focused on FATCA to working on compliance campaigns that incorporate FATCA into overall tax administration. Additionally, IRS and outside researchers plan to study the role of enforcement in driving overall patterns in reporting offshore assets and income generated from such assets. Though IRS maintains

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<sup>29</sup>GAO, *Foreign Account Reporting Requirements: IRS Needs to Further Develop Risk, Compliance, and Cost Plans*, [GAO-12-484](#) (Washington, D.C.: Apr. 16, 2012).

<sup>30</sup>TIGTA, 2018-30-040.

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that FATCA is more integrated into its operations, TIGTA's 2018 report concluded that IRS was still unprepared to enforce compliance with FATCA in part because it took limited or no action on the majority of planned activities outlined in the FATCA Compliance Roadmap.<sup>31</sup>

Documenting a framework for using FATCA reporting requirements to improve taxpayer compliance and measure their effect is consistent with three steps we found leading public sector organizations take to increase the accountability of their initiatives: (1) define clear missions and desired outcomes; (2) measure performance to gauge progress; and (3) use performance information as a basis for decision-making.<sup>32</sup> We also previously reported that it is important for IRS to use a documented framework that defines a clear strategy, timeline, and plans for assessment.<sup>33</sup> Having such a framework in place can help IRS better allocate resources and avoid unnecessary costs resulting from not having the necessary or appropriate data available to execute its objectives. In light of the challenges IRS faces to collect, manage, and use FATCA data to improve compliance in a resource-constrained environment, employing a comprehensive plan would help IRS maximize the use of collected data and better leverage individual campaigns to increase taxpayer compliance. Without such a plan, IRS's ability to collect and leverage data collected under FATCA for compliance enforcement and other purposes is constrained.

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<sup>31</sup>TIGTA, 2018-30-040.

<sup>32</sup>See [GAO-12-484](#) and [GAO-11-336](#).

<sup>33</sup>[GAO-11-336](#).

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## Analysis of FBAR and FATCA Data Provide Insights, Including the Possibility that Tens of Thousands of Forms 8938 May Have Been Filed Unnecessarily

More than 900,000 Individual FBAR Filers Reported about \$1.5 Trillion or More in Foreign Accounts in Both Calendar Years 2015 and 2016

We could not report on total values of foreign financial assets on Forms 8938 in tax years 2015 and 2016. However, we could provide a range of total maximum account values reported on FBARs during the same period. Specifically, we determined that more than 900,000 individuals filed FBARs in calendar years 2015 and 2016, and declared total maximum values of accounts ranging from about \$1.5 trillion to more than \$2 trillion each year.<sup>34</sup>

A little more than one in five—or about 21.7 percent—of the approximately 404,800 Forms 8938 filed with IRS in tax year 2016 were done so from U.S. persons living abroad, with the other 78.3 percent living in the United States. Table 1 shows that a higher proportion of Form 8938 filings from U.S. persons living abroad for tax year 2016 were filed on paper (43.3 percent) than Form 8938 filings from U.S. persons living in the United States during the same period (14.7 percent). We extracted these data from IRTF, which IRS officials said is the authoritative source for filers of Form 8938. However, we could not report complete information on foreign financial assets reported by Form 8938 filers because such data are incomplete; as noted above, IRS databases we

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<sup>34</sup>The lower bound of individual FBAR filings from calendar years 2015 and 2016 includes those filings reporting total maximum values of accounts of less than \$1 billion. The upper bound of such filings includes those filings that reported total values of less than \$5 billion. We are providing a range of estimates because we found a large number of filings made potentially in error—such as reporting more than \$100 trillion in foreign assets. Additionally, we could not independently verify the accuracy of all self-reported FBAR data, as we have only limited means to determine which filings have errors and which filings have accurate information. See appendix III for more detailed information on the ranges of estimates of total maximum account values reported by FBAR filers for both 2015 and 2016, and our methodology for developing the range of estimates.

used to extract Form 8938 data—IRTF and MTRDB—do not include asset information reported on paper filings of Forms 8938.

**Table 1: Tax Year 2016 Form 8938 Electronic and Paper Filings Stored in IRS’s IRTF**

Residence and filing status	Electronic filings	Paper filings	Total filings
<b>U.S. persons living in the United States</b>			
Married filing jointly	191,220	27,953	219,173
Other <sup>a</sup>	78,939	18,764	97,703
<b>Total—U.S. persons living in the United States</b>	<b>270,159</b>	<b>46,717</b>	<b>316,876</b>
<b>U.S. persons living abroad</b>			
Married filing jointly	16,237	8,871	25,108
Other <sup>a</sup>	33,568	29,239	62,807
<b>Total—U.S. persons living abroad</b>	<b>49,805</b>	<b>38,110</b>	<b>87,915</b>
<b>Total—all U.S. persons</b>	<b>319,964</b>	<b>84,827</b>	<b>404,791</b>

Source: GAO analysis of IRS data. | GAO-19-180

<sup>a</sup>Filers in this category include those who identify as single, married filing separately, “head of household” or “qualifying widow(er).”

## Tens of Thousands of Forms 8938 May Have Been Filed Unnecessarily in Tax Year 2016

Of the approximately 404,800 Forms 8938 filed by individuals for tax year 2016—the most recent data available—we could access information on residency of filers and reported foreign financial assets from about 277,600 Forms 8938 that did not indicate that foreign financial assets and values were declared on other forms besides the Form 8938.<sup>35</sup> Of the subset of these Forms 8938, more than one quarter—or about 73,500—reported foreign financial assets in amounts that indicate the Form 8938 may have been filed unnecessarily, since they reported specified foreign financial assets with aggregate values at or below reporting thresholds as of the last day of the tax year.<sup>36</sup> Based on available Form 8938 data from tax year 2016, table 2 shows that about 61,900 filings from U.S. persons living in the United States and about 11,600 filings from U.S. persons living abroad during the same tax year reported specified foreign financial assets with aggregate values at or below end of tax year thresholds.

<sup>35</sup>Under Part IV of the Form 8938, filers may identify that they declared specified foreign financial assets on other forms besides the Form 8938. In these instances, filers do not need to include these assets on the Form 8938 for the tax year.

<sup>36</sup>FATCA generally requires certain taxpayers to report to IRS on Form 8938 foreign financial accounts and other specified foreign financial assets whose aggregate value exceeds specified thresholds, which vary by residency and filing status. See appendix IV for more detailed information on these thresholds.

These totals likely understate the total number of Forms 8938 that U.S. persons may have filed unnecessarily in tax year 2016; due to data limitations, these totals exclude Forms 8938 without asset information stored in IRS's databases, including most Forms 8938 filed on paper and Forms 8938 where filers identified that they declared foreign financial assets on other forms besides the Form 8938.

**Table 2: Number of Available Tax Year 2016 Form 8938 Individual Filings at or below, or above End-of-Year Asset Reporting Thresholds, Excluding Filers Who Used Other Forms**

Residence and filing status	Threshold for reporting aggregate asset value as of the last day of the tax year	Number of filings reporting at or below threshold	Number of filings reporting above threshold
<b>U.S. persons living in the United States</b>			
Married filing jointly	Exceeds \$100,000	46,747	121,090
Other <sup>a</sup>	Exceeds \$50,000	15,154	54,861
<b>Total—U.S. persons living in the United States</b>		<b>61,901</b>	<b>175,951</b>
<b>U.S. persons living abroad</b>			
Married filing jointly	Exceeds \$400,000	4,937	8,279
Other <sup>a</sup>	Exceeds \$200,000	6,630	19,906
<b>Total—U.S. persons living abroad</b>		<b>11,567</b>	<b>28,185</b>
<b>Total—all U.S. persons</b>		<b>73,468</b>	<b>204,136</b>

Source: GAO analysis of IRS data. | GAO-19-180

Note: Table does not include 50,538 filings from U.S. persons living in the United States and 39,672 Form 8938 filings from U.S. persons living abroad without asset information stored in IRS's databases. Table also does not include information from Form 8938 filings where filer(s) identified on part IV of Form 8938 that they declared foreign financial assets on other forms besides the Form 8938. Table also does not include information on any other filings for which the residence of the filer could not be determined.

<sup>a</sup>Filers in this category include those who identify as single, married filing separately, "head of household" or "qualifying widow(er)."

There is no clear explanation as to why some U.S. persons may have filed Forms 8938 unnecessarily. However, we identified a number of potential reasons from focus groups and other interviews with stakeholder groups. In focus groups we conducted, participants expressed confusion about IRS's instructions for completing the Form 8938 and information provided on IRS's website. In the instructions for completing Form 8938, IRS described the specific types of foreign financial assets that are to be reported on Form 8938, and the asset value thresholds that must be met for required reporting, depending on the location of residence and filing status of the taxpayer. IRS also posted responses to frequently asked questions on meeting FATCA reporting requirements on its website, and

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established a separate page on its website comparing foreign financial assets that must be reported on Form 8938 and/or FBAR.

Nonetheless, focus group participants reported confusion on whether and how to report investment and retirement accounts and compulsory savings plans managed by their country of residence.<sup>37</sup> In a meeting we convened with an organization representing tax attorneys, they told us taxpayers are unsure about what account values to report on the Form 8938. Tax practitioners participating in another focus group added that they filed Forms 8938 regardless of the aggregate value of the assets because it was too cumbersome for them to identify whether the assets exceeded reporting thresholds as of the end of the year or at any time during the year.

IRS officials also cited a number of possible reasons why U.S. persons may be filing Forms 8938 unnecessarily. For example, it may be easier for U.S. persons to report all specified foreign financial assets they hold on the Form 8938, rather than determine whether the value of such assets met applicable thresholds. IRS officials also said that U.S. persons might complete a Form 8938 for reasons besides meeting tax-filing requirements, such as providing evidence of assets for a loan application.

IRS's Taxpayer Bill of Rights states that taxpayers are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. Furthermore, one of IRS's strategic goals is to empower taxpayers by making it easier for them to understand and meet their filing, reporting, and payment obligations.<sup>38</sup> IRS officials said they hosted sessions for tax practitioners at IRS Nationwide Tax Forums to address FATCA reporting requirements. However, they said IRS has not taken direct steps to identify or implement actions to further clarify instructions and related guidance on IRS's website for completing Form 8938, such as information on which

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<sup>37</sup>According to IRS instructions, Form 8938 filers may generally rely on periodic account statements for the tax year to report a financial account's maximum value. For most other specified foreign financial assets, filers may generally use the value of such assets as of the last day of the tax year if the assets (1) are not financial accounts, and (2) are held for investment and not held in accounts maintained by financial institutions. However, filers cannot use the aforementioned sources of asset values if they know or have reason to know—based on readily accessible information—that the values identified in such sources do not reflect reasonable estimates of the maximum value of the asset during the tax year.

<sup>38</sup>IRS Strategic Plan, Fiscal Years 2018-2022.

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foreign financial assets to report, how to calculate asset values, and determine whether such values exceed required reporting thresholds. Additionally, IRS officials said they have not conducted additional outreach to educate taxpayers on required reporting thresholds under FATCA, or notify Form 8938 filers of instances where aggregate values of specified foreign financial assets reported on Forms 8938 were below reporting thresholds.

IRS officials said they have not made efforts to determine whether there is a pattern of unnecessary Form 8938 filings that they could address. Rather, they said they believed resources should be devoted to FATCA implementation in general. However, as shown above, we have identified many tens of thousands of instances where U.S. persons may have filed Forms 8938 unnecessarily. Without assessing factors contributing to unnecessary Form 8938 reporting—and identifying or implementing actions to further clarify and educate taxpayers on FATCA reporting requirements—IRS is missing opportunities to help taxpayers understand their filing and reporting obligations and minimize their compliance burdens while properly meeting their tax obligations. Additionally, IRS may be missing opportunities to reduce costs in processing forms that taxpayers did not need to file.

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## Different Laws Established Overlapping Foreign Financial Asset Reporting Requirements and Compounded Taxpayer Compliance Burden

Because of overlapping statutory reporting requirements, IRS and FinCEN—both bureaus within Treasury—collect duplicative foreign financial asset data using two different forms (Form 8938 and FBAR). Our evaluation and management guide for fragmentation, overlap, and duplication states that overlap occurs when multiple agencies or programs have similar goals, engage in similar activities or strategies to achieve them, or target similar beneficiaries.<sup>39</sup> Table 3 shows that individuals required to report foreign financial assets on Form 8938, in many cases, also must meet FBAR reporting requirements. For example, specified individuals with foreign financial accounts exceeding \$50,000 in aggregate value on the last day of the tax year must file both Form 8938 and FBAR if such values exceed the minimum Form 8938 thresholds; these thresholds depend on the filing status and address of specified individuals.<sup>40</sup> Table 3 also shows that, in many cases, specified interests

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<sup>39</sup>[GAO-15-49SP](#).

<sup>40</sup>See appendix IV for thresholds of value of foreign assets making them reportable on Form 8938 by residency and filing status.

in foreign financial assets as defined in Form 8938 instructions are the same as the financial interest in such assets under FBAR. Further, as noted in table 3, the overlapping requirements lead to IRS and FinCEN collecting the same information on certain types of foreign financial assets. For example, both Form 8938 and FBAR collect information on foreign financial accounts for which a person has signature authority and a financial interest in the account. Form 8938 and FBAR also both collect duplicative information on several other types of foreign financial assets, such as foreign mutual funds and accounts at a foreign financial institution that include foreign stock or securities.

**Table 3: Illustrative Examples of Overlap in Form 8938 and FBAR Reporting Requirements**

	<b>IRS Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b> (To meet FATCA reporting requirements under IRC Section 6038D and implementing regulations) <sup>a</sup>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b> (To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations) <sup>b</sup>	<b>Explanation of Overlapping Requirements</b>
Type of filer	Any specified person that has an interest in a specified foreign financial asset during the taxable year. Specified persons include: <ul style="list-style-type: none"> <li>specified individuals, including U.S. citizens, resident aliens, and certain nonresident aliens; and</li> <li>specified domestic entities including certain domestic corporations, partnerships, and trusts.<sup>c</sup></li> </ul>	U.S. persons, which include U.S. citizens, residents and domestic entities—such as corporations, partnerships or trusts—that have an interest in foreign financial accounts and meet the reporting threshold.	A specified individual for FATCA purposes, such as a U.S. citizen or resident, in many cases will also be a U.S. person for FBAR purposes. Specified domestic entities for FATCA purposes—such as corporations, trusts, and estate—in many cases can also be classified as a U.S. person for FBAR purposes.
Type of interest in foreign financial assets <sup>d</sup>	A U.S. person has a specified interest in a foreign financial asset if he or she realizes any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset that are or would be required to be reported, included, or otherwise reflected on the person's income tax return. A U.S. person can have a specified interest in a foreign financial asset in certain other circumstances as well.	A U.S. person has a financial interest in each bank, securities or other financial account in a foreign country (1) for which he or she 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, (2) the legal owner has a certain specified relationship with the U.S. person, or (3) has signature or other authority to control the disposition of the assets in a financial account.	In many cases, specified interests as defined in Form 8938 instructions will be the same as financial interests under FBAR.

	<b>IRS Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b> (To meet FATCA reporting requirements under IRC Section 6038D and implementing regulations) <sup>a</sup>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b> (To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations) <sup>b</sup>	<b>Explanation of Overlapping Requirements</b>
Threshold of value of foreign assets making them reportable (individuals)	The minimum threshold for required reporting is more than \$50,000 in total value of assets on the last day of the tax year, or more than \$75,000 of such assets at any time during the year.  However, the thresholds may be higher depending on the filing status and address of specified individuals.	This is an aggregate balance, meaning if a person has two accounts, both accounts must be reported if the maximum account values of each (determined separately), when combined exceed \$10,000.	Assets required to be reported on both Form 8938 and FBAR include foreign financial accounts. Therefore, foreign financial accounts whose aggregate value exceeds \$50,000 as of the last day of the tax year have to be reported on both forms if such values also exceed the minimum Form 8938 thresholds; these thresholds depend on the filing status and address of specified individuals.  However, Form 8938 filers do not have to file an FBAR for the same reporting year in cases where aggregate value of assets required to be reported on the FBAR—including assets also required to be reported on Form 8938—are below FBAR’s \$10,000 reporting threshold. <sup>e</sup>
Foreign financial assets reportable on both forms (including maximum value of asset) <sup>f</sup>	<ul style="list-style-type: none"> <li>• financial (deposit and custodial) accounts held at foreign financial institutions.</li> <li>• foreign financial account for which a person has signature authority and a financial interest in the account (subject to exceptions).<sup>g</sup></li> <li>• foreign stock or securities held in a financial account at a foreign financial institution.<sup>h</sup></li> <li>• foreign mutual funds.</li> <li>• foreign accounts held by a foreign or domestic grantor trust for which the specified individual is the grantor.</li> <li>• foreign-issued life insurance or annuity contract with a cash-value.</li> </ul>		Banks, securities, and other financial accounts as defined under FBAR would include financial assets maintained by a foreign financial institution as defined for Form 8938 as listed in this row.
Foreign financial assets reportable on only one form (including maximum value of asset) <sup>f</sup>	<ul style="list-style-type: none"> <li>• foreign stock or securities not held in a financial account.</li> <li>• foreign nonaccount investment assets held by a foreign or domestic grantor trust for which the specified individual is the grantor.</li> <li>• foreign partnership interests.</li> <li>• foreign hedge funds and foreign private equity funds.</li> </ul>	<ul style="list-style-type: none"> <li>• financial account held at a foreign branch of a U.S. financial institution.</li> <li>• foreign financial account for which a person has signature authority, but no financial interest in the account (subject to exceptions).<sup>g</sup></li> <li>• indirect interests in foreign financial assets through an entity.<sup>i</sup></li> </ul>	Not applicable.

	<b>IRS Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b> (To meet FATCA reporting requirements under IRC Section 6038D and implementing regulations) <sup>a</sup>	<b>FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b> (To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations) <sup>b</sup>	<b>Explanation of Overlapping Requirements</b>
Penalties	Up to \$10,000 for failure to disclose and an additional \$10,000 for each 30 days of nonfiling after IRS notice of a failure to disclose, for a potential maximum penalty of \$50,000. <sup>j</sup> Criminal penalties may also apply.	For civil penalty assessment prior to August 2, 2016, if nonwillful, up to \$10,000 per violation; if willful, the greater of \$100,000 or 50 percent of account balances per violation. <sup>k</sup> Civil monetary penalties are adjusted for inflation. Criminal penalties may also apply.	A U.S. person may be liable for civil and criminal penalties under two different penalty regimes unless he or she discloses specified foreign financial assets to IRS and FinCEN using two separate forms—Form 8938 and FBAR.

Source: GAO analysis of IRS and FinCEN information. | GAO-19-180

<sup>a</sup>26 U.S.C. § 6038D; 26 C.F.R. §§ 1.6038D-1 to 1.6038D-8.

<sup>b</sup>31 U.S.C. § 5314; 31 C.F.R. § 1010.350.

<sup>c</sup>26 C.F.R. § 1.6038D-6. A domestic corporation, a domestic partnership, or a trust described in IRC section 7701(a)(30)(E) can be classified as a specified domestic entity, if such corporation, partnership, or trust is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets.

<sup>d</sup>See appendix IV for a complete definition of specified and financial interests covered under Form 8938 and FBAR reporting requirements, respectively.

<sup>e</sup>As an example, a single taxpayer living in the U.S. possesses a foreign bank account with a maximum annual value of \$5,000 and foreign partnership interests valued at \$80,000. The single taxpayer must file an IRS Form 8938 since total specified foreign financial assets held exceed the \$75,000 maximum aggregate annual reporting threshold for U.S. persons living in the United States and not married filing jointly. However, the taxpayer does not have to file an FBAR since the maximum value of the foreign bank account is below FBAR's \$10,000 reporting threshold.

<sup>f</sup>Includes maximum value of specified foreign financial assets (Form 8938) or maximum value of financial accounts maintained by a financial institution physically located in a foreign country (FBAR).

<sup>g</sup>Under FATCA, any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account are or would be required to be reported, included, or otherwise reflected on a person's income tax return. Under FBAR reporting requirements, a person has signature or other authority if he or she has the authority (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

<sup>h</sup>The account itself is subject to reporting, but the contents of the account do not have to be separately reported.

<sup>i</sup>Assets only must be reported if a person has sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity.

<sup>j</sup>26 U.S.C. § 6038D; 26 C.F.R. § 1.6038D-8. In addition to the penalty for failure to file Form 8938, taxpayers who fail to report income from such assets on their tax returns are subject to a penalty of 40 percent of the tax due on that income (in addition to the tax on the income). There is no differentiation in the penalty based on willfulness of the failure to file.

<sup>k</sup>For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the maximum penalties for negligent, nonwillful, and willful violations are adjusted for inflation. 31 C.F.R. § 1010.821.

Overlapping reporting requirements result in most Form 8938 filers also filing an FBAR during the same reporting year. Table 4 shows that close to 75 percent of Form 8938 filers in tax years 2015 and 2016 percent also filed an FBAR for the same year using the same TIN.

**Table 4: Number and Percentage of Individual 2015 and 2016 Form 8938 Filings from Filers who also Submitted an FBAR for 2015 and 2016**

Year	Number of Form 8938 filings	Number of Form 8938 filers who also submitted an FBAR	Percentage of Form 8938 filers who also submitted an FBAR
2015	365,540	272,684	74.6%
2016	404,791	295,236	72.9%

Source: GAO analysis of IRS and FinCEN data. | GAO-19-180

Overlapping requirements to file both Form 8938 and FBAR increases the compliance burden on U.S. persons and adds complexity that can create confusion, potentially resulting in inaccurate or unnecessary reporting. Focus group participants in all five countries included in our study affirmed that U.S. persons experienced confusion and frustration with having to report duplicative foreign financial asset information on both forms. Focus group participants and others we interviewed also noted that U.S. persons incurred additional financial costs to complete and file both Form 8938 and FBAR. For instance, one tax practitioner in Canada said the charge was about \$190 to report four-to-five accounts on an FBAR in addition to charging about \$540 for basic tax return packages. An accounting firm based in Japan typically charged between \$300 and \$800 to complete a Form 8938 and between \$150 and \$500 to complete an FBAR, depending on the number of accounts reported on the forms. Proposed revisions to regulations implementing BSA proposed by FinCEN may also increase the number of duplicative foreign financial accounts reported on Form 8938 and FBAR. Currently, U.S. persons must report detailed information on all foreign financial accounts on Form 8938 if the value of such accounts and other specified foreign financial assets reaches applicable reporting thresholds.<sup>41</sup> In contrast, U.S. persons are generally exempted from reporting detailed account information on FBARs if they report having signature or other authority over 25 or more foreign financial accounts. FinCEN’s proposed revisions to BSA regulations would eliminate the exemption, requiring U.S. persons

<sup>41</sup>See appendix IV for thresholds of value of foreign assets making them reportable on Form 8938 by residence and filing status.

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to report detailed information on all foreign financial accounts in which he or she has a financial interest if the value of such accounts exceed FBAR's \$10,000 reporting threshold. FinCEN estimated that it will receive account information for the first time on about 5.4 million foreign financial accounts if it finalizes the proposed revisions.<sup>42</sup> In turn, these revisions may lead to increased filings of duplicative asset data on both Form 8938 and FBAR, as U.S. persons may have to report detailed information on all foreign financial accounts using both forms.

U.S. persons also face exposure to two different penalty regimes for any failures in accurately and completely reporting foreign financial asset information to two bureaus within Treasury—IRS and FinCEN.<sup>43</sup> Officials from one organization representing U.S. persons living abroad said penalties due to failure to report certain accounts on one or both forms can be significant, even if little or no taxes are owed on those accounts. The duplicative reporting of foreign financial asset data on two different forms also creates additional costs to the government to process and store the same or similar information twice, and enforce reporting compliance with both requirements.

In 2012, we recommended that Treasury direct the Office of Tax Policy, IRS, and FinCEN to determine whether the benefits of implementing a less duplicative reporting process exceed the costs and, if so, implement that process.<sup>44</sup> Treasury did not implement our recommendation. While we continue to believe that the agencies should have considered whether less duplicative reporting could have been implemented, we do recognize that FATCA and FBAR were enacted under two different statutes to serve

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<sup>42</sup>See Department of the Treasury, Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Financial Accounts, 81 Fed. Reg. 12,613 (Mar. 10, 2016). FinCEN's estimate of additional foreign financial accounts reported based on proposed revisions to the regulations are based on the number of accounts reported on FBARs in 2013, in which the filers had 25 or more foreign financial accounts and noted the number of such accounts. FinCEN is currently drafting a final rule, which will go through a formal clearance process including intra departmental review within Treasury.

<sup>43</sup>26 U.S.C. § 6038D(d); 31 U.S.C. § 5321(a)(5); 31 C.F.R. § 1010.840.

<sup>44</sup>[GAO-12-403](#).

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different purposes.<sup>45</sup> As mentioned above, according to IRS, FATCA improves visibility into taxable income from foreign sources and enhances the agency's ability to identify and pursue taxpayer noncompliance. In contrast, the information reported on the FBAR is collected to identify money laundering and other financial crimes; law enforcement agencies can use BSA information—including information collected from FBARs—to aid regulatory and criminal investigations. Additionally, data collected from Form 8938 and FBAR are used in different systems for use by different bureaus within Treasury. Fully addressing issues stemming from overlapping reporting requirements and the resulting collection of duplicative information—while at the same time ensuring that such information can be used for tax compliance and law enforcement purposes—can only be done by modifying the statutes governing the requirements.

Further, IRS and FinCEN have varying degrees of access to foreign financial asset information collected from Form 8938 and FBAR to enforce tax compliance and financial crime laws. FATCA was enacted, in part, to improve visibility into taxable income from foreign sources. However, information provided on Forms 8938 is taxpayer return information protected by section 6103 of the Internal Revenue Code (IRC), which generally prohibits IRS from disclosing information provided on Forms 8938.<sup>46</sup> IRS can share return information with other government agencies and others when it is allowed by statute. For example, under section 6103, IRS may disclose return information related to taxes imposed under the IRC—such as self-employment income tax, Social Security and Medicare tax and income tax withholding—to the Social Security Administration (SSA) as needed to carry out its responsibilities under the Social Security Act.<sup>47</sup> However, according to FinCEN officials, FinCEN, law enforcement, and regulators often cannot access

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<sup>45</sup>FATCA was enacted as subtitle A of title V of the Hiring Incentives to Restore Employment Act. Pub. L. No. 111-147, §§ 501-541, 124 Stat. 71, 97-117 (2010). FBAR reporting requirements were imposed by section 1010.350 of title 31, Code of Federal Regulations, promulgated under the authority of the Bank Secrecy Act of 1970. Pub. L. No. 91-508, 84 Stat. 1114 (1970), as amended, *codified as* 12 U.S.C. §§ 1730d, 1829b, 1951–1959; 18 U.S.C. § 6002; 31 U.S.C. §§ 321, 5311–5322.

<sup>46</sup>26 U.S.C. § 6103(a). For example, according to IRS officials, IRS, FinCEN, law enforcement, and regulators cannot utilize Forms 8938 in FBAR enforcement without a determination that a potential BSA violation was in furtherance of a potential violation of the IRC.

<sup>47</sup>26 U.S.C. § 6103(l)(1).

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information submitted on Forms 8938. While section 6103 provides other exceptions to disclosure prohibitions—such as allowing IRS to share return information with law enforcement agencies for investigation and prosecution of nontax criminal laws—such information is generally only accessible pursuant to a court order.<sup>48</sup>

As noted above, information reported on the FBAR can be used by law enforcement agencies to aid regulatory and criminal investigations. This includes IRS, which has been delegated responsibility from FinCEN to enforce compliance with FBAR reporting requirements. IRS has used FBAR information in addressing taxpayer noncompliance with reporting and paying taxes on foreign assets and income. For example, taxpayers accepted into one of IRS's offshore voluntary disclosure programs must have filed amended or late FBARs as part of their program applications.<sup>49</sup> Investigators from IRS's Criminal Investigation division generally reviewed applications to determine if the taxpayer has made a complete and truthful disclosure. IRS examiners can also use information from case files of program participants—such as information disclosed on FBARs—to identify new groups of taxpayers suspected of hiding income offshore. IRS can then choose to continue offering offshore programs and encourage these newly identified groups of taxpayers, as well as all taxpayers with unreported offshore accounts, to disclose their accounts voluntarily.

In addition to eliminating overlapping reporting requirements, harmonizing statutes governing foreign financial asset reporting and use of information collected on such assets to make such statutes fully consistent could yield additional benefits to both IRS and the law enforcement community. Specifically, and as shown in appendix IV, there are specified foreign financial assets reported on Form 8938—such as foreign hedge funds and foreign private equity funds—that are not required to be reported on an FBAR. In contrast, there are other specified foreign financial assets reported on an FBAR—such as indirect interests in foreign financial assets through an entity—that are not required to be reported on Form

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<sup>48</sup>26 U.S.C. § 6103(i)(1).

<sup>49</sup>Between 2003 and 2018, IRS carried out five offshore disclosure programs that offered incentives for taxpayers to disclose their offshore accounts and pay delinquent taxes, interest, and penalties. Generally, the programs offered somewhat reduced penalties and no risk of criminal prosecution of eligible taxpayers who fully disclosed their previously unreported offshore accounts, and paid taxes due plus interest. The fifth program, which started in 2014, closed on September 28, 2018.

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8938. Without congressional action to address overlap in foreign financial asset reporting requirements, IRS and FinCEN will neither be able to coordinate efforts to collect and use foreign financial asset information, nor reduce unnecessary burdens faced by U.S. persons in reporting duplicative foreign financial asset information.

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## FFIs Face Overlapping Foreign Account Reporting Systems, but Alignment Would Entail Significant Changes in Law

Two reporting systems for sharing foreign account information from foreign financial institutions are in operation globally—FATCA and the Common Reporting Standard (CRS). According to officials from banking associations and a consulting firm, FFIs in the countries where we examined FATCA implementation encountered challenges implementing and now maintaining two overlapping reporting systems for collecting and transmitting account information to other countries for a seemingly similar purpose, and collecting sufficient information from customers to ensure they meet the requirements of both systems. As noted above, we previously identified overlap as occurring when multiple agencies or programs have similar goals, engage in similar activities or strategies to achieve them, or target similar beneficiaries.<sup>50</sup>

According to an IRS official, collecting account information under FATCA ushered in an era of greater transparency; as noted above, FATCA's passage sought to reduce tax evasion by creating greater transparency and accountability with respect to offshore accounts and other assets held by U.S. taxpayers. When FATCA was first introduced, there was no international platform to share account information between countries. The United States and other countries worked together to reach an agreement on the electronic formatting that would be used to share the information.

Other countries tax authorities' became more interested in understanding the financial assets held abroad by their residents through an exchange of account information among themselves. In response, the Organisation for Economic Co-operation and Development (OECD) established the CRS reporting system for automatic exchange of information among member countries. According to the OECD, CRS was developed with a view to maximize efficiency and reduce cost for financial institutions. Thus, CRS drew extensively on the intergovernmental approach used to implement FATCA reporting requirements for FFIs. Countries

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<sup>50</sup>[GAO-15-49SP](#).

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participating in CRS exchange account information with each other using OECD's Common Transmission System, which was modeled on FATCA's International Data Exchange System.<sup>51</sup> Figure 2 depicts the flow of account information between countries under FATCA and CRS.

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<sup>51</sup>CRS is implemented through legislation by each participating jurisdiction.

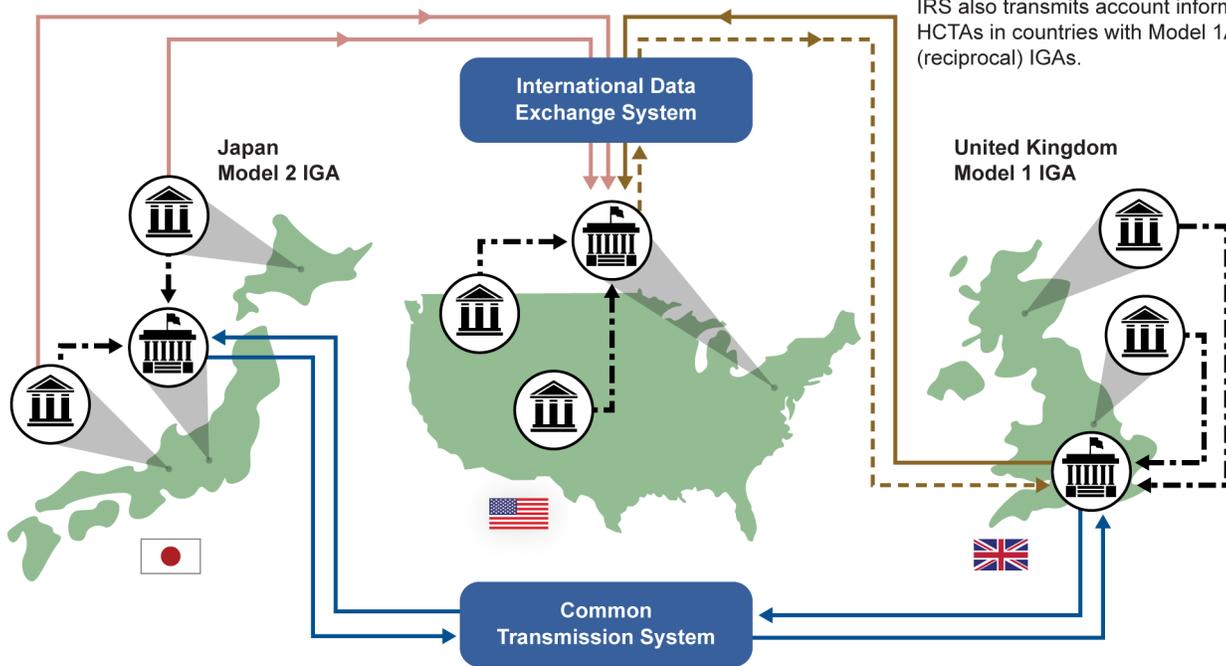
**Figure 2: Flow of Account Information under FATCA and CRS Reporting Systems**

**Foreign Account Tax Compliance Act (FATCA)**

Host country tax authorities (HCTAs) and foreign financial institutions (FFIs) share account information with IRS using IRS's International Data Exchange System.

**Countries with Model 2 Intergovernmental Agreements (IGAs) / Countries Treated as Not Having an IGA in Effect**  
 FFIs transmit account information directly to IRS.

**Countries with Model 1 Intergovernmental Agreements (IGAs)**  
 HCTAs collect account information from FFIs and transmit the information to IRS. IRS also transmits account information to HCTAs in countries with Model 1A (reciprocal) IGAs.



**Common Reporting Standard (CRS)**

HCTAs share account information with other HCTAs using Organisation of Economic Co-operation and Development's Common Transmission System.

-  Host country tax authorities (HCTAs)/IRS
-  Foreign financial institutions (FFIs)/U.S. financial institutions
-  FFIs/U.S. financial institutions transmit account information to HCTAs/IRS
-  HCTAs transmit account information collected from FFIs to IRS
-  IRS transmits account information to HCTAs
-  FFIs transmit account information directly to IRS
-  HCTAs share account information with other HCTAs using Organisation of Economic Co-operation and Development's Common Transmission System

Source: GAO. | GAO-19-180

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CRS reporting requirements are in many ways similar to FATCA, including required reporting of the account holders' name and address, taxpayer identification number, account number, account balance, and income and sales proceeds. However, the requirements differ in significant ways. The biggest differences in requirements are driven by the nature of the U.S. tax system. The United States, like many countries, generally taxes citizens and resident aliens on their worldwide income regardless of where that income is earned. However, the United States differs from other countries because it generally subjects U.S. citizens who reside abroad to U.S. taxation in the same manner as U.S. residents. In contrast to U.S. policy, most other countries do not tax their citizens if they reside in a country other than their country of citizenship. Further, IGAs implementing FATCA require FFIs to report the foreign-held accounts of U.S. citizens and residents—including resident aliens—while CRS requires financial institutions in jurisdictions participating in CRS to report on almost all accounts held by nonresidents of the reporting country. Appendix V provides more detailed information on differences in reporting requirements, due diligence requirements, and definitions under FATCA and CRS.

These differences in tax systems drive variations in due diligence procedures between FATCA and CRS. For example, FATCA aims to identify whether an account holder at a foreign institution is a U.S. person based on citizenship and tax residency information.<sup>52</sup> In contrast, CRS aims to identify the tax residency of all account holders of a financial institution, and does not consider citizenship. Due to the multilateral nature of CRS, if an account holder is determined on the basis of the due diligence procedures to have residency in two or more countries, information would be exchanged with all jurisdictions in which the account holder is determined a resident for tax purposes. Under CRS rules, information about foreign accounts held by a U.S. citizen with a tax residence abroad would not be reported to IRS, but rather to the jurisdiction in which they were a resident for tax purposes. Because the United States taxes the worldwide income of U.S. citizens, CRS rules would need to require identification of account holders' citizenship in member countries where they are residents if FATCA were to be aligned with CRS. Table 5 shows a comparison of individuals reported to IRS under FATCA and hypothetically under CRS.

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<sup>52</sup>Pub. L. No. 111-147, §§ 501-541, 124 Stat. 71, 97-117 (2010).

**Table 5: Comparison of FFI Reporting to IRS under FATCA and Hypothetically under CRS**

	FATCA (on basis of U.S. citizenship and tax residency)	CRS (on basis of tax residency)
U.S. citizen living in the United States with a U.S. account	n/a	n/a
U.S. citizen living in the United States with a foreign account	✓	✓
U.S. citizen with a tax residence abroad and a foreign account	✓	X
Permanent resident alien with a tax residence abroad and a U.S. account <sup>a</sup>	n/a	X
Permanent resident alien living in the United States with a U.S. account <sup>a</sup>	n/a	n/a
Permanent resident alien living in the United States with a foreign account <sup>a</sup>	✓	✓
Nonresident alien living in the United States with a U.S. account	n/a	n/a
Nonresident alien living in the United States with a foreign account	X	X

Legend:

n/a = Account is reported to IRS through the use of IRS Form 1099

✓ = Account reported

X = Account not reported

Source: GAO. | GAO-19-180

Note: Information in this table assumes that all applicable reporting thresholds are met.

<sup>a</sup>A person is a resident alien of the United States for tax purposes if he or she is lawfully admitted for permanent residence (the green card test), meets the substantial presence test, or makes a first year election. 26 U.S.C. § 7701(b)(1).

Treasury and IRS, as part of its 2017-2018 Priority Guidance Plan, are considering modifying certain elements of the existing FATCA regulations. For instance, Treasury and IRS are considering coordinating certain documentation requirements for participating FFIs with the requirements under IGAs. In December 2018, Treasury and IRS also proposed regulations intended, in part, to reduce the burdens of FATCA.<sup>53</sup> The proposed regulations included a clarification of the definition of an investment entity that is similar to the guidance published

<sup>53</sup>83 Fed. Reg. 64,757 (Dec. 18, 2018).

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by OECD interpreting the definition of a “managed by” investment entity under CRS.<sup>54</sup>

If the United States wanted to adopt CRS, some of the key differences between FATCA and CRS—as outlined above and in appendix V—could be aligned through regulation while others would require legislation. According to Treasury officials, to align FATCA and CRS, Congress would need to revise statutes to:

- provide for the collection of information for accounts that residents of partner jurisdictions maintain at U.S. financial institutions;
- require certain U.S. financial institutions to report the account balance (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) for all financial accounts maintained at a U.S. office and held by foreign residents;
- expand the current reporting required with respect to U.S. source income paid to accounts held by foreign residents to include similar non-U.S. source payments;
- require financial institutions to report the gross proceeds from the sale or redemption of property held in, or with respect to, a financial account; and
- require financial institutions to report information with respect to financial accounts held by certain passive entities with substantial foreign owners.

While better aligning FATCA and CRS to some extent is possible, anything short of the United States fully adopting CRS would not fully eliminate the burdens of overlapping requirements that FFIs must currently meet under the two different systems. While having the United States adopt the CRS reporting system in lieu of FATCA could benefit FFIs that may otherwise have to operate two overlapping reporting systems, it would result in no additional benefit to IRS in terms of

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<sup>54</sup>Under 26 C.F.R. § 1.1471-5(e)(4)(i)(B), an entity is an investment entity (and therefore a financial institution) if the entity’s gross income is primarily attributable to investing, reinvesting, or trading in financial assets and the entity is “managed by” another entity that is a depository institution, custodial institution, insurance company, or an investment entity described in 26 C.F.R. § 1.1471-5(e)(4)(i)(A). The proposed regulations clarify that an entity is not “managed by” another entity for purposes of 26 C.F.R. § 1.1471-5(e)(4)(i)(B) solely because the first-mentioned entity invests all or a portion of its assets in such other entity, and such other entity is a mutual fund, an exchange traded fund, or a collective investment entity that is widely held and is subject to investor-protection regulation.

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obtaining information on U.S. accounts. Additionally, it could generate additional costs and reporting burdens to U.S. financial institutions that would need to implement systems to meet CRS requirements. The extent of these costs is unknown. Further, adoption of CRS would create the circumstance where foreign accounts held by U.S. citizens with a tax residence in partner jurisdiction—including U.S. citizens who have a U.S. tax obligation—would not be reported to IRS.

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## Agencies Coordinated Efforts to Address Challenges U.S. Persons Living Abroad Encountered from FATCA Implementation, but Opportunities Exist to Enhance Collaboration

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### Some U.S. Persons Living Abroad Encountered Reduced Access to Financial Services Due in Part to Costs and Risks FFIs Faced from Implementing FATCA

Tax practitioners and others we interviewed said that U.S. persons living abroad—whether or not they are required to complete a Form 8938—risk being denied access to foreign financial services. U.S. persons and tax practitioners located in four of the five countries where we conducted focus groups and interviews reported that some U.S. persons and U.S.-owned businesses encountered difficulties opening bank accounts with FFIs after FATCA was enacted, with some FFIs closing U.S. persons' existing accounts or denying them opportunities to open new accounts. One focus group participant, for example, said that the financial institution closed down all accounts including business checking, savings, and money market accounts after FATCA was implemented, requiring this individual to find a local resident who could co-sign on a new account.

Costs FFIs would incur from implementing FATCA were cited as a significant factor in increasing barriers faced by U.S. persons in accessing foreign financial services. Officials from one organization representing tax attorneys said that as a result of costs associated with FATCA implementation, FFIs have found it less burdensome to close accounts of

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U.S. persons or require the accounts to be moved to a Securities and Exchange Commission registered affiliate than comply with FATCA. Tax practitioners and an official from a bankers association added that because FFIs may gain only small margins of profit from U.S. persons, FFIs may believe it is too troublesome to do business with them. Additionally, officials from a foreign government agency told us that because FATCA is expensive for FFIs to continue implementing, banks in their country might charge U.S. persons seeking access to financial services additional fees to account for FATCA implementation costs. Tax practitioners, consultants working with FFIs to implement FATCA reporting requirements, and the National Taxpayer Advocate told us that FFIs with smaller asset sizes such as smaller trust companies were more prone to decline business with U.S. persons.<sup>55</sup> Officials from an advocacy group representing U.S. persons living abroad told the National Taxpayer Advocate that some smaller banks declined U.S. persons as customers as a business decision, believing it would cost more for them to comply with FATCA reporting requirements than maintain U.S. expatriates' accounts.

Banking associations we interviewed said that decisions made by FFIs on whether to accept U.S. persons as customers also depends on the overall risks and benefits of taking on individual U.S. persons, shaped in part from risks in not meeting FATCA reporting requirements. Representatives of a banking association and an advocacy group told us that some FFIs decided to avoid doing business with U.S. persons after they became concerned about potential penalties for failure to comply—either willfully or in error—with FATCA reporting requirements. One banking association added that such errors could affect other aspects of FFIs' relationships with the U.S. government, such as nonprosecution agreements made with the U.S. Department of Justice.

Officials from one consulting firm that helped FFIs meet FATCA reporting requirements added that FFIs' determination of risk depends on many layers, such as the value of clients' assets or the country in which clients reside or possess citizenship. After FATCA's implementation, according to officials from the consulting firm, FFIs decided to turn away U.S. persons in some cases because the benefits of doing business with U.S. persons were less than the potential risks. For example, if a U.S. person

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<sup>55</sup>The National Taxpayer Advocate leads the Taxpayer Advocate Service, an independent organization inside IRS that helps taxpayers resolve problems and works for systemic change to mitigate problems experienced by groups of taxpayers.

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only maintained a payroll account, the FFI may determine it would not make enough money to account for risks in incorrectly identifying the status of the customer as a U.S. or non-U.S. person. However, focus group participants from two countries said that FFIs may agree to accept U.S. persons as customers if they have higher account balances that offset risks from FATCA reporting requirements. One focus group participant, for instance, said banks in his country will do business with a U.S. person if he or she has more than \$500,000 in assets. Additionally, U.S. persons and tax practitioners we interviewed said that other factors such as language barriers and U.S. regulations designed to prevent money laundering may also inhibit U.S. persons' access to brokerage accounts while overseas.

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### Form 8938 Reporting Requirements for Individuals with Signature Authority on and Financial Interest in Accounts May Have Contributed to Employment and Promotion Denials Overseas

Focus group participants and others we interviewed said that Form 8938 reporting requirements contributed to denials of employment and promotion opportunities for U.S. persons living abroad. Treasury officials noted that requirements imposed by FATCA do not directly hinder U.S. persons from gaining employment or promotion opportunities overseas. However, focus group participants, a consulting firm, and a foreign government agency noted that foreign-owned companies and nonprofit organizations such as churches did not want to hire or promote U.S. persons because they wanted to avoid exposing information to the U.S. government on their organizations' accounts and client trust accounts where the U.S. person would have signature authority. As noted above, a U.S. person is generally required to report on the Form 8938 foreign financial accounts for which the person has signature authority if he or she has a financial interest in the account.<sup>56</sup>

Focus group participants and others noted that such requirements have adversely affected the ability of U.S. persons to serve on a corporate board or in a nonprofit organization, or maintain business relationships. Treasury and Department of Commerce officials stationed in one country included in our review added that FATCA implementation has played a role in dissuading foreign-owned corporations in some Asian countries from considering U.S. persons for corporate leadership positions such as directorships. This is in part because FATCA has triggered additional paperwork burden and operating costs for onboarding U.S. employees

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<sup>56</sup>Under FATCA, any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account are or would be required to be reported, included, or otherwise reflected on a person's income tax return.

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since they have had to help them meet Form 8938 reporting requirements. Two advocacy groups representing U.S. persons living abroad added that it is also harder for U.S.-based companies to justify relocating U.S. persons overseas and paying for such relocations since they also have had to help their U.S. employees meet Form 8938 reporting requirements in addition to meeting other tax filing requirements.

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**U.S. Persons Living Abroad Encounter Challenges Obtaining Social Security Numbers Necessary to Meet U.S. Tax Obligations and Obtain Financial Services**

U.S. embassy documents indicate there was increased demand for Social Security Numbers (SSN) since FATCA's passage in 2010, driven in part by U.S. citizens applying for an SSN to gain access to foreign financial services or resolve outstanding U.S. tax obligations before completing renunciation. However, officials from two organizations representing Americans living abroad cited significant challenges faced by some U.S. persons living abroad in obtaining SSNs required to meet their U.S. tax obligations or obtain financial services. U.S. persons living abroad might not possess an SSN because their parents did not obtain one for them as a minor. Often, this may have been due to the parents leaving the United States when the child was young. State officials also said that U.S. citizens applying for U.S. passports while overseas frequently forget their SSNs or do not know if their parents ever applied for an SSN on their behalf. Officials from organizations representing U.S. persons living abroad added that without an SSN, these persons are unable to claim refunds or other tax benefits when filing their tax returns, or participate in IRS programs to voluntarily disclose previously unreported tax liabilities and assets. Additionally, some might be unable to gain or maintain access to financial accounts or other assets in their countries of residence without an SSN. According to these officials and tax practitioners we interviewed, U.S. persons living abroad face greater challenges in obtaining SSNs than those living in the United States. For instance, they faced difficulties obtaining documentation from the United States that the Social Security Administration (SSA) requires with SSN applications; traveling to Social Security offices and U.S. embassies or consulates to certify documents or submit applications in person; and receiving valid

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SSNs from SSA in a timely manner to file tax returns or participate in offshore disclosure programs.<sup>57</sup>

SSA officials also identified several challenges U.S. persons experience when applying for an SSN from abroad. For instance, SSA officials said that efforts to authenticate documents submitted with SSN applications can cause delays for U.S. persons living abroad in obtaining an SSN. Additionally, SSN applicants living abroad face significantly longer wait times than applicants living in the United States once their applications are processed. According to SSA officials, after an application is processed, it can take 3 to 6 months—depending on the country’s mail service—for an individual to receive a Social Security Card. This is significantly longer than the 2-week period it takes SSN applicants to receive a card after mailing in their applications from within the United States.

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### FATCA Implementation Contributed to Increased Renunciations of U.S. Citizenship, but the Extent of the Effect is Unclear

According to Department of State (State) data, the annual number of approvals of requests for renunciations of U.S. citizenships increased nearly 178 percent during a 6-year period, from 1,601 in 2011—the year after FATCA was enacted—to 4,449 in 2016, the most recent year to which full data on renunciations were available. According to U.S. embassy documents and information provided by focus group participants and interviewees across all the countries we examined, FATCA was the reason or a contributing factor in some of these decisions and the resulting increase in total renunciations. Specific effects of FATCA implementation contributing to decisions to renounce U.S. citizenship included reduced access to foreign financial services and employment or

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<sup>57</sup>SSN applicants must properly complete the application for a Social Security Card and provide at least two documents to prove age, identity, and U.S. citizenship. SSA can only accept original documents or documents certified by the custodian of the original record. The applicant can submit the completed application and evidence at any Social Security office or U.S. embassy or consulate with a Federal Benefits Unit (FBU). A Regional Federal Benefits Officer may also specifically authorize a U.S. embassy or consulate without an FBU to accept an application. Additionally, first-time SSN applicants over age 12 may submit their applications at any U.S. embassy or consulate, regardless of whether there is an FBU or whether there is Regional Federal Benefits Officer authorization. Military dependents or U.S. citizens working on a U.S. military post may also go to a Post Adjutant or Personnel Office. If the applicant is age 12 or older, he or she must participate in a mandatory in-person interview, and must submit satisfactory evidence explaining why he or she did not have an SSN prior to age 12. U.S. persons in Canada who are required to submit an SSN application in person are referred the appropriate SSA domestic border field office in the United States. Once the SSN application is processed and approved, the applicant will receive a Social Security Card in the mail.

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promotion opportunities in a foreign-owned company—as identified above from our document reviews, focus groups, and interviews—and burdens in meeting FATCA reporting requirements. However, the extent to which FATCA implementation contributed to increased renunciations is unclear. State officials said that data are unavailable to determine the extent to which these renunciation decisions were the direct result of FATCA because State has no legal obligation to collect information on the motivation behind renunciation of citizenship.

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### Treasury, State, and SSA Initially Collaborated to Remedy FATCA-Related Issues for U.S. Persons Abroad, but Problems Persist without Cross-Agency Efforts to Address Them

In response to concerns about the availability of foreign financial services, Treasury implemented regulations that allow certain low-risk local FFIs to be deemed compliant with FATCA, but only if the FFIs do not implement policies or practices that discriminate against opening or maintaining accounts for specified U.S. persons.<sup>58</sup> Treasury and State also previously established joint strategies to address these challenges. For instance, Treasury and State developed guidance on FATCA that was posted on embassy websites to educate U.S. persons and others. Additionally, Treasury and State officials conducted outreach events and workshops through U.S. embassies and American chambers of commerce worldwide to provide information on FATCA and other tax filing requirements. According to State officials, the U.S. embassies in at least two countries—Switzerland and France—also worked with foreign officials and/or FFIs to increase access to financial services for U.S. citizens residing in those countries. For instance, Treasury and State officials reached agreements with FFIs in Switzerland to provide a wider range of financial services to U.S. persons. Similarly, in 2017, SSA and State implemented an interagency agreement to streamline processes for providing SSNs to U.S. persons living abroad after FATCA’s implementation in 2010. SSA officials said they are also in discussions with State on improving SSA’s website to include more transparent, specific information for SSN overseas applicants about SSA documentation requirements.

Tax practitioners, advocacy groups, and Treasury officials we interviewed said FFIs have become more willing to accept U.S. persons as customers compared to when FATCA was enacted in 2010. However, U.S. persons living abroad continue to face issues gaining access to foreign financial services. For example, in a September 2018 letter sent by the Chair of

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<sup>58</sup>26 C.F.R. § 1.1471-5(f)(1)(i)(A)(9).

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the Finance Committee of the Netherlands House of Representatives to a member of Congress, U.S. citizens born outside the United States and who have never lived, studied, or worked in the United States are effectively being denied access to financial services in the Netherlands. Focus group participants added that some banks will reject U.S. clients or charge heavy fees for them to open an account.

Agencies have ongoing efforts to address FATCA-related issues, as listed below, but some are ad hoc, fragmented, or otherwise not part of a broader effort between Treasury and other agencies such as State or SSA to use ongoing collaborative mechanisms to monitor and share information on such issues, and jointly develop and implement steps to address them:

- Treasury officials said they are participating in discussions with FFIs to address residual issues with access to foreign financial services. However, they said they have not involved other agencies in these discussions.
- IRS officials, in response to concerns from the French government, said they are developing a program to help streamline foreign asset-related tax compliance requirements for a small group of U.S. born citizens that have been French residents most of their lives without an SSN, and—according to State officials—did not wish to take the necessary steps to renounce their citizenship. However, no effort has been made to address these issues more broadly.
- State encouraged U.S. citizens to alert the nearest U.S. embassy of any practices they encounter with regard to the provision of financial services. State documents noted that some Americans have been turned away by banks or required to meet a higher deposit threshold in part because of FATCA reporting requirements. State documentation also noted that there have been cases of U.S. citizens with existing bank accounts who have been asked to close them. However, State documentation we reviewed does not highlight collaborative efforts currently underway with Treasury or other agencies to address banking access issues U.S. persons living abroad are presently encountering worldwide.
- As described above, SSA and State streamlined processes and policies for U.S. persons abroad seeking to obtain SSNs. However, SSA officials said they have not been involved in any ongoing efforts involving Treasury to identify systemic issues and related solutions involving SSNs for the purposes of tax compliance and citizenship renunciations. Treasury officials said they spoke with SSA officials

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about problems U.S. persons living abroad face in obtaining SSNs, but SSA believed that cycle times for processing SSN applications submitted by U.S. persons living abroad were not significantly greater than for applications submitted by U.S. persons living in the United States, although mailing times could vary significantly and take up to 3 to 6 months.

We have previously identified key practices to enhance and sustain interagency collaboration, including

- defining and articulating a common outcome,
- establishing mutually reinforcing or joint strategies, and
- developing mechanisms to monitor, evaluate, and report on results.<sup>59</sup>

One goal in IRS's strategic plan is to collaborate with external partners proactively to improve tax administration, while objectives in SSA's strategic plan include improving service delivery and expanding service delivery options. Additionally, according to State's Bureau of Consular Affairs website, one of State's key priorities is to protect the interests of U.S. citizens overseas, such as through ensuring responsive and efficient provision of consular services overseas. As noted above, there are a host of ongoing issues and challenges for U.S. persons living abroad from implementation of FATCA, such as loss of access to foreign financial services, denial of employment and promotion opportunities overseas, and difficulty obtaining SSNs from abroad. However, Treasury currently lacks a collaborative mechanism to coordinate efforts with other agencies to address these issues, and Treasury officials said they do not plan to establish them. Without effective collaborative mechanisms to monitor and share information and implement cross-agency solutions, future efforts to address such issues will continue to be fragmented and less effective than they otherwise could be.

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## Conclusions

In enacting FATCA, Congress sought to reduce tax evasion by creating greater transparency and accountability over offshore assets held by U.S.

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<sup>59</sup>See [GAO-06-15](#) for additional examples of key practices to enhance and sustain interagency collaboration. We broadly define collaboration as any joint activity that is intended to produce more public value than could be produced when the agencies act alone. See [GAO-12-1022](#) for a list of selected mechanisms for interagency collaboration.

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taxpayers. Because of FATCA, IRS receives information on foreign financial assets from hundreds of thousands of filers annually. IRS could use this information to help ensure taxpayers holding offshore assets report and pay taxes owed on income generated from such assets. However, to take full advantage of the information, IRS must address key challenges. Specifically, Taxpayer Identification Numbers (TIN) reported by FFIs are often inaccurate or incomplete, which makes it difficult for IRS to match information reported by FFIs to individual taxpayers. As such, IRS must develop a plan to mitigate the risks that these data issues pose to agency efforts to identify and combat taxpayer noncompliance.

Lack of consistent, complete, and readily available Form 8938 and related parent individual tax return data also affects IRS's compliance activities, making it more difficult for IRS business units to extract and analyze FATCA data to improve tax compliance efforts and reduce tax revenue loss from income generated from offshore assets. At the same time, IRS has stopped following its FATCA Compliance Roadmap it developed in 2016 because, according to IRS officials, IRS moved away from updating broad strategy documents to focus on individual compliance campaigns. However, in light of the challenges IRS continues to face in fully integrating FATCA information into its compliance programs, it will not maximize use of such information and effectively leverage individual compliance campaigns unless it employs a comprehensive plan that enables IRS to better leverage such campaigns to improve taxpayer compliance.

Our analysis of available data indicates that many of the Forms 8938 filed in tax year 2016 may have been filed unnecessarily. Factors that are contributing to this unnecessary reporting are unclear. While IRS has provided instructions and guidance on its website for completing Form 8938, focus group participants and tax practitioners reported confusion on whether and how to report investments in foreign accounts. Taking steps to identify and address factors contributing to unnecessary Form 8938 reporting would help reduce taxpayer burden and reduce processing costs for IRS.

Reporting requirements for foreign financial assets under FATCA overlap with reporting requirements under FBAR. These overlapping requirements—implemented under two different statutes—have resulted in most taxpayers filing Forms 8938 also filing FBARs with FinCEN. Duplicative filings on foreign financial assets cause confusion, frustration, and compliance burdens for taxpayers. Duplicative filings also increased costs to the government to process and store the same or similar

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information. Modifying the statutes governing the requirements can fully address the issues outlined above, and can allow for the use of FATCA information for prevention and detection of financial crimes. This is similar to other statutory allowances for IRS to disclose return information for other purposes, such as for determining Social Security income tax withholding.

Lastly, FATCA has created challenges for some U.S. persons living abroad that go beyond increasing their tax compliance burdens. Some U.S. persons living abroad are still facing issues accessing financial services and employment and obtaining SSNs. Treasury, State, and SSA have taken some steps to address these issues both separately and in coordination with each other. However, Treasury, as the agency ultimately responsible for effective administration of FATCA, currently lacks a collaborative mechanism with State and SSA to address ongoing issues. Establishing a formal means to collaboratively address burdens faced by Americans abroad from FATCA can help agencies develop effective solutions to mitigate such burdens.

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## Matter for Congressional Consideration

We are making the following matter for congressional consideration:

- Congress should consider amending the Internal Revenue Code, Bank Secrecy Act of 1970, and other statutes, as needed, to address overlap in foreign financial asset reporting requirements for the purposes of tax compliance and detection, and prevention of financial crimes, such as by aligning the types of assets to be reported and asset reporting thresholds, and ensuring appropriate access to the reported information.

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## Recommendations for Executive Action

We are making the following four recommendations to IRS:

- The Commissioner of Internal Revenue should develop a plan to mitigate risks with compliance activities due to the lack of accurate and complete TINs of U.S. account holders collected from FFIs. (Recommendation 1)
- The Commissioner of Internal Revenue should ensure that appropriate business units conducting compliance enforcement and research have access to consistent and complete data collected from individuals' electronic and paper filings of Form 8938 and elements of parent individual tax returns. As part of this effort, the Commissioner should ensure that IRS provides clear guidance to the business units

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for accessing such data in IRS's Compliance Data Warehouse. (Recommendation 2)

- The Commissioner of Internal Revenue should employ a comprehensive plan for managing efforts to leverage FATCA data in agency compliance efforts. The plan should document and track activities over time to
  - ensure individuals and FFIs comply with FATCA reporting requirements;
  - assess and mitigate data quality risks from FFIs;
  - improve the quality, management, and accessibility of FATCA data for compliance, research, and other purposes; and
  - establish, monitor, and evaluate compliance efforts involving FATCA data intended to improve voluntary compliance and address noncompliance with FATCA reporting requirements. (Recommendation 3)
- The Commissioner of Internal Revenue should assess factors contributing to unnecessary Form 8938 reporting and take steps, as appropriate, to address the issue. Depending on the results of the assessment, potential options may include:
  - identifying and implementing steps to further clarify IRS Form 8938 instructions and related guidance on IRS's website on determining what foreign financial assets to report, and how to calculate and report asset values subject to reporting thresholds; and
  - conducting additional outreach to educate taxpayers on required reporting thresholds, including notifying taxpayers that may have unnecessarily filed an IRS Form 8938 to reduce such filings. (Recommendation 4)

We are also making the following recommendation to Treasury:

The Secretary of the Treasury should lead efforts, in coordination with the Secretary of State and Commissioner of Social Security, to establish a formal means to collaboratively address ongoing issues—including issues accessing financial services and employment and obtaining SSNs—that U.S. persons living abroad encounter from implementation of FATCA reporting requirements. (Recommendation 5)

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We are also making the following recommendation to State:

- The Secretary of State, in coordination with the Secretary of the Treasury and Commissioner of Social Security, should establish a formal means to collaboratively address ongoing issues—including issues accessing financial services and employment and obtaining SSNs—that U.S. persons living abroad encounter from implementation of FATCA reporting requirements. (Recommendation 6)

We are also making the following recommendation to SSA:

- The Commissioner of Social Security, in coordination with the Secretaries of State and Treasury, should establish a formal means to collaboratively address ongoing issues—including issues accessing financial services and employment and obtaining SSNs—that U.S. persons living abroad encounter from implementation of FATCA reporting requirements. (Recommendation 7)

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## Agency Comments and our Evaluation

We provided a draft of this report to the Secretaries of State and the Treasury, Commissioner of Internal Revenue, and Acting Commissioner of Social Security.

IRS provided written comments that are summarized below and reprinted in appendix VI. IRS did not state whether it agreed or disagreed with our four recommendations but otherwise provided responses.

Regarding our recommendation to develop a plan to mitigate risks with compliance activities due to the lack of accurate and complete TINs of U.S. account holders collected from FFIs (recommendation 1), IRS reiterated that it provided a transition period, through the end of 2019, for compliance with the TIN requirements for FFIs in countries with Model 1 IGAs with the United States. IRS also said that it continued to make progress on improving FATCA filing compliance, citing efforts such as initiating a campaign addressing FFIs that do not meet their compliance responsibilities. While these efforts may help IRS obtain more accurate and complete information from financial accounts, IRS did not specify how it will mitigate the ongoing hurdles it faces in matching accounts reported by FFIs without valid TINs to accounts reported by individual tax filers and ensure compliance.

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Regarding our recommendation that appropriate business units have access to consistent and complete data collected from Forms 8938 and tax returns filed by individuals (recommendation 2), IRS reiterated that RAAS has been working to obtain read-only access to the IPM database but that limited budgetary resources are delaying implementation. Enabling access to consistent and complete Form 8938 and tax return data would help IRS better target compliance initiatives and leverage limited available enforcement resources. While IRS continues to work on enabling access to IPM, it could still provide clear guidance to its business units for accessing Form 8938 and tax return data in IRS's Compliance Data Warehouse, as we recommended.

Regarding our recommendation to employ a comprehensive plan for managing efforts to leverage FATCA data in agency compliance efforts (recommendation 3), IRS said the resources that would be required to develop a comprehensive plan would be better spent on enforcement activities. While implementing enforcement activities could increase compliance with FATCA reporting requirements, it risks not maximizing the value of such efforts without a comprehensive plan to manage and address the myriad of challenges discussed in this report. Further, it is our belief that IRS's failure to execute the FATCA roadmap is not justification for abandoning a strategic approach going forward.

Regarding our recommendation to assess factors contributing to unnecessary Form 8938 reporting and take appropriate steps to address the issue (recommendation 4), IRS said it will continue to observe filings of Form 8938 and, to the extent that there are unnecessary filings, assess options to inform account holders to reduce reporting and filing burdens followed by appropriate steps to implement any selected options. Our analysis of available data indicates that many Forms 8938 may have been filed unnecessarily. Implementing our recommendation reduces the risk that taxpayers file—and IRS processes—forms unnecessarily.

Treasury provided written comments but did not state whether it agreed or disagreed with our recommendation that it lead efforts, in coordination with State and SSA, to establish a formal means to collaboratively address ongoing issues that U.S. persons living abroad encounter from implementation of FATCA reporting requirements (recommendation 5). Treasury said it will work collaboratively with State and SSA to answer questions that Americans abroad have regarding their tax obligations and, where appropriate, to direct U.S. citizens to resources that will help them understand the procedures applied by SSA to apply for an SSN.

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However, Treasury said it is not the appropriate agency to lead coordination efforts involving foreign employment issues and issues regarding access to foreign financial services and obtaining SSNs. As we noted above, Treasury is ultimately responsible for effective administration of FATCA. As such, it is in a better position than State or SSA to adjust regulations and guidance implementing FATCA to address burdens FFIs and foreign employers face from FATCA implementation while ensuring tax compliance. Additionally, Treasury has an interest in helping U.S. persons receive valid SSNs from SSA in a timely manner to meet their tax obligations. Treasury's written response is reprinted in appendix VII.

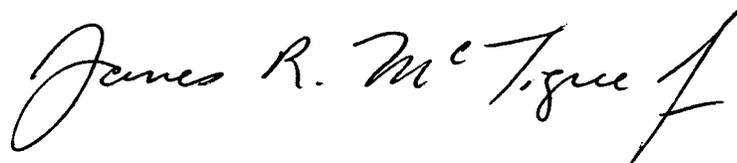
State and SSA also provided written comments in which they concurred with our recommendations to establish a formal means to address collaboratively together with Treasury ongoing issues that U.S. persons living abroad encounter with FATCA (recommendations 6 and 7). State and SSA's written comments are reprinted in appendices VIII and IX, respectively.

Treasury, State, and SSA provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees, the Secretaries of State and the Treasury, Commissioner of Internal Revenue, Acting Commissioner of Social Security, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or [mctiguej@gao.gov](mailto:mctiguej@gao.gov). Contact points for our offices of Congressional Relations and Public Affairs are on the last page of this report. GAO staff who contributed to this report are listed in appendix X.



James R. McTigue, Jr.  
Director, Tax Issues  
Strategic Issues Team

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# Appendix I: Objectives, Scope, and Methodology

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The objectives of this report are to (1) assess the Internal Revenue Service's (IRS) efforts to use information collected under the Foreign Account Tax Compliance Act (FATCA) to improve taxpayer compliance; (2) examine available foreign financial asset reports submitted by U.S. persons, including submissions that were below required filing thresholds; (3) examine the extent to which the Department of the Treasury (Treasury) administers overlapping reporting requirements on foreign financial assets; (4) describe similarities and differences between FATCA and Common Reporting Standard (CRS) reporting requirements; and (5) examine the effects of FATCA implementation that are unique to U.S. persons living abroad.<sup>1</sup>

For our first objective, we reviewed Treasury Inspector General for Tax Administration reports and collected information from Treasury and IRS to summarize efforts to collect complete and valid Taxpayer Identification Numbers (TIN) from foreign financial institutions (FFI). We identified criteria from our prior work identifying key practices for risk management.<sup>2</sup> The key practices are derived from the Software Engineering Institute's Capability Maturity Model® Integration for Development and Office of Management and Budget guidance.<sup>3</sup> We applied these criteria to assess steps IRS has taken to manage risks in not receiving complete and valid TIN information from FFIs. We also applied criteria from our prior work on use of documented frameworks to IRS documentation on FATCA compliance activities to determine the extent to which IRS implemented a comprehensive plan to maximize use of collected data to enforce compliance with FATCA.<sup>4</sup>

For our second objective, we identified total maximum account values reported by individual filers of Financial Crimes Enforcement Network

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<sup>1</sup>Subtitle A of Title V of the Hiring Incentives to Restore Employment Act is commonly referred to as FATCA. Pub. L. No. 111-147, §§ 501-541, 124 Stat. 71, 97-117 (2010).

<sup>2</sup>GAO, *Information Technology: IRS Needs to Take Additional Actions to Address Significant Risks to Tax Processing*, [GAO-18-298](#) (Washington, D.C.: June 28, 2018).

<sup>3</sup>Software Engineering Institute, *Capability Maturity Model® Integration for Development (CMMI-DEV), Version 1.3* (Pittsburgh, Pa.: November 2010); Office of Management and Budget, *Managing Information as a Strategic Resource*, OMB Circular No. A-130 (Washington, D.C.: revised 2016); Office of Management and Budget, *Management's Responsibility for Enterprise Risk Management and Internal Control*, OMB Circular No. A-123 (Washington, D.C.: 2016).

<sup>4</sup>GAO, *Tax Preparer Regulation: IRS Needs a Documented Framework to Achieve Goal of Improving Taxpayer Compliance*, [GAO-11-336](#) (Washington, D.C.: March 31, 2011).

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(FinCEN) Form 114s (commonly known as the *Report of Foreign Bank and Financial Accounts*, or FBAR) in calendar years 2015 and 2016. See appendix III for more details on our methodology to evaluate these data. We also summarized the numbers of IRS Forms 8938, *Statement of Specified Foreign Financial Assets* (Form 8938) filed in tax year 2016, accounting for the data limitations described below. We also identified Forms 8938 filed in tax year 2016—the most recent year for which data were available—with available residency and asset information that reported specified foreign financial assets with aggregate values at or below end-of-year tax thresholds, which vary depending on the location of residence and filing status of such filers.

For our third objective, we reviewed IRS and FinCEN documentation, and applied criteria from *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide* to identify the extent to which IRS and FinCEN were engaged in overlapping activities, and collecting duplicative information on foreign financial assets held by U.S. persons.<sup>5</sup> We assessed the extent to which individual filers who submitted a Form 8938 in 2015 and 2016 also submitted an FBAR for the same year by determining the number and percentage of Forms 8938 with TINs that also match the TIN listed on the corresponding FBAR for the same year.

For the three objectives described above, we assessed the reliability of data submitted on Forms 8938 filed by individuals for tax years 2015 and 2016, the most recent data available. These data were extracted from IRS's Individual Return Transaction File (IRTF) and Modernized Tax Return Database (MTRDB) through IRS's Compliance Data Warehouse (CDW). We also assessed the reliability of data from FBARs for calendar years 2015 and 2016 by (1) reviewing documentation about the data and the systems that produced them; (2) conducting electronic tests, such as identifying data with significant numbers of missing Form 8938 or FBAR records, or values of foreign financial assets reported outside an expected range; (3) tracing selections or random samples of data to source documents; and (4) interviewing IRS and FinCEN officials knowledgeable about the data. We also reviewed Form 8938 and relevant parent tax return data stored in IRS databases to determine whether IRS management is using quality information collected from Forms 8938 to achieve its objectives, as defined in our *Standards for Internal Control in*

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<sup>5</sup>GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide*, [GAO-15-49SP](#) (Washington, D.C.: April 14, 2015).

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*the Federal Government.*<sup>6</sup> We determined that data extracted from IRTF on characteristics of Form 8938 filers and from FBAR filings was sufficiently reliable for our purposes, subject to caveats identified in this report.<sup>7</sup> However, we determined we could not obtain complete data on foreign financial assets reported on Forms 8938 filed on paper.

For our fourth objective, we reviewed model international agreements and other documentation, and interviewed officials from Treasury, IRS, and the Organisation for Economic Co-operation and Development to compare and contrast FATCA and CRS reporting requirements. We also used the collected information to identify what changes, if any, the United States and other countries could implement to align FATCA and CRS reporting requirements.

For our fifth objective, we collected documentation and conducted focus groups and semi-structured interviews with 21 U.S. persons living abroad that were subject to FATCA reporting requirements. We also conducted focus groups and interviews with tax practitioners, banking and CPA organizations, government agencies, advocacy groups representing Americans living abroad, and other organizations from the United States and five other countries (Canada, Japan, Singapore, Switzerland, and the United Kingdom). We selected these countries based on geography, relatively high numbers of U.S. expatriates and Form 8938 filers, tax information sharing agreements, and other tax treaties with the United States. The findings from the focus groups and interviews are not generalizable to other U.S. persons, tax practitioners or organizations, but were selected to represent the viewpoints of U.S. persons, FFIs, and host country tax authorities required to transmit information on foreign accounts and other specified foreign financial assets to IRS. We conducted a thematic analysis of the focus groups and interviews, and reviewed cables from U.S. embassies to identify the unique effects of FATCA implementation on U.S. persons living abroad. We collected documentation from and interviewed Treasury, IRS, Department of State,

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<sup>6</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>7</sup>We required each FBAR filing to contain data on (1) the filer, (2) the transmitter of the report, and (3) the transmitter contact. Due to the likelihood that filings without these required data elements contained other errors, we dropped these from our analysis. Additionally, we dropped FBAR filings that (1) were missing data on the reporting year; (2) did not report information on any foreign accounts; or (3) declared more than \$100 trillion in assets.

and Social Security Administration officials on steps to monitor and mitigate such effects. We also identified criteria from our prior work on key practices to enhance and sustain interagency collaboration and mechanisms to facilitate coordination.<sup>8</sup> We applied the criteria to agencies' collaborative efforts addressing issues U.S. persons living abroad faced from FATCA's implementation, and identified the extent to which agencies established effective collaborative mechanisms to identify, assess, and implement cross-agency solutions to such issues.

We conducted this performance audit from August 2017 to April 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>8</sup>GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: September 27, 2012); and *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: October 21, 2005).

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# Appendix II: IRS Data Management Systems Storing Data from IRS Forms 8938 and Related Elements of Individual Tax Returns

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The following IRS databases store data collected from individuals' electronic and paper filings of Forms 8938 and/or elements of individual parent tax returns—the filer's address and filing status—used to determine specified reporting thresholds for Form 8938 filers:<sup>1</sup>

- **Individual Master File (IMF)**, which serves as IRS's system for processing individual taxpayer account data. Using this system, accounts are updated, taxes are assessed, and refunds are generated as required during each tax-filing period.
- **Individual Returns Transaction File (IRTF)**, which stores edited, transcribed, and error-corrected data from the Form 1040 series and related forms for the current processing year and two prior years.
- **Modernized Tax Return Database (MTRDB)**, which serves as the official repository of all electronic returns processed through IRS's Modernized e-File system. Tax return data is stored immediately after returns are processed.
- **International Compliance Management Model (ICMM)-FATCA International Returns (ICMM-FIR)**, which collects, parses, and stores data from incoming form reports—such as Forms 8938 and 8966—into the **FATCA Database (FDB)**, which serves as the repository where ICMM-FIR stores data and from which downstream applications can pull data.
- **Integrated Production Model (IPM)**, which is a downstream data repository that houses IMF data, information returns, and other data. According to IRS officials, data from IPM are consolidated and made available to a variety of downstream, security certified, systems for use in conducive analysis, case selection, and report preparation.

Additionally, data from these and other IRS databases are copied to IRS's Compliance Data Warehouse (CDW) periodically, which captures data from multiple production systems and organizes the data in a way that is conducive to analysis.<sup>2</sup>

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<sup>1</sup>FATCA generally requires certain taxpayers to report to IRS on Form 8938 foreign financial accounts and other specified foreign financial assets whose aggregate value exceeds specified thresholds, which vary by residency and filing status. See appendix IV for more detailed information on these thresholds.

<sup>2</sup>CDW also includes a copy of IMF and Business Master File data, and provides access to a variety of other tax return, enforcement, compliance, and other data.

Table 6 highlights several problems with the consistency and completeness of Form 8938 and relevant parent tax return data stored across the listed databases.

- **Inconsistent and incomplete data on address and filing status of Form 8938 filers:** As noted above, elements of parent tax returns—specifically the filer’s country of residence and filing status—are used to determine specified reporting thresholds for Form 8938 filers. However, IRTF and MTRDB have inconsistent and incomplete data on addresses linked to Form 8938 filers, and report inconsistent numbers of Forms 8938 filed from a U.S. residence. For example, the variable identified as containing data on foreign countries of residence in IRTF shows approximately 8,100 foreign filers in tax years 2015 and 2016, whereas a similar variable in MTRDB shows approximately 89,000 foreign filers for those same years. Additionally, FDB does not contain country codes from paper filings of Form 8938. ICCM-FIR stores information from some elements from parent tax returns—such as TINs and document locator numbers. According to IRS officials, however, ICMM-FIR lacks data on country codes and filing status of Form 8938 filers. IRS officials said that ICMM-FIR was not designed or intended to store data on Form 8938 filers; rather, it was designed to be a database for use in comparing Form 8938 and 8966 data. In general, IRS officials indicated that they would like to adjust the way ICMM-FIR stores data, but that would require modifying the way the database was established.
- **Incomplete data on assets reported on Forms 8938:** MTRDB contains detailed information on specified foreign financial assets submitted on electronic filings of Form 8938 and the country code from which the Form 8938 was filed. IRS officials said it is not designed to store information submitted on paper filings of Forms 8938 and parent tax returns. IRS officials said that while IMF processes information transcribed from individual income tax returns, there is no requirement to cross-reference information from the tax return with information submitted with an accompanying Form 8938. Additionally, while IRS officials told us that IRTF is the authoritative source for filers of Form 8938, it does not store account and other asset information submitted from Forms 8938. When asked whether there is any move to store account and other asset information collected from Forms 8938 into IRTF, IRS officials said that the decision on what returns or portions of returns are transcribed are subject to resource constraints and are prioritized from year to year.

**Appendix II: IRS Data Management Systems  
Storing Data from IRS Forms 8938 and Related  
Elements of Individual Tax Returns**

**Table 6: Comparison of Individual IRS Form 8938 and Related Parent Tax Return Data Stored in Selected IRS Databases**

	<b>IMF</b>	<b>IRTF</b>	<b>MTRDB</b>	<b>ICMM-FIR</b>	<b>FDB</b>	<b>IPM</b>
Contains complete records of individual tax returns?	Yes	Yes Contains 404,791 records of individual tax returns for tax year 2016.	Incomplete Contains 314,573 records of individual tax returns filed in tax year 2016 also stored in IRTF.  However, MTRDB is not designed to store records of returns submitted on paper. Rather, it is intended to be a repository only for electronically filed returns processed through IRS's Modernized e-File program.	Incomplete Contains information from Form 8938 electronic and paper filings and all Form 8938 data contained in IPM.  Contains information from some elements from parent tax returns submitted with Forms 8938, such as taxpayer identification numbers and document locator numbers.	Yes	Yes
Contains country code from where Form 8938 was filed?	No	Incomplete	Yes	Incomplete	Incomplete FDB stores country codes from electronic filings, but not paper filings.	Yes
Contains filing status of Form 8938 filers?	Yes	Yes	Yes	No	No	Yes
Contains summary account and other asset information from Form 8938, Parts I and II?	No	No	Yes	Yes	Yes	Yes
Contains detailed account and other asset information from Form 8938, Parts V and VI?	No	No	Yes	Yes	Yes	Yes

Source: GAO analysis of IRS information. | GAO-19-180

Note: Data from these and other databases are copied to IRS's CDW periodically.

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# Appendix III: Methodology and Detailed Information on 2015 and 2016 Individual FBAR Filings

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Table 7 shows that more than 900,000 individuals filed Financial Crimes Enforcement Network (FinCEN) Form 114s (commonly known as the *Report of Foreign Bank and Financial Accounts*, or FBAR) in calendar years 2015 and 2016, and declared total maximum values of accounts ranging from about \$1.5 trillion to more than \$2 trillion each year.<sup>1</sup> We are providing a range of estimates because we found a large number of filings made potentially in error. In some cases, for instance, FBAR filers reported more than \$100 trillion in foreign financial accounts. We assume many of these filings are likely made in error, but have only limited means to determine which filings have errors, and which filings have accurate information. Because we cannot independently verify the accuracy of all self-reported FBAR data, we decided to present a range of data with (1) a lower bound discarding all FBAR filings reporting total values of reported foreign financial accounts at or above \$1 billion; and (2) an upper bound discarding all filings reporting total values of such accounts at or above \$5 billion.<sup>2</sup> Table 2 excludes amended and duplicated FBAR filings. This table also excludes FBAR filings that reported a financial interest in 25 or more financial accounts, but reported total maximum account values of \$0 from parts II and III of the FBAR.<sup>3</sup> Although we identified problems with the data, we determined they were reliable enough to provide an estimated range of asset values to report the scale of foreign financial accounts held by U.S. persons.

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<sup>1</sup>The lower bound of individual FBAR filings from calendar years 2015 and 2016 includes those filings reporting total maximum values of accounts of up to \$1 billion. The upper bound of such filings includes those filings reported total values of up to \$5 billion.

<sup>2</sup>Of the 683 individual FBAR filers reporting \$1 billion or more in total maximum account values in calendar years 2015 or 2016, 447 (or about 65.4 percent) of filers (1) did not file an FBAR for the other year, or (2) reported total maximum account values of \$500 million or less on the FBAR for the other year. The number of individual FBAR filers reporting total maximum account values of \$5 billion or more increased by about 55.8 percent between calendar years 2015 and 2016. In contrast, individual FBAR filers reporting account values of \$5 billion or less increased only about 2.2 percent during the same period.

<sup>3</sup>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). 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.

**Appendix III: Methodology and Detailed  
Information on 2015 and 2016 Individual FBAR  
Filings**

**Table 7: Number of Individuals Filing FBARs and Total Maximum Value of Accounts Reported by Such Individuals, Calendar Years 2015 and 2016**

Calendar year	Lower bound (FBAR filings reporting total maximum values of accounts of less than \$1 billion)		Upper bound (FBAR filings reporting total maximum values of accounts less than \$5 billion)	
	Number of individual FBAR filers	Total maximum value of accounts (dollars in trillions) <sup>a</sup>	Number of individual FBAR filers	Total maximum value of accounts (dollars in trillions) <sup>a</sup>
2015	928,813	1.55	929,123	2.26
2016	949,167	1.50	949,510	2.19

Source: GAO analysis of FinCEN data. | GAO-19-180

Note: This table excludes amended and duplicated FBAR filings. This table also excludes FBAR filings that reported a financial interest in 25 or more financial accounts but reported total maximum account values of \$0 from parts II and III of the FBAR.

<sup>a</sup>Includes total maximum value of accounts reported on parts II and III of the FBAR.

Appendix III: Methodology and Detailed Information on 2015 and 2016 Individual FBAR Filings

Table 8 shows a detailed breakdown of 2015 and 2016 FBAR filings by residence and categories of total maximum account values reported on the FBARs.

**Table 8: Individual FBAR Filings by Location of Residence and Categories of Total Maximum Account Values, Calendar Years 2015 and 2016**

Location of residence	Category of total maximum value of accounts <sup>a</sup>	Individual FBAR filers—calendar year 2015		Individual FBAR filers—calendar year 2016	
		Number	Percent	Number	Percent
U.S. address	\$0-\$10,000	31,552	4.4	34,672	4.7
	\$10,001-\$50,000	239,508	33.3	250,031	33.6
	\$50,001-\$100,000	120,593	16.7	125,058	16.8
	\$100,001-\$250,000	135,872	18.9	140,992	19.0
	\$250,001-\$500,000	73,346	10.2	75,342	10.1
	\$500,001-\$1,000,000	46,741	6.5	47,203	6.4
	\$1,000,001-\$5,000,000	48,269	6.7	47,006	6.3
	\$5,000,001-\$10,000,000	9,011	1.3	8,265	1.1
	\$10,000,001-\$50,000,000	10,331	1.4	9,722	1.3
	\$50,000,001-\$100,000,000	2,170	0.3	1,932	0.3
	\$100,000,001-\$500,000,000	2,120	0.3	2,099	0.3
	\$500,000,001-\$1,000,000,000	388	0.1	342	0.0
	\$1,000,000,001-\$5,000,000,000	287	0.0	315	0.0
	More than \$5,000,000,000	71	0.0	112	0.0
	<b>Total—all categories</b>	<b>720,259</b>	<b>100</b>	<b>743,091</b>	<b>100</b>
Foreign address	\$0-\$10,000	5,470	2.6	5,260	2.6
	\$10,001-\$50,000	57,667	27.9	55,864	27.4
	\$50,001-\$100,000	33,420	16.1	32,858	16.1
	\$100,001-\$250,000	42,845	20.7	42,297	20.7
	\$250,001-\$500,000	26,682	12.9	26,885	13.2
	\$500,001-\$1,000,000	19,060	9.2	19,192	9.4
	\$1,000,001-\$5,000,000	17,556	8.5	17,530	8.6
	\$5,000,001-\$10,000,000	2,071	1.0	2,019	1.0
	\$10,000,001-\$50,000,000	1,693	0.8	1,609	0.8
	\$50,000,001-\$100,000,000	250	0.1	237	0.1
	\$100,000,001-\$500,000,000	227	0.1	191	0.1
	\$500,000,001-\$1,000,000,000	49	0.0	41	0.0
	\$1,000,000,001-\$5,000,000,000	23	0.0	26	0.0
	More than \$5,000,000,000	( <sup>b</sup> )	( <sup>b</sup> )	( <sup>b</sup> )	( <sup>b</sup> )

**Appendix III: Methodology and Detailed Information on 2015 and 2016 Individual FBAR Filings**

Location of residence	Category of total maximum value of accounts <sup>a</sup>	Individual FBAR filers-calendar year 2015		Individual FBAR filers-calendar year 2016	
		Number	Percent	Number	Percent
	<b>Total—all categories</b>	<b>207,013<sup>c</sup></b>	<b>100<sup>c</sup></b>	<b>204,009<sup>c</sup></b>	<b>100<sup>c</sup></b>
	<b>Total—all residences and categories</b>	<b>927,272<sup>c</sup></b>	<b>100<sup>c</sup></b>	<b>947,100<sup>c</sup></b>	<b>100<sup>c</sup></b>

Source: GAO analysis of FinCEN data. | GAO-19-180

Note: This table excludes 4,444 FBAR filings from calendar years 2015 and 2016 that are missing a country of residence. This table excludes amended and duplicated FBAR filings. This table also excludes FBAR filings that reported a financial interest in 25 or more financial accounts but reported total maximum account values of \$0 from parts II and III of the FBAR.

<sup>a</sup>Includes total maximum account values reported on parts II and III of FBAR.

<sup>b</sup>Fewer than 20 filers living abroad reported total maximum account values of more than \$5 billion, so they are masked to avoid disclosing federal tax information.

<sup>c</sup>The total does not include individual FBAR filers with foreign addresses who reported total maximum account values of more than \$5 billion.

# Appendix IV: Detailed Comparison of Individual Foreign Financial Asset Reporting Requirements

**Table 9: Detailed Comparison of Form 8938 and FBAR Reporting Requirements**

	<p><b>Internal Revenue Service (IRS) Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b></p> <p>(To meet Foreign Account Tax Compliance Act (FATCA) reporting requirements under Internal Revenue Code (IRC) Section 6038D and implementing regulations.)<sup>a</sup></p>	<p><b>Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b></p> <p>(To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations.)<sup>b</sup></p>
<p>Who Must File?</p>	<p>A specified person that has any interest in a specified foreign financial asset during the taxable year must file a Form 8938 attached to the annual return if the aggregate value of all such assets exceeds certain thresholds.<sup>c</sup></p> <p>A specified person is a specified individual or a specified domestic entity.<sup>d</sup></p> <p>A specified individual is an individual who is a</p> <ul style="list-style-type: none"> <li>• U.S. citizen;</li> <li>• resident alien of the United States for any portion of the taxable year;<sup>e</sup></li> <li>• nonresident alien for whom an election under IRC Section 6013(g) or (h) is in effect;<sup>f</sup> or</li> <li>• nonresident alien who is a bona fide resident of a U.S. possession, including bona fide residents of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands.<sup>d</sup></li> </ul> <p>In general, a specified individual who is a dual resident and is treated as a nonresident alien for purposes of computing the U.S. tax liability is not required to report on assets held with respect to the portion of the year the person is considered a dual resident taxpayer.<sup>c</sup></p> <p>A specified domestic entity is a domestic corporation, a domestic partnership, or a trust described in IRC section 7701(a)(30)(E), if such corporation, partnership, or trust is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets.</p>	<p>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 shall report such relationship for each year in which such relationship exists, subject to a threshold.<sup>b</sup> A U.S. person is</p> <ul style="list-style-type: none"> <li>• U.S. citizen; or</li> <li>• resident of the United States;<sup>g</sup> or an entity, including but not limited to, a corporation, partnership, trust, or LLC, created, organized, or formed under the laws of the United States, any state, the District of Columbia, any U.S. possession or territory, or Indian tribe.<sup>b</sup></li> </ul>

**Appendix IV: Detailed Comparison of  
Individual Foreign Financial Asset Reporting  
Requirements**

	<b>Internal Revenue Service (IRS) Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b>	<b>Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
	(To meet Foreign Account Tax Compliance Act (FATCA) reporting requirements under Internal Revenue Code (IRC) Section 6038D and implementing regulations.) <sup>a</sup>	(To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations.) <sup>b</sup>
Type of interest in foreign financial accounts/assets	<p><b>Specified interest in a foreign financial asset:</b> A U.S. person has a specified interest if he or she</p> <ul style="list-style-type: none"> <li>realizes any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account or asset that are or would be required to be reported, included, or otherwise reflected on the person's income tax return.<sup>c</sup></li> <li>has an interest in property transferred in connection with the performance of services on the first date that the property is substantially vested.<sup>c</sup></li> <li>elects to include unearned income of a child from a specified foreign financial asset held by their child on the person's income tax return.<sup>c</sup></li> </ul> <p>In general, a specified person is not treated as having an interest in any specified foreign financial asset held by a corporation, partnership, trust, or estate solely because of the person's status as a shareholder, partner, or beneficiary of such entity. However, there are exceptions for certain trusts and estates and assets held by a disregarded entity.<sup>c</sup></p>	<p><b>Financial interest:</b> A U.S. person has a financial interest in each bank, securities, or other financial account in a foreign country for which he or she 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. If an account is maintained in the name of more than one person, each U.S. person in whose name the account is maintained has a financial interest in that account.<sup>i</sup></p> <p>A U.S. person also has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is:</p> <ul style="list-style-type: none"> <li>a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person with respect to the account;</li> <li>a corporation in which the U.S. person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the U.S. person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the U.S. person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;</li> <li>a trust, if the U.S. person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes; or</li> <li>a trust in which the U.S. person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.<sup>j</sup></li> </ul> <p><b>Signature authority:</b> A person has signatory or other authority if he or she has the authority (alone or in conjunction with another) to control the disposition of money, funds, or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained, subject to certain exceptions.<sup>k</sup></p>

**Appendix IV: Detailed Comparison of  
Individual Foreign Financial Asset Reporting  
Requirements**

	<b>Internal Revenue Service (IRS) Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b>	<b>Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>
	(To meet Foreign Account Tax Compliance Act (FATCA) reporting requirements under Internal Revenue Code (IRC) Section 6038D and implementing regulations.) <sup>a</sup>	(To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations.) <sup>b</sup>
Threshold of value of foreign assets making them reportable (individuals)	<p>By statute, the threshold is \$50,000 in the aggregate or a higher amount prescribed by the Department of the Treasury (Treasury).<sup>a</sup> The thresholds may be higher depending on the residence and filing status of specified individuals.</p> <p>Thresholds for specified individuals living in the United States:</p> <ul style="list-style-type: none"> <li>• married filing jointly: Total value of assets was more than \$100,000 on the last day of the tax year, or more than \$150,000 at any time during the year.</li> <li>• other filers: Total value of assets was more than \$50,000 on the last day of the tax year, or more than \$75,000 at any time during the year.<sup>c</sup></li> </ul> <p>Thresholds for specified individuals living abroad:</p> <ul style="list-style-type: none"> <li>• married filing jointly: Total value of assets was more than \$400,000 on the last day of the tax year, or more than \$600,000 at any time during the year.</li> <li>• other filers: Total value of assets was more than \$200,000 on the last day of the tax year, or more than \$300,000 at any time during the year.<sup>c</sup></li> </ul> <p>Joint owners have an interest in the full value of the jointly owned foreign financial asset when determining whether they meet a reporting threshold.<sup>h</sup></p>	<p>This is an aggregate balance, meaning if a person has two accounts, both accounts must be reported if the maximum account values of each (determined separately), when combined exceed \$10,000.</p>
Foreign financial assets reportable on both Form 8938 and FBAR (including maximum value of asset) <sup>j</sup>	<ul style="list-style-type: none"> <li>• financial (deposit and custodial) accounts held at foreign financial institutions.</li> <li>• foreign financial account for which a person has signature authority and a financial interest in the account (subject to exceptions).<sup>m</sup></li> <li>• foreign stock or securities held in a financial account at a foreign financial institution.<sup>n</sup></li> <li>• foreign mutual funds.</li> <li>• foreign accounts held by a foreign or domestic grantor trust for which the specified individual is the grantor.</li> <li>• foreign-issued life insurance or annuity contract with a cash value.</li> </ul>	
Foreign financial assets reportable only on one form (including maximum value of asset) <sup>k</sup>	<ul style="list-style-type: none"> <li>• foreign stock or securities not held in a financial account.</li> <li>• foreign partnership interests.</li> <li>• foreign nonaccount investment assets held by a foreign or domestic grantor trust for which the specified individual is the grantor.</li> <li>• foreign hedge funds and foreign private equity funds.</li> </ul>	<ul style="list-style-type: none"> <li>• financial account held at a foreign branch of a U.S. financial institution.<sup>n</sup></li> <li>• foreign financial account for which a person has signature authority, but no financial interest in the account (subject to exceptions).<sup>m</sup></li> <li>• indirect interests in foreign financial assets through an entity.<sup>o</sup></li> </ul>

**Appendix IV: Detailed Comparison of  
Individual Foreign Financial Asset Reporting  
Requirements**

	<b>Internal Revenue Service (IRS) Form 8938 (Form 8938), Statement of Specified Foreign Financial Assets</b>  (To meet Foreign Account Tax Compliance Act (FATCA) reporting requirements under Internal Revenue Code (IRC) Section 6038D and implementing regulations.) <sup>a</sup>	<b>Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR)</b>  (To meet FBAR reporting requirements under section 5314 of title 31, United States Code, and implementing regulations.) <sup>b</sup>
When and where form is reported	Filed with the annual federal income tax return by the due date of the return (typically April 15), including any applicable extensions. <sup>c</sup>	Filed electronically through FinCEN's Bank Secrecy Act E-Filing System or paper filed with IRS (with FinCEN granted exemption) by the due date of federal income tax returns (typically April 15), with a 6-month automatic extension. <sup>p</sup>
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 \$50,000. <sup>q</sup> Criminal penalties may also apply.	Civil penalties for each FBAR violation can be up to \$500 for a negligent FBAR violation and up to \$10,000 for nonwillful violation. In addition, a person with a willful FBAR violation may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50 percent of the amount in the account at the time of the violation, and be subject to possible criminal sanctions. <sup>r</sup> These penalties are per person, per account, and per year.

Source: GAO analysis of IRS and FinCEN information. | GAO-19-180

<sup>a</sup>26 U.S.C. § 6038D; 26 C.F.R. §§ 1.6038D-1 to 1.6038D-8.

<sup>b</sup>31 U.S.C. § 5314; 31 C.F.R. § 1010.350.

<sup>c</sup>26 C.F.R. § 1.6038D-2. Filers in this category include those who identify as single, married filing separately, "head of household," or "qualifying widow(er)."

<sup>d</sup>26 C.F.R. § 1.6038D-6.

<sup>e</sup>Resident aliens of the United States are defined at 26 U.S.C. § 7701(b) and the regulations thereunder. The United States does not include possessions and territories for this purpose.

<sup>f</sup>Under 26 U.S.C. § 6013(g), in cases where married couples where one spouse is a U.S. taxpayer and the other is not, the spouse who is a nonresident alien for U.S. income tax classification purposes can elect to be a U.S. taxpayer so the married couple can file a joint tax return. Under 26 U.S.C. § 6013(h), in cases where married couples where one spouse is a U.S. taxpayer and the other is not, the nonresident alien spouse can elect to be a U.S. taxpayer for the full year in which he or she immigrates to the United States so the couple can file a joint income tax return.

<sup>g</sup>26 U.S.C. § 7701(b) and the regulations thereunder. 31 C.F.R. § 1010.350(b)(2) states: "A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder." Resident aliens of the United States are defined at 26 C.F.R. § 301.7701(b)-1, but the definition of the United States is modified to include possessions and territories.

<sup>h</sup>26 C.F.R. § 1.6038D-2(c)(2). Married individuals filing jointly need only report each jointly owned asset once. If filing separately and other spouses are specified individuals, each includes half of the value when calculating whether the value exceeds the threshold for reporting. If filing separately and only one spouse is a specified individual, the specified individual must include the entire value calculating whether the value exceeds the threshold for reporting.

<sup>i</sup>31 C.F.R. § 1010.350(e)(1).

<sup>j</sup>31 C.F.R. § 1010.350(e)(2).

<sup>k</sup>31 C.F.R. § 1010.350(f). Certain officers or employees of certain federally regulated financial institutions and investment companies and entities with certain listed or registered classes of securities need not report signature or other authority over a foreign account if the officer or employee has no financial interest in the account.

<sup>l</sup>Includes maximum value of specified foreign financial assets (Form 8938) or maximum value of financial accounts maintained by a financial institution physically located in a foreign country (FBAR).

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**Appendix IV: Detailed Comparison of  
Individual Foreign Financial Asset Reporting  
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<sup>m</sup>Under FATCA, any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the account are or would be required to be reported, included, or otherwise reflected on a person's income tax return. Under FBAR reporting requirements, a person has signature or other authority if he or she has the authority (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

<sup>n</sup>The account itself is subject to reporting, but the contents of the account do not have to be separately reported.

<sup>o</sup>Assets only must be reported if a person has sufficient ownership or beneficial interest (i.e., a greater than 50 percent interest) in the entity.

<sup>p</sup>Pub. L. No. 114-41, § 2006(b)(11), 129 Stat. 443, 458–459 (2015).

<sup>q</sup>26 U.S.C. § 6038D; 26 C.F.R. § 1.6038D-8. In addition to the penalty for failure to file Form 8938, taxpayers who fail to report income from such assets on their tax returns are subject to a penalty of 40 percent of the tax due on that income (in addition to the tax on the income). There is no differentiation in the penalty based on willfulness of the failure to file.

<sup>r</sup>For penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the maximum penalties for negligent, nonwillful, and willful violations are adjusted for inflation. 31 C.F.R. § 1010.821.

# Appendix V: Key Differences between FATCA Intergovernmental Agreements and CRS

**Table 10: Comparison of Key Differences between Foreign Account Tax Compliance Act Intergovernmental Agreements and the Common Reporting Standard**

	<b>Intergovernmental agreements (IGAs) implementing Foreign Account Tax Compliance Act (FATCA)</b>	<b>Common Reporting Standard (CRS)</b>
Participating jurisdictions (as of October 2018)	99 — Model 1 IGA jurisdictions 14 — Model 2 IGA jurisdictions	102 – participating jurisdictions
<b>Reporting differences</b>		
Reporting nexus for financial institutions	FATCA Model 1 IGA reporting can be based either where the residence of the financial institution is located, or where the financial institution is organized. Under Model 2 IGA reporting, the financial institution reports directly to IRS.	CRS reporting is based only on the laws of the residence of the financial institution.
Financial institution registration	IRS generally requires financial institutions to register to obtain a Global Intermediary Identification Number.	No financial institution registration is required.
Non-reporting financial institutions	FATCA includes exempt beneficial owners, deemed compliant foreign financial institutions and other categories not in CRS, including: <ul style="list-style-type: none"> <li>• treaty qualified retirement funds.</li> <li>• investment entities wholly owned by exempt beneficial owners.</li> <li>• local banks.</li> <li>• financial institutions with a local client base or only low-value accounts.</li> <li>• sponsored investment entity and controlled foreign corporations.</li> <li>• sponsored closely held investment vehicles.</li> <li>• investment advisors and investment managers.</li> </ul>	Similar categories are not present in CRS. CRS does include other non-reporting financial institutions such as: <ul style="list-style-type: none"> <li>• governmental entities.</li> <li>• certain retirement funds.</li> <li>• collective investment vehicles.</li> </ul>
Persons subject to reporting	Foreign accounts of U.S. citizens, resident aliens (green card holders), and U.S. residents.	Accounts held by nonresidents of the reporting country. For reporting purposes, a taxpayer may be a resident for more than one country for tax purposes.
Nonreportable persons	FATCA has a detailed list setting out each category of nonreportable U.S. persons. The categories are drawn from the FATCA statute and contain U.S.-specific definitions with references to U.S. domestic law.	CRS contains a shorter list of nonreportable persons with nonjurisdiction specific descriptions.

**Appendix V: Key Differences between FATCA  
Intergovernmental Agreements and CRS**

Information reported	<p>Financial institutions report the following information only on account holders who are U.S. persons:</p> <ul style="list-style-type: none"> <li>• name of taxpayer.</li> <li>• address of taxpayer.</li> <li>• taxpayer identification number.</li> <li>• account number.</li> <li>• name and identifying number of financial institution.</li> <li>• account balance.</li> <li>• income and sales proceeds (phased in from 2017).</li> </ul>	<p>Financial institutions report on all foreign account holders to the country where they are resident. CRS requires financial institutions to report the same information on account holders as does FATCA, but also requires reporting of information on tax residency, date, and place of birth for all account holders.</p>
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**Due diligence differences**

Due diligence process	<p>Identify whether an account holder is a U.S. person using citizenship and tax residency. Information is required for account holders who are U.S. persons.</p>	<p>Identify the tax residency of each of its account holders. Information is required for all account holders.</p>
Double or multiple residency	<p>This situation is not contemplated under FATCA.</p>	<p>Due to the multilateral context of CRS, in case of double or multiple residency of an account holder (determined on the basis of the due diligence procedures), information will be exchanged with all jurisdictions in which the account holder is found to be resident for tax purposes.</p>

**Definitional differences**

Examples include:

- Debt or equity interests in an investment entity
  - FATCA: Excludes debt or equity interests in an investment entity if the interests are publicly traded, unless the interests are registered on the books of the investment entity (with exceptions).
  - CRS: Does not exclude equity or debt interests in an investment entity from the definition of financial account where the interests are regularly traded on an established securities market, unless the interest is held by a custodial institution.
- Dormant accounts
  - FATCA: A dormant account is reviewed, identified, and reported like any other account.
  - CRS: A dormant account may be treated as an excluded account and thus would not require reporting.
- Financial asset
  - FATCA: IGAs do not provide a definition of financial assets that must be reported by financial institutions.
  - CRS: Financial assets that must be reported by financial institutions include securities, partnership interest, commodities, swaps, insurance or annuity contract, or any interest in such assets.
- Passive nonfinancial entity (NFE)
  - FATCA: Model 1 IGAs do not cover passive NFE investment entities in non-participating jurisdictions, which are subject to a 30-percent withholding tax.
  - CRS: A passive NFE includes investment entities not resident in participating jurisdictions.

Source: GAO analysis of Treasury and OECD information. | GAO-19-180

# Appendix VI: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

February 28, 2019

James R. McTigue  
Director, Tax Issues  
Strategic Issues Team  
U.S. Government Accountability Office  
441 G Street N.W.  
Washington, DC 20548

Dear Mr. McTigue:

Thank you for the opportunity to review and comment on the draft report, *Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad* (GAO-19-180).

The information reporting regime for the Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 and, since that time, the filings of the Foreign Bank Account Reporting form have more than doubled. FATCA, combined with enforcement efforts on the part of the IRS and Department of Justice, has drawn attention to the requirements to disclose foreign accounts and report income generated by those accounts. The increased disclosure and reporting demonstrates improved voluntary compliance thus heightening fairness and integrity in the tax system. Specifically, the implementation of FATCA has led to reporting from more than 30,000 foreign financial institutions and 80 tax jurisdictions and made it much harder for U.S. taxpayers to hide assets in offshore accounts and evade U.S. tax on the income generated by those accounts. Indeed, aggregate income statistics suggest that reported foreign-source income increased significantly for individuals disclosing offshore wealth under the FATCA regime.

The enactment and implementation of FATCA also triggered the development of a world-wide data exchange platform and the Organization for Economic Cooperation and Development's Common Reporting Standard (CRS). The account documentation due diligence and reporting rules imposed by CRS on financial institutions mirror those required by FATCA and fortify a global commitment to reduce cross-border tax evasion and create greater tax transparency.

The IRS's implementation of FATCA has been informed by, and is responsive to, stakeholder feedback. Our forms were developed and revised in close coordination with stakeholders, including our FATCA form user group. The collecting and reporting of taxpayer identification numbers (TINs) as part of FATCA reporting posed some

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challenges for foreign financial institutions and their U.S. taxpayer customers. In response to these concerns, the IRS provided several transition periods and rules to facilitate gathering reliable TIN information.

Throughout these transitions, we have continued to make progress on improving FATCA filing compliance. For example, the FATCA Filing Accuracy campaign will address those entities that have FATCA reporting obligations but do not meet all their compliance responsibilities. Likewise, we are currently in our first foreign financial institution certification cycle, where we are reviewing information submitted by responsible officers regarding their entity's efforts to meet their FATCA obligations.

As part of FATCA implementation, the IRS developed a FATCA Compliance Roadmap in 2013 – a broad strategy document. FATCA is now integrated into our operations and has evolved. Our going-forward strategy for FATCA compliance is part of the Large Business & International (LB&I) Division's overall portfolio management strategy. This is a strategic approach used to manage the compliance efforts and projects under LB&I's jurisdiction through a variety of workstreams, including campaigns and other compliance programs.

Attached please find our response to the recommendations that are directed to the IRS. If you have any questions, please contact me, or a member of your staff may contact John V. Cardone, Director, LB&I's Withholding and International Individual Compliance Practice Area, at (202) 317-8511.

Sincerely,



Kirsten B. Wielobob  
Deputy Commissioner for  
Services and Enforcement

Enclosure

Enclosure

**GAO Recommendations and the IRS Responses to the Draft Report on Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad (GAO-19-180).**

**Recommendation 1:**

The Commissioner of Internal Revenue should develop a plan to mitigate risks with compliance activities due to the lack of accurate and complete Taxpayer Identification Numbers of U.S. account holders collected from foreign financial institutions.

**Comment:**

The IRS provided a transition period, through the end of 2019, for compliance with the TIN requirements for foreign financial institutions under Model 1 Intergovernmental Agreements (IGAs). During this transition period, we continue to make progress on improving FATCA filing compliance. All financial institutions and foreign tax administrations that file forms reporting accounts as required by FATCA receive a notification listing errors contained in their reporting. The Large Business & International (LB&I) Division follows up with foreign tax administrations regarding these errors to ensure the tax administrations are working with their financial institutions to correct these errors as their governments agreed in the IGAs. We also initiated a campaign addressing foreign financial institutions that do not meet their compliance responsibilities with respect to account opening requirements.

**Recommendation 2:**

The Commissioner of Internal Revenue should ensure that appropriate business units conducting compliance enforcement and research have access to consistent and complete data collected from individuals' electronic and paper filings of Form 8938 and elements of parent individual tax returns. As part of this effort, the Commissioner should ensure that IRS provides clear guidance to the business units for accessing such data in IRS's Compliance Data Warehouse.

**Comment:**

IRS Research, Applied Analytics, and Statistics (RAAS) has been working to obtain read-only access to the Integrated Production Model (IPM) database. The IPM contains the electronic and paper filing information that is the subject of this recommendation. Obtaining read-only access requires Information Technology (IT) resources, as it is a new technical process. We continue to work with IT on the feasibility and timeframe for enabling this access, but limited budgetary resources are delaying implementation.

**Recommendation 3:**

The Commissioner of Internal Revenue should employ a comprehensive plan for managing efforts to leverage Foreign Account Tax Compliance Act (FATCA) data in agency compliance efforts. The plan should document and track activities over time to

- ensure individuals and foreign financial institutions (FFIs) comply with FATCA reporting requirements;
- assess and mitigate data quality risks from FFIs;
- improve the quality, management and accessibility of FATCA data for compliance, research and other purposes; and
- establish, monitor and evaluate compliance efforts involving FATCA data intended to improve voluntary compliance and address noncompliance with FATCA reporting requirements.

**Comment:**

The resources that would be dedicated to update a comprehensive plan unique to FATCA (akin to the FATCA Roadmap) are better spent on the enforcement activities. Plans are underway. Enforcement resources are being used to implement this plan, rather than updating a comprehensive plan to address the four activities identified in this recommendation. LB&I has overall responsibility for these activities and their approach is expected to achieve the broader objective of improving financial institution and U.S. account holder compliance with FATCA.

**Recommendation 4:**

The Commissioner of Internal Revenue Service should assess factors contributing to unnecessary Form 8938 reporting and take appropriate steps to address the issue. Depending on the results of the assessment, potential options may include:

- identifying and implementing steps to further clarify IRS Form 8938 instructions and related guidance on IRS's website on determining what foreign financial assets to report, and how to calculate and report asset values subject to reporting thresholds; and
- conducting annual outreach to educate taxpayers on required reporting thresholds, including notifying taxpayers that may have unnecessarily filed an IRS Form 8938 to reduce such filing.

**Comment:**

The IRS will continue to observe filings of Form 8938 and, to the extent that there are unnecessary filings, assess options to inform account holders to reduce reporting and filing burdens followed by appropriate steps to implement any selected options.

# Appendix VII: Comments from the Department of the Treasury



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

March 8, 2019

James R. McTigue  
Director, Tax Issues  
Strategic Issues Team  
U.S. Government Accountability Office  
441 G Street N.W.  
Washington, DC 20548

Dear Mr. McTigue:

We appreciate the opportunity to review the draft report, *Foreign Assets Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad (GAO-19-180)*.

The Treasury Department and the Internal Revenue Service (IRS) have been leading the implementation of the Foreign Account Tax Compliance Act (FATCA) since its enactment in 2010, with the goal of ensuring the information reporting regime is effective at detecting non-compliance of U.S. persons using offshore accounts or entities while minimizing the burdens on financial institutions and account holders. It is important to note that all U.S. citizens are required to comply with U.S. tax laws, whether resident in the United States or abroad, and that FATCA is a tool to ensure compliance with the existing tax laws and to improve the integrity of our voluntary tax system.

To further reduce the burdens of FATCA compliance, the Treasury Department has worked collaboratively with foreign jurisdictions to implement FATCA through intergovernmental agreements (IGAs). The United States has signed IGAs with 101 jurisdictions, under which partner governments facilitate the collection of financial account information of U.S. persons. An additional 12 jurisdictions have reached agreements in substance with the United States. Since the enactment of FATCA, the IRS has seen an increase in the disclosure of financial accounts and the reporting of income in these accounts by taxpayers.

The Treasury Department and the IRS have continued to work with stakeholders to further refine and reduce burdens of FATCA, including for example, the publication of proposed regulations that would revise existing FATCA guidance to reduce burden (e.g., by eliminating or deferring certain withholding requirements and providing more flexibility regarding certain due diligence requirements). The Treasury Department and the IRS have received positive feedback from stakeholders on these proposals.

The draft report contains a recommendation that the Secretary of Treasury should lead efforts, in coordination with the Secretary of State and Acting Commissioner of Social Securities, to establish a formal means to collaboratively address ongoing

issues—including issues accessing financial services and employment and obtaining Social Security numbers—that U.S. persons living abroad encounter from implementation of Foreign Account Tax Compliance Act reporting requirements. (Recommendation 5). While the Treasury Department is not the appropriate agency to lead coordination efforts involving foreign employment issues and issues regarding access to foreign financial services and obtaining Social Security numbers, the Treasury Department is aware of the difficulties that some U.S. citizens residing abroad have raised about the potential effects of FATCA. The Treasury Department will work collaboratively with the State Department and the Social Security Administration to answer questions that Americans abroad have regarding their tax obligations and, where appropriate, to direct U.S. citizens to resources that will help them understand the procedures applied by the Social Security Administration to apply for a Social Security number. As GAO knows, FATCA does not prohibit, restrict or encourage foreign companies or foreign financial institutions to deny employment or services to U.S. persons; however, the Treasury Department will continue to work with the State Department and the Social Security Administration to address these important issues.

Thank you once again for the opportunity to review the draft report. We look forward to continuing to work with you and your office in the future.

Sincerely,



Douglas Poms  
International Tax Counsel

# Appendix VIII: Comments from the Department of State



United States Department of State  
*Comptroller*  
Washington, DC 20520  
FEB 01 2019

Thomas Melito  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

Dear Mr. Melito:

We appreciate the opportunity to review your draft report, "FOREIGN ASSET REPORTING: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad", GAO Job Code 102212.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Rathanika Touch, Management/Program Analyst, Office of the Comptroller, Bureau of Consular Affairs at (202) 485-6705.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey C. Mounts" with a stylized flourish at the end.

Jeffrey C. Mounts (Acting)

Enclosure:  
As stated

cc: GAO – James R. McTigue, Jr.  
CA/OCS – Michelle Bernier-Toth  
OIG - Norman Brown

Department of State Comments on GAO Draft Report

**FOREIGN ASSET REPORTING: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad (GAO-19-180, GAO Code 102212)**

Thank you for the opportunity to comment on the GAO draft report, *“Foreign Asset Reporting: Action Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad”*.

The Department of State, Bureau of Consular Affairs, strives to ensure consular and diplomatic protection to U.S. nationals and U.S. interests abroad. In support of the Department of State USAID Joint Strategic Goal (1) Protect America’s Security at Home and Abroad and Goal (4) Ensure Effectiveness and Accountability to the U.S. Taxpayer, the Bureau of Consular Affairs partners with the U.S. Department of the Treasury, the Internal Revenue Service, and the Social Security Administration through our federal benefits and federal obligations programs at U.S. embassies and consulates abroad.

**Recommendations 6: The Secretary of State, in coordination with the Secretary of the Treasury and Acting Commissioner of Social Security, should establish a formal means to collaboratively address ongoing issues- including issues accessing financial services and employment and obtaining Social Security numbers – that U.S. persons living abroad encounter from implementation of Foreign Account Tax Compliance Act reporting requirements.**

Comment: The Department of State concurs with GAO recommendation 6 and welcomes the opportunity to work with the Department of Treasury and SSA to find new channels to improve SSN and ITIN services to U.S. citizens and beneficiaries abroad and reduce barriers to Social Security Number and ITIN adjudication and processing.

# Appendix IX: Comments from the Social Security Administration



**SOCIAL SECURITY**  
Office of the Commissioner

January 14, 2019

Mr. James R. McTigue, Jr.  
Director, Tax Issues  
Strategic Issues Team  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. McTigue,

Thank you for the opportunity to review the draft report, "Foreign Asset Reporting: Actions Needed to Enhance Compliance Efforts, Eliminate Overlapping Requirements, and Mitigate Burdens on U.S. Persons Abroad" (GAO-19-180). Please see our enclosed comments.

If you have any questions, please contact me at (410) 965-9704. Your staff may contact Trae Sommer, Acting Director of the Audit Liaison Staff, at (410) 965-9102.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie Hall".

Stephanie Hall  
Acting Deputy Chief of Staff

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

**SSA COMMENTS ON THE OFFICE OF THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO) DRAFT REPORT, “FOREIGN ASSET REPORTING: ACTIONS NEEDED TO ENHANCE COMPLIANCE EFFORTS, ELIMINATE OVERLAPPING REQUIREMENTS, AND MITIGATE BURDENS ON U.S. PERSONS ABROAD” (GAO-19-180)**

The original and primary purpose for assigning a Social Security number (SSN) is to allow an employer to uniquely identify and accurately report an individual’s earnings covered under the Social Security program and enable us to determine eligibility to program benefits. Our policies for assigning SSNs and issuing Social Security cards are the same for citizens living in the United States or living abroad. We recognize, however, that individuals living abroad may encounter longer wait times to obtain SSNs due to unique challenges related to their countries of residence. We continuously look for opportunities to streamline and improve our SSN issuance process and will work with the Departments of State (State) and the Treasury (Treasury) to ensure individuals eligible for SSNs receive Social Security cards in a timely manner.

Our response to the recommendation is below. We also provided technical comments at the staff level for GAO’s consideration.

**SSA’s Recommendation 1 -- GAO’s Recommendation 7**

In coordination with State and Treasury, establish a formal means to collaboratively address ongoing issues—including issues accessing financial services and employment and obtaining Social Security numbers—that U.S. persons living abroad encounter from implementation of FATCA reporting requirements.

**Response**

We agree.

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# Appendix X: GAO Contact and Acknowledgments

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## GAO Contact

James R McTigue, Jr. (202) 512-9110 or [mctiguej@gao.gov](mailto:mctiguej@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Brian James (Assistant Director), Mark Ryan (Analyst-in-Charge), Ariana Graham, George Guttman, Krista Loose, Daniel Mahoney, Cynthia Saunders, A.J. Stephens, and Elwood White made key contributions to this report. Michael John Bechetti, Ted Burik, and Jacqueline Chapin also provided assistance.

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