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American Citizens Abroad submission of testimony to the
House Financial Services Committee Hearing entitled
“Oversight of the Financial Crimes Enforcement Network (FinCEN)”
featuring testimony by Acting Director of FinCEN Mr Himamauli Das
April 28, 2022

American Citizens Abroad, Inc, and its sister organization, American Citizens Abroad Global Foundation hereby submit our Statement for the record.

American Citizens Abroad, Inc. ([ACA](#)) is a leading advocacy organization representing Americans living and working overseas. Headquartered in Washington, DC, ACA is nonpartisan, non-profit (section 501(c)(4)), with a 40-plus-year history of advocating on behalf of the community of Americans living and working overseas. Alongside ACA is its sister charitable (section 501(c)(3)) research and educational organization, American Citizens Abroad Global Foundation ([ACAGF](#)).

Questions by members of the Financial Services Committee for FinCEN Acting Director Das were largely focused on how FinCEN maintains a balance between fulfilling its mission as the administrator of the Bank Secrecy Act and keeper of the nation’s financial intelligence unit critical to tax and law enforcement, and protecting citizens’ privacy, data, and taxpayer dollars. Implementation of the Anti-Money Laundering Act of 2020 (AML), including the Corporate Transparency Act, in addition to the oversight of sanctions against Russia and Russian oligarchs in response to the war in Ukraine have clearly put enormous pressure on the agency. ACA is grateful for the extensive, illuminating discussion of FinCEN’s responsibilities and efforts to fulfil them.

Opening comments by Rep. Patrick McHenry claimed FinCEN is something of “a mystery” to many Americans. Their finances attract the attention of authorities only when a funds transfer exceeding \$10,000 or deemed suspicious in the context of money laundering or fraud obliges their bank to disclose their transaction to FinCEN. U.S. citizens living abroad, however, are very much aware of FinCEN. They engage regularly with FinCEN and, in fact, *report their own financial data* to the agency. In each year that the cumulative balance of their non-U.S. financial accounts exceeds \$10,000, they file a report to disclose their foreign financial account information, the Report of Foreign Bank and Financial Accounts or FBAR. The FBAR was established in the Bank Secrecy Act of 1970; its \$10,000 reporting threshold is decades overdue for adjustment.

ACA was delighted to hear Rep. Joyce Beatty raise the out-of-date FBAR reporting threshold with Acting Director Das and state explicitly her support for indexing the reporting threshold for inflation. Acting Director Das indicated that a FinCEN review of the FBAR reporting threshold was required under the AML (as well as the Currency Transaction Report and Suspicious Activity Report thresholds) and was expected to be complete by the end of the year. We encourage the Financial Services Committee to monitor this review, especially given Acting Director Das’s admission that resourcing shortfalls would keep FinCEN “missing deadlines and making trade-offs.”

Americans abroad understand that the FBARs are a very important component of law and tax enforcement and a major item for case generation. The report, however, would be more useful to FinCEN if it were easier for U.S. citizens living abroad to comply with it. We welcome the support of the Financial Services Committee for increasing the FBAR reporting

threshold and ask you to consider supporting these reform recommendations for FinCEN aimed at improving FBAR compliance and FBAR data.

- Eliminate the reporting duplication between the FBAR and the FATCA Form 8938;
- Revise civil and criminal penalties for non-willful FBAR compliance failures and bring them into line with the quantum of the violation;
- Restore paper filing of the FBAR to facilitate compliance by those with no computer or no computer literacy, using forms that can be scanned into electronic databases; and
- Translate the FBAR into other languages.

U.S. citizens living abroad will also greatly benefit from Committee support – including funding - to FinCEN to accelerate the implementation of beneficial ownership transparency. We understand the FBAR and FATCA reporting were established to improve visibility into taxable income from foreign sources and help the IRS identify noncompliance by U.S. taxpayers who have undisclosed foreign accounts and foreign assets. We also understand that these reporting regimes are powerless when foreign accounts and assets are held in the anonymous shell companies commonly used by bad actors to hide illicit funds. When the beneficial ownership reporting rules, database and database accessibility protocols are completed, Congress might then move the everyday bank accounts of ordinary, law-abiding Americans living abroad out of the spotlight, and focus tax and law enforcement efforts on the structures and schemes of bad actors.

Rep. Bryan Steil used an apt analogy to describe his concerns about Bank Secrecy Act data stores, saying that “growing the haystack of data impacts the search for the needle.” Removing from foreign financial account reporting the accounts that U.S. citizens living abroad use to pay their bills and save for the future - which would occur if Congress passed the Overseas Americans Financial Access Act, legislation that mirrors [ACA's call for Same Country Exemption for FATCA reporting](#) would help shrink the haystack. It would also end, or at least greatly reduce, the “lockout” of U.S. citizens by foreign banks that refuse service to Americans to avoid FATCA compliance.

Americans abroad have been working for many years to persuade Congress to address the serious financial and personal problems they face because of U.S. taxation, such as procuring bank products and services.

TAXATION AND AMERICANS ABROAD

The Taxpayer First Act has identified U.S. citizens living and working overseas as an underserved community and the IRS is working to create systems and provide support to these taxpayers. This cannot come fast enough for the estimated 3.9 million U.S. citizens living and working abroad.¹ Tax filing for U.S. citizens living and working outside the U.S. is complex, costly and confusing, results in onerous taxation of foreign investments considered Passive Foreign Investment Company (PFICs), involves duplicate reporting regimes like the Foreign Account Tax Compliance Act (FATCA) Form 8938 and the Financial Bank Account Report (FBAR)(FinCEN Form 114), is unfair with regard to the application of certain tax credits for non-residents (Child Tax Credit and Earned Income Credit), exposes filers to

¹ ACA and District Economics Group estimate that the total number of Americans abroad at present, excluding members of the military and other government employees and contractors, is approximately 3.9 million individuals. See: <https://www.americansabroad.org/news/aca-district-economics-group-analysis-of-revenue-effects-of-residence-based-taxation/>

double taxation with the Net Investment Income Tax (NIIT), and involves wading through many regulations that overlap with U.S. corporate international tax.

This is just a sampling of the problems on the individual side of reporting, not taking into consideration the filing requirements for small business operations run by U.S. citizens overseas that need to deal with the Transition Tax and Global Intangible Low-Taxed Income (GILTI) regimes (and are denied access to programs available for small businesses through the U.S. tax code such as the Employee Retention Tax Credit and Paycheck Protection Program which were discussed by Senator Cardin).

RESIDENCE-BASED TAXATION

ACA for over six years has advocated for the adoption of residence-based taxation (RBT) and has [produced key documents and research that support the move to RBT](#), which can be made revenue neutral and tight against abuse. ACA was the first organization to develop a side-by-side analysis that indicates where in the current tax code changes could be made in a move to a system of taxation based on residence (excludes from U.S. taxation foreign earned income). ACA has fielded two research projects on the subject with District Economics Group (DEG), Washington, DC-based economic consulting firm – one in 2017 and one in 2022 – that provide valuable information on the income, assets and taxation of U.S. citizens living and working overseas. This data, one of a kind, supports our position that RBT can be adopted and no one will be any worse off, the U.S. Treasury would not lose revenue, and the provisions would be protected against tax abuse.

CONGRESSIONAL HEARINGS ON TAXATION AND AMERICANS ABROAD

It is time for this research work, along with documents and testimony from ACA and other stakeholders, to be put on record with the House Committee on Oversight and Reform with hearings. There are currently three pieces of legislation introduced in Congress that address some of the tax compliance problems of U.S. citizens overseas; H. R. 5800 (The Commission on Americans Living Abroad Act) and H.R. 5799 (The Overseas Americans Financial Access Act) both introduced by Congresswoman Carolyn Maloney, and H.R. 6057 (The Tax Simplification for Americans Abroad Act), introduced by Congressman Donald Beyer. These legislators have asked Chairman Neal to address the tax and compliance issues of U.S. citizens living and working overseas, and ACA echoes this call to action for the Oversight and Reform Committee.

Never in the history of the U.S. Congress have hearings been held to address the specific issues facing U.S. citizens living and working abroad, not only tax issues but other concerns related to Social Security, Medicare, voting and representation. The Americans Abroad Caucus with Co-Chairs Carolyn Maloney, Dina Titus, and Maria Elvira Salazar are hearing from constituents in their districts about the growing concerns of citizens who chose to live and work overseas. If U.S. citizens are to engage in a global economic marketplace, they need the tools to help them compete for jobs and have full access to financial and banking services. Some U.S. laws, such as FATCA, are hampering this and the Committee needs to hear and understand these issues and problems, in order that proposals, such as the adoption of Residence-based taxation, can be carefully examined.

ACA would like to thank the House Financial Services Committee for the opportunity to submit this testimony and commentary. For more information, please visit the ACA website www.americansabroad.org or telephone +1 202 476 0741 and/or email charles.bruce@americansabroad.org.