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Late FBAR and Form 8938 in 2026: What Determines the Correction Path

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By the Guillen Pujol CPA Group Editorial Team

Executive Summary

- In July 2026, the IRS removed the Delinquent FBAR Submission Procedures page from its website. Taxpayers with an outstanding Report of Foreign Bank and Financial Accounts (FBAR) can no longer rely on that guidance, which stated that the IRS would not impose late-filing penalties on taxpayers who met specific requirements. Penalties still depend on the facts and circumstances of each case; they are not automatic.
- What went unreported determines the correction path. A late FBAR with the income already included on the return is a different scenario from one in which Form 8938, other international information returns, or foreign income are also missing. The FBAR and Form 8938 are separate obligations; meeting one does not satisfy the other.
- The Streamlined Filing Compliance Procedures remain available for certain cases of non-willful conduct. Residency and filing history determine whether the Domestic or Foreign procedure applies, which years the submission must cover, and which penalty treatment applies.
- A full review also identifies any willful conduct, prior IRS contact, or earlier corrections. Those facts determine which procedures remain available; an open civil examination rules out Streamlined, and willful conduct directs the case to the IRS Voluntary Disclosure Practice. Before filing any correction, the taxpayer reconstructs each affected year—income, residency, ownership, signature authority, and forms already filed.

A foreign account left out of earlier reports often comes to light during a tax review, a wealth review, a financing process, or a financial statement audit. From that finding, the taxpayer reconstructs, year by year, which obligations existed, what was filed, and how the related income was reported. When a single account or structure meets the requirements of several regimes, it is subject to more than one obligation.

In early July 2026, the IRS removed the Delinquent FBAR Submission Procedures page from its website. The page described an administrative path for certain taxpayers with late FBAR filings. The IRS took it down

without prior notice or public explanation, which left tax professionals and taxpayers with international structures unsure how the IRS would treat those filings. On July 16, 2026, Bloomberg Tax reported that penalty relief for late FBAR filings remained available despite the page's removal.

Current IRS guidance states that a taxpayer with a late FBAR must file it as soon as possible if the IRS has not yet contacted the taxpayer about it and no civil or criminal investigation is underway. The late filing explains the reasons for the delay. If the case fits a compliance program—such as the Streamlined Filing Compliance Procedures—the taxpayer follows that procedure's specific rules.

For business owners, executives, and families with structures abroad, the correction path depends on what went unreported, tax residency in each year, and any prior contact with the IRS.

The Type of Omission Defines the Correction Path for FBAR and Form 8938

When the federal returns already report the income from a foreign account correctly and only the FBAR is outstanding, the taxpayer corrects the omission by electronically filing the late FinCEN Form 114 reports with an explanation for the delay. The current IRS page does not distinguish this scenario from other late FBAR filings; penalties depend on the facts and circumstances of each case.

The review must also confirm whether that same account was subject to Form 8938. Taxpayers file this form with their federal income tax return, and it has its own filing criteria. The IRS clarifies that filing Form 8938 does not replace the FBAR; the same account belongs on both forms when it meets each regime's requirements.

When a required Form 8938 is missing, the IRS page on delinquent international information returns points taxpayers to the normal filing procedures, provided there is no civil examination, criminal investigation, or prior IRS contact about those forms. The taxpayer attaches the late Form 8938 to the amended return for the corresponding year. The taxpayer can include a reasonable cause statement, although the IRS warns that it may assess penalties during processing without considering the statement.

If income from the foreign accounts or assets was also left out, the correction covers the affected income tax returns, international information returns, and FBAR filings. In non-willful cases, the Streamlined Filing Compliance Procedures provide the framework for analyzing that set of facts.

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Streamlined Domestic vs. Foreign: Residency Changes the Compliance Package

The Streamlined Filing Compliance Procedures are available to taxpayers whose failures to report income, pay tax, or file international information returns resulted from non-willful conduct. Under the IRS definition, non-willful conduct covers negligence, inadvertence, mistake, and a good-faith misunderstanding of tax obligations. Once the taxpayer establishes non-willful conduct, residency determines which procedure applies and what the submission must include.

A taxpayer who qualifies for the Streamlined Domestic Offshore Procedures files amended returns, with the corresponding international information returns, for the three most recent years for which the federal return due date has passed. The package also covers the six most recent years for which the FBAR due date has passed.

The procedure imposes a Title 26 miscellaneous offshore penalty equal to 5% of certain foreign financial assets included in its penalty base. The taxpayer must also have filed the required federal returns for the covered period.

The Streamlined Foreign Offshore Procedures apply a specific non-residency test and use the same lookback periods—three years for tax returns and six years for FBAR filings. Depending on the filing history, the taxpayer covers those three years with delinquent returns, amended returns, or a combination of both.

For taxpayers who qualify for Streamlined Foreign and follow its instructions, the IRS states that it will not assess failure-to-file, failure-to-pay, accuracy-related, information return, or FBAR penalties. Under Streamlined Domestic, the 5% miscellaneous offshore penalty is the procedure’s only penalty and replaces the accuracy-related, information return, and FBAR penalties.

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Willfulness, IRS Contact, and Prior Corrections: What Changes in the Available Options

Taxpayers sign the non-willful conduct certification under penalty of perjury on Form 14654 for Streamlined Domestic or on Form 14653 for Streamlined Foreign. For that reason, when the history shows conscious decisions about foreign income, accounts, or reporting obligations, the taxpayer analyzes those facts before signing the certification.

When the facts involve willfulness, the IRS offers a separate path—its Criminal Investigation Voluntary Disclosure Practice (VDP). The IRS describes willfulness as intentional and deliberate conduct aimed at concealing income or assets, inflating expenses, or evading filing or payment obligations. A timely, truthful, and complete voluntary disclosure that meets VDP requirements can keep the IRS from recommending criminal prosecution.

A taxpayer becomes ineligible for Streamlined once the IRS has opened a civil examination of the taxpayer's returns for any year, even when the examination began over an issue unrelated to foreign financial assets. The same restriction applies when IRS Criminal Investigation has opened a criminal investigation. Before making a new filing, the taxpayer identifies what type of contact exists—and what stage it has reached—to establish which procedures remain available.

The IRS notes that taxpayers who filed delinquent or amended returns outside a formal disclosure program—so-called quiet disclosures—can still use Streamlined if they meet its other requirements. Penalties the IRS has already assessed on those filings remain in place; Streamlined relief does not extend to them.

The IRS still describes the VDP changes it announced in December 2025 as proposals pending finalization, so any evaluation of that path must rely on the rules in effect at the time of filing.

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Does Your International Structure Have an FBAR or Form 8938 Compliance Gap?

If you have already identified the omitted account, gathered the bank statements, and located the returns for the affected years, you have much of the case file in place. What usually remains is connecting those records

to each year's tax residency, ownership and signature authority, Form 8938 and other international information returns, and any earlier correction or IRS contact.

At **Guillen Pujol CPA Group**, we work with business owners, families, and investors whose tax obligations span the United States and other jurisdictions. In this context, we organize the reporting history, identify the affected obligations, and define the tax scope of the correction before preparing a technical proposal. These capabilities are part of the international and compliance services our firm publicly offers.

Our related services include:

- **International Tax Consulting & Compliance Services**—to reconstruct the tax and information reporting obligations for the affected years.
- **Streamlined Foreign Offshore Disclosure (SFOD) Applications**—when the omission resulted from non-willful conduct and the case qualifies for Streamlined Domestic or Foreign.
- **International Business Ownership Structuring and Compliance**—when accounts, entities, ownership interests, or signature authority are part of an international business structure.
- **IRS Tax Audit Representation & Dispute Resolution**—when there is already IRS contact, an examination, a notice, or a dispute; we handle these matters within our professional scope.

If the omission spans several years, forms, or entities, the next step is an evaluation session to organize the facts, review the scope of the outstanding reporting, and define the information needed for a technical proposal. The session is exploratory and precedes any service proposal.

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