Residency-based taxation for Americans overseas

A review of the LaHood Bill (H.R. 10468)

Ross McGill
Chairman Emeritus, TConsult

Contents

Introduction 2
Why the Bill is difficult in Washington 3
Why it matters outside the United States 4
LaHood Bill 5
Operational challenges for FFIs, NQIs and QIs 10
Conclusions 11
More information 11
Appendix I: Estimate of the number of U.S. Citizens living abroad 11

Introduction

For years, the practical problem for non-U.S. financial institutions has seemed obvious enough. First and foremost, if a client is a U.S. specified person and has an account at a foreign (i.e., non-U.S.) financial institution (FFI), FATCA reporting will almost certainly follow. Second, once an FFI allows that American to also use their account to trade U.S. securities and potentially receive U.S.-sourced FDAP[1] income e.g., dividends, other U.S. tax reporting (Forms 1099, 945) and withholding obligations (24% backup withholding) may follow too. Since 2014, many firms have established policies to exclude U.S. account holders to specifically avoid or mitigate these complexities and operational risks.

However, that neat logic starts to break down if the United States effectively creates a new category of overseas American who remains a U.S. citizen yet is no longer treated as a specified U.S. person for FATCA. That is exactly why the LaHood Bill matters. The LaHood Bill was first introduced into the 118th Congress by Republican Congressman Darin LaHood[2] of Illinois as H.R.10468. Due to time constraints, it expired with the end of the 118th Congress in January 2025. Congressman LaHood has indicated that the Bill may now be re-submitted at some point in the 119th Congress in 2026. The Bill does not just reopen the residence-based taxation debate, it raises the possibility that some overseas Americans could fall outside both FATCA reporting to the IRS and CRS exchange to another jurisdiction in at least some fact patterns.

That possibility should not be overstated, but it should not be ignored either. For non-U.S. financial institutions, the key issue is not simply whether the U.S. client population may shrink because of an effective re-definition. It is whether the withholding and reporting architecture around those clients may become less coherent, more document-driven and, in some cases, less symmetrical than it is today. That has consequences for onboarding, product access, account retention and design of controls.

In a webinar on April 15th, 2026, hosted by Tax Fairness for American Abroad[3] tax lawyer Mark Warren spoke of the challenges facing the campaign to have the Bill passed. Not least of these was gaining bipartisan support for the bill, which currently has two Republican leads including Senator Todd Young[4] of Indiana. So, while the Bill has House and Senate support, it is currently all on the Republican side of the aisle. The effect of the 2026 mid-term elections in the U.S. could change the dynamic of the Bill's progress significantly unless democratic support can be found.

There are two broad strokes to this story. The first is the U.S. perspective and the second is the operational impact of the Bill outside the U.S. if it gets passed.

Why the Bill is difficult in Washington

From the U.S. perspective, and particularly the IRS and Treasury's viewpoint, the main sticking point to the Bill appears to be the difficulty in making the Bill "revenue neutral". The U.S. taxes its citizens, wherever they live on planet earth, based on their worldwide income. This means that an American living in Paris, France would be paying French taxes on their French income and U.S. taxes on the same income – double taxation which takes significant time, effort and cost to mitigate. If the LaHood Bill passed, much of that revenue currently collected by the U.S. Treasury would disappear and so the Bill, in its current state is heavily revenue negative to the U.S. Research and efforts are under way with the Joint Committee on Taxation to try to get the draft Bill to a revenue neutral position, but the lobbying group itself admits it is several billion dollars short of that target at the moment. Apart from revenue considerations, the IRS is particularly keen to make sure that the behavioural impact of the Bill is not to create tax shelter opportunities by Americans identifying loopholes in the text.

The FATCA component also means that an American resident outside the U.S. will have their personal data and foreign bank account details reported to the IRS. This is a particular sticking point in the European Union which has strict data privacy rules in the form of the General Data Protection Regulation (GDPR). There have been substantial lobbying and legal efforts to have FATCA in the E.U. deemed incompatible with the principles of GDPR to prevent data disclosures.

[1] Income characterized as Fixed, Determinable, Annual or Periodic
[2] https://LaHood.house.gov/about
[3] https://www.taxfairnessabroad.org
[4] https://en.wikipedia.org/wiki/Todd_Young

Americans, and particularly so-called "Accidental Americans" living outside the U.S. are currently looking at three possible pathways to mitigate their double tax and disclosure headaches:

1. Revoke their U.S. citizenship to obtain a Certificate of Loss of Nationality (CLN),
2. Get FATCA data transfers declared illegal, notably under E.U. data protection regulation (GDPR)
3. Apply for a Certificate of Non-Residency (CNR) under the LaHood Bill when it passes into law, in which FATCA will no longer consider them a "specified U.S. person" for reporting purposes.

None of these pathways is perfect and some have been legally challenged or been bogged down in political controversy. The timeline for LaHood remains unclear. That is to say, that none of these arguments is particularly compelling or we would not still be debating this in 2026.

The political landscape does not look conducive to an early submission of the Bill. Spring 2026 is taken up with budget appropriations. In August, the House is in recess. September returns to appropriations to avoid a government shutdown. October is another recess and, for 2026, campaigning for the mid-term elections. November and December could be a "lame-duck" session depending on the outcome of the elections. That gets us to 2027 at the earliest unless an opportunity arises before that, to do which, the Bill needs that bipartisan support.

Why it matters outside the United States

The effect outside the U.S. is more likely to be operational than political. Outside the U.S. Americans have historically, or at least since 2014, had great difficulty opening or maintaining financial accounts at what are termed "foreign financial institutions" (FFIs). This leaves them with one of three options.

Option 1: Revoke U.S. citizenship (the nuclear option)

On the voluntary side, for those seeking the "nuclear option" the U.S. State Department has now reduced the fee for administrative processing of a Certificate of Loss of Nationality (CLN) from $2,350 to $450, effective April 13th, 2026, and in the same rule it projected 4,661 annual applications. This is an important signal for most institutions. It suggests that the pool of overseas Americans actively trying to exit the citizenship-based tax system may remain substantial, especially when the cost of leaving has been cut so sharply. However, circa 5,000 Americans revoking citizenship is not significant when compared to the 3.3 million[5] Americans currently estimated to be living outside the US.

However impactful it is for the people concerned, any reasonably projected number of revocations will be statistically insignificant when compared to the overall population of Americans, accidental or otherwise, living outside the US. So, option 1 is not a realistic solution for most Americans.

Option 2: Hope FATCA is declared illegal (the conventional option)

FATCA is a U.S. law. It is Title V of the HIRE ACT (2010). That is very unlikely to be changed anytime soon. The implementation of this law via Intergovernmental Agreements (IGAs) however, could be changed and has changed several times since entering into force in 2014. The IRS web site shows several updates to specific bilateral arrangements[6].

Certain lobbying groups, most notably the Association of Americans Overseas[7] and the Association of Accidental Americans have argued that the data transfers of Americans under FATCA IGAs breach the GDPR rights of E.U. residents. It's worth remembering that FATCA pre-dates GDPR and that FATCA IGAs are bilateral with individual transposition into Member State's domestic law. The most recent case is in Belgium where litigation has now reached the E.U. Court of Justice. The argument here is whether a pre-GDPR FATCA IGA can still survive under

[5] https://www.fvap.gov/info/reports-surveys/postelectionreporttocongress
[6] https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act
[7] https://aaro.org/issues/taxation-issues/accidental-americans-in-the-news

GDPR Article 96[8] and whether the scale and design of reporting are compatible with E.U. privacy principles. This is also a political issue. The E.U. Parliament has asked all Member States via 2020/C 118/23 to review their IGAs for GDPR alignment[9] particularly regarding so called Accidental Americans. However, there is no E.U.-wide consensus yet that FATCA reporting is illegal under or incompatible with GDPR.

It should be noted that while the E.U. is important, it represents only 27 Member States, all of which have IGAs, out of the total current IGA population of 113[10]. Outside the E.U., there have been one or two minor challenges, e.g., UK, Israel, and Canada but overall, the FATCA reporting model remains intact. It seems like the issue of true reciprocity in IGAs is more engaging for governments than data privacy concerns.

Should any of these efforts succeed to any degree, it could lead to a pause, restriction or redesign of FATCA reporting, particularly with respect to E.U IGAs. These could take effect as either (i) Memoranda of Understanding, or (ii) Joint Statements made bilaterally or multilaterally to a template, as has already been the case for France, Germany, Italy, Spain and the UK in 2012[11]. In each case of course, the detail would need to address, in particular, the changes to documentation, due diligence and reporting of Accidental Americans such that reporting of these was either excluded, limited or, more likely, reported on a pooled or aggregated basis so that no personal data is transferred.

Option 3: The LaHood Bill (residency-based taxation)

The LaHood Bill would create an elective residence-based income tax regime for non-resident U.S. citizens.

LaHood Bill

For those with an eye for detail in this readership, I can briefly explain the structure of the LaHood Bill to evidence the way in which it addresses the issue.

Location

The LaHood Bill is structured as Subpart E of Part H of Subpart N of Chapter 1 being part of subtitle A of Title 26 of the U.S. Internal Revenue Code. It would create a new “Section 899” of the Code allowing for an election by a non-resident citizen of the United States to be subject to residency-based income tax rules. See Exhibit 1.

[8] Article 96 of GDPR says that international agreements involving transfers of personal data to third countries or international organisations that were concluded by Member States before 24 May 2016 and complied with pre-GDPR E.U. law remain in force until amended, replaced, or revoked.
[9] https://E.U.r-lex.E.U.ropa.E.U./legal-content/EN/TXT/PDF/?uri=CELEX%3A52018IP0316
[10] https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act
[11] https://home.treasury.gov/system/files/131/FATCA-Joint-Statement-US-Fr-Ger-It-Sp-UK-2-7-2012.pdf

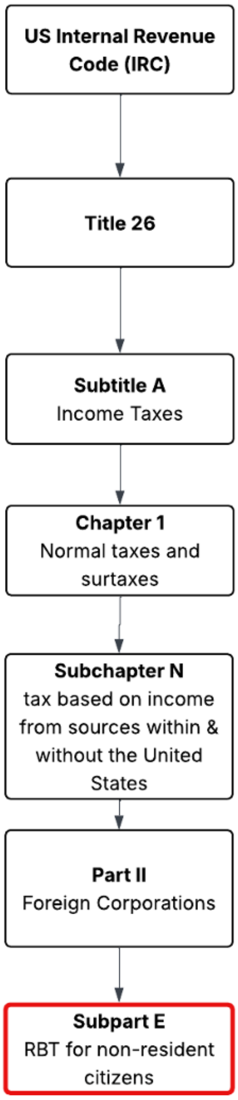

Exhibit 1 Location of the proposed LaHood Bill in the Code. Source: Author

Section Structure

The Bill has three sections. Section 1 is administrative and establishes the name, or short title of the Bill. Section 2 establishes the details of a new subpart E of the Code, within which are sections 899, 899A, 899B and 899C.

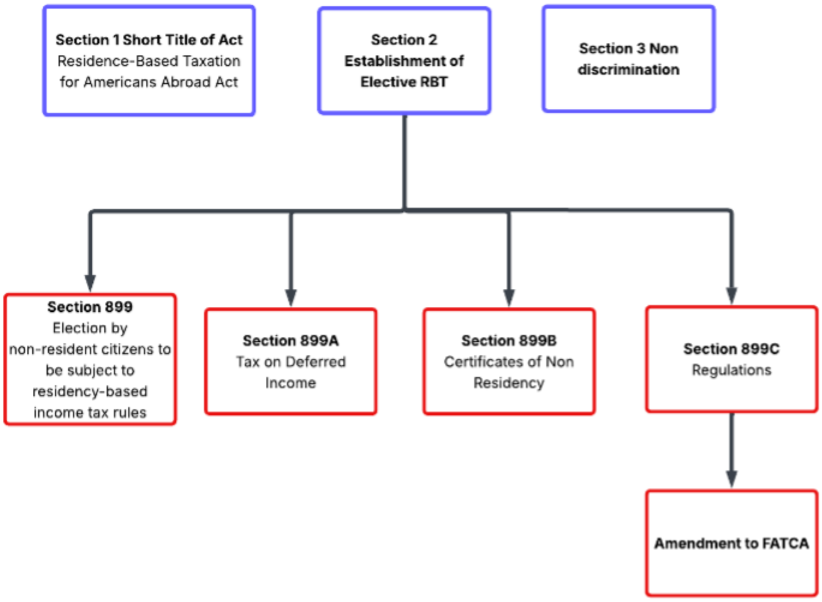

Exhibit 2 Structure of the LaHood Bill. Source: Author

Section 899

899(a)	Provides the basic rules including the rules on deferred income
899(b)	States that an electing individual effectively becomes an alien, amends the substantial presence test and creates a link to Chapter 4 (FATCA) by establishing that the electing individual would not be a "specified U.S. Person" for the purpose of FATCA
899(c)	Defines an electing individual as any U.S. person making an election. This part also specifies that a U.S. citizen born outside the U.S. should be treated as an electing individual until they become resident in the U.S. These rules all exclude Federal employees
899(d)	Provides the rules for making an election including the manner of the election, minimum requirements for the election and the rules for termination of an election which includes either by the electing individual becoming a U.S. resident or by a voluntary termination of the election by the electing individual.
899(e)	Provides for a short-term non-residency meaning that section 899(b) does not apply if the electing individual terminates their election before the beginning of the fourth taxable year.

Section 899A

This section provides the rules for taxation on deferred income, meaning that an election can be treated as valid provided the electing individual has paid any tax due on income that was deferred for tax purposes.

Section 899B

This section deals with the issuance of Certificates of Non-residency (CNR).

899B(a)	Establishes CNRs as the mechanism for an electing individual to prove their election
899B(b)	Contains the rules for termination of CNRs which is either by the electing individual becoming a U.S. resident or by voluntarily terminating their election.

899B(c)	Requires the Secretary to create, publish and maintain a searchable database of CNRs
899B(d)	Establishes a $100 fee per application together with an inflation adjustment calculation.

Section 899C

Where Section 2 of the Bill establishes the detail of the new proposed section 899, section 3 of the draft Bill establishes the principle of non-discrimination, one of the most important parts of the Bill, especially for FFIs.

899C	Establishes three main parts of the regulations – (i) the creation of the new subpart E, (ii) the Effective date of the new sections and (iii) the non-discrimination prohibition. In the latter, it requires that Section 1471(b)(1) of FATCA be amended to provide that an FFI must have no policies that would discriminate against opening or maintaining financial accounts for electing individuals.

Most importantly for FATCA, the Bill would establish that an electing individual with a certificate of non-residency (CNR) would be treated as having established that they are not a specified United States person for Section 1472 purposes. The Bill would also, as noted above, require:

1. foreign tax residence for the electing individual,
2. the creation of a public, searchable database of certificate numbers and terminations by the IRS,
3. impose a $100+ user fee for the certificate, and
4. changes to FATCA and its transposed domestic legislation to prohibit participating FFIs from discriminating against resident U.S. citizens when opening or maintaining accounts.

By 2030, the first requirement could see the irony of a U.S. citizen with a CNR presenting an E.U. eTRC to evidence their E.U. tax residency under the FASTER Directive to claim tax treaty benefits in another E.U Member State.

The second requirement would create a new tax operational procedure for any account holder presenting a CNR. An FFI would naturally have to check the U.S. CNR database to make sure that an electing individual has, in fact, been issued with a valid CNR. It would also have to have a procedure to deal with a situation in which the account holder terminates their election and effectively returns to a specified U.S. Person status.

The third requirement could result in financial institutions passing this cost along to clients which could perhaps be another bone of contention in a banking relationship.

The fourth requirement is important because, you could argue that current practice among non-U.S. financial institutions is already discriminatory but clearly based on risk. If the LaHood Bill is passed in its current or similar form, it is also arguable that this change alone would require amendments to over 100 intergovernmental agreements (IGAs) and the FFI Agreement for non-IGA jurisdictions. This in turn would require wholesale changes to domestic law because FATCA is implemented via a transposition of the IGAs into domestic law by each contracting State.

These are not small technical tweaks. The principle would effectively create a new class of account holder that many institutions do not currently have in their FATCA operating models i.e., non-reportable U.S. Person. In practical terms, it would move at least part of the U.S. system away from citizenship-only logic and toward residence-based logic.

While this would present a more workable solution for Americans living outside the U.S., this will be a very long road to successful implementation. I can certainly see a route in which the Bill passes in 2027, but IGA re-negotiation and domestic law changes would be unlikely to lead to a successful implementation before 2030. The irony of this would not go unnoticed in the upcoming environment of the E.U. FASTER Directive in which an E.U. resident will have to provide an electronic tax residency certificate (eTRC) in order to claim tax treaty benefits.

Would this bring the U.S. closer to CRS?

Possibly.

The OECD's Common Reporting Standard is built around tax residence, not citizenship. The OECD describes CRS as a system under which jurisdictions obtain information from their financial institutions and automatically exchange it with other partner jurisdictions annually. In the OECD framework, the automatic exchange of information (AEoI) is through Competent Authority Agreements (CAAs), some of which are multilateral in nature (MCAAs). CRS is the component that controls, through domestic legislation, which institutions must gather data, conduct due diligence and report to their Competent Authority so that the AEoI component can take place between the signatory governments.

In practical CRS onboarding, the central question is where the customer is tax resident, not what passport they hold. That is why the LaHood Bill feels more CRS-like than current FATCA for the class of person who are qualifying non-resident Americans. Residence starts to matter more than citizenship in determining reportability.

But the U.S. would still not become a CRS jurisdiction in any normal sense. FATCA would remain a U.S.-specific system backed by withholding leverage. The LaHood Bill would carve out a residence-based exception within FATCA, not replace FATCA with a multilateral CRS-style exchange framework. The Bill is also distinctly American in its mechanics i.e., election, compliance certification, deemed-sale tax under proposed section 899A, certificate issuance, termination rules and a public database. So, the direction of travel would be more residence-based, but the machinery would remain unmistakably FATCA-era U.S. tax administration.

Falling outside FATCA and CRS

Possibly.

This is the point that could be more controversial. If a non-resident U.S. citizen qualifies under a LaHood-style regime and holds a certificate of non-residency, the draft Bill says they would no longer be treated as a specified U.S. person for FATCA purposes. That, on its own, will cause financial firms operational issues. Segregating their clients into more tax, reporting, and non-reporting buckets.

At the same time, CRS is not a citizenship-based system. It is concerned with tax residence and cross-border reporting. Mainstream CRS practice states that institutions identify customers who appear to be tax resident outside the jurisdiction where they hold their accounts and report that information to the local authority, while customers resident in the same jurisdiction as the account are typically not reportable for CRS exchange, although tax residency must still be established.

So, geography matters.

If an overseas American becomes nonreportable as a specified U.S. person under FATCA and holds their account only in the country where they are actually tax resident, there would be no automatic cross-border report under either regime. Not FATCA to the IRS, because the bill would take them out of that bucket. Not CRS outward to another jurisdiction, because the account is domestic to the person's residence jurisdiction and CRS is designed for non-resident reporting and exchange. To that extent, LaHood allows for the natural but narrow fact pattern in which neither FATCA nor CRS would be activated. That would not mean invisibility in every sense because the residence country institution may still obtain information under its own domestic rules, but it could mean no automatic international exchange under either FATCA or CRS.

But it is only narrow gap. If the same person holds an account in a third-country CRS partner jurisdiction, then CRS should still bite. A Swiss institution, for example, would generally still have to identify and report a client who is tax resident in France, because CRS would be keyed to French tax residence, not U.S. citizenship. In that case, FATCA would fall away while CRS would continue to produce reporting to the client's country of residence. So, LaHood would not create a universal route out of automatic exchange. It would create a potential gap only where the account sits in the individual's actual residence jurisdiction.

That matters because it changes the policy conversation. The Bill is not just about easing banking discrimination against Americans abroad. It may also create a class of people who are treated, for reporting purposes, more like ordinary locally resident clients and less like internationally mobile U.S. taxpayers. Some will see that as a sensible correction. Others will see it as a blind spot. Either way, it is a genuine design consequence of the proposal.

U.S. source income still causes a problem

There is a particularly complex set of rules that apply if you, as a financial institution, have a U.S. client that also receives U.S.-sourced FDAP income. Unlike the non-resident alien (NRA) rules of U.S. Code Chapter 3, the tax rate for such U.S. account holders would usually be 0%. However, there are situations in which a 24% backup withholding, Form 1099 and/or Form 945 reporting may apply (and the individual would need to submit an FBAR[12]). The avoidance of the risk associated with this operational complexity is one of the main drivers for financial institutions refusing to allow U.S. account holders.

In the classic sense, a qualified intermediary (QI) acting under U.S. Code Chapter 3 may have the situation of a direct client that is a U.S. Citizen but is excluded from the definition of a specified U.S. person in FATCA and has provided a certificate of non-residency to cure any U.S. indicia at account opening. Equally, if the Bill were enacted and the IRS updated forms and guidance, these individuals will likely provide a Form W-8 instead of a Form W-9 to their financial institution and on which they claim the benefit of a double tax treaty between their country of residence and the U.S. This will mark an additional documentary flow outside of normal Know Your Customer (KYC) rules that will require verification of the Certificate of Non-Residency (CNR) against the public database before the account can be opened and tax rates established for U.S. FDAP income.

For an ordinary U.S. client, U.S.-source investing can trigger a separate layer of Form 1099 reporting, backup withholding and Form 945 complexity. But for a LaHood electing individual who can validly certify foreign residency status on Form W-8 and claim treaty benefits, the compliance burden may shift away from the U.S.-person reporting regime (Chapter 4) and into the foreign-person withholding and treaty regime instead (Chapter 3). The complexity does not disappear; it changes character.

That is why many non-U.S. financial institutions may still draw the commercial line in the same place even if LaHood is enacted. They may become more comfortable banking some U.S. clients or retaining them once FATCA treatment becomes more residence-based, but they may still decide not to let those same clients trade U.S. securities or access products that bring U.S.-source payment, broker-reporting, backup withholding or Form 945 complexity into play. FATCA may become easier to live with. Product-level U.S. tax operations may still not be worth the effort.

The operational distinction is not merely "U.S. client versus non-U.S. client." It is increasingly "U.S. client relationship versus U.S.-source product exposure." And that distinction may survive even if LaHood changes the FATCA side of the equation.

One, perhaps unintended consequence, might be that the IRS may want (or be instructed to) have some mechanism to track the implementation of LaHood, especially if there are concerns over revenue neutrality and cost. To do that it would need to add new Form 1042-S coding, revised reconciliations and clarifications in the QI framework to capture amounts paid to the class of U.S. citizens with a certificate on non-residency in the same way that it has added LOB codes already. This would certainly give the IRS a richer dataset on the effects of the LaHood Bill and the change in tax revenue that would result. The Form 1042 tax return might also change to include reconciliations for this new class of account holder. All this would likely drive additional requirements to the QI Agreement (Rev. Proc. 2022-43[13]) to clarify how this class of account holder should be treated.

Operational challenges for FFIs, NQIs and QIs

The first challenge will be documentation and due diligence. Financial institutions will face more customer challenges to status, more requests for reclassification, and more pressure to explain why a client remains reportable while documentary status is still incomplete. Financial institutions will need to amend systems to track, not just W-8s and W-9s, but also CLNs and CNRs and their effective dates and connect these through rules to any changes in the account holder's address. As noted before, there may also be eTRCs and validation to be aware of if the account holder is an E.U resident.

The second challenge will be convergence with CRS. If LaHood or something close to it passes, some overseas Americans, including those colloquially termed "Accidental Americans" would become locally resident, nonreportable clients for FATCA while remaining ordinary domestic account holders for their residence-country institutions. That would bring the U.S. closer to CRS in philosophy, but not in structure. It would also leave

[12] Foreign Bank Account Report
[13] https://www.irs.gov/pub/irs-drop/rp-22-43.pdf

institutions needing new controls for certificate of non-residency (CNR) capture, validation, monitoring and termination handling. These would all be predicated on updated IRS guidance, forms, reporting codes and framework technical changes.

The third challenge is the one compliance teams dislike most, mismatch. FATCA status changes first, client expectations change faster, and product/governance frameworks do not catch up. That is the challenge in which institutions over-rely on old indicia, mishandle new certificates, or fail to separate account-level reportability from product-level withholding and reporting.

Conclusions

So, we have three potential options to make life easier for Americans resident outside the U.S.

1. **Renounce:** Let them renounce their citizenship, get a CLN, provide a W-8 and report their US income on a 1042-S (pooled for QIs and not pooled for NQIs); If the account is domestic, no FATCA or CRS reporting.
2. **Status Quo:** Nothing changes and wait to see if FATCA goes away in Europe because of GDPR, FATCA reporting, potentially backup withholding and 945 reporting, 1099 reporting.
3. **LaHood:** Wait for the LaHood Bill to go through Congress, Senate, the President's desk and into law, get a CNR, provide a W-8 and report them on 1042-S. If the account is domestic, no FATCA or CRS reporting.

Options (1) and (3) look very similar in outcome, although option (1) is available now to any American outside the U.S. and may, given the geopolitical environment, be an increasingly attractive option. Option (3) looks like it would give the best of both worlds and align an American's tax status to where they actually live and work.

So, the real question is not whether LaHood would bring the United States closer to CRS. In one sense, it plainly would. The better question is whether it would create a more coherent reporting world for non-U.S. financial institutions and whether it makes more sense for the Americans concerned to retain their US citizenship but split out their taxation to residency based.

That is why the LaHood Bill is more than a tax reform proposal. For non-U.S. financial institutions, it is a documentation challenge, an operating model challenge and a reporting architecture question. For Americans living outside the U.S., it's more of a test: which is more important to you - your U.S. citizenship or your residence?

Even if LaHood changes FATCA classifications, many institutions may still restrict access to U.S.-source products because the product-level compliance burden would likely remain a high risk.

More information

If you'd like more insights into this area, please get in touch.

Email: ross.mcgill@tconsult-ltd.com

LinkedIn: linkedin.com/in/rossmcgill

Appendix I: Estimate of the number of U.S. Citizens living abroad[14]

Jurisdiction	Estimated US Citizens
Canada	612,780
U.K.	327,528
Mexico	313,602
Japan	169,985
France	166,712
Israel	142,204
Germany	125,355
Australia	100,699
Ireland	90,201
Colombia	88,670

[14] Source: Federal Voting Assistance Program, Overseas Citizen Population Analysis (OCPA): Technical Report 2024 8–9, fig 1, available at FVAP.