



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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Affected IRM: 8.11.6

MEMORANDUM FOR ALL IRS INDEPENDENT OFFICE OF APPEALS EMPLOYEES

FROM: Margaret K. Harris /s/ *Margaret K. Harris*
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SUBJECT: Appeals Case Management System (ACMS) and FinCEN Query
procedure updates for IRM 8.11.6, *FBAR Penalties*

This guidance provides general information about ACMS detailed in [IRM 8.11.6, *FBAR Penalties*](#). Please distribute this information to all impacted employees within your organization.

Purpose: This guidance provides changes in terminology and new processing functionality for the IRS Independent Office of Appeals (Appeals) new case management system, ACMS and procedures to submit a FinCEN Query request. This memorandum does not supersede other interim guidance issued for IRM 8.11.6.

Background/Source(s) of Authority: Appeals Centralized Database System (ACDS), Appeals' aging legacy system, is being replaced by ACMS, a more modernized system. ACMS provides Appeals with a new level of automation and analytics, allowing more effective collaboration within Appeals and, in the future, other IRS business units.

Procedural Change: Release 1 of ACMS focused on Collection Appeals work. Release 2 of ACMS will focus on Examination Appeals and Specialized Examination Programs and Referrals (SEPR) case work. Future releases will incorporate concepts introduced in this guidance and will be reinforced via training and applicable user guides. Procedural changes pertaining to this guidance are included in the attachment.

Additional Information: Additional information on ACMS can be found on the Appeals Exchange (ApEx) ACMS Home Page. This site contains links for helpful information with ACMS, training documents, etc.

Effect on Other Documents: Portions of this guidance may be extended, modified or made permanent, and incorporated into the affected IRM section(s) within two years from the date of this memorandum.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on How to Contact an Analyst.

Distribution: FOIA Library on IRS.gov

Attachment

cc: www.irs.gov

Attachment AP-08-1026-0088, Updates Including for Appeals Case Management System (ACMS) Procedures on FBAR Penalty Cases

Throughout 8.11.6

- References to the Appeals Centralized Database System (ACDS) will be changed to Appeals Case Management System (ACMS).
- Form 5402, *Appeals Transmittal and Case Memo*, has been replaced. The 'Printable View' feature now captures the information found on Form 5402 and is referred to as the E-5402.
- References to a Work Unit Number (WUNO) will be changed to Appeals Number.

8.11.6.1.3 (MM-DD-YYYY)

Responsibilities

Updated paragraph (2).

(2) Appeals Team Managers (ATMs) approve FBAR settlements, documented in ACMS and on the E-5402.

8.11.6.1.4 (MM-DD-YYYY)

Terms and Acronyms

Updated paragraph (2).

Add:

ACMS	Appeals Case Management System
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Remove:

CS	Case Summary
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8.11.6.2 (MM-DD-YYYY)

FBAR Overview

Updated paragraph (4) Note.

(4) Filings can be researched on the FinCEN Query System (FCQ). Penalty cases, assessments, and payments are recorded on a separate FBAR database maintained by the Small Business/Self-Employed (SB/SE) Specialty Examination, Bank Secrecy Act Examination, Currency Transaction Report (CTR) Operations unit.

Note: To obtain a copy of the FBAR(s) filed by the filer, prepare Form 10509, *FinCEN Query (FCQ) Request*, and submit it to your ATM for approval. The Form 10509 is used to request general FinCEN data, such as the CTR, Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, and the FBAR. Once approved, the ATM will send it to the Appeals FBAR Coordinator who will submit it for a response.

8.11.6.3 (MM-DD-YYYY)

FBAR Administrative Case Files

Updated paragraph (5).

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(5) The administrative file will contain the following documents:

- The Examiner's Form 886-A, *Explanation of Items*, or the Examiner's explanation if not included in Form 886-A, which provides a summary explaining the FBAR violation(s), including:
 - A discussion of the FBAR violations.
 - The number of penalty assertions.
 - The penalty calculation and dollar amounts.
 - The FBAR case disposition.

Note: If it is not clear that the summary memorandum was shared with the filer, follow the appropriate ex parte procedures in IRM 8.1.10, *Ex Parte Communications*.

- Letter 3709, *FBAR 30-Day Letter*.

Note: If information is needed to determine if the penalty has been assessed, contact the assigned Appeals FBAR Coordinator.

- Form 13449, *Agreement to Assessment and Collection of Penalties under 31 USC 5321(a)(5) and 5321(a)(6)*.
- Filer's protest. The protested years should be the same as the years on the Appeals record.

Caution: The years listed in ACMS must match the years on the Letter 3709, Form 13449, and the years protested by the filer. If they do not, seek guidance from the Appeals FBAR Coordinator.

- Form 13536, *Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD)*. Used to start an FBAR examination that did not originate from a U.S. Code Title 26, *Internal Revenue Code*, examination, and for the exam group to update the FBAR database. Also used to provide updates to CTR/BSA including to close the case from Exam.
- Form 13535, *Report of Foreign Bank and Financial Accounts Related Statute Memorandum*, signed by the designated official documenting a good faith determination, based on the facts and circumstances, that the potential FBAR violation was in furtherance of a potential Title 26 violation. Required if the FBAR examination originates from a Title 26 examination or Title 26 data is accessed.

Caution: When a Form 13535 is not found in the file the ATE should immediately seek guidance from an FBAR Coordinator. No further work on the case should be conducted until the guidance is provided.

- The file may also contain:
 - Form 13448, *Penalty Assessment Certification Summary (Title 31 "FBAR")*. If a post-assessed penalty case, this form includes the date that

the IRS designated official stamps this assessment certification form, certifying the penalty assessment occurred on that date.

- Letter 3708, *Notice and Demand for Payment of FBAR Penalty*, is issued by CTR/BSA to the filer after the penalty has been assessed. Therefore, it will only be available for post-assessed penalty cases and is issued only if the penalty has not been paid in full at the time of assessment. If Letter 3708 should be in the case file but is not, it must be requested by the ATM. To request a copy of Letter 3708 issued by CTR/BSA:
 - E-mail # [REDACTED] # ,
 - Use e-mail subject line "Demand Letter Request," and
 - In the encrypted e-mail message include the filer's full name, TIN and year(s) for which the letter is requested.
- Form 2848, *Power of Attorney and Declaration of Representative*, or a general power of attorney form which is valid under state law, if applicable. The authorization must specify that it applies to FBAR, Title 31 FBAR Penalties, or otherwise comply with the requirements found in IRM 4.26.17.3.2, *Power of Attorney in FBAR Examinations*.
- IRS Counsel memorandum approving the assertion of willful FBAR penalties (required only for willful penalties). Memorandum may contain privileged communications and should not be disclosed or shared with the filer or representative without prior discussion with the ATM and authorization from Counsel.
- FBAR consent to extend the statute of limitations, if applicable.

Caution: A consent to extend the statute of limitations for the Title 26

examination does not extend the statute of limitations on the FBAR examination.

8.11.6.4 (MM-DD-YYYY)

FBAR Statute of Limitations

Updated paragraphs (1) and (2).

(1) The authority for the assessment statute expiration date (ASED) and civil action statute expiration date (CASED) for FBAR civil penalties is found in 31 USC 5321(b)(1) and 5321(b)(2), respectively.

(2) For cases with the ACMS subcategory "FBAR pre-Assessed," the statute of limitations is the ASED. For cases with the ACMS subcategory "FBAR post-assessed," the statute of limitations is the applicable CASED.

8.11.6.4.2 (MM-DD-YYYY)

Consent to Extend the Time to Assess Civil Penalties for FBAR Violations

Updated paragraph (1). The note in paragraph (1) is unchanged.

(1) Only use the consent form created specifically to extend the assessment statute of limitations for FBAR cases, Form 15616, *Consent to Extend the Time to Assess Civil FBAR Penalties*.

8.11.6.4.3 (MM-DD-YYYY)

Post-Assessment FBAR Civil Action Statute of Limitations

Updated paragraph (1).

(1) For post-assessment FBAR cases only, the CASED will be entered in ACMS to control the statute of limitations.

8.11.6.5 (MM-DD-YYYY)

Establishing FBAR Penalty Cases on ACMS

Updated title and paragraph (1).

(1) For APS procedures for establishing FBAR cases on ACMS, refer to IRM 8.20.5.27, *Foreign Bank Account Report (FBAR) Penalty Case Carding*.

8.11.6.6 (MM-DD-YYYY)

Appeals Technical Employee (ATE) Procedures for FBAR Penalty Cases

Updated paragraphs (1) through (4) and (8). Deleted paragraph 5.

(1) All FBAR penalty cases are controlled in ACMS. FBAR information is not maintained in IDRS.

(2) Initial review of the case file is required within 45 days from the date of receipt.

(3) Upon review of the case, the ATE will verify the Case Summary (CS) information and make updates, if needed.

Note: ATEs can update fields within ACMS. If a field cannot be updated, submit an Account Processing support request to APS to update the appeal information.

(4) Verify the filer information:

- a. Filer Name is the U.S. person subject to the FBAR penalty and could include an individual citizen or resident of the United States or a U.S. entity (includes corporations, partnerships, LLCs, estates, trusts, and any other legal entity formed in the U.S.).
- b. Taxpayer Identification Number (TIN)
- c. Category = Reports of Foreign Bank and Financial Accounts
- d. Subcategory = FBAR pre-assessed or FBAR post-assessed
 - a. The FBAR pre-assessed subcategory includes both willful and non-willful FBAR penalty cases where the penalty has not been assessed.
 - b. The FBAR post-assessed subcategory covers willful and non-willful penalty cases verified by Form 13448 after assessment.
- e. Feature Code = AI (Appeals Technical Assistance Issue)
- f. POA/Representative information

Note 1: Form 2848, *Power of Attorney and Declaration of Representative*, may be used for Title 31 BSA examinations, including FBAR examinations. Line 3 on Form 2848 must include the description of the matter in the first column, tax form

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number in the second column, and the years and period covered in the third column. The words, "FBAR Examination" or "Matters Related to FBAR" must be added in the first column, "FinCEN Form 114" must be entered in the second column, and the filing periods at issue covered by the representative's authority must be entered in the third column.

Note 2: See IRM 4.26.17.3.2, *Power of Attorney in FBAR Examinations*, for more information on a valid power of attorney.

- g. Statute date must be validated within 45 days of receipt. See IRM 8.21.3.2.1(3), *New Receipts and Transfers*. See table below for the appropriate entries.

If FBAR Penalty is:	Statute Date is:
Pre-assessed	6 years from the date of the violation (either the due date of the FBAR or date on which records requested)
Post-assessed	2 years from the date of assessment

Note: The FBAR2 statute code used in ACDS is not used in ACMS.

- h. Calendar Years: Verify the protested years match ACMS. If the years don't match, contact the Appeals FBAR Coordinator.
- Note:** The Appeals FBAR Coordinator will notify Compliance of the discrepancy. If necessary, Compliance will either send or prepare Form 13536, *Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD)*, to CTR/BSA to have the calendar year corrected by either closing or establishing the year in CTR/BSA. Once the calendar year has either been opened or closed by CTR/BSA, ACMS must be updated accordingly.
- i. Penalty Amount: Verify the penalty amount for each period is accurate.
- For pre-assessed penalty cases, update per the amounts on Form 13449, *Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)*.
 - For post-assessed penalty cases, update per the amounts on Form 13448, *Penalty Assessment Certification Summary (Title 31 "FBAR")*. Form 13448 is verification from CTR/BSA that the penalty has been assessed.

(8) All FBAR penalty cases are Appeals Coordinated Issues (ACI), and some cases will require review and concurrence. During the preliminary review of the case, the ATE must submit a Technical support request, through their ATM, as required by IRM

8.2.1.6, *Preliminary Review of a Case – ATE*. The ATE must also verify or input the feature code “AI” since all FBAR cases include an “Appeals Technical Assistance Issue.” For FBAR cases subject to review and concurrence, concurrence should be received from the assigned Appeals FBAR Coordinator for the proposed settlement determination prior to making the offer to the filer or representative.

8.11.6.9 (MM-DD-YYYY)

FBAR Closing Procedures

Updated paragraphs (1) and (3). Remove paragraph (4) and Note.

(1) Refer to IRM 8.20.7.36, *Foreign Bank and Financial Account (FBAR) Penalty Case Closing Procedure*, for APS procedures for closing all types of FBAR cases. On ACMS these cases are automatically closed without APS action.

(3) Determine the valid ACMS closing code from the chart below. Select the applicable resolution reason from the pick list in ACMS.

Determination Made	Closing Code
Agreed or No Change - valid only for pre-assessment case	03
Partially sustained - valid only for pre-assessment case	13
Compliance fully sustained - valid only for post-assessment case	14
Compliance not sustained/fully abated - valid only for post-assessment case	15
Compliance partly sustained/partly abated - valid only for post-assessment case	16
Premature Referral - valid for either pre-assessment or post-assessment case	20

8.11.6.9.1 (MM-DD-YYYY)

FBAR Closing - Premature Referral

Updated paragraphs (3), (4) and (6). Remove paragraph (5) and renumber.

(3) See the table below for information on handling the case as a premature referral:

Type of Case	Actions Required if Referral is Premature
Combined FBAR case with related case	• Close combined cases • Return the case to the originating Compliance office, generally the Technical Services (TS) staff

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Type of Case	Actions Required if Referral is Premature
	• ATE enters the case closing information and prepares the E-5402, indicating a premature referral. Form 13536, <i>Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD)</i>, should be prepared and sent to CTR/BSA to notify them that the jurisdiction is released
Income tax case only	• Return the case to the originating Compliance office • ATE enters the case closing information and prepares the E-5402 indicating a premature referral
FBAR case only	• Return the case to the originating group • ATE enters the case closing information and prepares the E-5402 indicating a premature referral. Form 13536 should be prepared and sent to CTR/BSA to notify them that the jurisdiction is released

(4) When closing a premature referral in ACMS use Closing Code 20 - Premature Referral, with the applicable resolution reason code. Document in the remarks that jurisdiction is being released.

(5) Send an electronic copy the E-5402, Form 13536, and the Appeals Case Memorandum (ACM) to CTR/BSA at the following e-mail:

[REDACTED]

Note: Form 13536, *Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD)*, should be completed by the ATE to indicate the case is being returned to Compliance as a premature referral. The FMD keeps CTR/BSA apprised of the location of the case file.

8.11.6.9.2 (MM-DD-YYYY)

FBAR Closing - Pre-Assessment Case

Updated paragraphs (1), (3) and (10).

(1) The ATE will prepare the closing letter and E-5402.

Note: If the ATM mails the closing letter prior to closing, the ATM is required to put a copy of the signed and dated closing letter in the case file and upload a copy to ACMS.

(3) If the case has both pre- and post-assessed penalties, prioritize the case as a post-assessed case. Use the post-assessed closing codes and applicable resolution reason code.

(10) Closing codes are found in the table in IRM 8.11.6.9.

8.11.6.9.3 (MM-DD-YYYY)

FBAR Closing - Post-Assessment Case

Updated paragraphs (2), (5), and (9).

(2) The ATE will prepare the closing letter and E-5402.

(5) Closing codes are found in the table in IRM 8.11.6.9.

- Revised Penalty amounts:

Type of closing (closing code)	Dollar entry for each period
Compliance Fully Sustained (14)	Enter total amount of penalty agreed to
Compliance Not Sustained/fully abated (15)	Enter zero (0)
Compliance Partly Sustained/partly abated (16)	Enter revised penalty amount

(9) When the case is approved for closure by the ATM, the applicable action records will be automatically input and the case will be systemically closed from ACMS, without APS involvement. Closed FBAR case files are sent from Appeals to CTR/BSA directly without being routed through APS. Alternatively, IRS Counsel may request the files be shipped to a different location for review. Mailing the files is the responsibility of the ATE and should be done without delay when the case is approved for closure by the ATM.

When sending the case file include Form 3210, *Document Transmittal*. Follow IRM 1.22.5.10, *Acceptable Mail/Shipping Services*, to determine the appropriate shipping method.

If shipping via USPS:

Internal Revenue Service
Attention: CTR/BSA FBAR Coordinator
P.O. Box 33115
Detroit, MI 48232-0115

If shipping via a small package carrier, such as UPS:

Internal Revenue Service
Attention: CTR/BSA FBAR Coordinator
985 Michigan Ave, 8th Floor
Detroit, MI 48226

8.11.6.10 (MM-DD-YYYY)
FBAR Administrative File
Updated paragraph (1).

(1) The following documents are among those that should be included in the administrative file and uploaded to ACMS by the ATE/ATM, using the correct document “type” and “sub-type” categories. All documents that are needed to review the case for closure should be categorized using the “closing document” type. Most of the remaining documents would be categorized using the “Appeals administrative file” type.

- E-5402. The 'Printable View' feature captures the information previously found on Form 5402.
- Appeals Case Memorandum (ACM)
- Schedule of Adjustments (SOA)
- Letter 5834, *Foreign Bank and Financial Accounts Report Agreement Form Transmittal*
- Form 13449, *Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)*, prepared by Appeals
- Form 13448, *Penalty Assessment Certification Summary (Title 31 "FBAR")*, or other documentation received from CTR/BSA to confirm the penalty has been assessed
- Copy of any checks received in Appeals, if applicable
- Appropriate closing letter dated and signed by the ATM
- FBAR penalty computation spreadsheet/worksheet
- Form 13536, *FBAR Monitoring Document (FMD)*, if applicable
- Form 15616, *Consent to Extend the Time to Assess Civil FBAR Penalties*, if used by Appeals to extend the statute.