



SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

November 30, 2020

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MEMORANDUM FOR ALL SB/SE FIELD AND SPECIALTY EXAMINATION, LB&I
EXAMINATION, TE/GE EXAMINATION AND APPEALS EMPLOYEES

FROM: Scott E. Irick /s/ Scott Irick
Director, Examination SB/SE

SUBJECT: Deviation for FBAR Compliance Activity in COVID-19
Environment

This memorandum issues updated guidance for Report of Foreign Bank and Financial Accounts (FBAR) compliance activity in the ongoing COVID-19 environment. Please ensure this information is distributed to all affected employees within your organization.

Purpose: It remains vitally important for employees to be sensitive to the individual circumstances of filers¹ and provide appropriate administrative actions commensurate with the situation. This memorandum provides updated guidance to address unique operational circumstances of the COVID-19 pandemic.

Background/Source(s) of Authority: The health, safety and well-being of IRS employees, filers, and representatives continues to be our primary concern. As the country and IRS continue with the phased approach to reopening, we continue to monitor the COVID-19 situation and provide updated guidance.

Procedural Change: This memorandum provides specific guidance regarding:

- Resuming FBAR Compliance Activity ([Attachment 1](#))
- Initiating New FBAR Examinations ([Attachment 2](#))
- Limiting In-Person Contacts ([Attachment 3](#))
- FBAR Mailing Priorities for Frontline Exam Groups ([Attachment 4](#))
- Shipping Electronically Processed FBAR Cases ([Attachment 5](#))
- Electronically Processing Certain FBAR Cases ([Attachment 6](#))

In addition to the specific guidance in this memorandum, employees must continue to follow COVID-19 [Servicewide guidance](#), which includes [mandatory telework](#) for work that can be performed remotely, and requires the use of [face coverings](#) while in IRS facilities and workspaces and for any field activity.

¹ In this memorandum, the definition of "filer" includes a US person required to file the FBAR that does not file the FBAR.

Effect on Other Documents: Guidance in this memorandum, including temporary IRM deviations, is designed to address unique operational circumstances of the COVID-19 pandemic and will not be incorporated into the IRM. This memorandum supersedes [SBSE-04-0620-0068](#), FBAR Compliance Activity in COVID-19 Environment, and [SBSE-04-0720-0067](#), Resumption and Initiation of FBAR Compliance Activity Effective July 16, 2020.

Effective Date: Guidance is effective November 30, 2020 and will be archived when no longer needed.

Note: Guidance applies to Appeals only as specifically indicated.

Note: Guidance regarding ERCS procedures does not apply to TE/GE.

Contact: BSA Policy Program Manager, Theresa Newton.

Attachments (6)

Additional Attachment: *Consent to Extend the Time to Assess Civil Penalties Provided by 31 U.S.C. § 5321 for FBAR Violations*

Distribution:

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Statute Review

Statutes must be reviewed on all cases where FBAR compliance activity was postponed and is now being resumed.

Note: Postponement for time-sensitive IRS actions in Notice 2020-23 does not apply to FBAR. FBAR penalties do not arise under the internal revenue laws and therefore are not a tax that can be postponed pursuant to Treas. Reg. 301.7508A-1(c)(2). Whether an approved [Form 13535](#), Related Statute Memorandum (RSM), has been secured is irrelevant to this issue.

Contact the filer by phone using [soft contact](#) procedures. The purpose of the contact is to advise the filer [The People First Initiative](#) has expired, compliance activity is resuming, and, if less than 180 days remain on the assessment statute expiration date (ASED), that the statute needs to be protected.

If ASED expires in less than 180 days

Solicit an FBAR statute extension (Consent to Extend the Time to Assess Civil Penalties Provided by 31 U.S.C. § 5321 for FBAR Violations, template attached) following [IRM 4.26.17.3.1.3](#), Extending the FBAR Statute of Limitations. Generally, at least 10 calendar days from the date the consent is issued should be allowed for the filer to respond.

If...	Then...
The filer extends the statute	Continue with appropriate compliance activity
The filer does not extend the statute	Follow guidance in this attachment to issue appropriate letters and/or reports pursuant to IRM 4.26.17.4 , Closing the FBAR Case, and to prepare the case for closure (see Attachment 4 , Attachment 5 , Attachment 6).

Document Receipt/Transmission and Signatures

Continue to follow [NHQ-01-0620-0002](#), Approval to Accept Images of Signatures and Digital Signatures, Approval to Receive Documents and Transmit Encrypted Documents by Email.

FBAR-related documents approved for electronic signature by the filer, authorized power-of-attorney (POA) and IRS personnel are shown in the following table:

<u>Document</u>	<u>Title</u>
FBAR consent (template attached)	Consent to Extend the Time to Assess Civil Penalties Provided by 31 U.S.C. § 5321 for FBAR Violations (also follow SBSE-25-1218-0046)
Form 13449	Agreement to Assessment and Collection of Penalties Under 31 USC 5321(a)(5) and 5321(a)(6)

Attachment 1, SBSE-04-1120-0074: Resuming FBAR Compliance Activity

FBAR-related documents approved for electronic signature of IRS personnel are shown in the following table:

<u>Document</u>	<u>Title</u>
Letter 937	Transmittal for Power of Attorney
Letter 3800	Warning for Report of Foreign Bank and Financial Accounts (FBAR) Apparent Violations
Letter 3708	Notice and Demand for Payment of FBAR Penalty
Letter 3708-A	Notice for Demand and Payment of FBAR Penalty after Appeal Denial
Letter 3709	FBAR 30 Day Letter
Letter 4265	FBAR Appointment Letter
Form 3753	Manual Refund Posting Voucher
Form 4477	Civil Suit Recommendation
Form 4481	Civil Suit – Advisory Transmittal
Form 13448	Penalty Assessments Certification Summary (Title 31 “FBAR”)
Form 13535	Report of Foreign Bank and Financial Accounts (FBAR) Related Statute Memorandum (RSM)

Status 14 & Deferring Compliance Activity

Based on a filer’s circumstances, compliance activity may be deferred if the statute is protected and frontline manager approval is secured. All case actions and delays must be documented on [Form 9984](#), Examining Officer’s Activity Record.

If a filer is unable to continue activity remotely, or requests relief, the following activity is still allowed:

- Taking action to require compliance with a previously issued third-party summons when the quash date or appearance date occurs during the period the filer is unable to continue activity remotely or requests relief.
- Completing work requiring no interaction with the filer, including but not limited to:
 - Reviewing records previously obtained
 - Conducting law research
 - Staying in communication with management on agreement, statute extension documents and actions needed to close the FBAR case.
 - Reviewing a protest to determine validity in accordance with [IRM 4.26.17.4.3.3](#), Closing the FBAR Case Unagreed. However, do NOT inquire pursuant to [IRM 4.26.17.4.3.3\(5\)](#) to address errors or omissions in the protest until the filer is able to resume.
 - Emailing [Form 13535](#) (RSM), [Form 13536](#), FBAR Monitoring Document (FMD), and/or a secured consent to Currency Transaction Report (CTR) Operations in accordance with [IRM 4.26.17](#). CTR Operations will process these documents to update the FBAR Database.

Attachment 1, SBSE-04-1120-0074: Resuming FBAR Compliance Activity

- Preparing reports, letters, document requests, or other documents that will be issued after the filer is able to resume.
- CTR Operations: Electronically referring a case to Bureau of the Fiscal Service (BFS) or IRS Counsel pursuant to [IRM 4.26.17.4.4](#), Closing the FBAR Case - Payment and Collection, if [Letter 3708](#) or [Letter 3708-A](#) has been issued.
- Soliciting an FBAR statute extension (Consent to Extend the Time to Assess Civil Penalties Provided by 31 U.S.C. § 5321 for FBAR Violations, template attached) following [IRM 4.26.17.3.1.3](#), Extending the FBAR Statute of Limitations.
- Contacting the filer and/or authorized power-of-attorney (POA) to request they electronically provide a signed FBAR statute extension and/or [Form 13449](#).

Unless managerial approval to defer compliance activity for an additional period is granted and no further casework can be performed (see above), all cases previously updated to Examination Returns Control System (ERCS) Status Code 14² must be returned to their prior status code within a reasonable time period as determined in collaboration with management. The case should only be in Status 14 when no case work can take place due to the COVID-19 pandemic impact. While in Status 14, no additional time should be applied to the case.

Status 19

All cases previously updated to ERCS Status Code 19 must remain in Status 19 until shipped. See [Attachment 4](#) for shipping resumption by frontline examination groups. If additional case actions are required, return the case to its prior status code within a reasonable time period as determined in collaboration with management. While in Status 19, no additional time should be applied to the case.

In-Person Contacts

Limit in-person taxpayer contacts by following guidance in [Attachment 3](#).

Soft Contact: Soft contact procedures entail approaching the filer with sensitivity and an awareness of their personal circumstances. The impact on filers during the COVID-19 pandemic can be wide-ranging. While one filer may experience little impact, another may suffer greatly. Therefore, examiners should exercise care when communicating with any filer. Contact should begin with an assessment of the impact of the pandemic on the filer. Based on the filer's circumstances, compliance activity may be deferred for a reasonable period, if the statute is protected and frontline manager approval is secured.

² Status 14 designation is generally not required in LB&I cases; however, FBAR cases meeting these criteria are an exception.

Attachment 2, SBSE-04-1120-0074: Initiating New FBAR Examinations

Use [Letter 4265](#), FBAR Appointment Letter, or another letter (including the required COVID language in Letter 4265) approved by the frontline manager to initiate a new FBAR examination. When the filer responds to the letter, initial contact must adhere to [soft contact](#) procedures and include an assessment of the impact of COVID-19 on the filer.

The initial contact letter does not offer to postpone the examination. However, based on the filer's circumstances, postponement or other action may be appropriate; discuss with the frontline manager. If FBAR compliance activity is [deferred](#), the statute is protected and frontline manager approval is secured, update the ERCS status code to 14. While in Status 14, no additional time should be applied to the case. All case actions and delays must be documented on [Form 9984](#), Examining Officer's Activity Record.

When scheduling the initial appointment, limit in-person contacts by following guidance in [Attachment 3](#).

Attachment 3, SBSE-04-1120-0074: Limiting In-Person Contacts

In-person contacts must be limited to the extent possible. Alternative methods to conducting the fact-finding phase of the examination in person should be exhausted before considering an in-person contact. Alternative methods include:

- Conducting interviews by phone or video conference (if available)
- Receiving summoned testimony by phone. Note: The issued summons must include the place and time for appearance (e.g., IRS office). After issuance, with mutual agreement, arranging to accept testimony by phone in lieu of an in-person appearance is acceptable.
- Mailing records to an IRS office
- E-Faxing records
- Emailing records following guidance in [NHQ-01-0620-0002](#)

Note: If original records are secured, [Form 2725-A](#), Document Receipt/History and Custody of Documents, must be issued to the filer when documents are received (and acknowledged when the documents are returned).

Refer to guidance issued by your business unit for conducting face-to-face contact, approval of face-to-face contacts and working in an IRS post of duty (POD).

Mailing/shipping physical FBAR case files or documents from frontline examination groups is authorized in the following priority order:

1. **Payments** to CTR Operations can be sent **effective immediately**. Follow [IRM 4.26.17.4.4](#), Closing the FBAR Case - Payment and Collection. **Clearly identify on Form 3210 the date payment was received**. CTR Operations will use this date to post the payment, ensuring accurate interest and failure-to-pay penalty calculations.
2. **Protested cases** can proceed **effective immediately**, in the following priority order:

Priority Level	If Days Remaining on ASED ³ is...	AND Electronic Processing Procedures	Then...
1	Regardless of the ASED	were completed	<ul style="list-style-type: none"> • Follow shipping guidance in Attachment 5 for electronically processed cases. • Ship following Protested Case Shipment guidelines below.
2	90 or less	were NOT completed	<ul style="list-style-type: none"> • Follow electronic processing procedures in Attachment 6. • Once electronic processing is complete, including exam's receipt of Form 13448, follow shipping guidance in Attachment 5. • Ship following Protested Case Shipment guidelines below.
3	91-394 ⁴	were NOT completed	
ALL protested years with fewer than 395 days remaining on the ASED MUST be electronically processed prior to shipping .			
4	395 or more	were NOT completed	<ul style="list-style-type: none"> • Do NOT complete electronic processing procedures in Attachment 6 • Email completed Form 13536 (FMD) to CTR Operations per IRM 4.26.17.4.3.4.1, Closing the FBAR Case - Pre-Assessment Appeal. • Ship following Protested Case Shipment guidelines below.

Note: In this memorandum, “electronic processing” refers to procedures in [Attachment 6](#) or [SBSE-04-0620-0068](#), Attachment 3, Defining Exigent Circumstances and Protection of Statute of Limitations.

³ Assessment Statute Expiration Date (ASED).

⁴ For a hearing prior to assessment, at least 365 days must remain on the ASED when the case reaches Appeals. Allow an additional 30 days for the case to reach Appeals. [IRM 4.26.17.3.1.3\(4\)](#), Extending the FBAR Statute of Limitations

Protested Case Shipment: Protested FBAR cases that have been electronically processed OR have at least 395 days remaining on the ASED, as described in the above table, should be shipped directly to Appeals by the frontline examination group. As such, business units that ordinarily ship cases to Appeals via Technical Services per [IRM 4.26.17.4.5\(3\)](#), Closing ERCS Controls, will be bypassing Technical Services. Frontline exam groups should ship their cases to:

IRS Appeals APS
1222 Spruce Street, Room 6.304
St. Louis, MO 63103

Exception: If the frontline exam group is closing an FBAR case (MFT Y0) AND unagreed related non-FBAR case(s), then the FBAR case must be closed through Technical Services, as normal.

Appeals Team Managers may, upon receipt of a post-assessment case directly from a frontline examination group, email [REDACTED] to request a copy of [Letter 3708](#) issued by CTR Operations. Use email subject line "Demand Letter Request – [name control]", and in the body of the encrypted email include the case name, TIN and year(s) for which the letter is requested.

3. Non-Protested Cases (No Action, Warning Letter, Agreed, Unagreed-Not Protested) can proceed **effective immediately**, as follows:

- Follow electronic processing procedures in [Attachment 6](#) for ALL non-protested years, if not already completed pursuant to [SBSE-04-0620-0068](#), Attachment 3.
- Once electronic processing is complete, including exam's receipt of Form 13448, follow shipping guidelines in [Attachment 5](#) for electronically processed cases.
- Use a red folder for cases with ASEDs expiring on or before 12/31/20, if possible.
- Ship to CTR Operations in the following priority order:

Priority Level	If ASED is...	Then Shipping Can Begin...
1	Before the date of this memo ⁵	1 week after the date of this memo
2	On or after the date of this memo - 12/31/20	2 weeks after the date of this memo
3	1/1/21 – 6/30/21	3 weeks after the date of this memo
4	7/1/21 – 12/31/21	30 days after the date of this memo
5	1/1/22 or later	45 days after the date of this memo
Ship multi-year cases based on shortest ASED.		
ALL non-protested years MUST be electronically processed prior to shipping.		

Closing All FBAR Cases: ERCS Status Code Updates

⁵ Not indicative of a barred statute. Physical cases and ERCS controls remain in frontline examination groups awaiting shipping authorization, postponed pursuant to [SBSE-04-0620-0068](#) and [SBSE-04-0720-0067](#). Electronic procedures in [SBSE-04-0620-0068](#) allowed for timely assessment/electronic closure.

Attachment 4, SBSE-04-1120-0074: FBAR Mailing Priorities for Frontline Exam Groups

The required ERCS status code update is determined by where the case is shipped, as summarized in the table below:

If Shipping Directly to...	Then Update ERCS Status Code to...	Notes
CTR Operations	90	Follow IRM 4.26.17.4.5 , Closing ERCS Controls.
Appeals (see Protested Case Shipment above)	90 upon Appeals' acknowledgement of case receipt ⁶	<ul style="list-style-type: none"> • Do not update to 81. Appeals does not use ERCS for FBAR cases and will not update the status. • Do not update to 90 prior to Appeals' acknowledgement of case receipt. Doing so leaves the in-transit case without a systemic record.
Technical Services (see Protested Case Shipment above)	21	Follow IRM 4.26.17.4.5 , Closing ERCS Controls

⁶ ERCS programming allows frontline exam groups to update MFT Y0 to status code 90. Requiring Appeals' acknowledgement to update to 90 mimics Technical Services' procedure. [IRM 4.26.17.4.5](#), Closing ERCS Controls

Attachment 5, SBSE-04-1120-0074: Shipping Electronically Processed Cases

Any year electronically processed pursuant to [SBSE-04-0620-0068](#)⁷ or [Attachment 6](#) of this memo must follow these guidelines when the case is authorized to ship per [Attachment 4](#):

1. Prepare the physical case file in accordance with [IRM 4.26.17.2.4](#), FBAR Case File Assembly.
2. Print [Form 13536](#), FBAR Monitoring Document (FMD), previously emailed⁸ to [REDACTED], CTR Operations Supervisory Tax Law Specialist.
 - Update the “Date Closed from Group” field to “COVID-19: Shipped MM/DD/YYYY”. Pen-and-ink update is acceptable.
 - Retain in the physical case file.
3. Print the email⁹ previously sent to [REDACTED].
 - Attach it behind the closing FMD (updated per above).
 - Retain in the physical case file.
4. If penalties, print Form 13448 previously received from CTR Operations¹⁰.
 - Write in red in the top margin “Exam Copy”
 - Attach it to the front of [Form 13449](#) in the physical case file.
5. Write/type and highlight the following comment in Special Features/Other Instructions of [Form 3198](#), Special Handling Notice for Examination Case Processing, or [Form 3198-A](#), TE/GE Special Handling Notice:
 - If no penalties: “COVID-19: Emailed CTR Ops MM/DD/YY”.
 - If penalties: “COVID-19: Emailed CTR Ops MM/DD/YY, FBAR penalty assessed MM/DD/YY”.
6. Inform CTR Operations of case shipment.
 - Exam Group Managers email [REDACTED] the case name, TIN, period(s), when and where the case is shipping.
 - Use email subject line, “Electronically Processed Case Now Shipping – [name control]”.
 - Print this email and retain it in the physical case file prior to shipping.
 - CTR Operations: Upon receipt of this email, update the notation in the FBAR Database¹¹ to read “COVID-19: Shipped MM/DD/YYYY” where “MM/DD/YYY” is the shipment date in the email.
7. Follow [Attachment 4](#) to update ERCS status code and ship the case.

⁷ Imminent statute procedures in Attachment 3, Defining Exigent Circumstances and Protection of Statute of Limitations

⁸ From Exam Group Manager

⁹ From Exam Group Manager

¹⁰ To Exam Group Manager

¹¹ “Date Closed from Group” (for Exam FMDs)

The COVID-19 pandemic continues to significantly impact FBAR operations, including closed case processing performed by CTR Operations. It is necessary to expand use of electronic case processing procedures beyond imminent statute and limited other cases as previously authorized in [SBSE-04-0620-0068](#)¹².

The following procedures are required for ALL FBAR years, **EXCEPT** protested years with at least 395 days remaining on the assessment statute of limitations. These protested years cannot follow these electronic processing procedures because doing so prohibits an Appeals hearing prior to assessment. Differences between pre-assessment and post-assessment Appeals hearings are significant. See [IRM 4.26.17.4.3.4](#), Closing the FBAR Case Appealed.

1. Follow [IRM 4.26.17.4](#), Closing the FBAR Case, to prepare the case for closure. See [Attachment 1](#) for a list of documents approved for electronic signature.
2. When the case is ready to “close”, Exam Group Managers should email [REDACTED], CTR Operations Supervisory Tax Law Specialist.
 - Use email subject line, “Electronic Processing Package – [name control]”.
 - The email must include:
 - Case name(s),
 - TIN(s),
 - FBAR period(s) ready for closure and the statute date of each,
 - Comment if IRM-required approvals (see [IRM 4.26.16](#), [IRM 4.26.17](#)) were secured from the group manager, Operating Division FBAR Coordinator, and for willful penalties proposed, Counsel,
 - [Form 13536](#), FBAR Monitoring Document (FMD), with disposition information and in “Date Closed from Group” field, the notation “COVID-19: Emailed CTR Ops MM/DD/YY”, and
 - If penalties are proposed, [Form 13449](#) signed by the filer/authorized POA if agreed; if unagreed, submit a copy of the issued Form 13449.
3. Print the above-referenced email for the physical case file; attach it behind the closing FMD retained in the case file.
4. **CTR Operations:** Use the information received in the above email package to record the disposition and case shipment status in the FBAR Database. In the database field “Date Closed from Group”, record the notation “COVID-19: Awaiting Shipment as of MM/DD/YYYY” where MM/DD/YYYY is from “Date Closed from Group” on the FMD included in the email package.

¹² Attachment 3, Defining Exigent Circumstances and Protection of Statute of Limitations

Attachment 6, SBSE-04-1120-0074: Electronically Processing Certain FBAR Cases

5. If penalties are proposed, CTR Operations Supervisory Tax Law Specialist will email the Exam Group Manager Form 13448, Penalty Assessments Certification Summary (Title 31 "FBAR"), confirming the amount and date of the FBAR penalty assessment.
 - Print the Form 13448 received from CTR Operations, write in red in the top margin "Exam Copy" and attach it to the front of [Form 13449](#) in the physical case file.
 - Immediately review for accuracy and report any discrepancies to [REDACTED], CC to [REDACTED]. Use email subject line, "Assessment Discrepancy – [name control]".
5. When electronic processing procedures are completed:
 - If case shipment is delayed pursuant to [Attachment 4](#), the Servicewide [mandatory telework](#) directive, or other COVID-19 related guidance, update the ERCS status (e.g. Status Code 12 or 13) to **Status Code 19**. Once in Status 19, a case is deemed ready to be shipped/closed and no additional time should be applied. If circumstances warrant further examination (e.g. additional documentation is submitted by the filer), return the case to the appropriate status (e.g. Status Code 12) and work as appropriate.
 - If case shipment is NOT delayed pursuant to [Attachment 4](#), the Servicewide [mandatory telework](#) directive, or other COVID-19 related guidance, do not update the ERCS status code at this time. Proceed to Step #6.
6. Any electronically processed case must follow additional shipping guidelines in [Attachment 5](#) when the case is authorized to ship (see [Attachment 4](#)).