



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.26.7

JULY 29, 2025

## EFFECTIVE DATE

(07-29-2025)

## PURPOSE

- (1) This transmits a revision to IRM 4.26.7, Bank Secrecy Act, Bank Secrecy Act Penalties.

## MATERIAL CHANGES

- (1) Minor editorial edits have been made throughout this IRM.
- (2) Italics have been removed from the official titles in this IRM.
- (3) The title of 4.26.7.1 has been changed to Program Scope and Objectives.
- (4) The title of 4.26.7.1.1 has been changed to Background and paragraphs (2), (3), and (4) have been moved to 4.26.7.1.2.
- (5) 4.26.7.1.1, Authority, has been moved to 4.26.7.1.2.
- (6) The title of 4.26.7.1.3 has been changed to Roles and Responsibilities. The titles of Chief BSA Policy and Chief BSA Exam have been changed to Program Manager BSA Policy and BSA Exam.
- (7) 4.26.7.1.5, Program Controls has been added to this IRM.
- (8) The internal website addresses have been masked in 4.26.7.1.8.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.26.7 dated October 11, 2019.

## AUDIENCE

Intended audience are employees of the Bank Secrecy Act Program in the Small Business/Self Employed (SB/SE) Division, and can be referenced by all field compliance personnel.

Richard L. Tierney  
Director, Examination  
Small Business/Self-Employed



---

4.26.7

Bank Secrecy Act Penalties

## Table of Contents

4.26.7.1 Program Scope and Objectives

4.26.7.1.1 Background

4.26.7.1.2 Authority

4.26.7.1.3 Roles and Responsibilities

4.26.7.1.4 Program Management and Review

4.26.7.1.5 Program Controls

4.26.7.1.6 Terms and Acronyms

4.26.7.1.7 Related Resources

4.26.7.2 Overview

4.26.7.3 Civil Penalties

4.26.7.3.1 Negligence Penalty

4.26.7.3.2 “Non-Willful” Violation of FBAR Requirements

4.26.7.3.3 Willful Violations of Recordkeeping and Reporting Requirements

4.26.7.3.4 Willful Violation of Other Duties

4.26.7.3.5 Structuring and Related Prohibited Actions

4.26.7.3.6 Anti-Money Laundering Program Violations

4.26.7.3.7 MSB Registration Violations

4.26.7.4 Determining Intent Under the BSA

4.26.7.4.1 Negligence

4.26.7.4.2 Willfulness Guidelines

4.26.7.5 Criminal Penalties for Violation of Bank Secrecy Act

4.26.7.6 Forfeiture Authority



4.26.7.1  
(10-11-2019)  
**Program Scope and Objectives**

- (1) **Purpose.** This IRM provides an overview of the penalties that may be assessed on both reporting and recordkeeping requirements of the Bank Secrecy Act (BSA). Other than the Report of Foreign Bank and Financial Accounts (FBAR) penalty, all other penalties are assessed by the Financial Crimes Enforcement Network (FinCEN). An IRS examiner's decision to refer a case to FinCEN for a potential civil monetary penalty will depend upon the facts and circumstances of each case. However, all IRS examiners should be aware of the potential civil and criminal penalties to inform those examined.
- (2) **Audience.** The intended audience is employees of the Bank Secrecy Act Program in the Small Business/Self Employed (SB/SE) Division, and can be referenced by all IRS personnel, including those working FBAR cases.
- (3) **Policy Owner.** The Director, SB/SE Specialty Examination Policy is responsible for overseeing the policy for conducting examinations under the Bank Secrecy Act.
- (4) **Program Owner.** The Director, SB/SE Specialty Examination is responsible for ensuring examinations conducted under the Bank Secrecy Act are conducted with integrity and fairness to all.
- (5) **Primary Stakeholders.** SB/SE Specialty Examination BSA; SB/SE Headquarters Exam, Specialty Exam Policy BSA; SB/SE Exam Quality & Technical Support, Field and Specialty Exam Quality; Chief Counsel, Division Counsel SB/SE.
- (6) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.
- (7) **Program Goals.** The mission of the BSA Program (BSA) is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity by providing financial institutions top quality service to help them understand their obligations under the BSA and to ensure BSA compliance with integrity and fairness to all.

4.26.7.1.1  
(07-29-2025)  
**Background**

- (1) The Department of the Treasury has primary responsibility for implementing and enforcing the Bank Secrecy Act (BSA). The Secretary of the Treasury delegated the authority to administer the BSA to the Director, Financial Crimes Enforcement Network (FinCEN). FinCEN redelegated responsibility for assuring civil compliance with the law to various Federal agencies including the Internal Revenue Service. Treasury Directive 15-41 (See IRM 4.26.1-2) and 31 CFR 1010.810(b)(8) delegates the responsibility to examine and assure compliance with the requirements of 31 CFR Chapter X, Financial Crimes Enforcement Network, Department Of The Treasury, for certain entities to the IRS. FinCEN's delegation is limited to "examining" for compliance with the BSA requirements. FinCEN retains all civil penalty authority, except for penalties assessed on violations of the Report of Foreign Bank and Financial Accounts (FBAR), under 31 CFR 1010.810(d).

4.26.7.1.2  
(07-29-2025)  
**Authority**

- (1) The authority to enforce the FBAR reporting and recordkeeping requirements found at *31 USC 5314*, Records and Reports on Foreign Financial Agency transactions, 31 CFR 1010.350, Reports of Foreign Financial Accounts, and 31 CFR 1010.420, Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts, was redelegated from FinCEN to

the Commissioner of Internal Revenue by Delegation Order 25-13 (Formerly DO 4-35, Rev. 1) effective as of April 11, 2012. IRS has full authority to examine for and assess penalties related to noncompliance with the FBAR requirements.

- (2) IRS Criminal Investigation has authority under 31 CFR 1010.810(c)(2), Authority for Investigating Criminal Violations, to investigate all criminal violations of the Bank Secrecy Act except those with respect to Form 105, Reports of International Transportation of Currency or Monetary Instruments (CMIR). 31 CFR 1010.810(c)(1) delegates to the Commissioner of Customs and Border Protection the authority to investigate criminal violations of the CMIR. Customs and Border Protection also has civil authority for CMIRs under 31 CFR 1010.810(b)(7).
- (3) A civil monetary penalty may be imposed for any BSA violation notwithstanding the fact that a criminal penalty is imposed for the same violation, *31 USC 5321(d)*, Criminal Penalty Not Exclusive of Civil Penalty. IRM 4.26.8.6.5, Parallel Civil & Criminal Referrals, provides guidance on how to make the simultaneous referrals.

4.26.7.1.3  
(10-11-2019)  
**Roles and  
Responsibilities**

- (1) Director, Examination - Specialty Policy is the executive responsible for BSA examination policy and procedures.
- (2) Director, Examination - Specialty Examination is the executive responsible for BSA examination operational compliance.
- (3) Program Manager, BSA Examination is responsible for ensuring general information about basic BSA examiner responsibilities and IRM sections is communicated to and carried out by BSA examiners.
- (4) Program Manager, BSA Policy is responsible for maintaining and updating policy and procedures FBAR information is communicated to and examiners audit for FBAR requirements.
- (5) Chief, Criminal Investigation is responsible for investigating criminal violations of the BSA.

4.26.7.1.4  
(07-29-2025)  
**Program Management  
and Review**

- (1) The Title 31 database contains reports to monitor the current year's work plan, as well as specific programs. These reports provide Headquarters and Field Examination with timely and reliable information. Reports used to monitor examination processes include:

Report Name	Description
Direct examination time	This report contains the number of hours charged to a case.
New examination starts	This report contains a list of cases started within the period of the report.
Examination closures	This report contains a list of cases closed within the period of the report.

Report Name	Description
Average hours expended per case	This report contains the average number of hours charged to all cases within the period of the report.
No issue percentage	This report contains the percentage of case closed with no action with the period of the report.
Closed case cycle time by work-stream	This report contains the cycle time of closed cases by Title 31 and Title 26 categories within the period of the report.
Open case cycle time by work-stream	This report contains a list of open cases by Title 31 and Title 26 categories within the period of the report.
Referrals to Examination	This report contains the number of referrals to Examination made within the period of the report.
Referrals to Employment Tax	This report contains the number of referrals to Employment Tax made within the period of the report.
Referrals to CI	This report contains the number of referrals to CI made within the period of the report.
Number of surveyed cases	This report contains the number of surveyed cases within the period of the report.
Workplan accomplishments	This report contains the number of cases opened and closed, by categories Title 31 and Title 26, cases towards meeting the workplan goals of the fiscal year.

(2) Periodic program reviews are conducted to:

- Assess the effectiveness of specific programs within Examination or across the organization,
- Determine if procedures are being followed,
- Validate policies and procedures, and
- Identify and share best/proven practices.

## 4.26.7.1.5

(07-29-2025)

**Program Controls**

- (1) The IRS BSA program operates under the framework of internal controls designed to ensure that examinations are conducted consistently, accurately, and in accordance with BSA laws, regulations, and IRS policies. Key controls include:
  - Periodic reviews of examination case files by group managers
  - Standardized training for examiners, and
  - Review of closed case files is conducted to monitor adherence to established procedures.
- (2) BSA Case Selection (CS) is responsible for identifying, selecting, and delivering BSA cases to BSA Exam. Cases delivered to groups, electronically, and the group manager is responsible for assigning the cases to revenue agents for examination.
- (3) Access to all systems of records is restricted to a need to use basis and monitored by the supervisors of examiners that need the information.
- (4) IRM 1.2.2.15.13, Delegation Order 25-13, (Rev. 1), Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements, provides the delegation to the IRS to enforce FBAR laws.
- (5) 31 CFR 1010.810(b)(8) designates to the Commissioner of Internal Revenue the authority to examine all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety, to determine compliance with BSA law.

## 4.26.7.1.6

(10-11-2019)

**Terms and Acronyms**

- (1) The following table is a list of acronyms, and their definitions, used in this IRM.

Acronyms	Definition
AML	Anti-Money Laundering
BSA	Bank Secrecy Act
CFR	Code of Federal Regulations
CI	IRS Criminal Investigation
CMIR	Reports of Transportation of Currency or Monetary Instruments
CTR	Currency Transaction Report
FBAR	Report of Foreign Bank and Financial Accounts
FCPIA Act	Federal Civil Penalties Inflation Adjustment Act of 1990
FinCEN	Financial Crimes Enforcement Network
GTO	Geographic Targeting Order
MSB	Money Services Business
USC	United States Code



- (2) The following table contains a list of terms, and their definition, used in this IRM.

Terms	Definition
AML Program	A written risk-based plan, reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

4.26.7.1.7  
(10-11-2019)  
**Related Resources**

- (1) The following table contains related resources referenced in this IRM:

Resource	Title
<i>BSA Exam Site</i>	BSA Exam SharePoint
<i>BSA Policy Site</i>	BSA Policy SharePoint
<i>Fincen</i>	FinCEN website

4.26.7.2  
(10-11-2019)  
**Overview**

- (1) 31 USC 5311 through 31 USC 5332, except 31 USC 5315, known as the Bank Secrecy Act (BSA), and the related regulations at 31 CFR Chapter X, Financial Crimes Enforcement Network, Department of the Treasury, provide for civil and criminal penalties as well as forfeiture of assets. BSA penalties depend on the type of entity, the type of Anti-Money Laundering program, reporting or record-keeping violation involved, and the degree of intent.
- (2) Civil penalties, except for penalties assessed on requirements of the Report of Foreign Bank and Financial Accounts (FBAR), are assessed by the Financial Crimes Enforcement Network (FinCEN). FBAR assessment authority is delegated to the IRS. The examiner's decision to refer a case to FinCEN for a potential civil monetary penalty will depend upon the facts and circumstances of each case. The general standard for a FinCEN referral is "significant" BSA violation(s) or AML program deficiencies. This, along with indications of willful behavior, may warrant a referral to FinCEN. Referral procedures are located at IRM 4.26.8.5.1, Guidelines for Referrals to FinCEN.
- (3) FinCEN's role includes evaluating the circumstances of the alleged violation(s) and determining whether some type of civil action, including seeking the imposition of a civil monetary penalty, should be taken against the person or financial institution.

4.26.7.3  
(10-11-2019)  
**Civil Penalties**

- (1) *31 USC 5321*, Civil Penalties, provides overall civil penalty provisions for violations of the BSA and for violations of certain related statutes. It provides authority for assessing penalties when regulations for those penalties have not been issued. The penalties apply to violations of the BSA itself, the regulations under the BSA, or any geographic targeting or special measures order issued by Treasury, as well as penalties for taking certain actions, such as structuring, with the intent to evade BSA reporting or recordkeeping requirements.
- (2) 31 CFR 1010.820, Civil Penalties, issued under the authority of 31 USC 5321 is the primary penalty regulation for all penalties assessed before August 2, 2016. It addresses civil penalties arising from violations of the BSA reporting and recordkeeping requirements, as well as structuring penalties.
- (3) The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA Act) mandates that penalties be adjusted annually for inflation. For penalties assessed after August 1, 2016, FinCEN must set forth adjusted maximum penalty amounts for each civil monetary penalty within its jurisdiction subject to the FCPIA Act. The adjusted civil monetary penalty amounts at 31 CFR 1010.821, Penalty Adjustment and Table, supersede the amounts published authorizing the assessment of penalties.
- (4) For penalties that have both a fixed and a non-fixed component, the civil monetary penalty amounts at 31 CFR 1010.821 apply only to the fixed amounts. For example, the penalty for willful FBAR failures is the greater of \$100,000 or 50% of the account balance at the time of the violation. The civil monetary penalty inflation adjustment amount at 31 CFR 1010.821 applies only to the \$100,000 amount.
- (5) Penalties that lack a stated dollar amount and are instead written solely as functions of violations are not subject to adjustment under the FCPIA Act. For example, the penalty for structuring a transaction to circumvent a BSA reporting requirement is the amount of coin and currency involved in the transaction. See 31 CFR 1010.820(e).
- (6) No later than January 15 of every year, FinCEN is required to adjust each civil monetary penalty provided by law within their jurisdiction by the inflation adjustment and publish each such adjustment in the Federal Register.

**Note:** If the Penalty Adjustment Table at 31 CFR 1010.821 is not current, examiners should check the Federal Register to see if the inflation adjusted rate has been published.

- (7) Penalties subject to adjustment are listed at 31 CFR 1010.821 and include penalties related to:
  - Recordkeeping violations for funds transfer by an insured depository institution
  - Willful or grossly negligent recordkeeping violations
  - Failure to terminate correspondent relationship with foreign banks
  - General civil penalty provisions for willful violations of the BSA requirements
  - Foreign financial agency transactions which are non-willful
  - Foreign financial agency transactions which are willful
  - Negligent violations by financial institutions and nonfinancial trades or businesses

- Pattern of negligent activity by financial institutions or nonfinancial trades or businesses
- Violations of certain due diligence requirements, prohibition on correspondent accounts for shell banks, and special measures
- Civil penalties for failure to register as a money services business

4.26.7.3.1  
(10-11-2019)  
**Negligence Penalty**

- (1) *31 USC 5321(a)(6)*, Negligence, and 31 CFR 1010.820(h) provided for a penalty for each negligent violation of any requirement of the Bank Secrecy Act (BSA). The penalty amount could not exceed \$500.
- (2) Negligence is further discussed in IRM 4.26.7.4.1.
- (3) The penalty may be assessed against any financial institution or nonfinancial trade or business which negligently violates any provision of 31 USC 5321, Civil penalties.
- (4) For penalties assessed after August 1, 2016, the negligence penalties are subject to annual inflationary adjustment under the FCPIA Act.

USC Citation	Civil Monetary Penalty Description	Penalty Amount
31 USC 5321(a)(6)(A)	Negligent Violation by a Financial Institution or Non-Financial Trade or Business	31 CFR 1010.821
<i>31 USC 5321(a)(6)(B)</i>	Pattern of Negligent Activity by a Financial Institution or Non-Financial Trade or Business	31 CFR 1010.821

4.26.7.3.2  
(10-11-2019)  
**“Non-Willful” Violation of FBAR Requirements**

- (1) Any person who violates or causes any violation of the Report of Foreign Bank and Financial Accounts (FBAR) requirements of *31 USC 5314*, Records and Reports on Foreign Financial Agency Transactions, may be assessed a penalty not to exceed \$10,000 per violation for penalties assessed before August 2, 2016. See *31 USC 5321(a)(5)(B)*, Amount of Penalty.
- (2) Penalties may not be applicable if the violation was due to reasonable cause and the amount of the transaction or the balance in the account at the time of the transaction was properly reported on the taxpayer’s U.S. income tax return.
- (3) For penalties assessed after August 1, 2016, the penalty is subject to the inflationary adjustments under the FCPIA.

USC Citation	Civil Monetary Penalty Description	Penalty Amount
31 USC 5321(a)(5)(B)(i)	Foreign Financial Agency Transaction—Non- Willful Violation of Transaction	31 CFR 1010.821, Penalty Adjustment and Table

4.26.7.3.3  
(10-11-2019)

**Willful Violations of  
Recordkeeping and  
Reporting Requirements**

- (1) Where the violation is willful, the penalty depends on the Bank Secrecy Act (BSA) requirement violated. There are different penalties for recordkeeping, reporting, and Anti-Money Laundering program violations, as well as for other types of violations, such as failure by a Money Services Business (MSB) to register.
- (2) Within the types of willful violations, there are variations in penalties as well, depending on the provision violated.
- (3) A penalty may be assessed upon any person to which the regulation applies, or any person willfully causing a violation of the regulations, and if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully or through gross negligence participates in the violation identified at *31 USC 5321(a)* other than an FBAR violation. For an FBAR, the violation may be assessed against any person willfully violating, or willfully causing a violation of the FBAR requirement.
- (4) For penalties assessed after August 1, 2016, the penalties are subject to the inflationary adjustments under the FCPIA Act. The first table is for willful violation of record keeping penalties and the second table is for willful violation of reporting requirement penalties.

***Willful Violation of Record Keeping Penalties***

USC Citation	Civil Monetary Penalty Description	Penalty Amount
12 USC 1955 (except FBAR)	Willful or Grossly Negligent Record- keeping Violation of financial institution	31 CFR 1010.821, Penalty Adjustment and Table

***Willful Violation of Reporting Requirements Penalties***

USC Citation	Civil Monetary Penalty Description	Penalty Amount
31 USC 5321(a)(1) (except FBAR)	General Civil Penalty Provision for Willful Violations of Bank Secrecy Act Require- ments	31 CFR 1010.821

USC Citation	Civil Monetary Penalty Description	Penalty Amount
31 USC 5321 (a)(5)(C) (FBAR transactions)	Foreign Financial Agency Transaction - Willful Violation of Transaction	31 CFR 1010.821

4.26.7.3.4  
(10-11-2019)

**Willful Violation of Other Duties**

- (1) *31 USC 5314* and 31 CFR 1010.360, Reports of Transactions with Foreign Financial Agencies, establish procedures under which the Secretary of the Treasury may issue regulations requiring designated financial institutions to report certain financial transactions with designated foreign financial agencies. A civil penalty not to exceed the greater of the amount of the transaction (not to exceed \$100,000), or \$25,000 may be assessed upon any person who willfully violates the requirement to report. See 31 CFR 1010.820(g)(1).
- (2) *31 USC 5326*, Records of Certain Domestic Transactions, and 31 CFR 1010.370, Reports of Certain Domestic Coin and Currency Transactions, allow the Secretary, upon the Secretary's own initiative or at the request of an appropriate federal or state law enforcement official, to issue a Geographical Targeting Order (GTO). A GTO requires a domestic financial institution or group of domestic financial institutions in a geographic area, and any other person participating in the type of transaction, to file a report in the manner and to the extent specified in the order, if it is found that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of the BSA. A civil penalty not to exceed the greater of the amount of the transaction (not to exceed \$100,000), or \$25,000 may be assessed upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation. See 31 CFR 1010.820(f).
- (3) Special measures, including reporting, recordkeeping, and prohibited transactions that are specially ordered under *31 USC 5318A*, Special Measures for Jurisdictions, Financial Institutions, International Transactions, or Types of Accounts of Primary Money Laundering Concern, for one or more domestic financial institutions and domestic financial agencies, may be required after a finding by the Secretary that a jurisdiction outside of the US, a financial institution operating outside of the US, or a transaction within, or involving, a jurisdiction outside of the US is of primary money laundering concern. Special Measures for some countries appear in the regulations in Subpart F, Special Standards of Diligence: Prohibitions; and Special Measures.  
  
**Example:** 31 CFR 1010.651, Special Measures Against Burma. A civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000 on any financial institution or agency that violates any provision of 31 USC 5318A. See *31 USC 5321(a)(7)*. Special measures for some entities appear in the regulations at 31 CFR 1010.651.
- (4) Financial institutions and agencies that engage in private banking or offer correspondent accounts to foreign entities, for example a credit union or an agent of a foreign financial institution, must establish due diligence (or in some

cases, enhanced due diligence), policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts, especially when special measures apply. See *31 USC 5318(i)*, Due Diligence for United States Private Banking and Correspondent Bank Accounts Involving Foreign Persons, 31 CFR 1010.610, Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions, and 31 CFR 1010.620, Due Diligence Programs for Private Banking Accounts. A civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000 on any financial institution or agency that violates any provision of 31 USC 5318(i). See 31 USC 5321(a)(7).

- (5) Correspondent accounts for foreign shell banks are prohibited, *31 USC 5318(j)*, Prohibition on United States Correspondent Accounts with Foreign Shell Banks, and 31 CFR 1010.630, Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process. Both sections *31 USC 5318*, Compliance, Exemptions, and Summons Authority, and 31 USC 5318A are viewed as complementary international counter money laundering provisions and share the same penalty, 31 USC 5321(a)(7), Penalties for International Counter Money Laundering Violations. A civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000 on any financial institution or agency that violates any provision of 5318(j). See 31 USC 5321(a)(7).
- (6) 31 CFR 1010.520, Information Sharing Between Government Agencies and Financial Institutions, requires a financial institution upon receiving a request from FinCEN to expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction, with each individual, entity, or organization name in the request. If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in the request, they must report to FinCEN in the manner and in the time frame specified in FinCEN's request. A penalty may be assessed against a financial institution that fails to comply with this information-sharing rules of section 314 of the USA PATRIOT Act.
- (7) A financial institution defined at *31 USC 5312(a)(2)* with an AML program requirement, must comply with section 314(a) of the USA PATRIOT Act requirements.

4.26.7.3.5  
(10-11-2019)  
**Structuring and Related  
Prohibited Actions**

- (1) The Secretary of the Treasury is authorized by *31 USC 5321(a)(4)*, Structured Transaction Violation, to impose a civil money penalty on **any person** who structures, or attempts to structure, a transaction with the intent to evade a Bank Secrecy Act (BSA) requirement.
- (2) A civil penalty may be assessed up to the amount of coins and currency involved in the structured transaction(s). The amount of any civil penalty assessed shall be reduced by the amount of any forfeiture to the US in connection with the transactions for which the penalty was imposed. See 31 USC 5321(a)(4) or 31 CFR 1010.820(e).
- (3) IRM 4.26.13, Structuring, contains a complete discussion of the:
  - Law which prohibits structuring,
  - Procedures on how to identify structured transactions,
  - Examples of structured transactions, and



- Examination techniques to identify structured transactions.
- (4) Structuring is defined as a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading a reporting or recordkeeping requirement of the BSA.
- (5) *31 USC 5324*, Structuring Transactions to Evade Reporting Requirement Prohibited, prohibits certain actions by any person who acts with the purpose of evading:
- a. The reporting requirements of *31 USC 5313*, Reports on Domestic Coins and Currency Transactions.
  - b. The recordkeeping requirements of *31 USC 5325*, Identification Required to Purchase Certain Monetary Instruments. (Requirement to secure customer identification prior to issuing or selling a bank check, cashier's check, traveler's check, or money order for currency at \$3,000 or more)
  - c. The reporting requirements of *31 USC 5331*, Reports Relating to Coins and Currency Received by a Nonfinancial Trade or Business. (Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business)
  - d. The reporting requirements of *31 USC 5316*, Reports on Exporting and Importing Monetary Instruments (CMIR)
  - e. The reporting or recordkeeping requirements imposed by any order issued under *31 USC 5326*, Records of Certain Domestic Transactions (Geographic Targeting Orders).
  - f. The recordkeeping requirements under Section 21 of the Federal Deposit Insurance Act and Section 123 of Public Law 91-508. (Recordkeeping requirements for transmittal of funds at \$3,000 and above, additional records to be made by a dealer in foreign exchange at \$1,000 and above, and records to be made by casinos and card clubs)
- (6) *31 USC 5324* is self-implementing, meaning that penalties can be assessed against a structured transaction without having an implementing regulation. *31 CFR 1010.314*, Structured Transactions, defines structuring to include causing or attempting to cause a domestic financial institution to fail to file a report or to file a report with a material omission or misstatement of fact, or structure (as defined in *31 CFR 1010.100(xx)*, Structure (Structuring), with one or more domestic financial institutions. *31 CFR 1010.100(xx)* is limited to evading a reporting requirement under:
- *31 CFR 1010.311* - Filing Obligations for Reports of Transactions in Currency (CTRs)
  - *31 CFR 1010.313* - Aggregation, Transactions in Currency Totaling More Than \$10,000 During One Business Day (CTR)
  - *31 CFR 1020.315* - Transactions of Exempt Persons, (by banks)
  - *31 CFR 1021.311* - Filing Obligations, (CTRs at a casino)
  - *31 CFR 1021.313* - Aggregation, Transactions by Casinos in Currency Totaling More Than \$10,000 During Any Gaming Day
- (7) *31 CFR 1010.820(e)*, Civil Penalty, is limited to willful violations of *31 CFR 1010.314* which is limited to the reporting requirements above. Consequently, *31 USC 5324* is cited for structuring violations related to:

- Recordkeeping requirements on the purchase of money orders or traveler's checks
  - Recordkeeping requirements on transmittal of funds
  - Recordkeeping requirements on foreign currency exchanges
  - Form 8300 requirements, including any GTO requirement
  - CMIR
- (8) 31 CFR 1010.810(b)(8) gives the Commissioner, IRS, the delegated authority to examine certain financial institutions to determine compliance with BSA. IRS does not have delegated authority to examine for compliance with structuring by customers of the financial institution, employees of the financial institution, or an individual who is not defined as a financial institution. See the following table for civil penalties for structuring and related prohibited actions:

USC Citation	Civil Penalty Description	Penalty
Structuring 31 USC 5324 and 31 CFR 1010.314	Structuring transactions or taking related actions for the purpose of evading a reporting. Applies to a: <ul style="list-style-type: none"> <li>• CTR</li> <li>• CTR, aggregated transaction, and</li> <li>• Transactions with exempt persons by a bank</li> </ul>	31 USC 5321(a)(4) and 31 CFR 1010.820(e)
31 USC 5324, CMIR, Form 8300, and Recordkeeping on <ul style="list-style-type: none"> <li>• Money orders &amp; traveler's checks</li> <li>• Wire transfers</li> <li>• Currency exchange</li> <li>• Casino transactions</li> </ul>	Structuring transactions or taking related actions for the purpose of evading a reporting or recordkeeping requirement. Applies to: <p>Reports</p> <ul style="list-style-type: none"> <li>• CMIR, and</li> <li>• Form 8300</li> </ul> <p>Recordkeeping on</p> <ul style="list-style-type: none"> <li>• Money orders &amp; traveler's checks</li> <li>• Wire transfers</li> <li>• Foreign currency exchange, and</li> <li>• Casino transactions</li> </ul>	31 USC 5321(a)(4)



4.26.7.3.6  
(10-11-2019)  
**Anti-Money Laundering  
Program Violations**

- (1) *31 USC 5318(a)(2)*, General Powers of the Secretary, allows the Secretary of the Treasury to require a class of domestic financial institutions or nonfinancial trades or businesses to maintain appropriate procedures to ensure compliance with the Bank Secrecy Act and its regulations or to guard against money laundering.
- (2) *31 USC 5318(h)*, Anti-Money Laundering Programs, requires all financial institutions to establish an anti-money laundering (AML) program with minimum requirements; however, regulations have not been adopted for some types of financial institutions and they are currently exempted from this requirement. Those financial institutions required to have AML programs appear in the regulations at 31 CFR Chapter X, Financial Crimes Enforcement Network, Department of the Treasury. 31 CFR 1010.205, Exempted Anti-Money Laundering Programs for Certain Financial Institutions, provides permanent and temporary exemptions from this requirement.
- (3) 31 CFR 1010.205(b)(2), Temporary Exemption for Certain Financial Institutions, provides a temporary exemption to the requirement to develop and implement an AML program to a bank that is not subject to regulation by a Federal functional regulator. The IRS is not defined as a Federal functional regulator under 31 CFR 1010.100(r), Federal Functional Regulator. Consequently, a credit union under IRS authority is temporarily exempt from the requirement to have an AML program.
- (4) 31 CFR 1020.220, Customer Identification Programs for Banks, Savings Associations, Credit Unions, and Certain Non-Federally Regulated Banks, requires these financial institutions to have a written customer identification program. For most, it is part of their AML program. A bank must create and retain, for five years, certain customer records as a part of its customer identification program.

**Note:** A credit union, defined as a bank and under IRS examination authority, is required to have a customer identification program even though they are not required to have an AML program.

- (5) A penalty may be assessed upon any domestic financial institution or non-financial trade or business, and a partner, director, officer, or employee of the domestic financial institution or non-financial trade or business who willfully violates this requirement. A separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.
- (6) For penalties assessed after August 1, 2016, the penalty is subject to the inflationary adjustments under the FCPIA Act.

Violation	Civil Monetary Penalty Description	Penalty Amount
31 USC 5318(h) and regulations appearing at 31 CFR Chapter X by financial institution type	Willful failure to establish an AML program, including, at a minimum <ul style="list-style-type: none"> <li>• The development of internal policies, procedures, and controls;</li> <li>• Designation of a compliance officer;</li> <li>• Ongoing employee training program; and</li> <li>• Independent audit function to test programs.</li> </ul>	31 USC 5321(a)(1), 31 CFR 1010.821, Penalty Adjustment and Table
31 CFR 1010.220	Written customer identification program	31 USC 5321(a)(1), 31 CFR 1010.821

4.26.7.3.7  
(10-11-2019)  
**MSB Registration  
Violations**

- (1) It is unlawful for a money services business (MSB) to do business without complying with the registration requirements. A failure to comply includes the filing of false or materially incomplete information in connection with the registration. The failure to comply with the MSB registration requirement includes failure to retain a copy of the registration or agent list. See *31 USC 5330(e)*, Civil Penalty for Failure to Comply with Registration Requirements, and 31 CFR 1022.380(e), Consequences of Failing to Comply with 31 USC 5330.
- (2) Each day a violation continues constitutes a separate violation.
- (3) The instructions to FinCEN Form 107, Registration of Money Services Businesses, defines an “owner or controlling person” for purposes of responsibility to register to include, for a corporation, “the largest single shareholder”. The instructions also provide that if two or more persons own equal numbers of shares of a corporation, they may enter into an agreement to determine who will register the corporation. The instructions to FinCEN Form 107 provide additional information. The law states that any person who fails to comply with any requirement of the law may be liable for a civil penalty.
- (4) Prior to August 2, 2016, a person who failed to register, as required by 31 CFR 1022.380, Registration of Money Services Business, would have been subject to a penalty of \$5,000 per day, whether or not the failure to register was willful.
- (5) For violations after August 1, 2016, the penalty amount has been adjusted due to inflation as required by the FCPIA Act.

4.26.7.4  
(10-11-2019)  
**Determining Intent  
Under the BSA**

- (1) Civil willfulness means that the violation is voluntary, rather than accidental or unconscious. Civil willfulness includes when a person acts “with willful blindness” to the obvious or known consequences of the person’s actions. Civil willfulness also includes when a person acts recklessly, which means the person’s actions took an unjustifiably high risk that is either known or so obvious that it should be known.
- (2) In determining intent, generally one looks to the knowledge of the person involved. This includes knowledge of the facts involved and knowledge of legal requirements relating to those facts.
- (3) Intent is determined by analyzing all the facts and circumstances of the case and it is often shown by circumstantial evidence. The BSA examiner must thoroughly document facts on the issue of intent.

4.26.7.4.1  
(10-11-2019)  
**Negligence**

- (1) Negligence is usually defined as the failure to use the care that a reasonable person would use in the same or similar circumstances.
- (2) There are two principal areas where a reasonable person would exercise care for financial reporting and recordkeeping. A reasonable business person would normally:
  - a. Exercise care to learn about legal requirements in his area of business.
  - b. Exercise care to see that his business had sufficient internal controls to meet those requirements.
- (3) When normal business care is not exercised in one or both areas, there is a case for negligence.
- (4) Negligence is the lack of reasonable cause for a failure to use the care normally expected in the same or similar circumstances. For additional suggestions on the type of facts that establish negligence, see IRM 20.1.1, Penalty Handbook, Introduction and Penalty Relief.

4.26.7.4.2  
(10-11-2019)  
**Willfulness Guidelines**

- (1) Civil willfulness means that the violation is voluntary, rather than accidental or unconscious. Civil willfulness includes when a person acts with *willful blindness* to the obvious or know consequences of the person’s actions. Civil willfulness also includes when a person acts recklessly, which means that the person’s actions took an unjustifiably high risk that is either known or so obvious that it should be known.
- (2) The government need only show that the financial institution or individual acted with either recklessness or willful blindness in a civil enforcement action under 31 USC 5321(a)(1), Civil Penalties. The government need not show that the entity or individual had knowledge that the conduct violated the BSA or acted with an improper motive or bad purpose.
- (3) The first step to establish “recklessness” or “willful blindness” is establishing that the entity or individuals had knowledge of the law or took deliberate actions to avoid confirming their requirements under the BSA. Evidence of an intentional act or a conscious effort to avoid learning of their legal duty along with knowledge that the transactions occurred is an excellent indicator of willfulness. Knowledge of the law may be established in several ways:

- a. Notification by the IRS, including receipt of Letter 1052, Bank Secrecy Act Requirements Notification Letter, prior BSA examinations, and educational visits.
  - b. Prior BSA filing history.
  - c. Actions by the entity, including development of an AML program, previously filed reports, registration with FinCEN.
  - d. Work history of owners, officers, and employees.
  - e. Education provided by the principal(s) to their agents and the frequency of training.
  - f. Education or training by their business community.
- (4) The second step to establish recklessness or willful blindness is evaluating indicators of willfulness. Factors to consider when evaluating indicators of willfulness are:
- a. Failure to report a transaction which is logged or identified on a report.
  - b. Failure to keep records.
  - c. Altering records.
  - d. Misleading the examiner. For example, a casino that states they do not accept “wires in” and bank statements identify large wires in from established patrons.
  - e. Failure to report on specific customers. For example, an entity files CTRs on all customers except one, or an employee is identified on an incident report aiding a customer to structure a transaction and compliance ignores the report due to a personal relationship.
  - f. Failure of the entity’s owners to make a conscious effort to determine what the law requires when starting a new business.

4.26.7.5  
(10-11-2019)  
**Criminal Penalties for  
Violation of Bank  
Secrecy Act**

- (1) IRS Criminal Investigation has BSA criminal examination authority under 31 CFR 1010.810(c)(2) except for examinations related to the CMIR, which are examined by Customs. If an examination has criminal potential, see IRM 4.26.8, Special Procedures. Most Federal BSA criminal penalties are provided for in *31 USC 5322*, Criminal Penalties, and 31 CFR 1010.840, Criminal Penalty.
- (2) 18 USC 1960, Prohibition of Unlicensed Money Transmitting Businesses, prohibits anyone to knowingly conduct any unlicensed money transmitting business, whether or not they knew that the operation was required to be licensed or that operation without a license was a criminal offense. A person who violates this offense knowingly conducts, controls, manages, supervises, directs or owns all or part of an unlicensed money transmitting business by operating without a state license, failing to comply with federal Money Services Business (MSB) registration requirements, or transferring money knowing the funds transmitted were criminally derived or intended to promote or support some unlawful activity.

**Note:** The term “money transmitting business” means any business other than the United States Postal Service which provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers’ checks, and other similar instruments or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

- (3) Criminal penalties for structuring are provided for in *31 USC 5324(d)*, Criminal Penalty, and 31 CFR 1010.840.

4.26.7.6  
(10-11-2019)  
**Forfeiture Authority**

- (1) BSA criminal and civil forfeiture authority was moved by section 372 of the USA PATRIOT Act from Title 18 to *31 USC 5317(c)*, Forfeiture. The code at *31 USC 5317(c)(2)*, Civil Forfeiture, provides for civil forfeiture proceedings. The code provision is quite broad. Any property involved in a violation of 31 USC 5313, Reports on Domestic Coins and Currency Transactions, *31 USC 5316*, Reports on Exporting and Importing Monetary Instruments, or *31 USC 5324*, Structuring Transactions to Evade Reporting Requirement Prohibited, or any conspiracy to commit such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States. The Secretary of the Treasury has discretionary authority to remit or mitigate the forfeiture.
- (2) Forfeiture authority under related regulation 31 CFR 1010.830, Forfeiture of Currency or Monetary Instruments, is narrower in that it mentions neither the CTR nor the structuring transactional amounts. This regulation provides only that any currency or other monetary instruments, which are in the process of any transportation and for which a CMIR is required under 31 CFR 1010.340, Reports of Transportation of Currency or Monetary Instruments, are subject to seizure and forfeiture to the United States if the report has not been filed or contains material omissions or misstatements.
- (3) Amounts seized and forfeited reduce penalties assessed for violation of the reporting requirements regarding exporting and importing monetary instruments under *31 USC 5321(a)(2)*, Civil Penalties, 31 CFR 1010.820(d) and the structuring prohibitions, 31 USC 5321(a)(4), Structured Transaction Violation, and 31 CFR 1010.820(e), Willful Violation.
- (4) Customs has forfeiture authority along with examination authority over the CMIR, 31 CFR 1010.810(b)(7), Commissioner of Customs and Border Protection. It also has authority to examine for criminal violations of the CMIR requirements, 31 CFR 1010.810(c)(1), Commissioner of Customs and Border Protection.

