



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.26.12

JULY 13, 2021

EFFECTIVE DATE

(07-13-2021)

PURPOSE

- (1) This transmits a revision to IRM 4.26.12, Bank Secrecy Act, Examination Techniques for Form 8300 Industries.

MATERIAL CHANGES

- (1) 4.26.12.12.5 updated to include links to FinCEN articles cited.
- (2) Italics have been removed from titles throughout this IRM.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.26.12 dated August 21, 2019

AUDIENCE

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 field compliance personnel.

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Small Business/Self-Employed

4.26.12

Examination Techniques for Form 8300 Industries

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4.26.12.1
(08-21-2019)
Program Scope and Objectives

- (1) **Purpose.** This IRM section describes basic information and examination techniques for specific industries that are required to file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, under:
 - a. IRC 6050I, Returns relating to cash received in trade or business, etc., and related regulations under 26 CFR 1.6050I-1, Returns relating to cash in excess of \$10,000 received in a trade or business, and 26 CFR 1.6050I-2, Returns relating to cash in excess of \$10,000 received as bail by court clerks.
 - b. 31 USC 5331, Reports relating to coins and currency received in nonfinancial trade or business, and related regulations in 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business.
- (2) **Audience.** This IRM is for BSA managers and BSA examiners.
- (3) **Policy Owner.** Director, Specialty Examination Policy – Small Business/Self Employed.
- (4) **Program Owner.** Director, Examination - Specialty Examination owns Bank Secrecy Act.
- (5) **Primary Stakeholders.** BSA Exam Case Selection, Specialty Examination and Exam Quality and Technical Support, Field and Specialty Exam Quality are the primary stakeholders for this IRM.
- (6) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.26.12.1.1
(08-21-2019)
Background

- (1) Generally, the BSA examiner will conduct a Form 8300 examination under IRC 6050I.
- (2) When a business is required under Title 31 to have an Anti-Money Laundering (AML) program under Title 31 the examiner should usually start the examination under Title 31.
- (3) Form 8300 is a dual-purpose form. Filing a Form 8300 meets the parallel requirements found in Title 26 and Title 31.
- (4) The examiner is responsible for supporting the goals of the BSA program: to identify, detect, and deter money laundering whether it is in furtherance of a criminal enterprise, terrorism, tax evasion, or other unlawful activity. The examiner must be alert to efforts by customers or businesses that structure transactions to avoid the filing of Form 8300.
- (5) Refer to IRM 4.26.11, BSA Examiner Responsibilities for Form 8300 Examinations, for the responsibilities of the BSA examiner when conducting a Form 8300 examination. The procedures suggested in this section are intended to assist an examiner with respect to the industries covered. They are not all inclusive.

4.26.12.1.2
(08-21-2019)
Authority

- (1) Refer to IRM 4.26.1, Introduction, for the authority for the Bank Secrecy Act.

4.26.12.1.3
(08-21-2019)
Responsibilities

- (1) Director, Specialty Examination 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) Chief, BSA is responsible for ensuring general information about basic BSA examiner responsibilities and IRM sections is communicated to and carried out by BSA examiners.

4.26.12.1.4
(08-21-2019)
Acronyms

- (1) Below are definitions for terms frequently used throughout this IRM:

Acronym	Definition
ACL	Action Control Log
AML	Anti-Money Laundering
ATG	Audit Techniques Guides
BSA	Bank Secrecy Act
CMIR	Report of International Transportation of Currency or Monetary Instruments
CTR	Currency Transaction Report
DMS	Dealership Management System
ECS	Exam Case Selection
FAA	Federal Aviation Administration
FATF	Financial Action Task Force
FBAR	Report of Foreign Bank and Financial Reports
FCQ	FinCEN Query
FinCEN	Financial Crimes Enforcement Network
GAGR	Gross Annual Gaming Revenues
GAO	Government Accountability Office
GTO	Geographic Targeting Orders
HIDTA	High Intensity Drug Trafficking Area
HIFCA	High Intensity Money Laundering and Related Financial Crimes Areas
IDRS	Integrated Data Retrieval System
IOLA	Interest on Lawyers Account
IOLTA	Interest on Lawyer Trust Accounts
ITG	Indian Tribal Governments
LB&I	Large Business & International
MSB	Money Service Business

Acronym	Definition
MTL	Multiple Transaction Logs
NADA	National Automobile Dealers Association
NBFI	Non-Bank Financial Institution
NSF	Non-Sufficient Funds
OFAC	Office of Foreign Assets Control
PMSJ	Dealers in precious metals, stones, and jewels
SAR	Suspicious Activity Report
TEGE	Tax Exempt/Government Entities

4.26.12.1.5
(08-21-2019)
Terms

- (1) The following table lists a term, and its definition:

Term	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.

4.26.12.1.6
(08-21-2019)
Related Resources

- (1) The following is a list of resources related to the information found in this IRM.

Resource	Title
IRM 4.26.6	Bank Secrecy Act Examiner Responsibilities
IRM 4.26.9	Examination Techniques for Bank Secrecy Act Industries
IRM 4.26.10	Form 8300 History and Law
IRM 4.26.11	BSA Examiner Responsibilities for Form 8300 Examinations

- (2) Helpful information is also available in these locations:

- a. Audit Technique Guides (ATGs) are available for various industries. Although they were not specifically written for BSA examinations, they explain unique industry issues, business practices and terminology. They may be found at <https://www.irs.gov/businesses/small-businesses-self-employed/audit-techniques-guides-atgs>.
- b. Electronic Publishing Website <http://publish.no.irs.gov/ephome.html>.

4.26.12.2
(06-01-2006)

Attorney Overview

- (1) Attorneys have the potential for receiving large amounts of cash for legal services or funds to be held in trust.
- (2) Attorneys usually generate fees based either on retainer or contingency. See Terminology for definitions and discussion.
- (3) In addition to general operating accounts, attorneys have trust or escrow accounts to hold funds in trust for their clients. Dollar amounts may be large and the potential for cash transactions is high.
- (4) Attorney-client privilege is a legally recognized privilege that protects confidential communication between attorney and client. However, the identity of a client and the amount of cash paid by the client to the attorney is not generally considered privileged information under the attorney-client privilege.
- (5) Attorneys may practice as sole proprietorships, in a partnership, or as an employee of a corporation.
- (6) Attorneys in a general law practice may handle everything from personal injury cases to corporate reorganizations. Others may specialize (for example, patent law, criminal defense, estate or corporation law). Generally, even specialists diversify to some degree.

4.26.12.2.1
(08-21-2019)

Law

- (1) For a detailed explanation of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, law, see IRM 4.26.10, Form 8300 History and Law.
- (2) There is no general exception from the reporting requirements of IRC 6050I, Returns relating to cash received in trade or business, etc., for attorneys.
- (3) A transaction, for Form 8300 purposes, includes the sale of legal services. Related transactions include not only transactions conducted between a payer and a recipient within a 24-hour period, but also those where the recipient knows or has reason to know that each transaction is one of a series of connected transactions 26 CFR 1.6050I- 1(c)(7)(ii), Related Transactions.

Example: An attorney agrees to represent a client in a case with the attorney's fee determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to \$8,000 which the client pays in cash. In the second month in which the attorney represents the client, the bill for the attorney's services comes to \$4,000, which the client again pays in cash. The aggregate amount of cash paid (\$12,000) relates to a single transaction as defined in 26 CFR 1.6050I-1(c)(7)(i), Transaction, the sale of legal services relating to the case, and the receipt of cash must be reported on a Form 8300. See 26 CFR 1.6050I-1(c)(7)(iii), Example 2.

- (4) Generally, a person who, in the course of a trade or business, acts as an agent and receives cash in excess of \$10,000 from a principal must report this receipt of cash on Form 8300. However, an agent who receives cash from a principal and uses all the cash within 15 days in a second cash transaction, which is reportable under IRC 6050I or under 31 USC 5312, Definitions and Applications, and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report the initial receipt of cash on Form 8300.

Example: B, the principal, gives D, an attorney, \$75,000 in cash to purchase real property on behalf of B. Within 15 days D purchases real property for cash from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in 26 CFR 1.6050I-1(a)(3)(ii), Exception, D need not report with respect to the initial receipt of cash under this section. The exception does not apply, however, if D pays E by means other than cash, or effects the purchase more than 15 days following receipt of the cash from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of cash from B under this section. See 26 CFR 1.6050I-1(a)(3)(iii), Example.

- (5) Generally, because attorneys are not involved in the retail sale of consumer durables, collectibles, or travel and entertainment, reporting of monetary instruments is not required. However, if the attorney knew or should have known that the use of monetary instruments was for avoiding the filing of the Form 8300, the monetary instruments become reportable. See 26 CFR 1.6050I-1(c)(1)(ii)(B)(2), Amounts received on or after February 3, 1992. In that case, an attorney must report as cash:
- A cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order,
 - Having a face amount of not more than \$10,000, and
 - Received in any transaction in which the attorney knows or should have known that such instrument is being used to avoid the Form 8300 filing requirements.

Example: An attorney receives twenty-two \$500 money orders from a client for services. A review of the money orders shows that the customer used five different MSBs to purchase the money orders. At each of four locations, the customer purchased five \$500 money orders for a total of \$2,500 at each location and at the fifth MSB, the customer purchased two \$500 money orders for a total of \$1,000. Based on the pattern of these purchases, the attorney should have known that the customer was trying to circumvent the Form 8300 requirements along with possibly structuring to circumvent the currency transaction reporting requirements. In this example, the attorney has an obligation to file a Form 8300. The BSA examiner after reviewing a deposit slip or cash receipts journal should have seen the large volume of small denomination monetary instruments being deposited and inquired as to their underlying transaction.

4.26.12.2.1.1
(08-21-2019)

Attorney-Client Privilege

- (1) The attorney-client privilege is a centuries-old rule that an attorney or a client need not reveal communications between the client and the attorney under the theory that a person should be able to speak freely and honestly with his/her attorney without fear of future revelation. Five requirements are often cited for it to apply:
- The person asserting the privilege must be a client or must have sought to become a client at the time of disclosure.

- b. The person connected to the communication must be acting as a lawyer; such as, not providing accounting or business advice.
 - c. The communication must be between the lawyer and the client exclusively—no non- clients may be included in the communication.
 - d. The communication must have occurred for securing a legal opinion, legal services, or assistance in some legal proceeding, and not for the purpose of committing a crime.
 - e. The privilege may be claimed or waived by the client, usually through counsel. A client may waive the privilege by disclosing the information to others.
- (2) Attorneys may raise the attorney-client privilege to justify failing to file or filing an incomplete Form 8300. U.S. Circuit courts have considered this issue and have concluded that the attorney-client privilege does not protect the client's name, or the amount paid to an attorney. Thus, the information reported on a Form 8300 is generally not protected by the attorney-client privilege.
- a. The second circuit in *United States v. Goldberger & Dubin*, 935 F.2d 501 (2d Cir. 1991), decided attorneys could not claim the attorney-client privilege to avoid disclosing to the Internal Revenue Service the names of clients who paid cash fees in excess of \$10,000.
 - b. In *United States v. Leventhal*, 961 F.2d 936 (11th Cir. 1992), Robert Leventhal, an attorney in Florida, refused to file Form 8300 with the IRS, which would have shown the names of clients who had paid him over \$10,000 in cash. Leventhal's clients had wished to remain anonymous, and Leventhal argued that the attorney-client privilege gave them that right. Leventhal cited the Florida Rules of Professional Conduct, which require disclosure of confidential client information only in rare circumstances. The court ruled that disclosing the clients' identities revealed only the existence of an attorney-client relationship, a simple factual matter that is not within the scope of the privilege. Therefore, Leventhal was compelled to reveal the sources of the payments. The court also pointed out that if the clients wished to remain anonymous they could have simply written a check.
 - c. The U.S. Court of Appeals for the Sixth Circuit followed Leventhal in *United States v. Ritchie*, 15 F.3d 592 (6th Cir. 1994), cert. denied, 513 U.S. 868 (1994). Attorney Robert Ritchie had challenged the same IRS policy as Leventhal, but the court noted that virtually every court to consider the issue has concluded that client identity and payment of fees is not privileged information. The Appeals court judge held that there was no "constitutionally protected liberty interest in spending large amounts of cash without having to account for it".
 - d. The U.S. Court of Appeals for the 8th Circuit in *United States v. Sindel*, 53 F.3d 874 (8th Cir. 1995), found the attorney-client privilege did not protect client identity and fee information. The district court order properly required the attorney to identify any clients making payments in cash of more than \$10,000.
 - e. The U.S. Court of Appeals for the 9th Circuit in *United States v. Blackman*, 72 F.3d 1418 (9th Cir. 1995) granted appellee Internal Revenue Service's petition to enforce a summons seeking information from appellant under IRC 6050I to complete Internal Revenue Service Form 8300, despite appellants arguments that the information was subject to the attorney-client privilege and his constitutional 5th amendment privilege. The court found that the identity of the client and

the amount of the fee paid were not sufficiently intertwined with confidential communications to be subject to the privilege.

- f. In *Lefcourt v. United States*, 125 F.3d 79 (2nd Cir. 1997), the Second Circuit held that a law firm did not have reasonable cause to willfully ignore the Form 8300 reporting requirements.
- (3) However, not all courts have found for the IRS in attorney-client cases. The first Circuit in *United States v. Gertner*, 65 F.3d 963 (1st Cir. 1995) refused to enforce an IRS summons for the recipient's records based on a finding by the lower court that the sole purpose of the summons was a determination of the identity of the payor for tax purposes. A John Doe summons should have been issued instead. The court specifically refused to consider the government's argument that its purpose was to determine the recipient's compliance with IRC 6050I because this argument had not been raised in the district court.
- (4) The attorney's accounting books and records may contain additional information that possibly could be subject to the attorney-client privilege. Such additional information that is protected by the attorney-client privilege should not be sought through a summons for Form 8300 information. The purpose for requesting the books and records must be to determine whether the attorney follows the Form 8300 reporting requirement. Whether the attorney-client privilege applies will depend on what information is contained in the books and records.
- (5) In certain instances, involving "special circumstances", preparation and filing of Form 8300 may violate attorney-client privilege. "Special circumstances" exist when disclosure of the Form 8300 information reveals a "last link" to connect the client with a crime and thus violating the client's privilege against self-incrimination, if disclosed. Cases in which "special circumstances" are present will be rare. Thus far, invocation of the "last link" doctrine as a defense against the disclosure required by IRC 6050I has been unsuccessful. See *United States v. Goldberger & Dubin*, 935 F.2d 501, 505 (2d Cir. 1991) before finding no "direct linkage" between the disclosure and the incrimination); *In re Grand Jury Proceedings 88-9*, 899 F.2d 1039 (11th Cir. 1990); *in re Shargel*, 742 F.2d 61 (2d Cir. 1984) (disclosure of fee information and client identify are not privileged, even though it might incriminate the client). See also, *in re Osterhoudt*, 722 F.2d 591, 593 (9th Cir. 1983) (information regarding fee arrangement ordinarily not part of the subject matter of the disclosure of privileged information), and explaining an adverse line of cases which misinterpreted *Baird v. Koerner*, 279 F.2d 623 (9th Cir. 1960).
- (6) If there are questions regarding attorney-client privilege, contact local counsel for assistance.
- (1) In addition to the normal records found in other businesses, an attorney will generally maintain:
 - Case time records
 - Client billing records
 - Client case file
 - Client identification or client card index
 - Notary log
 - Trust fund or escrow account records, including segregated trust accounts and general trust accounts

4.26.12.2.2
(08-21-2019)
**Records Commonly
Found**

4.26.12.2.3
(08-21-2019)
Terminology

- (1) Billing hours (also known as billable hours) - Refers to the practice of billing the client by the hour or portion thereof for work in non-contingency cases. This would either be in addition to, or in fulfillment of, the retainer. There is usually an expectation that work will be continued until the case is terminated and the various payments as the hours accumulate are added together in computing the threshold requirements for Form 8300 reporting purposes.
- (2) Contingency fee - A fee payable only upon the occurrence of the contingency, generally the winning or settlement of a lawsuit for damages. It generally represents a stated percentage of the proceeds of successful settlement of the case.
- (3) General trust accounts - Funds held for multiple clients in one account.
- (4) IOLTA or IOLA are a method of raising money for charitable (pro bono) legal services to indigent persons using interest earned on certain lawyer trust accounts. Lawyers deposit amounts, which must be held for a long term in a general trust account, called the IOLTA account. This is usually an interest-bearing checking account. The interest on the IOLTA account is then used mainly to pay legal services for indigent persons. The attorney withdraws the funds for the use of a client. Today every state, the District of Columbia and the U.S. Virgin Islands operate IOLTA programs.
- (5) Referral fee or forwarding fee - An amount, often a percentage of the ultimate fee, paid to the attorney for referring the case to another attorney.
- (6) Retainer - A fee generally paid up-front, for "retaining" the services of the attorney, usually for a specific period. An annual retainer covers a one-year period.
- (7) Specific retainer - An agreed fee for a case, part of which may be payable in advance.
- (8) Trust accounts - These accounts may also be termed escrow or trust fund accounts. These accounts usually are segregated, holding only the funds for one client or case.

4.26.12.2.4
(08-21-2019)
Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.2.4.1
(08-21-2019)
Pre-Plan

- (1) Prior to a Form 8300 examination the examiner should prepare a pre-plan that includes conducting research. Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) Check the Internet for the attorney's web site, which will describe the firm's legal specialties, membership and structure. Any attorney may receive cash during business activities. However, attorneys compensated through third party payments (such as insurance settlements) are less likely to receive currency. Certain legal specialties that are more likely to be paid directly by the client include:
 - Criminal defense attorneys
 - Estate and trust attorneys

- Real estate attorneys
- Tax attorneys

- (3) Consider reviewing the Attorneys Audit Technique Guide for an overview of examination techniques used with attorney cases.

4.26.12.2.4.2
(08-21-2019)
Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300 examinations.

4.26.12.2.4.3
(08-21-2019)
Interview

- (1) Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for detailed initial interview information in Form 8300 examinations.
- (2) For attorneys, it is important to determine if any prior Form 8300 has been filed blank or incomplete because of a claim of attorney-client privilege, professional ethical obligations or constitutional protections. If so, the examiner must coordinate with local Area Counsel, through the manager, before proceeding with any summons or penalty actions.
- (3) Also refer to IRM 4.10.3.3, Interviews: Authority and Purpose, for additional information.

4.26.12.2.4.4
(08-21-2019)
Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) The examiner should examine the appropriate documents and accounting records to determine if:
 - a. Transactions occurred involving the receipt of reportable cash in excess of \$10,000. These will generally be reflected in client payment records.
 - b. There are consecutive or related reportable transactions totaling in excess of \$10,000. An attorney will often have a retainer fee plus hourly billing for a client contract. These payments are related transactions and must be aggregated.
- (3) There may be a need, on a case by case basis, to interview a client to obtain all the facts needed to develop the issues.

4.26.12.2.4.5
(08-21-2019)
Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. See IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.
- (2) For a discussion of penalty considerations, see IRM 4.26.11.10, Analysis and Conclusions.
- (3) For attorneys, note that any penalty or summons enforcement action where claims of attorney-client privilege, professional ethical obligations or Constitutional protections may be raised must be coordinated with local Area Counsel, through the examiner's group manager, before proceeding.
- (4) For details regarding case content, assembly, and procedures, see IRM 4.26.11.11.

4.26.12.2.5
(08-21-2019)

**Form 8300 Examination
Techniques**

- (1) Ensure that sources of cash received are properly identified in the books and records. Claims of unknown or unidentified sources should be scrutinized.
- (2) Ensure that trust fund ownership is properly identified on filed forms. If filed CTRs do not fully identify the owner of trust funds, there should be a Form 8300 filed by the attorney. The exception in 26 CFR 1.6050I-1(a)(3)(ii), Exception, only applies if the principal in the transaction is fully identified and all cash is transferred by the agent within 15 days.
- (3) Ensure that cases involving claims of attorney-client privilege, professional ethical obligations, or Constitutional protections are properly coordinated with Division Counsel, through the examiner's group manager, before proceeding with any summons or penalty actions.
- (4) Ensure that trust funds are clearly identified on filed reports. One widespread practice, which may obscure the ownership of funds, involves attorney trust accounts. Attorneys in some states may be required (or may have the option) to keep their clients' funds in a trust account (IOLTA or IOLA). Attorneys deposit funds into the account. Interest from such accounts may accrue for a public service purpose such as providing legal services for the poor. However, the identity of the attorney depositing funds or the true owner of the funds may not be identified on CTRs filed by the bank. There are often no Forms 8300 filed. While this practice is not necessarily indicative of money laundering, it does effectively obscure the ownership of the funds.

4.26.12.3
(08-21-2019)

**Casinos and Card Clubs
Overview**

- (1) The term casino used in this section includes card clubs.
- (2) Casinos and card clubs, which have a GAGR of \$1,000,000 or less, are subject to the requirements of IRC 6050I, Returns relating to cash received in trade or business, etc., and 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business. They are not required to comply with the reporting, recordkeeping, and AML program requirements of 31 CFR Part 1021, Rules for Casinos and Card Clubs. Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, requirements only apply to the smaller casinos. Only casinos required to file CTRs under the BSA regulations, 31 CFR Part 1021 are exempt from the Form 8300 reporting requirement. It is imperative the examiner not confuse the requirements in 31 CFR Part 1021 with the requirements for Form 8300 in IRC 6050I and 31 CFR 1010.330.
- (3) Because tribal governments do not have to file Form 8300, but tribal members and others do, the examiner should determine the ownership structure of a tribal casino before proceeding with a Form 8300 examination.
- (4) In addition to a gambling casino, the casino complex may include hotel facilities, restaurants, bars and lounges, theaters and showrooms, sports and health facilities, convention space, and various shops and stores. These non-gaming related businesses are subject to Form 8300 requirements.
- (5) Organizational structure may vary depending upon applicable laws and regulations, and management needs within each individual casino. Generally, a typical gambling casino is organized into two separate, yet related operations, the casino floor and the casino cage. Larger casinos may have more than one casino floor and/or more than one casino cage. See IRM 4.26.9-1, Organizational Structure of a Gambling Casino.

4.26.12.3.1
(08-21-2019)
Law

- (1) For information on the law and any statutory exceptions, see IRM 4.26.10, Form 8300 History and Law.

4.26.12.3.2
(08-21-2019)
Records Commonly Found

- (1) See IRM 4.26.9.2.3, Records Commonly Found, for relevant casino records.

4.26.12.3.3
(08-21-2019)
Terminology

- (1) See IRM 4.26.9.2.3.1, Terminology, for relevant casino terminology.

4.26.12.3.4
(08-21-2019)
Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.3.4.1
(08-21-2019)
Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) If research shows the casino is filing CTRs or has a volume of CTRs sufficient to indicate there is greater than \$1,000,000 in GAGR, the casino is subject to the reporting and recordkeeping requirements of 31 CFR Part 1021 and is not subject to Form 8300 cash reporting requirements of IRC 6050I and 31 CFR 1010.330.
- (3) An in-depth examination should be considered if:
 - a. The casino has never been examined for compliance.
 - b. A prior examination revealed deficiencies.
 - c. The casino has filed relatively few Form 8300.
- (4) Examiners should familiarize themselves with state, tribal and local laws and regulations related to casinos in their jurisdictions. Attention should be placed on casino records, documents and reports required by those laws and regulations that may assist in detecting cash received.

4.26.12.3.4.2
(08-21-2019)
Systems Analysis

- (1) Casino records and management needs vary depending upon applicable laws and regulations. A complete analysis should be conducted of the casino accounting system used to record and process customer transaction. This accounting system may be separate from the general accounting system used to report income and expenses of the business. The analysis of the gaming accounting system will establish the audit trail leading to reportable transactions.
- (2) The analysis should include:
 - a. Identifying the flow of information through the system,
 - b. Determining what kinds of original source documents and records are prepared relative to customer transactions, who prepares them, and how they are stored and organized,
 - c. Determining what records are prepared by the casino that specifically identify cash received from the customer, and

- d. Determining the kinds of reports prepared by the casino in the ordinary course of its business that may identify and/or summarize recorded customer transactions, particularly cash received.
- (3) If the casino accounting systems are computerized, the examiner should determine:
 - a. What computer files and records are maintained relative to customer transactions and what information is stored in those files and records,
 - b. What computer files and records are prepared that specifically identify cash received from the customer,
 - c. Whether the casino has retained those records, and
 - d. What kinds of computer-generated reports are prepared by the casino in the ordinary course of its business that may identify and/or summarize recorded customer transactions, particularly cash received in excess of \$10,000.
- (4) The examiner should consider requesting assistance from a Computer Audit Specialist (CAS) if the casino computerized data cannot be provided in an Excel, Access, or any format familiar to the examiner.

4.26.12.3.4.3
(08-21-2019)
Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300 examinations.
- (2) A formal MOU has been negotiated with ITG in TE/GE for contacts with tribal casinos. The examiner's group manager is required to contact the appropriate ITG field manager prior to any tribal contact.

4.26.12.3.4.4
(08-21-2019)
Interview

- (1) Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for detailed initial interview information in Form 8300 examinations. Also refer to IRM 4.10.3.3, Interviews: Authority and Purpose, for additional reference.

4.26.12.3.4.5
(08-21-2019)
Review of Records

- (1) The records reviewed to determine a casino's Form 8300 compliance is different from those reviewed in any other business. This is because the records to be reviewed are those generated in the gaming area and not necessarily the accounting records. Refer to IRM 4.26.9.2.3, Records Commonly Found, for the types of records commonly found in casinos. Identify the appropriate records to be reviewed. The records chosen should assist the examiner in finding:
 - a. Transactions involving the receipt of reportable cash in excess of \$10,000,
 - b. Consecutive or related reportable transactions in excess of \$10,000, and
 - c. Whether Forms 8300 were filed on such transactions.
- (2) Generally, casinos will have cash going in and out of the casino. IRC 6050I requires reports only of cash received and therefore the focus should be restricted to funds coming into the casino, not funds going out.

4.26.12.3.4.6

(08-21-2019)

Closing

- (1) A closing conference must be held with the owner, corporate officer, general partner, tribal leader, or tribal designated contact person. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. See IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.3.5

(08-21-2019)

Money Laundering Trends

- (1) The more cash intensive a business is, the more likely it will attract individuals or groups seeking to use the “normalcy” of currency in the business as a cover to launder funds obtained from illegal sources. Casinos by nature are cash intensive. Either the casino and/or its customers can be involved in potential money laundering schemes. The examiner must focus on both the casino and the customers during a Form 8300 examination.
- (2) Examples of how casino employees may structure transactions or advise customers how to avoid a Form 8300 filing include the following:
 - a. Employees may fragment larger cash transactions into amounts of \$10,000 or less, when preparing source documentation.
 - b. Employees may advise customers to limit their cash activity to amounts of \$10,000 or less per transaction.
 - c. Employees at the gaming tables may advise customers, who are buying chips with cash, that they are approaching the reporting threshold, thereby suggesting or implying that they should move to another table. This action could be viewed as potentially assisting in structuring transactions.
- (3) Examples of how customers may structure transactions, with or without the knowledge of the casino, to avoid a Form 8300 filing include the following:
 - a. A customer may move from table to table limiting their cash buy-ins to amounts of less than \$10,000 per table.
 - b. A customer may conduct cash transactions at the casino cage in increments of \$10,000 or less. They may conduct the transactions at different windows or at different times of the day using different cashiers.
 - c. A customer may maintain more than one account with the casino, sometimes using an alias, and limit cash transactions to \$10,000 or less per account.
 - d. A customer may structure cash transactions throughout the casino to avoid the filing requirement.
 - e. A customer could purchase a large amount of chips with cash (in amounts just below the reporting threshold) at a table, engage in minimal gaming and then go to the cage and redeem the chips for a casino check.
 - f. A customer could make a large deposit using numerous small denomination bills, engage in minimal gaming and then withdraw the funds in large denomination bills, a casino check or a wire transfer.
 - g. A customer could insert cash into a slot machine bill validator, accumulate credits with minimal or no gaming activity, and then cash out the credits for large denomination bills or a casino check.
 - h. When reviewing customer cash transactions, if an examiner identifies transactions at or near the reporting threshold, the examiner should review all other activity by that customer for that day (and prior and subsequent days) to determine if the customer was attempting to structure transactions and whether a filing was required.

4.26.12.3.6
(08-21-2019)
**Form 8300 Review
Techniques**

- (1) Examination techniques used for casinos will vary significantly depending upon whether the casino inputs and processes its customer transaction records by or through a computer system and has retained those records in machine readable form; or uses a manual system of records.
- (2) If casino records are computerized and have been retained by the casino, the examiners may consider using a computer audit specialist especially if the data is not available in a format familiar to the examiner such as Excel and or Access.
- (3) If computerized records are available for some transactions but not for others, a combination of a review of manual records and electronic records will be required.
- (4) The examiner should consider the following steps in reviewing any filed Form 8300:
 - a. Inspect the casino's retained copies of Form 8300 for completeness.
 - b. Reconcile retained copies to those found on FinCEN Query (FCQ) to ensure all were filed.
 - c. Examine the source documents associated with these transactions to ensure that all information required to be reported and was available from source documents was included on Form 8300.
 - d. Take appropriate steps to verify that customers had been provided with the required written statement.
- (5) All identified potential reporting violations should be grouped as either single transactions over \$10,000 or multiple and related transactions totaling over \$10,000. In the case of all reporting violations, the examiner must determine whether the total transaction amount includes one or more single transactions in cash greater than \$10,000 or whether the amount is comprised exclusively of multiple transactions of less than \$10,000.
- (6) A single transaction is one that involves a physical transfer of cash from the customer to the casino in one event, even though the cash may be intended for more than one purpose and may appear in the casino's records as more than one transaction.

Example: A customer redeems three markers of \$5,000 each by making one payment, at one time, of \$15,000 cash at the cage. This represents a single transaction even though it may appear in the casino's records as three separate transactions.

Example: A customer uses cash to redeem a marker of \$5,000 and to make a deposit of \$10,000, at the same time. This represents a single transaction even though the funds are intended for separate purposes and result in two separate records.

- (7) Multiple transactions are those that are aggregated and total over \$10,000. Some examples:
 - a. From a Multiple Transaction Log (MTL), a customer is identified as making five trips to the cage to purchase chips which total over \$10,000.
 - b. An individual repays a \$15,000 marker in installments of \$5,000 each with currency.

Note: For Form 8300 reporting, multiple transactions occurring beyond a 24-hour period, which are related, must be reported. Multiple payments on a single marker are related regardless if they are conducted within or beyond a 24-hour period.

4.26.12.3.6.1
(08-21-2019)
**Receipt of Cash by the
Casino (Cash-in)**

- (1) When reviewing casino records to determine if a Form 8300 is required to be filed for a cash-in transaction, all cash-in transactions are to be aggregated together regardless of the type of transaction involved.
- (2) Casinos may maintain various types of records that will track “cash-in” from customers.
- (3) Where MTL are prepared, review the MTLs to identify single and/or aggregated reportable cash transactions.

Note: If a casino prepares a MTL, it should be used.

- (4) Player Rating Cards - If the casino tracks or monitors certain customer’s gaming activities using a player rating system or similar process, review the player ratings reports which may summarize individual customer transactions. These reports will generally identify the total amount of cash received from the customer. Such reports may include Daily Player Rating Audit Reports, Trip History Summary Reports, and Player Complimentary Reports.
- (5) Review individual customer deposit account activity through a download of cage and credit transactions. Any deposit transactions will be coded for the medium used (such as cash, chips, wire transfer, and other similar items).
- (6) Marker redemptions or marker payments - Review individual customer marker payment activity through a download of cage and credit transactions. Any marker payment transactions will be coded for the medium used (such as cash, chips, wire transfer, and other similar items). If the casino offers credit, the data analysis must include marker repayments within and beyond a 24-hour period.
- (7) Checks Purchased - Review records of casino checks issued to customers. Such records will usually include check registers or logs, as well as the casino checks themselves, and will generally identify the purpose for which the check was issued.
- (8) Filed Form 8300 must be compared to the identified reportable cash transactions to determine if there are any compliance violations.

4.26.12.3.7
(08-21-2019)
**Computer Auditing
Techniques**

- (1) If casino records are computerized and have been retained by the casino, examiners should use the techniques described in this section to identify potential reportable cash transactions. As previously stated, if computerized records are available for some transactions but not for others, a combination of these computer auditing techniques and the manual review techniques described in this section should be utilized.
- (2) The examiner must analyze the computerized data to identify reportable cash transactions. If the casino offers credit, the data analysis must include marker repayments within and beyond a 24-hour period.

- (3) Filed Form 8300 must be compared to the identified reportable cash transactions to determine if there are any compliance violations.
- 4.26.12.3.7.1
(08-21-2019)
Review of Form(s) 8300
- (1) The examiner must analyze any filed Form 8300 to determine if they are timely, accurate, and complete.
- (2) The examiner must not include missing SSNs of non-resident aliens or missing account numbers on non-account related transactions in the analysis of incomplete Form 8300.
- 4.26.12.3.7.2
(08-21-2019)
Receipt of Cash by the Casino (Cash-in)
- (1) The examiner will identify all potential reportable cash transactions related to cash received by the casino from each of its customers during the review period for the following:
- a. The aggregated total of all cash received in a 24-hour period from a customer without regard to where in the casino the transaction occurred or the type of transaction that was conducted.
 - b. The aggregated total of all cash received beyond a 24-hour period for a related transaction. For example, multiple cash marker payments paid on a single marker over several days.
- (2) For each potential reportable transaction listed, the examiner should identify:
- The date of the transaction
 - The name and account number of the customer
 - The total amount of cash received by the casino
- (3) Examiners must compare each potential reportable transaction to the Form 8300 filed to determine any failures to file and any incomplete Form 8300 filed.
- 4.26.12.3.7.3
(08-21-2019)
Additional Analysis
- (1) Depending upon the findings of the cash-in analysis, examiners may wish to expand the scope of the review to include additional testing of transactions, particularly when the casino's tracking system for cash transactions is totally dependent on data entered into the computer.
- (2) Examiners may want to include testing of transactions recorded in the computer as having occurred in a form other than cash. If Form 8300 is prepared from computer records, casino employees may attempt to conceal cash received by recording them in the system as non-cash transactions.
- (3) The purpose of this analysis is to ensure that transactions have not been incorrectly entered into the computer, whether by intent or accident, thereby circumventing the casino's tracking systems.
- 4.26.12.4
(06-01-2006)
Construction Industry Overview
- (1) The construction industry covers a broad area of business activity, ranging from heavy construction, such as building bridges and dams, to home remodeling.
- (2) The size of the firms ranges from very small (representative of most of the contractors) to multinational firms. The smaller firms perform construction work only, while the larger firms, often referred to as "engineering and construction" firms, provide a wide range of services besides construction.

- (3) Building construction includes the construction of office buildings, warehouses, hospitals, single-family dwellings, and multi-family dwellings. Most contractors are engaged in building construction.

4.26.12.4.1
(08-21-2019)
Law

- (1) For a detailed discussion of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, law, see IRM 4.26.10, Form 8300 History and Law.
- (2) For additional information and the latest specific industry guidance, search “construction industry” on <http://mysbse.web.irs.gov/default.aspx>.

4.26.12.4.2
(08-21-2019)
Records Commonly Found

- (1) The following records will be found in addition to the normal records found in other businesses:
- Back charges
 - Billing schedules
 - Building permits
 - Certificates of payment
 - Change orders or add-ons
 - Construction contracts
 - Internal reports
 - Invoices
 - Job listings
 - Job status reports
 - Project control statements

4.26.12.4.3
(08-21-2019)
Terminology

- (1) Advance payments - Payments generally made to a prime contractor prior to performance of any work under a contract.
- (2) Back charges - Cost of incomplete work charged to the contractor.
- (3) Backlog - The accumulation of unfinished jobs of a contractor, including those not started, measured by the amount of revenue expected from them.
- (4) Bid - A formal offer from a contractor, which specifies the price to be charged for completing work in accordance with project specifications and contract requirements.
- (5) Claims - Amounts in excess of the original contract price which the contractor seeks to collect from the owner or others due to unanticipated circumstances.
- (6) Construction - The converting of the plans and specifications into physical structures and facilities, involving the organization and coordination of all the resources for the project to complete the project on schedule, within budget, and according to specifications.
- (7) Construction manager – A contractor who enters into an agency contract with the project owner to supervise and coordinate the construction activity on the project, including the negotiation of contracts with others on behalf of the owner for all the construction work.
- (8) General contractor (also called a prime contractor) - Contracts with the project owner for the construction of the project and takes full responsibility for its completion.

- (9) Guarantee or retention payment - The final payment after certification of project completion, usually 10% of contract amount.
- (10) Job listing - Lists all active projects by job or project customer, contract or project number. It also may list job locations, description or scope of work and date started.
- (11) Progress reports - Daily reports prepared by the supervisor for the contractor on the progress of the job.
- (12) Progressive payments - Payments received over the course of a contract as specific benchmarks in the contract are met.
- (13) Specialty trade construction - Subcontracts for electrical, carpentry, plumbing, roofing, heating and air conditioning, mechanical, steel erection, excavation and foundation and demolition.
- (14) A more extensive listing of terms used in the construction industry can be found in the Construction Industry Audit Techniques Guide on <http://mysbse.web.irs.gov/default.aspx>.

4.26.12.4.4
(08-21-2019)

Examination Procedures

- (1) The scope and depth of each Form 8300 compliance review will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.4.4.1
(08-21-2019)

Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) The examiner should become familiar with the common business practices of the construction industry. Consult the Construction Industry Audit Techniques Guide on <http://mysbse.web.irs.gov/default.aspx> for more information.

4.26.12.4.4.2
(08-21-2019)

Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300 examinations.

4.26.12.4.4.3
(08-21-2019)

Interview

- (1) The examiner should interview both the owner and/or manager to obtain information on the operation of the business and the employee responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for detailed initial interview information in Form 8300 examinations. Also refer to IRM 4.10.3.3, Interviews: Authority and Purpose, for additional references.

4.26.12.4.4.4
(08-21-2019)

Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) The examiner may encounter inadequate records in some operations. Be alert for transactions between related entities or parties.

4.26.12.4.4.5
(08-21-2019)
Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. See IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.4.5
(08-21-2019)
Money Laundering Trends

- (1) Money laundering techniques specific to the construction industry include:
 - a. Financing a project and receiving the sales proceeds.
 - b. Payments received from the general contractor to underreport income.
 - c. Failing to maintain complete records.
 - d. Structuring a transaction by breaking one transaction into several.

4.26.12.4.6
(06-01-2006)
Form 8300 Review Techniques

- (1) A transaction for the construction industry is the contract, job, or accepted bid amount. Included in this are all subsequent change orders and any other additions to the project.
- (2) Additional agreements (add-ons) are entered into and added to the original contract and could be paid for in cash outside the contract.
- (3) Always look for contracts signed by one contractor and worked and completed by another. Also look for rebates and returns between contractors, which could involve large amounts of cash that are subject to the Form 8300 requirements.
- (4) Public records may be inspected for leads to projects. Building permits and zoning permits are available at the municipal offices where the contractor is involved in projects.
- (5) Good sources of cash payments that could be over \$10,000 and require Form 8300 filing are:
 - Selling of fill material from excavations to a third party or another contractor.
 - Selling of topsoil.
 - Disposal of various pieces of equipment, in sales between contractors.
 - Selling of salvage from demolition of large projects.
 - Job listings can identify cash transactions that occurred and had a CTR filed. By matching jobs to payments received, the examiner can trace any large cash payments requiring a Form 8300 to be filed.
 - Progress reports show the job number, customer name, scope of the work to be performed, job cost incurred to date, estimated cost to complete, change order dates, estimated fees, and the amount of the contract price earned to date. The reports are updated on a regular basis. If CTR(s) are compared, it may show cash other than that reported that is subject to the Form 8300 requirements.
 - Large amounts of cash may be found in claims filed in excess of the original contract, usually between contractors.

4.26.12.5
(06-01-2006)
Court Clerks Overview

- (1) IRC 6050I(g), Cash received by criminal court clerks, relating to court clerks, became effective on February 13, 1995, in the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322).
- (2) These provisions apply to court clerks in both Federal and State court systems. Specific statutory provisions limit the applicability of the Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, filing requirement for court clerks.

4.26.12.5.1
(08-21-2019)
Law

- (1) IRC 6050I(g) requires every clerk of a federal or state criminal court who receives more than \$10,000 in cash as bail for any individual for certain specified offenses to report that information on Form 8300.
- (2) In 2001, the BSA was amended to include the language of IRC 6050I, Returns relating to cash received in trade or business, etc., making the Form 8300 a dual-purpose form. At that time, the provision relating to court clerks was not carried over to the new 31 USC 5331, Reports relating to coins and currency received in nonfinancial trade or business. As a result, FinCEN was unable to access clerk of court Form 8300 due to the protections of IRC 6103, Confidentiality and disclosure of returns and return information. Examinations of court clerks continued to be held under IRC 6050I(g) during this period.
- (3) On December 23, 2011, the President signed Pub. L. 112-74, the Consolidated Appropriations Act of 2012, into law. Section 120 of Title I, Division C of the Act amends 31 USC 5331(a)(2), Coin and currency receipts of more than \$10,000, by requiring that any persons required to file a report under IRC 6050I(g) of the Internal Revenue Code of 1986 to file reports with FinCEN in the time and manner prescribed by regulation. The Title 31 requirements for court clerks became effective July 9, 2012, the effective date of the Title 31 regulations.
- (4) Regulations relating to court clerks for Title 26 and Title 31 appear at 26 CFR 1.6050I-2, Returns relating to cash in excess of \$10,000 received as bail by court clerks, and 31 CFR 1010.331, Reports relating to currency in excess of \$10,000 received as bail by court clerks, respectively. The regulations spell out the legal requirements in more detail.

4.26.12.5.1.1
(08-21-2019)
**Court Clerk
Requirements**

- (1) Both IRC 6050I(g) and 31 USC 5331 require any clerk of a federal or state criminal court who receives more than \$10,000 in cash, as bail for any individual charged with any of the following specified criminal offenses, to file a Form 8300:
 - Any federal criminal offense involving a controlled substance
 - Racketeering
 - Money laundering
 - Any state criminal offense substantially similar to the above offenses
- (2) Cash and certain monetary instruments with a face amount of \$10,000 or less are included within the definition of cash/currency for court clerks. 26 CFR 1.6050I-2(b), Meaning of terms, and 31 CFR 1010.331(b)(1), Currency. They include:
 - A cashier's check (by whatever name called, including treasurer's check and bank check)
 - A bank draft
 - A traveler's check
 - A money order

Note: There are no designated reporting transaction requirements for cash equivalents for clerks of court in either regulation.
- (3) If someone other than the clerk receives bail on behalf of the clerk (such as a sheriff), the clerk is treated as having received the bail. The clerk must file the Form 8300 if the other filing requirements are met. See 26 CFR 1.6050I-2(a), Reporting Requirements, and 31 CFR 1010.331(a), Reporting Requirements.

- (4) If multiple payments are made to satisfy bail reportable on Form 8300 and the initial payment does not exceed \$10,000, the initial payment and subsequent payments must be aggregated, and the information required must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed \$10,000. However, payments made to satisfy separate bail requirements are not required to be aggregated. See 26 CFR 1.6050I-2(c)(ii), Multiple payments.
- (5) The clerk is required to provide all information required by Form 8300 or its instructions by filing the form within 15 days of the transaction.
- (6) The clerk must verify the identity of each payer of bail listed.
- (7) A copy of the Form 8300 must be retained for five years from the date of filing.
- (8) Only Title 26 has a requirement that the court clerk provide a statement of the aggregate amount of reportable cash by each payer of bail. There are two different statements required. Both are discussed in paragraphs (9) and (10) below.
- (9) A statement to the payer of the bail - The Title 26 requirement of a statement to the payer of the bail can be satisfied either by sending a single written statement with an aggregate amount listed, or by furnishing copies of each Form 8300 relating to that payer of bail. This is the only instance where the regulations allow copies of Form 8300 to satisfy the requirement to furnish the statement. See 26 CFR 1.6050I- 2(d)(2), Information to payors of bail. The statement must be furnished on or before January 31 of the year following the calendar year in which the cash is received. It must contain:
 - a. The name and address of the clerk's office making the return.
 - b. The aggregate amount of reportable cash received during the calendar year by the clerk who made the information return required by this section in all cash transactions relating to the payor of bail.
 - c. A legend stating that the information contained in the statement has been reported to the Internal Revenue Service and the applicable United States Attorney(s).
- (10) A statement to the U.S. Attorney- Title 26 requires a statement containing all the information required by the Form 8300, or a copy of each Form 8300 filed by the court clerk, to be furnished to the U.S. Attorney. The statement to the U.S. Attorney must include the name and address of the clerk's office required to make the return, and the aggregate amount of cash received by such clerk. 26 CFR 1.6050I-2(d)(1)(i) requires that the statement to the U.S. Attorney must be filed with the applicable United States Attorney(s) by the 15th day after the date the cash bail is received.
- (11) A statement to payors of bail – Title 26 requires a written statement that contains the name and address of the clerk's office required to file Form 8300 and the aggregate amount of cash received by the clerk be provided to the payor of the bail. 26 CFR 1.6050I-2(d)(2)(i) requires the statement to be furnished to a payor of bail on or before January 31 of the year following the calendar year in which the cash is received.

- 4.26.12.5.2
(08-21-2019)
Records Commonly Found
- (1) In addition to the normal records found, a court clerk will generally maintain:
 - Cash receipts journal
 - Duplicate deposit slips
 - Duplicate receipts book
 - Internal reports of bail status
 - Record of bail received
- 4.26.12.5.3
(06-01-2006)
Terminology
- (1) For general terminology, see IRM 4.26.10, Form 8300 History and Law.
 - (2) Bail refers to bond posted as a guarantee for the appearance in court of a defendant released from custody.
 - (3) “Specified criminal offense” is statutory language to denote the four types of offenses that require court clerks to file a Form 8300 if the other filing requirements of the statute are met. See IRM 4.26.12.5.1.1.
- 4.26.12.5.4
(08-21-2019)
Examination Procedures
- (1) While Form 8300 examinations are not recommended for federal courts, they may be appropriate for state courts. See IRM 4.26.10.8, Clerk of Criminal Court Provisions, for more information regarding examinations of court clerks.
- 4.26.12.5.4.1
(08-21-2019)
Pre-Plan
- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
 - a. Review FCQ for Form 8300 filed by the court clerk’s office and CTRs and SARs filed on the court clerk’s office.
 - b. Review prior examination results.
- 4.26.12.5.4.2
(08-21-2019)
Initial Contact
- (1) Any initial request for an appointment should be scheduled through the court’s administrative office. Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300.
 - (2) The initial contact for a Form 8300 examination should be made by mailing to the clerk Letter 2277, Form 8300 Appointment Letter, with the scheduled date and time for the examination. The examiner may not make an initial examination contact via telephone.
- 4.26.12.5.4.3
(08-21-2019)
Interview
- (1) The examiner should interview both the court clerk and/or designated employee to obtain basic information and to determine the person(s) responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheets #205, Initial Interview Questions and Notes, for additional information on initial interviews.
- 4.26.12.5.4.4
(08-21-2019)
Review of Records
- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the court clerk has been compliant.
 - (2) When reviewing entries in the cash receipts journal, ensure that only payments made for bail are considered. Payments for penalties or other surety payments are not covered under the statute.
 - (3) The examiner should be alert to identify transactions that may indicate attempts to avoid the reporting requirements of IRC 6050I. However, most courts do not allow partial payments of bail or other situations conducive to

structuring transactions. Also, court clerks do not have an aggregation requirement except for multiple payments relating to a single bail.

4.26.12.5.4.5
(08-21-2019)

Closing

- (1) A closing conference must be held with the court clerk or designated representative. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. See IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.5.4.6
(08-21-2019)

Penalties

- (1) Title 26 penalties for failures to meet the requirements of IRC 6050I are not generally applicable to court clerks. IRM 1.2.20.1.2, Policy Statement 20-2 (Formerly P-2-4), states the Service's policy of not imposing penalties against federal governmental agencies.
- (2) Title 31 penalties for failures to meet the requirements of 31 USC 5331 are not applicable to court clerks.
 - a. Neither the penalty rules of 31 USC 5321, Civil penalties, nor the regulations at 31 CFR 1010.820, Civil penalty, have been updated to include clerk of court penalties.
 - b. Because court clerks are not included in the definition of either financial institutions or nonfinancial trades and businesses, it appears there is no Title 31 penalty currently applicable to court clerk violations.

4.26.12.5.5
(06-01-2006)

Money Laundering Trends

- (1) The court clerk is a public official/employee, with little incentive to assist transactors in structuring transactions. Because of the nature of bail payments and the requirements of the statute, transactors have fewer opportunities to structure payments.
- (2) Most problems that will be encountered involve ignorance or misunderstanding of the law.
- (3) Common problems which could be encountered include:
 - a. Failing to obtain complete identifying information on transactors, (This is especially common when another entity, such as the sheriff, receives bail on behalf of the court clerk).
 - b. Failing to file Form 8300 on reportable transactions, and
 - c. Failing to provide the required statement to transactors or U.S. Attorneys.
- (4) Money laundering techniques which could be used by the transactor include:
 - a. Using aliases or giving false identifying information when conducting transactions,
 - b. Using a combination of currency and monetary instruments to conduct transactions, and
 - c. Using multiple payers of bail in an attempt to defeat the filing of the Form 8300.

4.26.12.5.6
(06-01-2006)

Form 8300 Review Techniques

- (1) Ensure that only payments for bail are being considered. Court clerks receive fines, penalties and other types of surety payments, which are not covered under the statute.

- (2) Ensure that the bail is paid for one of the specified criminal offenses listed in the statute. Bail paid for other crimes does not trigger the reporting requirement.
- (3) Ensure that payments in monetary instruments are considered, along with payments in currency. The definition of cash in the regulations includes monetary instruments.
- (4) Ensure that the court clerk is providing both notifications required:
 - a. To the payer of bail, and
 - b. To the U.S. Attorney's office(s).
- (5) Ensure that a pattern of attorney payments of large cash bonds for clients is documented. It may warrant referral to the BSA ECS Form 8300 Coordinator for a Form 8300 examination of the attorney.

4.26.12.6 (06-01-2006)

Escrow and Title Companies Overview

- (1) Escrow companies are required to file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, for transactions where cash received is greater than \$10,000. The buyers will normally make payments into their trust sub-accounts using currency, wire transfers, direct deposits and monetary instruments.
- (2) Escrow and title companies are normally associated with the sale of real property. In some states motor homes are treated as real property. Escrow companies are also used for the sale of businesses.
- (3) The term Escrow Company is used interchangeably with Title or Land Company in this Section.
- (4) Usually each escrow is given a unique identification number by the business for their internal recordkeeping. Most transactions relate to real property and business acquisitions.
- (5) Generally, this type of business has management, office staff, escrow officers, their staff, and a title search department. A specific escrow officer will normally be assigned to each escrow. The officer or one of their assistants creates receipts for payments received on their specific accounts.
- (6) Normally four payments are made into the customer's sub-account:
 - a. The initial deposit or "good faith" payment made with the offer to purchase,
 - b. A second payment covering the balance of the down payment and projected closing costs,
 - c. A third payment from the lender funding the loan, and
 - d. A final payment to reconcile the estimated closing costs with the actual closing costs.

Note: The examiner should be aware that a series of payments may be observed if the down payment is substantial and the buyer draws from several bank accounts (or other sources) to make the down payment.

- (7) Both title and escrow companies are licensed and regulated by each state. The examiner should check the rules for their area. The following are general guidelines for closing escrow(s):

- a. Escrow(s) paid in currency must be closed within 24 hours.
- b. Escrow(s) paid with certified monetary instruments must be closed within three days.
- c. Escrow(s) paid with personal checks must be closed within 7-10 days.

4.26.12.6.1
(08-21-2019)

Law

- (1) For a detailed explanation of Form 8300 law and any statutory exceptions, see IRM 4.26.10, Form 8300 History and Law.
- (2) Escrow and title companies are considered trades and businesses subject to the requirements of IRC 6050I, Returns relating to cash received in trade or business, etc. Persons involved in real estate closings and settlements are also considered financial institutions under 31 USC 5312(a)(2) (U), Financial institution. This language includes escrow and title companies. These companies are not required to file CTRs under Title 31. They file Form 8300 instead.
- (3) A title or escrow company must report as cash those cash equivalents (a cashier's check by whatever name called, including "treasurer's check" and "bank check", bank draft, traveler's check, or money order, having a face amount of not more than \$10,000) received in any transaction in which the company knows that such instrument is being used to avoid the Form 8300 filing requirements.

4.26.12.6.2
(08-21-2019)

Records Commonly Found

- (1) In addition to the normal records found in other businesses, an escrow company will generally maintain:
 - Customer Identification documents
 - Daily reconciliation of open customer trust sub-accounts
 - Escrow closing documents
 - Escrow files
 - Escrow income reports
 - Escrow receipts
- (2) Generally, state law governs the documentation required to be held in the escrow file.
- (3) Often this type of business has a record of all escrow deposits in the file and the file is "balanced" by the escrow officer prior to the closing of the escrow.

4.26.12.6.3
(06-01-2006)

Terminology

- (1) For general terminology, see IRM 4.26.10.
- (2) Balancing the Escrow - The act of reconciling all the amounts deposited and disbursed in the escrow account at the close of escrow to effectively bring the escrow to a zero balance.
- (3) Escrow File - A folder containing all the relevant documents relating to a given escrow, usually identified by escrow number and the names of the seller and buyers. Information included in the file should include:
 - Balancing worksheet
 - Copies of correspondence
 - Copies of payment receipts
 - Escrow closing documents
 - Escrow instructions
 - Escrow officer notes and comments

- Identification documentation for both parties
- Title search information

- (4) Trust Sub-accounts - Escrow companies will maintain one trust account for customer payments. When an escrow is opened, a sub-account will be created within the trust account where all financial activities are recorded.

4.26.12.6.4
(08-21-2019)

Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.6.4.1
(08-21-2019)

Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) The examiner should become familiar with the common business practices and normal operations of escrow and title companies.

4.26.12.6.4.2
(08-21-2019)

Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300.

4.26.12.6.4.3
(08-21-2019)

Interview

- (1) The examiner should interview both the owner and/or manager to obtain information on the operation of the business and the employee responsible for filing Form 8300 examinations. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for detailed information about the initial interview.
- (2) Generally, these businesses use state notarizing procedures to identify the transactors.

4.26.12.6.4.4
(08-21-2019)

Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) Escrow companies do not normally maintain cash receipts journals but do maintain daily escrow income reports. These reports are posted to monthly ledgers.
- (3) Each customer deposit of money into escrow is receipted with a numbered escrow receipt. The escrow receipt denotes the method of payment and refers to an escrow file control number.
- (4) The escrow file number refers to an escrow file jacket containing duplicate escrow receipts, escrow closing documents, loan applications, a hard copy ledger, and other similar documents. The hard copy ledger is a journalized record of all payments and disbursements during escrow.
- (5) The most efficient way to begin the Form 8300 examination is to request all escrow receipts within the review dates.
- (6) An inspection of these receipts should disclose the method, date, and amount of the payment, the escrow number, and who received the payment. Often, it will also show from whom the funds were received.

- (7) Flip through the receipts noting those with large amounts of currency and multiple monetary instruments under \$10,000.
- (8) Record the findings in the workpapers, noting the following information:
 - The date
 - The amount
 - The escrow number
 - The transactor
 - The receipt number
- (9) During the review of these receipts, normal business operation patterns will become discernible. Any irregularity in the normal patterns should be noted and included in the workpapers.
- (10) Request the armored car service books that record all cash amounts handed over to that service. Inspection may reveal multiple or structured transactions.
- (11) Review cashiers' checks and money orders closely to note if the escrow company may be purchasing them with cash received from customers.
- (12) The above steps will lead the examiner to escrow files for transactions greater than \$10,000. Have the escrow company pull these files for further review.
- (13) From a review of the escrow file, determine the total amount deposited into the escrow and the form of that deposit should be discernible.
- (14) To adequately document a Form 8300 violation, the examiner should make copies of the receipts for all payments received for that escrow, and other documents necessary to show that the information was available to complete the Form 8300. Copies should not be made of credit applications or other documents that are not relevant to the filing requirements.

4.26.12.6.4.5
(08-21-2019)
Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. It may be necessary to include an interview with the escrow officer, and their subordinates to ascertain the facts involved in a specific escrow transaction. See IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.6.5
(08-21-2019)
**Money Laundering
Trends**

- (1) In internet auctions, fraudulent sellers may propose the use of a third-party escrow service. The perpetrator creates an escrow site that closely resembles a legitimate escrow service. The victim sends payment to that site but receives nothing in return. Alternatively, the seller sends merchandise to the subject and waits for his/her payment through a fraudulent escrow site created by the buyer. Payment is never received because it is illegitimate. A genuine online escrow company is licensed by the state in which it operates. The licensing agency can be found through the official state web site.
- (2) The FinCEN website, <https://www.fincen.gov/>, features reports detailing money laundering involving escrow companies.
 - a. Suspected Money Laundering in the Residential Real Estate Industry, April 2008, details five SAR-sourced potential money laundering transactions involving escrow accounts. The escrow accounts were used to layer the funds involved. One involved the use of an escrow account to purchase land in a country sanctioned by OFAC.

- b. The SAR Activity Review - Trends, Tips & Issues, Issue 19, May 2011 and Issue 21, May 2012 both contain examples of the use of escrow accounts for improper purposes. In one an attorney used an escrow account to conceal income received and another used an escrow account to layer skimmed mortgage payments.
- c. In July 2012, FinCEN published a BSA filing study assessing Suspicious Activity Reports (SARs) and Suspicious Form 8300 titled Assessing Suspicious Activity Reports and Suspicious Form 8300 Filings Related to Real Estate Title and Escrow Businesses 2003–2011. The study notes that currently these businesses are not required to establish AML programs or file SARs. The study is a precursor of regulations meant to prevent money laundering and terrorist activity.

4.26.12.6.6
(08-21-2019)
**Form 8300 Review
Techniques**

- (1) Often the escrow file will contain copies of the monetary instruments deposited into the escrow account, credit information and loan applications for the buyer. These may be useful in identifying structured transactions.
- (2) In addition to structuring by the business or the customer, agents acting on behalf of the customer may aid and assist in the structuring of a transaction. Patterns may form involving a attorney, real estate broker, real estate agent, escrow agent, or other similar professions. Careful review of escrow files may reveal unusual patterns and trends.

4.26.12.7
(08-21-2019)
**Mobile and
Manufactured Housing
Overview**

- (1) Retail mobile home dealers are primarily engaged in the sale, rental and repair of new and used mobile homes. The dealer will also act as a resale agent. A mobile home dealer typically offers the products of three or four manufacturers. A dealer may also have some units on consignment either from a manufacturer or a customer.
- (2) The dealer may transport and set up the home on the owner's property. The dealer may also act as a general contractor and make property improvements, such as pouring foundations, driveways and building garages as part of the sale. Some also sell insurance.
- (3) Manufactured housing is the current name for mobile homes. Manufactured housing is distinguished from modular housing in that modular housing is not designed with a permanent chassis.
- (4) For general information about manufactured housing, see Internet sources such as Wikipedia and resources cited there.

4.26.12.7.1
(08-21-2019)
Law

- (1) Mobile homes sold in a retail sale are considered personal (not real) property for purposes of the information reporting requirements of IRC 6050I, Returns relating to cash received in trade or business, etc.
 - a. At the point of sale by the business, the home is designed to be moveable from the dealer's lot. It may become permanently affixed to the ground later but that is not relevant to the sale by the mobile home dealer.
 - b. State law varies widely. For example, in Florida, mobile homes are registered and titled similarly to motor vehicles, although they are classified and taxed as real property.

- (2) Not only is a mobile home personal property, it is also a consumer durable under section 26 CFR 1.6050I-1(c)(2), Consumer durable, of the regulations. Because of this, the definition of reportable cash includes cash equivalents when a mobile home is sold by a business. The fact that the mobile home trailer is sold for a business purpose such as a temporary sales office would not remove it from the definition of a consumer durable.

Note: The definition of a consumer durable in the regulations is: “an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000. Thus, for example, a \$20,000 automobile is a consumer durable (whether or not it is sold for business use), but a \$20,000 dump truck or a \$20,000 factory machine is not.”

- (3) Modular buildings generally do not have axles and wheels built onto them. They are designed to be moved by a separate trailer to a site, which then functions as a fixed location. Guidance concerning mobile homes does not cover modular homes or buildings.
- (4) Note that the sale of a mobile home by its occupant homeowner to another prospective homeowner would not be considered reportable under IRC 6050I because it is not sold in the trade or business of the occupant homeowner.
- (5) For detailed information on Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, law and statutory exceptions, see IRM 4.26.10, Form 8300 History and Law.

4.26.12.7.2
(08-21-2019)
Records Commonly Found

- (1) In addition to the normal records found in other businesses, records most commonly found include:
- Conditional sales contracts
 - Inventory cards
 - License verification
 - Purchase invoices
 - Sales folder or jacket
 - Sales journal

4.26.12.7.3
(08-21-2019)
Terminology

- (1) Conditional Sales Contract - Also known as a financing sales contract. This is a contract where the seller has arranged or provided the financing for the purchase of the unit.
- (2) Manufactured home - Similar to the traditional home, except that it is pre-built in a factory.
- (3) Mobile Home - A pre-manufactured house, generally suitable for moving on wheels or by other transport. May be considered personal property or real property, depending upon local law.
- (4) Modular Office - Similar to a mobile home but is marketed for use as an office, schoolroom, or other commercial purposes. These units may be rented, leased, or purchased.

- (5) Modular building - Similar to a modular home but is marketed for use as an office, schoolroom, or other commercial purpose. These units may be rented, leased, or purchased.

4.26.12.7.4
(08-21-2019)

Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.7.4.1
(08-21-2019)

Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) Although state law does not govern the Form 8300 treatment of mobile homes, which as noted above are consumer durables for Form 8300 purposes, in considering what is reportable cash, it is useful to know how a modular home is characterized under state law at the time of sale. After the modular home has been permanently affixed to the ground, it would usually be considered real property.

4.26.12.7.4.2
(08-21-2019)

Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300 examinations.

4.26.12.7.4.3
(08-21-2019)

Interview

- (1) The examiner should interview both the owner and/or manager to obtain information on the operation of the business and the employee responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for initial interview information.

4.26.12.7.4.4
(08-21-2019)

Review of Records

- (1) Refer to IRC 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.

4.26.12.7.4.5
(08-21-2019)

Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. Refer to IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.7.5
(08-21-2019)

Money Laundering Trends

- (1) The business and/or the customer can be involved in potential money laundering schemes. The examiner must focus on both the business and the transactor(s) during the Form 8300 examination.
- (2) An example of a mobile home fraud was provided in FinCEN's Commercial Real Estate Financing Fraud, January 1, 2007 through December 31, 2010. A mobile home construction company, subsequently named in a consumer protection lawsuit, allegedly accepted thousands of dollars in consumer payments for mobile homes and services it did not provide, which prevented consumers from taking legal title to the homes. A SAR filer reported that these subjects sold homes that served as collateral backing a line of credit without applying the sales proceeds to reduce the loan principal.

4.26.12.7.6
(06-01-2006)

**Form 8300 Examination
Techniques**

- (1) If internal controls are inadequate or specific information exists that all cash sales are not recorded, the examiner should consider tracing a random sample of the current inventory back through the accounting records.
- (2) A substantial part of a mobile home or manufactured home dealer's business is in the resale market. In this capacity, the dealer is acting as a broker. Resale units are not booked into inventory.
- (3) The payment pattern of customers purchasing mobile homes and/or manufactured homes is similar to that observed in the retail auto industry. That is, it typically includes a down payment, possibly a trade-in, and financing arranged by either the customer or the dealer.
- (4) A customer file for a mobile home dealer may be similar to either that of the auto industry or a title company. The difference is whether local regulations license the mobile home as a vehicle or whether it is real property.
- (5) Mobile Home dealers are known as "traders". Items they may receive in trade include:
 - Automobiles
 - Boats
 - Firearms
 - Furniture
 - Land
 - Livestock
 - Motorcycles

4.26.12.8
(08-21-2019)

**Other Service
Occupations Overview**

- (1) This Section addresses trades or businesses that provide services to their customers as opposed to those engaged in the sale of goods. Attorneys are discussed separately in IRM 4.26.12.2 and Escrow and Title Companies are found in IRM 4.26.12.6.
- (2) While all trades or businesses are required to report cash transactions over \$10,000, the examiner should focus on those businesses where there is a likelihood that large currency transactions may occur. Some occupational services which should be considered are:
 - Accountants
 - Bail Bonds
 - Collection Agencies
 - Delivery Services
 - Entertainment Facilities
 - Insurance Companies
 - Medical Professionals
 - Musicians and Entertainers
 - Real Estate Brokers and Agents
 - Travel Agencies
- (3) Although these businesses are very different, there are some similarities between them. Most importantly for the purposes of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, they may all receive large payments of cash for providing a business service.

4.26.12.8.1
(08-21-2019)

Law

- (1) Armored cars generally are not considered money transmitters and so must file Form 8300 when otherwise required.
 - a. The definition of money transmitter now states specifically that the term shall not include a person that only “Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency, as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation”. 31 CFR 1010.100(ff)(5)(ii)(D), Facts and circumstances; Limitations. Also, see FinCEN Administrative Ruling FIN-2014-R010, issued September 24, 2014, Administrative Ruling on the Application of FinCEN Regulations to Currency Transporters, Including Armored Car Services, and Exemptive Relief.
 - b. The exclusion does not apply to such a person if it deposits currency or monetary instruments that it is transporting into its own operating account at a bank, regardless of the identity of the ultimate recipient of the funds represented by the currency or monetary instruments.
 - c. In instances where they are not considered money transmitters, armored cars must meet the requirements of IRC 6050I, Returns relating to cash received in trade or business, etc.
- (2) Bail bonding companies are Form 8300 filers. These companies provide the cash to the clerks of criminal court who must also file Form 8300 in the circumstances described in IRM 4.26.12.6. Additional information on bail bond companies can be found at https://www.irs.gov/pub/irs-utl/cashchapter9_210741.pdf.
- (3) A collection agency receives cash not for its own account, but for the person contracting for its services. Cash in excess of \$ 10,000 received by a person for the account of another must be reported under 26 CFR 1.6050I-1(a)(2), Cash received for the account of another. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of cash in excess of \$10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer, for example where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis.
- (4) Delivery services may also receive reportable cash from customers of the owners of the goods delivered. This is especially common in delivery services for alcoholic beverage companies because the liquor stores purchasing the beverages have cash arising from their various sales activities and like to move the cash out of the store as soon as possible. In this instance the delivery service is acting just like a collection agency and is treated in the same manner.
- (5) Travel or entertainment activities are one of the three types of Title 26 designated reporting transactions where cashier’s checks, bank drafts, traveler’s checks or money orders having a face amount of not more than \$10,000 are cash equivalents, 26 CFR 1.6050I.1(c)(1)(iii)(C), Designated reporting transaction. A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of ... a travel

or entertainment activity 26 CFR 1.6050I-1(c)(1)(iii), Designated reporting transaction. See IRM 4.26.10.5.4, Cash Equivalent Rules and Exceptions.

- (6) Entertainment facilities as a type include casinos, which are specially covered in IRM 4.26.12.4.
- (7) Entertainment facilities also include race tracks. Aggregation of cash receipts is not required unless the recipient has reason to know that the same person is conducting multiple transactions.

Example: P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places cash wagers of \$ 3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate cash recipient. As no individual recipient received cash in excess of \$10,000, no report is required.

- (8) Entertainment facilities, in general, are not required to have anti-money laundering programs or to file SARs.
- (9) Medical professionals may be physicians who operate as individuals or as LLCs or corporations. There may also be clinics and pharmacies, which operate as corporations. There are no special legal exclusions for Form 8300 reporting by medical professionals.
- (10) There are different types of real estate businesses.
 - a. Residential mortgage lenders and originators are required to establish anti-money laundering programs and to file SARs under 31 CFR 1029.210, Anti-money laundering programs for loan or finance companies, effective August 13, 2012. They are required to do so under the definition of loan and finance company and are specifically not required to file CTRs. This means that they must file Form 8300 when required to do so.
 - b. Title and escrow companies are discussed in IRM 4.26.12.6.
- (11) Travel agency activities are grouped with entertainment facilities as one of the three types of Title 26 designated reporting transactions where cashier's checks, bank drafts, traveler's checks or money orders having a face amount of not more than \$10,000 are cash equivalents.

4.26.12.8.2
(08-21-2019)
**Records Commonly
Found**

- (1) Records most commonly found include:
 - Bank statements
 - Billing statements
 - Cash Receipts Journal
 - Customer files
 - Customer receipts
 - Duplicate deposit slips
 - License verification
 - Receipt books
 - Service contracts
 - Time Sheets

(2) Additional records which may commonly be seen in specific occupations are:

- Bid proposals and acceptances
- Customer account receivable ledgers
- Customer contracts
- Delivery receipts
- Insurance policies
- Trip tickets
- Trust accounts

(3) Bail bond agents will have the following additional records:

- Bail agreements
- Collateral receipts
- Invoices for blank bonds from the surety company
- Numbered weekly reports to the surety company

4.26.12.8.3
(08-21-2019)
Terminology

- (1) For general terminology, see IRM 4.26.10, Form 8300 History and Law.
- (2) Many of these businesses have specific terminology. The examiner should refer to other industry specific sources, such as ATGs for a more complete listing of general industry terminology. They may be found at <https://www.irs.gov/businesses/small-businesses-self-employed/audit-techniques-guides-atgs>.

4.26.12.8.4
(06-01-2006)
Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.8.4.1
(08-21-2019)
Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) The examiner should be familiar with the common practices and normal operational flow of the business. Review the Audit Techniques Guide for background information on the service industry.
- (3) Accounting firms provide more than accounting services. Firms today will provide management consulting services over a wide array of issues affecting businesses. Note that the services provided may result in reimbursement of expenses and goods purchased as part of the consulting contract. An example is computer software programs either written or purchased and provided as part of the contract.
- (4) Armored car service providers may act as agents of the principal whose cash they are transporting or may act as agents of a bank. The armored car contract should be reviewed to determine for whom the service is being provided.
- (5) A bail bond firm arranges on behalf of its customer, to post a bail required by a court. Depending upon the jurisdiction, the customer may be required to post an amount anywhere from 10 to 100 percent of the bail amount. The bail bond company may also require additional amounts from its customer, to ensure the integrity of the bond.

- (6) Delivery services often receive payments for items being shipped on behalf of the seller/shipper. Depending on the relationship with the shipper/business and the customer, the payment received by the delivery company may be required to be in cash.
- (7) Entertainment facilities may receive large cash payments for special group sales, luxury accommodations, or special large ticket events. Initiation fees paid to country clubs and similar business organizations should also be considered.
- (8) Medical professionals include not only physicians but also medical clinics and pharmacies. Some medical professionals, especially specialists, receive payments for their services directly from the patient. Many elective surgical procedures are not covered by medical insurance and may be paid in cash, often in amounts greater than \$10,000.
- (9) Professional musicians and entertainers performing at large events may receive payment for their services in cash. Often, they will also receive cash payments from the vendor(s) at the event based on a contracted percentage of the vendor's total sales at the event.
- (10) Real estate brokers and agents receive payments from their clients for transactions involving assets which are generally greater than \$10,000. Depending on the prevailing state laws and licensing agencies, there are specific rules for the treatment of deposits received from the buyer/client. See IRM 4.26.12.6 for additional information on real property transactions.
- (11) Travel agencies arrange and book trips for individuals and groups. Total costs for trips often exceed the \$10,000 threshold. Trips arranged for groups are treated as single transactions. Travel agencies may also provide financial services regulated by the BSA. These may include sale or redemption of travelers' checks, currency exchange and wire services. Refer to IRM 4.26.9, Examination Techniques for Bank Secrecy Act Industries, for guidance.

4.26.12.8.4.2
(08-21-2019)
Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300 examinations.

4.26.12.8.4.3
(08-21-2019)
Interview

- (1) The examiner should interview both the owner and/or manager and the employee responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for additional information on the initial interview.

4.26.12.8.4.4
(08-21-2019)
Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) The records selected to be examined should be appropriate for the examination.
 - a. If the value of the services is consistently over \$10,000, then starting with the customer receipts that identify both the amount and type of payment, may be appropriate.
 - b. If only some of the services provided are valued at over \$10,000, then beginning with trip tickets, bail bond certificates, contracts, or customer accounts receivable, may be more appropriate.

- c. If the definition of reportable cash is only currency, then starting from duplicate deposit slips may be the best approach. However, note that cash will include certain monetary instruments in any transaction that was used to avoid the reporting requirements of Form 8300.

4.26.12.8.4.5
(08-21-2019)
Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. Refer to IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.8.5
(08-21-2019)
Form 8300 Examination Techniques

- (1) Pay special attention to cancelled contracts. Those paid in cash, cancelled near the initial payment, and refunded by company check may be an indication of money laundering.
- (2) Different individuals making multiple deposits for one transaction may be an indication of structuring.
- (3) In real estate transactions, review the trust fund account. Patterns of trust fund deposits just below the reporting threshold may be an indication of structuring. In this instance, the structuring could involve the broker or agent, as well as the client.
- (4) A good method for determining currency thresholds is to ascertain the number of payments generally made for the type of transaction and business. Then divide \$10,000 by the number of payments and round to the next highest thousand. For example, if there would normally be three payments in a transaction, divide \$10,000 by three, and round up to the next thousand = \$4,000.
- (5) Payments for a service using certain monetary instruments in amounts less than \$10,000 in regular patterns may be an indication of potential structuring of the transaction to avoid the Form 8300 reporting requirements.
- (6) Patterns of monetary instruments purchased in blocks and then tendered as part of a payment in excess of \$10,000 may indicate attempts to avoid the identification requirement of BSA (Title 31). The monetary instruments may not only identify a violation of IRC 6050I but also of Title 31.
- (7) For travel agencies and entertainment businesses, cash includes money orders and cashier's checks with a face value of \$10,000 or less.
- (8) Bail bond firms will require the receipt of "good" funds for posting of a bond. Therefore, currency may be seen more frequently in this service occupation than others. Be alert to the use of monetary instruments to avoid the filing of Form 8300. In addition to the amounts required under the bond, bail agents may also require additional collateral. Such collateral is related to the posting of the bond and is considered part of the transaction.

4.26.12.9
(06-01-2006)
Other Retail Overview

- (1) Other retail businesses sell items in exchange for cash, checks, wire transfer of funds, and/or financing arrangements. These businesses include, but are not limited to, the following:
 - Antique Dealers
 - Art Dealers
 - Auctions
 - Coin and Precious Metal Dealers

- Electronics Stores
- Furniture Stores
- Furriers
- Pawn Shops
- Retail Jewelers
- Sports Memorabilia Dealers
- Stamp Dealers

- (2) Many retail stores are owned and operated by large corporations identified under many different names at numerous locations. These stores maintain an inventory of items for sale. Many smaller specialty shops, especially antique and art dealers, hold costly inventory items. The potential for cash payments over \$10,000 is extremely high.

4.26.12.9.1
(08-21-2019)

Law

- (1) For detailed information on the law and any statutory exceptions, see IRM 4.26.10, Form 8300 History and Law.
- (2) The term retail sale means any sale (whether for resale or for any other purpose) made in the course of a trade or business, if that trade or business principally consists of making sales to ultimate consumers. Thus, for example, a jewelry store that sells primarily to ultimate consumers is conducting a retail sale when it sells gold to another jeweler for the latter's use in the manufacture of jewelry products. If cash over \$10,000 is received, it must be reported.
- (3) Certain types of retail sales are subject to the designated reporting transaction rules. These are a retail sale of:
- Consumer durables - "Consumer durable" means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000. Thus, for example, a \$20,000 automobile is a consumer durable (whether or not it is sold for business use), but a \$20,000 dump truck or a \$20,000 factory machine is not.
 - Collectibles, including any work of art, any rug or antique, any metal or gem, and any stamp or coin.
 - Travel or entertainment activities - Travel and entertainment activities are discussed in IRM 4.26.12.8.
- (4) The designated reporting rule expands the definition of cash beyond coin and currency to include a cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order having a face amount of not more than \$10,000.

4.26.12.9.2
(08-21-2019)

Records Commonly Found

- (1) The following may be found in addition to the normal records in other businesses:
- Customer cards
 - Customer files
 - Customer invoices and receipts
 - Installment records
 - Inventory control sheets
 - Lay-away records
 - Professional appraisal

4.26.12.9.3
(06-01-2006)
Terminology

- (1) Auction Barn/Yard - Can include livestock and heavy equipment sales.
- (2) Auction House - Also known as estate sales and private auction. There are generally valuable high-ticket items, such as antiques, that may be auctioned.
- (3) Bid - Amount offered to purchase.
- (4) Bullion - Precious metal in the form of bars or ingots.
- (5) Customer cards - Record of customer purchases or account receivable cards.
- (6) Furrier - Seller of apparel and accessories made from animal fur or artificial furs.
- (7) In-house financing - Financing that is provided by the business without using outside sources.
- (8) Loan Agreement - The loan contract containing the term of the loan.
- (9) Pawn Ticket - Record of stock held for customer retrieval by a specific date in exchange for cash.
- (10) Public Auction - Can draw large cash transactions depending on items presented.
- (11) Rental Purchase Plan - A plan that allows the rental of goods such as furniture, electronics or appliances that will eventually allow the customer to own the items.
- (12) Silent Auctions - Sealed bids are made on items - most often seen in art and antique sales.

4.26.12.9.4
(06-01-2006)
Examination Procedures

- (1) The scope and depth of each Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, compliance review will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.9.4.1
(08-21-2019)
Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) The examiner should become familiar with the common practices of the business.
 - a. Review the Retail Industry Audit Technique Guide for terms and typical business organization.
 - b. Review Art Galleries Audit Technique Guide for an overview of the art industry.
- (3) The examiner should become familiar with the general business structure for retail stores, which may include:
 - Owner/Corporate Headquarters
 - Store/Operations Manager
 - Office Manager
 - Sales Staff

- Bookkeeper
- Cashier

4.26.12.9.4.2
(08-21-2019)

Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in Form 8300 examinations.

4.26.12.9.4.3
(08-21-2019)

Interview

- (1) Refer to IRM 4.26.11.9.2, Lead sheet #205, Initial Interview Questions and Notes, for detailed initial interview information in Form 8300 examinations.

4.26.12.9.4.4
(08-21-2019)

Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) The principal record will be a combination sales/cash receipts journal. Some preferred customers have information cards that may include names and addresses, items purchased, purchase prices, and methods of payment.

4.26.12.9.4.5
(08-21-2019)

Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. Refer to IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.9.5
(06-01-2006)

Form 8300 Examination Techniques

- (1) Cross reference customer cards for various purchases and form of payment. Look for matching items of jewelry that were agreed upon at the same time and purchased on different dates. Also, sales of large ticket items with accessories ordered and paid for at a later date. For example, stereo unit with speakers, cabinet and television, or other electronic items all ordered and agreed upon at purchase but paid for at different times.
- (2) Identify multiple payments that are made in currency, or items defined as cash, on the same day or numerous days by customers. If this type of transaction occurs, review all available information to determine whether a Form 8300 was required.
- (3) Watch for manipulation of inventory items to conceal the sale of large ticket items. If this is found, referral to the BSA ECS Form 8300 Coordinator may be necessary.
- (4) A review of appraisals may lead to incorrect receipts or large cash sales which were not recorded. The examiner should consider a possible referral and discuss with the group manager when this situation is found.
- (5) Identify multiple items purchased at the same time but recorded as separate purchases.
- (6) Review in-house financing where multiple payments may exceed \$10,000 during a 12-month period.
- (7) Use of money orders and cashier's checks less than \$3,000 could be an indication of structuring.

4.26.12.10
(08-21-2019)

Retail Vehicles Overview

- (1) Retail vehicles are sold in exchange for cash, checks, wire transfer of funds, and/or financing arrangements.
- (2) Most of these businesses also provide parts and service to support products sold.
- (3) Retail vehicle dealers discussed in this subsection include but are not limited to the following:
 - Aircraft dealers
 - All-Terrain Vehicle (ATV) dealers
 - Farm implement/equipment dealers
 - Motorcycle dealers
 - New auto and truck dealers
 - Recreational vehicle dealers
 - Snowmobile dealers
 - Tractor-trailer dealers
 - Used auto and truck dealers
 - Watercraft (boats, yachts, and other similar items) dealers
- (4) Generally, retail vehicle dealers are members of national, state, and local organizations and associations. The NADA is one example. Most of the organizations provide educational information, pamphlets, and videos to dealers regarding the filing of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business. Additionally, this topic is covered at dealer conventions and meetings.
- (5) Most of these businesses have separate management, sales staff, and office staff.
- (6) Since most of these businesses sell consumer durables, the definition of cash includes certain monetary instruments of \$10,000 or less.
- (7) Some vehicle dealerships will allow certain customers to make payments over a specific period.
- (8) Most of these businesses have multiple bank accounts with different financial institutions. Typically, there is a general operating account at one bank with direct loan funding accounts at other banks. Funds are transferred into the general account by check or by electronic funds transfer.

4.26.12.10.1
(08-21-2019)

Law

- (1) For detailed information on the law and any statutory exceptions, see IRM 4.26.10, Form 8300 History and Law.
- (2) For retail sales of a consumer durable in a designated reporting transaction, certain monetary instruments are included in the definition of cash. Most auto and motorcycle dealers must consider cash equivalents when determining if the transaction is reportable because they engage in the sale of consumer durables. Some other factors to consider are:
 - a. Farm equipment dealers and tractor-trailer dealers generally do not sell vehicles considered consumer durables because their business does not involve the sale of items for personal use. Thus, cash is defined as currency for these transactions.
 - b. A seller of yachts would be engaged in a designated reporting transaction, but a seller of tugboats would not. Similarly, a seller of ultra-light

aircraft would be engaged in a designated reporting transaction, but a seller of commercial airliners would not.

- c. If a customer pays over \$10,000 in cash to the dealer's service department, the receipt in a 24-hour period must be reported. However, if the payment was made in cash equivalents it does not need to be reported because services are not a designated reporting transaction.
 - d. The term retail sale means any sale (whether for resale or for any other purpose) made in the course of a trade or business, if that trade or business principally consists of making sales to ultimate consumers.
- (3) The definition of "consumer durable" in 26 CFR 1.6050I-1(c)(2), Consumer durable, only applies to property that, among other things, "has a sales price of more than \$10,000". The other related costs, such as the sales tax, that must be paid to purchase the consumer durable would be part of the same transaction for purposes of determining the amount to report on a Form 8300 but those costs would not be considered for purposes of determining whether the property is a consumer durable.

Example: A customer and an auto dealership agree on a price for a car before taxes and fees of \$9,900. With taxes and fees, the total price is \$10,500. The customer pays \$9,900 in a cashier's check (no lien attached) and \$600 cash. Form 8300 is not required because the sales price of the car was less than \$10,000 and therefore the car is not considered a consumer durable.

Example: A customer and an auto dealership agree on a price for a car before taxes and fees of \$9,900. With taxes and fees, the total price is \$10,500. The customer pays \$10,500 cash. Form 8300 is required because the dealership received more than \$10,000 in cash in the same transaction.

Example: A customer and an auto dealership agree on a price for a car before taxes and fees of \$9,900. With taxes and fees, the total is \$10,500. The customer pays with \$6,000 in money orders and a \$4,500 cashier's check. The car is not a consumer durable because the sales price (\$9,900) is less than \$10,000. Form 8300 is not required because the car is not a consumer durable and, therefore, the monetary instruments are not included in the definition of cash.

- (4) When a customer makes weekly payments in cash to a dealership as a lease payment or a loan payment, and the payments exceed \$10,000 over the calendar year, the payments are considered related transactions because both parties know that the contract requires the payments. Each time the payments aggregate over \$10,000, another Form 8300 must be filed.

4.26.12.10.2
(08-21-2019)

Records Commonly Found

- (1) Records in addition to the records normally found in a business include:
- Customer deal jacket/folder
 - Installment sales agreement
 - Invoices
 - Leasing contracts
 - Monthly reconciliation report
 - New vehicle inventory listing
 - Sales receipt
 - Salesman deal worksheets

- Used vehicle inventory listing
- Wire transfer ledger

- (2) The examiner may request electronic bank deposit reconciliation in Excel format extracted from the dealer's DMS. The requested report should include receipts of the business from any source including the amount, date received, method of payment (cash, check, credit card number and other similar methods of payment), payer name, and receipt number. Receipt sources should include new and used vehicle sales, leases, service, parts, body shops, and any non-customer receipts.

Note: A "DMS" or "auto dealership management system" is a bundled management information system created specifically for automotive industry car dealerships or large equipment manufacturers, such as Caterpillar dealerships, and adapted for cars, boats, bikes, RV, and power sports dealers. These systems often contain software that cater to the needs of the finance, sales, parts, inventory and administration components of running the dealership. One of its functions can be automating tax returns.

4.26.12.10.3
(06-01-2006)
Terminology

- (1) Add on - Additional accessories or upgrade packages added to vehicle.
- (2) ATV includes such vehicles as:
- 4-wheeler
 - Dune buggy
 - Off road vehicle/two track
- (3) COD - Cash on delivery.
- (4) Deal jacket (also known as deal folder or customer file.) A folder containing all the paperwork relating to the sale to the customer which is often filed by customer name. Information inside can include:
- Control number of specific deal
 - Customer identification information (such as driver license information)
 - Documents required by state motor vehicle department
 - Financing and lien information identifying the existence of a loan
 - Notation of add-on accessories
 - Sales contract
 - Sales receipt
 - Salesman deal worksheet
 - Title/registration information
 - Trade-in data
- (5) Dealer Group - Multiple dealerships or locations owned by the same or related persons.
- (6) Dealer trade - Vehicles traded with other dealers within dealer network.
- (7) Either/Or - Customer is can find own financing within an agreed time. Normally, there is a cash down payment with one subsequent payment.
- (8) Hold check - A written and dated check held to be deposited at a later specified date.

- (9) In-house financing - The dealership extends credit to customer with customer payment made directly to the dealership.
- (10) Off-site sale - Dealers relocate inventory to various locations for vehicle sales events often involving several dealerships.
- (11) One Pay - Customer is granted an extended period to make payment, for example, "90-days, same as cash".
- (12) Pre-owned vehicle - Term generally replacing "used vehicle".
- (13) Rebate - Allowance offered by manufacturer with specific requirements.
- (14) Recreational Vehicle (RV) - Common term for trailers, campers, and motor homes.
- (15) Sport utility vehicle - Commonly referred to as SUV.
- (16) Trade in - Vehicle taken in and its value allowed towards the purchase of another vehicle.

4.26.12.10.4
(08-21-2019)

Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.10.4.1
(08-21-2019)

Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) When possible, the examiner should identify all locations included in a Dealer Group.
- (3) The examiner should become familiar with the common business practices of the trade or business.
 - Aircraft dealers - Aerospace Industry ATG 2005
 - ATV dealers
 - Farm implement/equipment dealers
 - Motorcycle dealers
 - New auto and truck dealers
 - Recreational vehicle dealers
 - Snowmobile dealers
 - Tractor-trailer dealers
 - Used auto and truck dealers
 - Watercraft (boats, yachts, and other similar watercraft) dealers
- (4) Information on the motor vehicle industry can be found on <https://www.irs.gov/> using key word search "motor vehicle industry". See especially Report of Cash Payments Over \$10,000 Received in a Trade or Business - Motor Vehicle Dealership Q&As. There are also internal resources such as MySBSE, <http://mysbse.web.irs.gov/default.aspx>, and the BSA SharePoint found at <https://organization.ds.irsnet.gov/sites/SbseFraudBSA/BkSecAct/SitePages/Home.aspx>.

- 4.26.12.10.4.2
(08-21-2019)
Initial Contact
- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in a Form 8300 examination.
- 4.26.12.10.4.3
(08-21-2019)
Interview
- (1) The examiner should interview both the owner and/or manager to obtain information on the operation of the business and the employee responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for detailed initial interview information.
- 4.26.12.10.4.4
(08-21-2019)
Review of Records
- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) Three payments are the norm in this industry (a deposit or down payment, the amount of loan proceeds, and any balance remaining due). The examiner should consider this in setting the scope of the examination.
- (3) Customer files are not always kept by calendar year. Often, files are kept alphabetically by customer.
- 4.26.12.10.4.5
(08-21-2019)
Closing
- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. Refer to IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.
- 4.26.12.10.5
(08-21-2019)
Money Laundering Trends
- (1) Money laundering techniques which could be used by the customer/transactor include:
- a. Using a combination of currency and monetary instruments to conduct transactions.
 - b. Making a large down payment/deposit and returning several days later to cancel the deal and requesting a refund by check.
 - c. Presenting a NSF or Hold check, and later redeeming with currency.
 - d. Purchasing several vehicles within a twelve-month period, each time "trading up" and transacting just under \$10,000 in cash/monetary instruments.
 - e. Making a side agreement with the business to inflate the value of a trade-in and later repurchase the trade-in.
- 4.26.12.10.6
(06-01-2006)
Form 8300 Review Techniques
- (1) Retail vehicle dealers make frequent bank deposits. These deposits often include cash amounts greater than \$10,000 from various sources. These cash deposits are reported on a CTR by the financial institution. Many times, there are no corresponding Form 8300 reported on the FCQ. Numerous sources of currency and monetary instruments require a greater scope and depth during the compliance review.
- (2) Special attention should be given to voided receipts. They may be indicative of structuring.
- (3) Identify related party transactions where an otherwise reportable transaction is split to avoid reporting. An example is a husband and wife making separate purchases to keep the total amount of the sale under \$10,000.
- (4) Identify relationships within and between businesses.

- (5) Be aware of add-on accessories to vehicles discussed at the time of the initial purchase, but not scheduled or transacted until a later date. This is considered a related transaction.
- (6) Large boats or yachts must be registered with the Coast Guard.
- (7) Airplanes must be registered with the FAA.
- (8) Test dealer records by pulling a sample of deal jackets and reviewing them to ensure that the process described in the interview is accurate.
- (9) Where a dealership self-finances its inventory, the examiner should test that all transactions are included in the accounting records by tracing a sample of current inventory back through the accounting records.

4.26.12.11
(08-21-2019)
**Wholesale Distributors
Overview**

- (1) Wholesale distributors, including beverage and tobacco firms, sell large quantities of products to other wholesalers and retailers. Transactions can involve large amounts of cash.
- (2) Full and partial payments are frequently made, providing truck drivers the cash necessary to keep the products moving. These drivers may be employed by the wholesaler or by the customer. The cash received may be applied to specific invoices or it may be applied on account, usually on a first-in, first-out basis. Drivers may collect cash payments and make daily deposits. A full understanding of company procedure for collecting payments is necessary.
- (3) Dealers in precious metals, precious stones, and jewels are discussed in IRM 4.26.9, Examination Techniques for Bank Secrecy Act Industries.

4.26.12.11.1
(08-21-2019)
Law

- (1) For detailed information on law and any statutory exceptions, see IRM 4.26.10, Form 8300 History and Law.
- (2) Wholesalers are not required to report the receipt of a monetary instrument unless the wholesaler knows that a monetary instrument is being used to avoid the reporting of the transaction.
 - a. A sale is not a retail sale unless the trade or business principally consists of making sales to ultimate consumers. Thus, an occasional sale to the ultimate consumer by a wholesaler in the course of its trade or business does not trigger reporting requirements for cash equivalents.
 - b. The law requires including cash equivalents when the wholesaler knows that such instrument is being used to evade the reporting of the transaction. Merely an appearance of structuring to evade the reporting requirements would not trigger the reporting requirement. However, a wholesaler cannot deliberately avoid knowledge of the facts. Knowledge may be attributed to such person under the concept of willful blindness.

4.26.12.11.2
(08-21-2019)
**Records Commonly
Found**

- (1) In addition to the records commonly found in a business, wholesale distributors records may include:
 - Customer correspondence relating to orders, billings, and payments
 - Daily and monthly drivers reports
 - Drivers route receipt books

- Financial statements, balance sheets, and loan applications or agreements that would relate to deposits or withdrawals from bank accounts
- Records of transfer of funds by wire or collection especially between accounts

4.26.12.11.3
(06-01-2006)

Terminology

- (1) Wholesale Distributor - A trade or business engaged in the sale of goods from one business to another. A wholesaler may act as a go-between broker to the transaction, may purchase goods for resale to other businesses, or may produce or distribute a product under a license.
- (2) Driver's Report - Shows customer name and address, quantity delivered, and form of payment. Some drivers make daily bank deposits before returning to the warehouse. A copy of deposit slips are generally attached to the daily report.
- (3) Driver's Route Receipt Books - Invoice receipt books holding copies of the daily receipts written by the drivers.
- (4) E-Commerce - Sale or trading of goods and services using the Internet.

4.26.12.11.4
(06-01-2006)

Compliance Review Procedures

- (1) The scope and depth of each Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.11.4.1
(08-21-2019)

Pre- Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) The examiner should become familiar with the common business practices of the trade or business.
- (3) Types of wholesalers include:
 - a. Merchant Wholesalers - These wholesaler suppliers own and produce a product or service and resell their products to resellers, retailers, distributors and other wholesalers.
 - b. General Wholesalers - Wholesalers that fall into this category will usually buy large quantities of products from one or more suppliers and will resell in smaller quantities to distributors, retailers and resellers.
 - c. Discount Wholesalers – This type of wholesaler will supply significantly discounted stock.

4.26.12.11.4.2
(08-21-2019)

Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information in a Form 8300 examination.

4.26.12.11.4.3
(08-21-2019)

Interview

- (1) Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for detailed information on the initial interview.

4.26.12.11.4.4
(08-21-2019)

Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) The examiner should examine the appropriate records which could include:
 - a. Drivers delivery records – drivers normally collect payment.
 - b. Accounts receivable records- many businesses make partial payments, so the examiner needs to review for related transactions.

4.26.12.11.4.5
(08-21-2019)

Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. Refer to IRM 4.26.11.11, Closing the Examination, for detailed closing procedures.

4.26.12.11.5
(08-21-2019)

Money Laundering Trends

- (1) A wholesaler may become involved in money laundering, knowingly or unknowingly, because of:
 - a. A desire by a customer to conceal the existence of taxable income. The wholesaler may be motivated to assist to keep the customer's business. Or, the customer will disguise transactions so the wholesaler will not recognize a reportable transaction.
 - b. A desire of a customer or possibly the wholesaler to use the wholesale activity to place funds derived from illegal sources into the legitimate economy.

4.26.12.11.6
(08-21-2019)

Form 8300 Examination Techniques

- (1) Sample and reconcile the daily driver's receipts to the daily summary report. Then trace the daily summary amounts to the bank deposits. If your sample verifies that all funds are deposited into the bank, you can then use the bank deposit slips to trace any large currency deposits back through the records to their source to determine any reportable transactions.
- (2) Review the drivers receipt books for cash payments on deliveries in excess of \$10,000. Also look for multiple deliveries paid at one location and paid in cash.
- (3) If the wholesaler also owns retail outlets, a separate review should be done.
- (4) A review of the accounts receivable should be made. If the customer is billed on a monthly or other periodic basis it may reveal transactions over \$10,000.

4.26.12.12
(08-21-2019)

Rentals Overview

- (1) Rental transactions may involve real estate or personal property. Rentals are characterized by rental contracts between the lessor who owns the leased property and the lessee who pays the lessor for the use and enjoyment of the property. Typically, real estate rentals are for a year or more, whereas personal property rentals, such as car rentals, can be for as little as a portion of a day.
- (2) The rental contract provides for the duration of the rental agreement. The parties know that use of the property and payment will continue until the rental agreement is concluded. Usually the entire amount of the rental is not paid at once. Real estate rentals usually envisage regular monthly payments from the lessee to the lessor due by a specified date each month. The type of payment is usually not specified. Payments may be in cash or cash equivalents, or by

personal check. In the case of real estate rentals payments may be made to a third-party real estate agent who then remits the funds, minus a percentage for the agent, to the owner.

- (3) A thorough understanding of the contract is necessary. Leases of land are generally required to be in writing by state law.

4.26.12.12.1
(08-21-2019)
Law

- (1) For a detailed explanation of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, law see IRM 4.26.10, Form 8300 History and Law.
- (2) A lessor is required to file Form 8300 whenever it receives cash over \$10,000 in one transaction or in a series of related transactions. Transactions include a rental of real or personal property.
 - a. Because the rental contract provides for the duration of the rental, it determines whether or not the recipient has reason to know that the rental payments are connected.
 - b. Generally rental payments are known to be one of a series of connected transactions. They are considered related transactions.
- (3) The receipt of multiple cash deposits or installment payments or similar payments relating to a single transaction, or two or more related transactions, must be reported on Form 8300. See 26 CFR 1.6050I-1(b), Multiple payments.
 - a. If an initial payment is in excess of \$10,000 in cash, the recipient must report that initial payment within 15 days of its receipt.
 - b. If the initial payment is \$10,000 or less, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000 and report the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.
 - c. In addition to any other required report, a report must be made each time that previously unreported payments made within a 12-month period for a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed \$10,000.
 - d. Generally, rental payments received in cash must be aggregated if received during the term of the rental contract.
- (4) Determining the term of the rental contract can be difficult if not specified in a written contract.
 - a. Most states require real estate rentals to be in writing unless the tenant occupies under a statutory month-to-month tenancy.
 - b. Rev. Proc. 2003-27 provides guidance on IRC 6050I, Returns relating to cash received in trade or business, etc., reporting requirements for the rental of taxicabs on a daily shift basis. In some cases, taxi fleet owners and taxi drivers enter into an informal arrangement based on long standing relationships. The taxi fleet owner grants the taxi driver the right to use the taxicab on a recurring, daily shift basis pursuant to agreed terms that the taxi fleet owner or the taxi driver can alter or terminate at the end of each daily shift. Neither the taxi fleet owner nor the taxi driver has an obligation to continue the rental arrangement. If a taxi fleet owner

rents a taxicab on a daily shift basis to a taxi driver under a formal lease or a daily shift arrangement based on the ongoing business relationship between the taxi fleet owner and the taxi driver, the Service will not treat the rental for a daily shift as part of a series of connected transactions under 26 CFR 1.6050I-1(c)(7)(ii), Related transactions, if the rent for the shift does not exceed \$150 and is not paid during a 24-hour period within which the payments made by, or on behalf of, the driver exceed \$150; and, neither the taxi fleet owner nor the taxi driver has an obligation to continue the daily shift rental arrangement.

- c. This principle means that in rentals of personal property where there is no written contract and payments are made daily, a contract for longer than 24 hours cannot be presumed if the parties to the contract testify that neither has an obligation to continue the daily shift rental arrangement and there is some other factor (such as a daily rental payment which is in an amount clearly sufficient only for one day).
- (5) Cash equivalents are not reportable for rental receipts unless received in any transaction in which the recipient knows that such instrument is being used to avoid the reporting of the transaction under IRC 6050I and related regulations.
- a. Because a designated reporting transaction is defined as a retail sale or the receipt of funds by a broker or other intermediary in connection with a retail sale of certain items or services, funds received from a rental agreement would not include cash equivalents as cash unless the recipient has knowledge of an attempt to evade the reporting requirements.
 - b. The examiner should explain that it is possible to voluntarily file a Form 8300 even if not required, to report suspicious activity.
- (6) Cash in excess of \$10,000 received for the account of another must be reported under 26 CFR 1.6050I-1(a)(3), Cash received by agents. When a third-party rental agent receives a cash rental payment from the lessee, the reporting obligation rests with the rental agent. The Form 8300 should be completed as follows:
- a. The lessee's information would be recorded in Part I of Form 8300. This information includes the customer's name, address, date of birth, TIN, and occupation.
 - b. Part II of Form 8300 would contain the lessor's information as the lessor is the "person on whose behalf the transaction was conducted".
 - c. Part IV of Form 8300 should include the rental agent's information as the business that received the cash. This is true whether the third-party rental agent, after receiving the cash, deposits the cash into its own account and writes a check to the lessor, deposits the cash into the account of the lessor at a bank, or delivers the cash directly to the lessor. In this latter situation, the lessor does not have an obligation to file a duplicate report. The action of the rental agent in filing the Form 8300 is attributed to the lessor. If the rental agent does not file, the responsibility of the lessor to file may still exist since the lessor also has directly received cash.

4.26.12.12.2
(08-21-2019)

Records Commonly Found

- (1) In addition to the records commonly found in a business, rental records may include:
 - Rental Contracts
 - Third party rental agency contracts
 - Correspondence relating to rentals and payments

4.26.12.12.3
(08-21-2019)

Terminology

- (1) Gross lease or tenancy stipulates a rent that is for the global amount due, including all service charges.
- (2) Head lease is the main or master lease in a situation where subleasing is allowed.
- (3) Lease is a legal contract where the use and enjoyment of property is transferred usually for a specified payment and for a specified term.
- (4) Lessee, also called a tenant when applied to land, has possession and use of the leased property.
- (5) Lessor is the owner of the property, also called the landlord.
- (6) Periodic tenancy is a tenancy which runs from year-to-year or month-to-month. It is common for a fixed-term tenancy to terminate and become a month-to-month tenancy. Notice must be given within a reasonable time before the end of the tenancy to terminate the periodic tenancy.
- (7) Rentals are leases of land or personal property. The term “rents” is also applied to the payments under a lease.
- (8) Tenancy describes a lease in which the leased property is an interest in land.
- (9) Sub-lease is a lease by a tenant in possession to a sub-tenant.

4.26.12.12.4
(08-21-2019)

Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.

4.26.12.12.4.1
(08-21-2019)

Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) The examiner should become familiar with the common practices of the business. Check Internet sources like “Lease” on Wikipedia.

4.26.12.12.4.2
(08-21-2019)

Initial Contact

- (1) Refer to IRM 4.26.11.8, Initial Contact: Overview, for detailed initial contact information.

4.26.12.12.4.3
(08-21-2019)

Interview

- (1) The examiner should interview both the lessor/owner and/or rental agent and the employee responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for information on the initial interview in a Form 8300 examination.

4.26.12.12.4.4
(08-21-2019)

Review of Records

- (1) Refer to IRM 4.26.11.9., Examination Process, for detailed examination steps for determining if the business has been compliant.

4.26.12.12.4.5
(08-21-2019)

Closing

- (1) A closing conference must be held with the owner, corporate officer, or general partner. Other employees, such as the person responsible for filing Form 8300 may be asked to attend to assist in addressing specific items. Refer to IRM 4.26.11.11, Closing the Case, for detailed closing procedures.

4.26.12.12.5
(07-13-2021)

Money Laundering Trends

- (1) The lessor and/or the lessee can be knowingly or unknowingly involved in potential money laundering schemes. The examiner must focus on both during the Form 8300 examination.
- (2) The most commonly reported suspected illicit financial activity associated with the commercial real estate sector is money laundering to promote tax evasion. (Money Laundering in the Commercial Real Estate Industry, FinCEN 2006, <https://www.fincen.gov/money-laundering-commercial-real-estate-industry>) A lessor may become involved in money laundering, because of:

- a. A desire by the landlord to underreport rental income.

Example: A landlord owned a series of rental properties. Often, he would subdivide single-family homes and rent individual bedrooms. He set up accounts in numerous banks and deposited mixed cash just under \$10,000 and cash equivalents which were reported on bank SARs and CTRs. This income was underreported by about \$2 million on his tax returns for over 4 years resulting in payments of hundreds of thousands in back taxes and penalties. (SAR Activity Review, May 2008 page 19, https://www.fincen.gov/sites/default/files/shared/sar_tti_13.pdf)

- b. A desire by a tenant to conceal the existence of taxable income by paying in cash. The lessor may be motivated to assist to keep the tenant. Or, the lessee will disguise transactions so the lessor will not recognize a reportable transaction.
- c. A desire of a lessor to use the rental activity to place funds derived from illegal sources into the legitimate economy.

Example: A U.S. bank reported that during a nine-day period, an associate of a bank customer reportedly made structured cash deposits into the bank customer's account from an unknown source. The bank customer, who owned rental properties, also reportedly wrote four checks each in face amounts at or near \$10,000, payable to one individual, within a five-week period, which began sixteen days before the first structured cash deposit and ended ten days after the last cash deposit was received in her account. The relevant circumstances included structured cash deposits from an unknown source, followed by checks written in amounts facilitating structured negotiation. In addition, the aggregate amount paid out in checks was five percent less than the aggregate amount deposited in cash. (Money Laundering in the Commercial Real Estate Industry, FinCEN 2006, <https://www.fincen.gov/money-laundering-commercial-real-estate-industry>)

- (3) Money laundering techniques, which could be used by the lessor include:

- a. Attempting to cash checks payable to the landlord.
- b. Paying cash for business expenses and failing to maintain complete records.
- c. Trading negotiable instruments with other business people to understate business receipts and actual business volumes to avoid audit trails and evade taxes.
- d. Failing to maintain complete and accurate records.
- e. Failing to file Form 8300 on reportable transactions.
- f. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements.

(4) Money laundering techniques, which could be used by the lessee include:

- a. Using aliases when conducting transactions.
- b. Using a combination of currency and monetary instruments to conduct transactions.

4.26.12.12.6
(08-21-2019)
**Form 8300 Examination
Techniques**

- (1) Sample and reconcile the daily rental receipts to the daily summary report. Then trace the daily summary amounts to the bank deposits. If the sample verifies that all funds are deposited into the bank, you can then use the bank deposit slips to trace any large currency deposits back through the records to their source to determine any reportable transactions.
- (2) Remember to aggregate the cash rental payments made during the year. This is especially important if the tenant sometimes pays in cash and sometimes with a cash equivalent.

4.26.12.13
(08-21-2019)
**Insurance Companies
Overview**

- (1) Nearly all activities of an insurance company are regulated at the state level. One of these regulated activities is the sale of insurance products. Each state has a Commissioner of Insurance who is delegated oversight authority by the state legislature to regulate the sales and marketing of insurance products to the citizens of their respective state. This function is performed by requiring a license to sell insurance.
- (2) The primary focus of an insurance examination is on the distribution systems for life insurance and annuity products, since these products provide the best opportunities for money laundering activities.
- (3) The ability to identify the distribution channel will enable an examiner to understand how a top-down examination approach can be employed, tracing the flow of money backwards from the insurance company to its field representative, licensed insurance agent, or broker.

4.26.12.13.1
(08-21-2019)
Law

- (1) For an overview of Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, law, see IRM 4.26.10, Form 8300 History and Law. For updates see: <https://www.irs.gov/> and internal resources such as <http://mysbse.web.irs.gov/default.aspx> and the BSA Policy SharePoint site found at <https://organization.ds.irsnet.gov/sites/SbseFraudBSA/BkSecAct/SitePages/Home.aspx>.
- (2) BSA examiners check compliance under two sources of the law on Insurance companies.
 - a. IRC 6050I, Returns relating to cash received in trade or business, etc., provides the requirement to file an information report (Form 8300) and

the regulations at 26 CFR 1.6050I-1, Returns relating to cash in excess of \$10,000 received in a trade or business, explain and provide the details for this filing.

- b. 31 USC 5331, Reports relating to coins and currency received in nonfinancial trade or business, copied the IRC 6050I with some exceptions. The regulations governing the filing of Form 8300 under 31 USC 5331 appear at 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business. In addition, the regulations at 31 CFR 1025, Rules for Insurance Companies, provide that insurance companies must create and maintain anti-money laundering programs and participate in information sharing when the requirements of 31 CFR 1025.330, Reports relating to currency in excess of \$10,000 received in a trade or business, are met.

4.26.12.13.1.1
(08-21-2019)

**Insurance Companies -
31 CFR Part 1025 Law**

- (1) 31 CFR Part 1025, Rules for Insurance Companies, provides additional rules for the insurance companies.
- (2) Insurance companies are defined in 31 CFR 1025.100, Definitions, as:
- a. The term "insurance company" or "insurer" means any person engaged within the United States as a business in the issuing or underwriting of any covered product.
 - b. The term "insurance company" or "insurer" does not include an insurance agent or insurance broker.
- (3) An insurance company is required to file a Form 8300 upon receiving cash more than \$10,000 in one transaction or related transactions under 31 CFR 1025.330. This rule simply refers to the requirements of 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business.
- (4) An insurance company is required to develop and implement an AML program reasonably designed to prevent the company from being used to facilitate money laundering or terrorist activities through the purchase and sale of covered products.
- (5) The risk assessment on which the AML program is based must include an assessment of the money laundering risks associated with:
- Product risk
 - Customer risk
 - Geographical risk
 - Operational risk
- (6) The AML program must establish policies and procedures for the business to prevent money laundering and terrorist financing based on the risk assessment.
- a. The program should have procedures to identify risks
 - b. It should establish reasonable steps to determine if suspicions are justified
 - c. It should develop procedures for making reasonable inquiries
- (7) At a minimum, the AML program must incorporate policies, procedures and internal controls based on the insurance company's assessment of its money

laundering and terrorist financing risks and must include provisions for complying with the BSA. For most insurance companies, the BSA requirements are:

- a. Establish a written effective AML program
- b. File Form 8300
- c. File Report of Foreign Bank and Financial Accounts
- d. File FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments
- e. File SARs

Note: Guidance for businesses required to establish AML programs in determining risk is available on the FinCEN website.

- (8) Insurance Companies are subject to the special information sharing procedures which are found in 31 CFR 1010.520, Information sharing between government agencies and financial institutions, and 31 CFR 1010.540, Voluntary information sharing among financial institutions, dealing with required and voluntary information sharing.
- (9) Insurance Companies must meet the same record keeping requirements as other financial institutions, 31 CFR 1025.410, Recordkeeping, referring to 31 CFR 1010.410, Records to be made and retained by financial institutions.

4.26.12.13.2
(08-21-2019)
**Records Commonly
Found**

- (1) In addition to the records commonly found in businesses, insurance companies are required to maintain:
 - a. A record of each extension of credit in an amount more than \$10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof.
 - b. A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than \$10,000 to or from any person, account, or place outside the United States.
 - c. A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than \$10,000 to a person, account or place outside the United States.
 - d. A record of such information for such period as the Secretary may require in an order issued under 31 CFR 1010.370(a), Reports of certain domestic coin and currency transactions, not to exceed five years.

4.26.12.13.3
(08-21-2019)
Terminology

- (1) Annuity Contract – Any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period.
- (2) Bank – Each agent, agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below:

- a. A commercial bank or trust company organized under the laws of any State or of the United States,
 - b. A private bank,
 - c. A savings and loan association or a building and loan association organized under the laws of any State or of the United States,
 - d. An insured institution as defined in section 401 of the National Housing Act,
 - e. A saving bank, industrial bank or other thrift institution,
 - f. A credit union organized under the law of any State or of the United States,
 - g. Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State,
 - h. A bank organized under foreign law, and
 - i. Any national banking association or corporation acting under the provisions of section 25(a) of the Act of December 23, 1913, as added by the Act of December 24, 1919, Ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611-32).
- (3) Broker-Dealer in Securities – A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.
- (4) Covered Products include:
- a. A permanent life insurance policy, other than a group life insurance policy,
 - b. An annuity contract, other than a group annuity contract, and
 - c. Any other insurance product with features of cash value or investment.
- (5) Group Annuity Contract - A master contract providing annuities to a group of persons under a single contract.
- (6) Group Life Insurance Policy - Any life insurance policy under which several persons and their dependents, if appropriate, are insured under a single policy.
- (7) Insurance Agent - A sales and/or service representative of an insurance company. The term “insurance agent” encompasses any person that sells, markets, distributes, or services an insurance company’s covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and, a bank or broker-dealer in securities that sells any covered product of an insurance company.
- (8) Insurance Broker - A person who, by acting as the customer’s representative arranges and/or services covered products on behalf of the customer.
- (9) Insurance Company or Insurer - Any person engaged within the United States as a business in the issuing or underwriting of any covered product. The term “insurance company” or “insurer” does not include an insurance agent or insurance broker.
- (10) Permanent Life Insurance Policy - An agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

- (11) Person – An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as the term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.
- (12) United States – The States of the United States, the District of Columbia, the Indian Lands (as the term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

4.26.12.13.4
(08-21-2019)

Examination Procedures

- (1) The scope and depth of each Form 8300 examination will depend upon the facts and circumstances of each case.
- (2) The following techniques are intended to be used as a guide and should not be considered all-inclusive.
- (3) The Title 31 Lead Sheet Package and the Form 8300 Lead Sheet Package referred to in the following subsections are available on the BSA SharePoint and should be used to guide the administrative aspects of the insurance companies' compliance examination.

4.26.12.13.4.1
(08-21-2019)

Pre-Plan

- (1) Refer to IRM 4.26.11.7, Planning the Examination, for detailed pre-plan information.
- (2) Only if the exam is conducted under Title 26 review the IDRS to verify that there are no assignments controlled to Collection, Criminal Investigation or Compliance.
- (3) The examiner should become familiar with the common practices of the business. Internet sites are useful.
 - a. National Association of Insurance Commissioners (NAICS) - <http://www.naic.org/>
 - b. International Association of Insurance Supervisors (IAIS) - <http://www.iaisweb.org/>
 - c. Office of Foreign Assets Control (OFAC) - <http://www.treas.gov/offices/enforcement/ofac/>
 - d. IRS Criminal Investigation - <https://www.irs.gov/compliance/criminal-investigation/criminal-enforcement>
 - e. Fraud - <http://sbseservicewide.web.irs.gov/Fraud/default.aspx>
 - f. Internal Revenue Bulletins (IRB) - <http://www.irs.gov/irb/>
 - g. Financial Crimes Enforcement Network - <http://www.fincen.gov/>
 - h. Code of Federal Regulations (CFR) - <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
 - i. The insurance company's website
 - j. The BSA SharePoint Title 31 Issues and Industries site also has background information and links to other internet sites. <https://organization.ds.irsnet.gov/sites/SbseFraudBSA/BkSecAct/SitePages/Home.aspx>

4.26.12.13.4.1.1
(08-21-2019)

Pre-Plan Decisions

- (1) When a business has requirements under both Title 31, such as the AML program requirement and under Titles 26 and 31 to file a Form 8300 these examinations should be started under Title 31. This allows the examination to cover not only the determination of whether their AML program is adequate but to secure any delinquent Form 8300.

- (2) If a Form 8300 IRC 6050I case is received in the field and the BSA manager and examiner, prior to contacting the entity, concur that the examination should be initiated using Title 31 procedures, the case may be surveyed.
 - a. For example, an insurance company is assigned to be worked as a Form 8300 case under Title 26. As part of the pre-contact activity the examiner notes that the business advertises that it sells covered products. The examiner has not contacted the business. The examiner should advise the manager and the Form 8300 case should be surveyed. A Title 31 (AML program and information sharing) case will be assigned by ECS after examining appropriate Title 31 sources.
- (3) If a case is originally identified as a Form 8300 IRC 6050I case and has been started under Title 26, the disclosure rules under IRC 6103, Confidentiality and disclosure of returns and return information, apply and the examiner must secure a related statute determination, signed by the territory manager, prior to addressing any Title 31 issues.
 - a. For example, an insurance company is assigned for a Form 8300 examination under IRC 6050I. During the examination, the examiner determines that the company offered products that meet the definition of covered products. Because the examination has already been started, it is not possible to survey the Title 26 case. The information can be used if a related statute determination is made. See IRM 4.26.14, Bank Secrecy Act - Disclosure, for the procedures for a related statute determination.

4.26.12.13.4.2
(08-21-2019)
Initial Contact

- (1) The initial contact for a Form 8300 examination of an insurance company must be made by mailing to the business Letter 4155, BSA Insurance Appointment Letter, with the scheduled date and time for the examination. The BSA group manager will contact the BSA Policy Analyst prior to scheduling the appointment to ensure proper notification is given to LB&I. The Chief BSA Policy will notify LB&I of all BSA insurance examinations.
- (2) Before the examiner can contact the entity, he/she must first determine the proper contact person. Make your initial contact with one of the officers of the company and/or the compliance officer.
 - a. Once the examiner has determined whom to contact, that person must be located. The examiner should use the various tools discussed earlier in the "Pre-Plan Section".
 - b. Another method is that of contacting the team leader of the LB&I case (if applicable) to obtain proper contact information but this should be done as a last resort and after the BSA Policy program manager has made proper notification pertaining to the upcoming BSA examination.
- (3) The following documents must be mailed to the business with the initial contact letter:
 - a. Form 4564 - Information Document Request
 - b. Pub 1 - Your Rights As A Taxpayer
 - c. Pub 5264 - Your Exam Rights
 - d. FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR)
 - e. Pub 4261 - Do you have a Foreign Financial Account?

- (4) Accompany the appointment letter with Form 4564. When the examination is under Title 26 the IDR should request the documents required in any Form 8300 compliance examination. When the examination is under Title 31 the IDR should request the following:
 - a. A copy of the AML compliance program in advance of the appointment. The BSA examiner should review copies of the AML compliance program of the business including but not limited to BSA compliance policies and procedures, BSA specific operations policies and procedures and BSA training monitoring and reporting policies and procedures.
 - b. Copies of all internal audits or external agency audits in advance of the appointment. The BSA examiner should note any inconsistencies reported and corrective actions recommended.
 - c. Only request Form 8300 records required under Title 31. Do not request evidence of compliance with the notice requirements which are only required in IRC 6050I(e).
- (5) If the entity fails to respond to the initial contact letter within 14 calendar days, then phone contact can be made.
- (6) Refer to IRM 4.26.11.8, Initial Contact: Overview, for additional detailed initial contact information.
- (7) Refer to IRM 4.26.11.12.9, Entities subject to both Title 26 and Title 31, for additional information on examinations of entities subject to both Title 26 and Title 31.

4.26.12.13.4.3
(08-21-2019)
Initial Interview

- (1) The examiner should interview both the owner and/or manager to obtain information on the operation of the business and the employee responsible for filing Form 8300. Refer to IRM 4.26.11.9.2, Lead Sheet #205, Initial Interview Questions and Notes, for additional initial interview information. Also, refer to IRM 4.26.11.12.9 for additional information on examinations of entities subject to both Title 26 and Title 31.

4.26.12.13.4.4
(08-21-2019)
Review of Records

- (1) Refer to IRM 4.26.11.9, Examination Process, for detailed examination steps for determining if the business has been compliant.
- (2) The examiner should follow the exam steps outlined in the Form 8300 Exam Lead Sheet (#300). If the examination is under Title 31 do not mention the customer notification requirement of IRC 6050I(e) for which you are not examining.
- (3) The principal record will be a combination sales/cash receipts type journal. Some preferred customers have information cards kept that may include names and addresses, items purchased, purchase prices, and methods of payment.

4.26.12.13.4.5
(08-21-2019)
Closing

- (1) Because of the dual nature of Form 8300 two types of closing are possible. The examination may be a simple examination under Title 26 only or it may be an examination of an entity that has responsibilities under both Title 31 and Title 26.
- (2) Companies that sell covered products have responsibilities under both Titles.

- (3) Determine the compliance under Title 31 and determine the compliance with Form 8300 using the Title 31 rules.
- (4) Refer to IRM 4.26.11.11, Closing the Examination, and IRM 4.26.11.12.9 for closing procedures.

4.26.12.13.5
(08-21-2019)
**Money Laundering
Trends**

- (1) The insurance company and/or the customer can be involved in potential money laundering schemes. The examiner must focus on both the business and the transactor(s) during the compliance examination.
- (2) It is believed that the most significant money laundering and terrorist financing risks in the insurance industry are found in the life insurance and annuity products because such products allow a customer to place large amounts of funds into the financial system and seamlessly transfer such funds to disguise their true origin.
- (3) Permanent life insurance policies that have a cash surrender value are particularly inviting money-laundering vehicles. Such cash value can be redeemed by a money launderer or can be used as a source of further investment of his/her tainted funds – for example, taking loans out against such cash value.
- (4) Money laundering techniques which could be used by the business include:
 - a. Failing to maintain complete records,
 - b. Failing to maintain accurate records,
 - c. Failing to record specific transactions,
 - d. Accepting third party payments,
 - e. Failing to file Form 8300 on reportable transactions,
 - f. Structuring a transaction by breaking one transaction into several to circumvent the reporting requirements,
 - g. Treating the purchase of related items as separate sales, and
 - h. Purchases not in conformity with standard industry practice or that are unusual for this type of business.
- (5) Money laundering techniques which could be used by the customer/transactor include:
 - a. Borrowing against the cash surrender value of permanent life insurance policies.
 - b. Selling units in investment-linked products (such as annuities).
 - c. Using insurance proceeds from an early policy surrender to purchase other financial assets.
 - d. Buying policies that allow the transfer of beneficial interests without the knowledge and consent of the issuer (for example, secondhand endowment and bearer insurance policies).
 - e. Purchasing insurance products through unusual methods such as currency or currency equivalents.
 - f. Buying products with insurance termination features without concern for the product's investment performance.
 - g. Unusual payment methods such as the use of large amounts of cash, multiple sequentially numbered money orders, traveler's checks or cashier's checks or payment from third parties.
 - h. Using a combination of currency and monetary instruments to conduct transactions.
 - i. Unwillingness by a customer or supplier to provide complete accurate information.

- (6) Additional information may be found in the International Association of Insurance Supervisors' "Guidance Paper on Anti-Money Laundering and Combating the Financing of Terrorism", October 2004, available at <http://www.iaisweb.org>.

4.26.12.13.6
(08-21-2019)
**Form 8300 Examination
Techniques**

- (1) Insurance companies are required to integrate the company's insurance agents and insurance brokers into its anti-money laundering program and obtain all relevant customer-related information necessary for an effective AML program. An effective program is one designed to prevent a financial institution from being used to facilitate money laundering or terrorist financing activity.
- (2) The AML program should be reviewed thoroughly to ensure the insurance company is addressing the agent responsibility for reporting suspicious transactions, filing Form 8300. Below are examples of items one would expect to see incorporated in a program:
- a. A method to identify high-risk operations (products, services, customers, and geographic locations); and provide periodic updates to the insurance company's risk profile; as well as, to the AML compliance program.
 - b. Formal reporting procedures to the board of directors, and senior management, of compliance initiatives, identified compliance deficiencies, and ensure that SARs filed, and corrective action taken.
 - c. Provision for program continuity despite changes in management or employee composition or structure.
 - d. Recommendations for BSA/AML compliance, and provide for timely updates to implement changes in regulations.
 - e. Implementing a risk-based policy for obtaining relevant customer-related information.
 - f. Identify reportable transactions and accurately file all required reports, including SARs, and Form 8300.
 - g. Provide for dual controls and the segregation of duties. Employees that complete the reporting forms (such as, SARs, 8300's) should not also be responsible for filing the reports.
 - h. Provide sufficient controls and monitoring systems for the timely detection and reporting of suspicious activity.
 - i. Provide for adequate supervision of employees and appropriate persons that handle currency transactions, complete reports, monitor for suspicious activity, or engage in any other activity covered by the BSA and its implementing regulations.
 - j. Train appropriate persons to be fully aware of their responsibilities under the BSA regulations and internal policy guidelines.
 - k. Incorporate BSA compliance into job descriptions and performance evaluations of appropriate personnel.
 - l. Identify multiple items purchased at the same time but recorded as separate purchases.
 - m. Use of money orders and cashier's checks less than \$3,000 could be an indication of structuring. Watch for bulk amounts of sequentially numbered U.S. money orders and traveler's checks deposited abroad.