



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.26.16

JUNE 24, 2021

## EFFECTIVE DATE

(06-24-2021)

## PURPOSE

- (1) This transmits revised text of IRM 4.26.16, Bank Secrecy Act, Report of Foreign Bank and Financial Accounts (FBAR).

## MATERIAL CHANGES

- (1) The text incorporates the new due date and automatic extension of FBAR reports beginning with calendar year 2016. The new due date is mandated by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41. FinCEN granted filers failing to meet the new due date an automatic extension.
- (2) SBSE-04-1119-0057, Change to FBAR Filing Verification Submission Process, is incorporated. This guidance provides an update on the process by which IRS accepts requests for verification that the government received a filed FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).
- (3) SBSE-04-1120-0076, Interim Guidance on the IRS Authority Previously Delegated through Treasury Directive 15-41, is incorporated. This guidance is a reissuance of interim guidance SBSE-04-0919-0046, Interim Guidance on the IRS Authority Previously Delegated through Treasury Directive 15-41, which conveys the authority of the IRS to take actions that were previously noted in the IRM as delegated through Treasury Directive (TD) 15-41.
- (4) Penalty amounts have been changed to reflect annual inflationary adjustments in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 USC 2461 note (FCPIA Act), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.
- (5) Regulations state that the penalties covered by the FCPIA Act should be adjusted annually due to inflation. Due to this requirement, actual amounts for covered penalties have been removed. A link to the penalty adjustment and table, 31 CFR 1010.821, is provided.
- (6) IRM 4.26.16.1, FBAR Overview, deleted.
- (7) IRM 4.26.16.1, New subsection, Program Scope and Objectives.
- (8) IRM 4.26.16.1.1, New subsection, Background.
- (9) IRM 4.26.16.1.2, New subsection, Authority.
- (10) IRM 4.26.16.1.3, New subsection, Responsibilities.
- (11) IRM 4.26.16.1.4, New subsection, Program Management and Reviews.
- (12) IRM 4.26.16.1.5, New subsection, Acronyms.
- (13) IRM 4.26.16.1.6, New subsection, Terms.
- (14) IRM 4.26.16.1.7, New subsection, Related Resources.
- (15) IRM 4.26.16.2, FBAR Authorities, deleted.

- (16) IRM 4.26.16.2.1, FBAR Statutory Authority, deleted and moved to IRM 4.26.16.1.2.
- (17) IRM 4.26.16.2.2, FBAR Regulatory Authority, deleted and moved to IRM 4.26.16.1.2.
- (18) IRM 4.26.16.3, FBAR Filing Criteria, moved to IRM 4.26.16.2.
- (19) IRM 4.26.16.3.1, United States Person, moved to IRM 4.26.16.2.1.
- (20) IRM 4.26.16.3.1.1, U.S. Citizen, moved to IRM 4.26.16.2.1.1.
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- (22) IRM 4.26.16.3.1.3, U.S. Entity, moved to IRM 4.26.16.2.1.3.
- (23) IRM 4.26.16.3.2, Financial Account, moved to IRM 4.26.16.2.2.
- (24) IRM 4.26.16.3.2.1, Financial Account Exceptions, moved to IRM 4.26.16.2.2.1.
- (25) IRM 4.26.16.3.2.2, Account Valuation, moved to IRM 4.26.16.2.2.2.
- (26) IRM 4.26.16.3.3, Financial Interest, moved to IRM 4.26.16.2.3.
- (27) IRM 4.26.16.3.4, Signature or Other Authority Over an Account, moved to IRM 4.26.16.2.4.
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- (30) IRM 4.26.16.3.5, Foreign Country, moved to IRM 4.26.16.2.5.
- (31) IRM 4.26.16.3.6, Aggregate Value Over \$10,000, moved to IRM 4.26.16.2.6.
- (32) IRM 4.26.16.4, FBAR Filing Procedures, moved to IRM 4.26.16.3.
- (33) IRM 4.26.16.4.1, General FBAR Filing, moved to IRM 4.26.16.3.1.
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- (35) IRM 4.26.16.4.3, FBAR Filing Exceptions, moved to IRM 4.26.16.3.3.
- (36) IRM 4.26.16.4.4, FBAR Filing by Married Couples, moved to IRM 4.26.16.3.4.
- (37) IRM 4.26.16.4.5, Electronic FBAR Filing by a Third Party, moved to IRM 4.26.16.3.5.
- (38) IRM 4.26.16.4.6, FBAR Filing for Financial Interest in 25 or More Accounts, moved to IRM 4.26.16.3.6.
- (39) IRM 4.26.16.4.7, FBAR Filing for Signature Authority for 25 or More Accounts, renamed FBAR Filing for Signature or Other Authority for 25 or More Accounts, and moved to IRM 4.26.16.3.7.
- (40) IRM 4.26.16.4.8, FBAR Filing for U.S. Persons Residing and Employed Outside the United States, moved to IRM 4.26.16.3.8.
- (41) IRM 4.26.16.4.9, Filing A Consolidated FBAR, moved to IRM 4.26.16.3.9.
- (42) IRM 4.26.16.4.10, No FBAR Filing Extension renamed FBAR Filing Extension, moved to IRM 4.26.16.3.10.
- (43) IRM 4.26.16.4.11, Delinquent FBAR Filing Procedures, moved to IRM 4.26.16.3.11.

- (44) IRM 4.26.16.4.12, Amending a Filed FBAR, moved to IRM 4.26.16.3.12.
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- (60) IRM 4.26.16.6.5.1, Willful FBAR Violations – Defining Willfulness, moved to IRM 4.26.16.5.5.1.
- (61) IRM 4.26.16.6.5.2, Willful FBAR Violations – Evidence, moved to IRM 4.26.16.5.5.2.
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- (63) IRM 4.26.16.6.6, Mitigation, deleted.
- (64) IRM 4.26.16.6.6.1, Mitigation Threshold Conditions, deleted.
- (65) IRM 4.26.16.6.7, FBAR Penalties - Examiner Discretion, moved to IRM 4.26.16.5.2.1.
- (66) IRM 4.26.16.6.8, Managerial Involvement and Approval of FBAR Penalties, moved to IRM 4.26.16.5.6.
- (67) Exhibit 4.26.16-1, New Exhibit, Acronyms.
- (68) Exhibit 4.26.16-1, FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004, moved to Exhibit 4.26.16-2.
- (69) Exhibit 4.26.16-2, Money Transmitter FBAR Filing Requirements, moved to Exhibit 4.26.16-3.
- (70) Exhibit 4.26.16-3, IRS Notice 2009-62, deleted.
- (71) Exhibit 4.26.16-4, IRS Notice 2010-23, deleted.
- (72) Exhibit 4.26.16-5, FinCEN Notice 2011-1, deleted.

- (73) Exhibit 4.26.16-6, FinCEN Notice 2011-2, deleted.
- (74) Exhibit 4.26.16-7, FinCEN Notice 2012-1, deleted.
- (75) Exhibit 4.26.16-8, FinCEN Notice 2012-2, deleted.
- (76) Exhibit 4.26.16-9, FinCEN Notice 2013-1, deleted.
- (77) Exhibit 4.26.16-10, FinCEN Notice 2014-1, deleted.

#### **EFFECT ON OTHER DOCUMENTS**

This supersedes IRM 4.26.16 dated November 6, 2015. This section should be read together with IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures, for a complete understanding of FBAR law and procedures. This IRM incorporates the guidance found in SBSE-04-1119-0057, Change to FBAR Filing Verification Submission Process, and SBSE-04-1120-0076, Interim Guidance on the IRS Authority Previously Delegated through Treasury Directive 15-41.

#### **AUDIENCE**

IRS employees in all operating divisions responsible for ensuring compliance with the reporting and recordkeeping requirements of the Report of Foreign Bank and Financial Accounts (FBAR).

Kellie L. McCann  
Acting Director, Specialty Examination Policy  
Small Business/Self-Employed

4.26.16

Report of Foreign Bank and Financial Accounts (FBAR)

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4.26.16.1  
(06-24-2021)  
**Program Scope and Objectives**

- (1) **Purpose.** This IRM contains information relating to the Report of Foreign Bank and Financial Accounts (FBAR).
  - Objectives – inform and educate examiners of procedures for FBAR reporting, filing and recordkeeping; provide information regarding penalty assessment and computation.
  - Revenue agents and their managers are responsible for adhering to the content of this IRM.
  - Employees will perform examinations of FBARs and determine compliance.
- (2) **Audience.** This IRM is for all Revenue Agents and their managers of SB/SE and LB&I responsible for ensuring compliance with the reporting and recordkeeping requirements for foreign financial accounts.
- (3) **Policy Owner.** The Director, SB/SE Specialty Exam Policy.
- (4) **Program Owner.** Director, Examination - Specialty Examination owns Bank Secrecy Act.
- (5) **Primary Stakeholders.** IRS employees in all operating divisions who are responsible for ensuring compliance with the reporting and recordkeeping requirements of the FBAR. IRS Office of Chief Counsel employees who provide guidance and clarification on interpreting laws related to FBAR provisions.

4.26.16.1.1  
(06-24-2021)  
**Background**

- (1) The requirement to report and keep records of foreign bank and financial accounts was added to the United States Code (USC) in 1970 as part of the “Currency and Foreign Transactions Reporting Act of 1970”, which came to be known as the “Bank Secrecy Act” or “BSA”. These anti-money laundering provisions, as amended, were codified at 31 USC 5311 - 5332, excluding 31 USC 5315.
- (2) The Report of Foreign Bank and Financial Accounts (FBAR) is required by the BSA. The statutory and regulatory authority for the reporting and recordkeeping requirements for foreign bank and financial accounts are in Title 31 Section 5314 of the United States Code and the related regulations under 31 CFR 1010.306, Filing of Reports, 31 CFR 1010.350, Reports of Foreign Financial Accounts, and 31 CFR 1010.420, Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts. The Secretary of the Treasury delegated the authority to administer civil compliance with Title II of the BSA to the Director, Financial Crimes Enforcement Network (FinCEN). FinCEN redelegated to the IRS the authority to interpret the law, examine for compliance, and enforce penalties for violations of the FBAR requirements. Each business operating division (BOD) within the IRS works its own FBAR cases.
- (3) The Surface Transportation and Veterans Health Care Choice Improvement Act of 2014, Public Law 114-41, required the Secretary to modify the applicable regulations to change the due date for FBARs due for calendar year 2016 and subsequent years to April 15th. FinCEN announced the due date change on its website and granted filers failing to meet the FBAR annual due date of April 15th an automatic extension to October 15th each year. FinCEN also

announced that when the FBAR due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.

4.26.16.1.2  
(06-24-2021)

**Authority**

- (1) The statutory authority for the FBAR is 31 USC 5314, Records and Reports on Foreign Financial Agency Transactions.
- (2) 31 USC 5314 directs the Secretary of the Treasury to require a resident or citizen of the United States to keep records and/or file reports when making transactions or maintaining a relationship with a foreign financial agency.
- (3) 31 USC 5321(a)(5), Foreign Financial Agency Transaction Violation, and 31 USC 5321(a)(6), Negligence, establish civil penalties for violations of the FBAR reporting and recordkeeping requirements. See IRM 4.26.16.5 below for a discussion of penalties.
- (4) 31 CFR 1010.350, Reports of Foreign Financial Accounts, contains the FBAR definitions and requirements. 31 CFR 1010.350(a), In General, states “each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 USC 5314 to be filed by such persons”.
- (5) 31 CFR 1010.306(c) specifies a filing due date of June 30th for the report for the prior year. The report is required to be electronically filed with FinCEN on FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR). The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41 (the Act) required the Secretary of the Treasury to change the FBAR due date to April 15 for calendar year 2016 and subsequent years. The Act provides for a maximum extension for a 6-month period ending on October 15.
- (6) Based on the Act, FinCEN announced that the FBAR due date was changed to April 15 to coincide with the Federal income tax filing season. FinCEN also announced an automatic extension of the filing deadline to October 15 for those who file by October 15. FinCEN does not require specific requests for an extension. FinCEN stated that the FBAR filing deadline will follow the Federal income tax due date guidance, which notes that when the Federal income tax due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.
- (7) 31 CFR 1010.420, Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts, requires maintenance and retention of FBAR records for a period of five years.
- (8) 31 CFR 1010.810(g) references a Memorandum of Agreement between FinCEN and the IRS, which redelegates, to the IRS, FinCEN’s authority to enforce the provisions of 31 USC 5314, Records and Reports on Foreign Financial Agency Transactions, 31 CFR 1010.350 and 31 CFR 1010.420. This includes the authority to:
  - a. Assess and collect civil FBAR penalties,
  - b. Investigate possible civil violations of these provisions,
  - c. Employ the summons power of subpart I of Chapter X,
  - d. Issue administrative rulings under subpart G of Chapter X, and



- e. Take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

4.26.16.1.3  
(06-24-2021)  
**Responsibilities**

- (1) The Director, SB/SE Specialty Exam Policy, is the executive responsible for the FBAR program.
- (2) The BSA Policy Program Manager has shared responsibility with the Program Manager, SB/SE HQ Exam, Exam Quality and Technical Support, Offshore and Entities Team and the Program Manager, Offshore Compliance Initiatives, Withholding and International Individual Compliance (WIIC), Large Business and International Division (LB&I) to provide oversight in administering the FBAR program. This oversight supports development and implementation of strategies to address non-compliance.
- (3) IRS examiners and technical support from each BOD within IRS are responsible for identifying and addressing issues related to FBAR non-compliance.
- (4) IRS Office of Chief Counsel provides guidance and clarification on interpreting laws related to FBAR provisions.

4.26.16.1.4  
(06-24-2021)  
**Program Management  
and Reviews**

- (1) **Program Goals:** To fulfill service-wide responsibility of the FBAR program and to ensure compliance operations are efficient and effective by improving and creating uniformity in conducting FBAR examinations across operating divisions.
- (2) **Program Reports:** Information regarding the reporting of program objectives are included, but not limited to:
  - a. FBAR Improvement Team Briefings,
  - b. Program Manager Monthly Briefings,
  - c. Examination Operational Review, and
  - d. Business Performance Reviews.
- (3) **Program Effectiveness:** Periodic program reviews are conducted to:
  - a. Assess the effectiveness of specific programs within Examination or across the organization,
  - b. Determine if procedures are being followed,
  - c. Validate policies and procedures, and
  - d. Identify and share best/proven practices.
- (4) **Periodic Review:** The BSA Policy Program Manager is responsible for reviewing the information in this IRM to ensure accuracy and promote consistent administration.

4.26.16.1.5  
(06-24-2021)  
**Acronyms**

- (1) See Exhibit 4.26.16-1 for a list of commonly used acronyms and their definitions.

4.26.16.1.6  
(06-24-2021)  
**Terms**

- (1) The term “highest aggregate balance” as used in this IRM, is calculated as follows:
  - a. Determine the high balance in each foreign account (to which the violations relate) during each year under examination,

- b. For each year, calculate the “combined high balance” by adding together the high balance of each account as determined in subparagraph (a), and then subtracting any transfers among the accounts during that year as necessary to avoid counting the same funds more than once in determining the “highest aggregate balance”. For example, if Account A’s high balance occurs July 15, transfers into Account A after July 15 are not subtracted; however, transfers into Account B from Account A after July 15 and before the date of Account B’s high balance are subtracted, and
  - c. The highest combined balance calculated under subparagraph (b) among all of the years at issue is the “highest aggregate balance”.
- (2) Whenever the term “filer” is used in this IRM it includes a US person required to file the FBAR that did not file the FBAR.
- (3) Whenever the term “violation” is used in this IRM it includes any reporting or recordkeeping violation of 31 USC 5314, Records and Reports on Foreign Financial Agency Transactions, or its implementing regulations. Each identified FBAR violation is subject to penalty, including each failure to accurately and timely report an account. Each foreign financial account required to be accurately reported on a timely-filed FBAR could be in violation of both the reporting and recordkeeping requirements.
- (4) The term “reporting”, when used in this IRM, refers to accurately reporting all required information on a timely-filed FBAR form. Examples of reporting violations include (i) failing to report an account, (ii) reporting an account on a late-filed FBAR (even if the account information is reported accurately), and (iii) inaccurately reporting an account on a timely-filed FBAR.

4.26.16.1.7  
(06-24-2021)

#### Related Resources

- (1) This section should be read together with IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures, for a complete understanding of FBAR law and procedures. See the following for additional information:
  - a. IRM 1.2.2.14.13, Delegation Order 25-13, Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements
  - b. IRM 4.26.6, Bank Secrecy Act Examiner Responsibilities for BSA Examinations
  - c. IRM 4.26.14, Disclosure
  - d. IRM 4.26.15, General Program
  - e. 31 CFR 1010.821, Penalty Adjustment and Table
- (2) While FinCEN retains its rule-making authority for FBAR, it redelegated civil FBAR enforcement authority to the IRS. See IRM 4.26.16.1.2.

4.26.16.2  
(11-06-2015)

#### FBAR Filing Criteria

- (1) An FBAR is required if **all** the following apply:
  - a. The filer is a U.S. person.
  - b. The U.S. person has a financial interest in a financial account or signature or other authority over a financial account.
  - c. The financial account is in a foreign country.
  - d. The aggregate amount(s) in the account(s) valued in U.S. dollars exceed \$10,000 at any time during the calendar year.
- (2) For a discussion of the requirements of money transmitters, see Exhibit 4.26.16-3. This exhibit also includes several Frequently Asked Questions.

4.26.16.2.1  
(11-06-2015)  
**United States Person**

- (1) A “United States person” is defined by 31 CFR 1010.350(b), United States Person, to include:
  - a. A citizen of the United States.
  - b. A resident of the United States.
  - c. An entity created, organized, or formed under the laws of the United States, any state, the District of Columbia, any territory or possession of the United States, or an Indian tribe.
- (2) The federal tax treatment of a United States person does not determine whether the person must file an FBAR to report an account or accounts.

**Example:** Single-member Limited Liability Companies are disregarded for federal tax purposes but would have to report foreign accounts on a timely-filed FBAR if otherwise required to do so.

**Example:** Some trusts may not file tax returns but may have a requirement to report a foreign bank account on a timely-filed FBAR.

- (3) “United States” is defined by 31 CFR 1010.100(hhh), United States, for FBAR and other Title 31 purposes as:
  - a. The States of the United States.
  - b. The District of Columbia.
  - c. The Indian lands (as defined in the Indian Gaming Regulatory Act).
  - d. The territories and insular possessions of the United States.
- (4) U.S. territories and insular possessions currently include:
  - Puerto Rico
  - Guam
  - American Samoa
  - U.S. Virgin Islands
  - Northern Mariana Islands

4.26.16.2.1.1  
(11-06-2015)  
**U.S. Citizen**

- (1) A citizen of the U.S. has a U.S. birth certificate or naturalization papers.
- (2) U.S. citizenship is not defined by residency. A citizen of the U.S. may reside outside the U.S.

**Example:** Children born of U.S. citizens living abroad are U.S. citizens even though they may never have been to the U.S.

4.26.16.2.1.2  
(11-06-2015)  
**U.S. Resident**

- (1) Prior to February 24, 2011, when revised regulations were issued, the FBAR regulations did not define the term “U.S. resident”.
- (2) For FBARs required to be filed by June 30, 2011, or later, 31 CFR 1010.350(b) defines “United States resident” using the definition of resident alien in IRC 7701(b), Definition of Resident Alien and Nonresident Alien, and the regulations thereunder but using the Title 31 definition of “United States”. The major tests of residency found in IRC 7701(b) are:

- a. The green card test. Individuals who at any time during the calendar year have been lawfully granted the privilege of residing permanently in the U.S. under the immigration laws automatically meet the definition of resident alien under the green card test.
  - b. The substantial presence test. Individuals are defined as resident aliens under the substantial presence test if they are physically present in the U.S. for at least 183 days during the current year, or they are physically present in the U.S. for at least 31 days during the current year and meet the specifications contained in IRC 7701(b)(3), Substantial Presence Test.
  - c. The individual files a first-year election on his income tax return to be treated as a resident alien under IRC 7701(b)(4), First-Year Election.
  - d. The individual is considered a resident under the special rules in IRC 7701(b)(2), Special Rules for First and Last Year of Residency, for first-year or last-year residency.
- (3) Individuals residing in the U.S. who do not meet one of these residency tests are not considered U.S. residents for FBAR purposes. This includes individuals in the U.S. under a work visa who do not meet the substantial presence test.
  - (4) Using these rules of residency can result in a non-resident being considered a U.S. resident for FBAR purposes. This would occur when a green card holder resides outside the U.S.
  - (5) FinCEN clarified in the preamble to the regulations that an election under IRC 6013(g), Election to Treat Nonresident Alien Individual as Resident of the United States, or IRC 6013(h), Joint Return, Etc., for Year in Which Nonresident Alien Becomes Resident of United States, is not considered when determining residency status for FBAR purposes.
  - (6) U.S. tax treaty provisions do not affect residency status for FBAR purposes. A treaty provision which allows a resident of the U.S. to file tax returns as a non-resident does not affect residency status for FBAR purposes if one of the tests of residency in IRC 7701(b) is met.
  - (7) Diplomats residing at foreign embassies in the U.S. are not generally considered U.S. residents.

4.26.16.2.1.3  
(06-24-2021)  
**U.S. Entity**

- (1) A U.S. entity is a legal entity created, organized, or formed under the laws of the U.S., any state, the District of Columbia, any territory or possession of the U.S., or an Indian tribe.
- (2) 31 CFR 1010.350(b) specifically names, but does not limit these types of entities to:
  - Corporations
  - Partnerships
  - Trusts
  - Limited Liability Companies
- (3) The preamble to the regulations clarifies that pension plans and welfare benefit plans are included as U.S. entities.
- (4) The definition of entities allows for new types of legal entities to be included in the future.

4.26.16.2.2  
(11-06-2015)

## Financial Account

- (1) A reportable financial account includes a:
- a. Bank account, such as a savings deposit, demand deposit, checking, time deposit (CD), or any other account maintained with a financial institution or other person engaged in the business of banking.
  - b. Securities account, securities derivatives account, or other financial instruments account held with a person engaged in the business of buying, selling, holding or trading stock or other securities.
  - c. Other financial account, as defined in (2) below.

- (2) "Other Financial Account" is defined by the regulations to include:

- a. An account with a person in the business of accepting deposits as a financial agency.
- b. An insurance or annuity policy that has a cash value.

**Note:** The preamble to the regulations clarifies that there need be no current payment of an income stream to trigger reporting. The cash value of the policy is considered the account value.

- c. An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association.
- d. A mutual fund or similar pooled fund defined as "a fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions".

- (3) The following are not considered financial accounts:

- a. Stocks, bonds, or similar financial instruments held directly by the person.
- b. Real estate or an account holding solely real estate (such as, Mexican "fideicomiso").
- c. A safety deposit box.

**Note:** A reportable account may exist where the financial institution providing the safety deposit box has access to the contents and can dispose of the contents upon instruction from, or prearrangement with, the person.

- d. Precious metals, precious stones, or jewels held directly by the person.

**Note:** 31 USC 5311, Declaration of Purpose, defines "financial agency" as "a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold". Therefore, a reportable account relationship may exist where a foreign agency holds precious metals on deposit or provides insurance or other services as an agent of the person owning the precious metals.

4.26.16.2.2.1  
(11-06-2015)

## Financial Account Exceptions

- (1) The following are not considered reportable financial accounts for FBAR purposes:

- a. An account of a department or agency of the U.S., an Indian tribe, any state or any political subdivision of a state, any territory or insular possession of the U.S., or a wholly-owned entity, agency or instrumentality of any of the foregoing.
- b. An account of an international financial institution of which the U.S. government is a member (such as, the International Monetary Fund (IMF) and the World Bank).
- c. An account in an institution known as a "United States military banking facility", that is, a facility designated to serve U.S. military installations abroad.
- d. Correspondent or "nostro" accounts that are maintained by banks and used solely for bank-to-bank settlements.
- e. Custodial or "omnibus" accounts held for the person by a U.S. institution acting as a global custodian, if the person cannot directly access the foreign custodial account.

4.26.16.2.2.2  
(06-24-2021)

**Account Valuation**

- (1) The FBAR is required for each calendar year during which the aggregate amount(s) in the foreign account(s) exceeded \$10,000, valued in U.S. dollars, at any time during that calendar year. To determine the account value to report on the FBAR follow these steps:

- a. Determine the maximum value in locally denominated currency. The maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year.

**Example:** If the statement closing balance is \$9,000 but at any time during the year a balance of \$15,000 appears on a statement, the maximum value reportable on an FBAR is \$15,000.

**Note:** If periodic account statements are not issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year.

- b. Convert the maximum value into U.S. dollars by using the official exchange rate in effect at the end of the year at issue for converting the foreign currency into U.S. dollars. The official Treasury Reporting Rates of Exchange for recent years are posted on the FBAR home page of the IRS web site at [www.irs.gov](http://www.irs.gov). Search for keyword "FBAR" to find the FBAR home page. Current and recent quarterly rates are also posted on the Bureau of the Fiscal Service website at [www.fiscal.treas.gov](http://www.fiscal.treas.gov).

- (2) If the filer has more than one account to report on the FBAR, each account is valued separately in accordance with the previous paragraphs.
- (3) If a person has one or more but fewer than 25 reportable accounts and is unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the calendar year, the FBAR instructions state that the person is to complete the applicable parts of the FBAR for each of these accounts and check the "amount unknown" box in Item 15a.
- (4) For purposes of determining the violation date balance for accounts where a currency other than U.S. dollars is used, convert the value of the foreign currency into U.S. dollars by using the official Treasury Reporting Rates of Exchange rate. The Treasury exchange rates are published quarterly on March 31st, June 30th, September 30th, and December 31st and are available at



<https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/>. An examiner should use the rate as of the date of the quarterly report for the three months following the date of the report, unless Treasury has issued an amendment to the quarterly report. For example, an examiner should use the Treasury exchange rate published March 31st to convert an April 15th account balance from the foreign currency into U.S. dollars. If Treasury has amended the quarterly report between March 31st and April 15th, an examiner should use the amended rate in effect for the April 15th date.

4.26.16.2.3  
(06-24-2021)  
**Financial Interest**

(1) Direct Financial Interest:

- a. A U.S. person has a financial interest in each account for which such person is the owner of record or has legal title, whether the account is maintained for his own benefit or for the benefit of others including non-U.S. persons.
- b. If an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those U.S. persons has a financial interest in that account and, generally, each person must report the account on the FBAR. However, see special rules for spousal reporting in IRM 4.26.16.3.4 below.

**Note:** Because the FBAR is a report of foreign financial accounts, the entire account value for jointly-owned accounts is reported on each FBAR. Accounts are not prorated for a person's percentage of ownership interest.

(2) Indirect financial interest: A U.S. person has an "other financial interest" in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is:

- a. A person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person.
- b. A corporation, whether foreign or domestic, in which the U.S. person owns directly or indirectly more than 50 percent of the total value of shares of stock or more than 50 percent of the voting power for all shares of stock.
- c. A partnership, whether foreign or domestic, in which the United States person owns directly or indirectly an interest in more than 50 percent of the profits (distributive share of income, taking into account any special allocation agreement) or more than 50 percent of the capital of the partnership.
- d. Any other entity in which the U.S. person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits.
- e. A trust, if the U.S. person is the trust grantor and has an ownership interest in the trust for U.S. federal tax purposes under 26 USC 671–679 and the regulations thereunder.
- f. A trust, whether foreign or domestic, in which the U.S. person either has a present beneficial interest, either directly or indirectly, in more than 50 percent of the assets of the trust or from which such person receives more than 50 percent of the trust's current income.

(3) The family attribution rules under Title 26 do not apply to FBAR reporting.

- (4) A U.S. person that causes an entity including, but not limited to, a corporation, partnership, or trust, to be created for the purpose of evading the FBAR reporting or recordkeeping requirements shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title. See 31 CFR 1010.350(e)(3), Anti-Avoidance Rule.

4.26.16.2.4  
(11-06-2015)

**Signature or Other  
Authority Over an  
Account**

- (1) An individual has signature or other authority over an account if that individual (alone or in conjunction with another) can control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.
- (2) Individuals **not** considered as having signature authority:
- a. Individuals with only the authority to buy or sell investments within the account, but no authority to disburse assets from the account.
  - b. Individuals with supervisory authority over the individuals who communicate with the person with whom the account is maintained. FinCEN clarified, in the preamble to the regulations at 31 CFR 1010.350, Reports of Foreign Financial Accounts, that approving a disbursement that a subordinate orders is not considered signature authority.
- (3) Only individuals can have signature authority. Signature authority attributed to entities must be exercised by individuals.

4.26.16.2.4.1  
(11-06-2015)

**Signature Authority  
Exceptions**

- (1) An officer or employee of the following institutions need not report signature or other authority over a foreign financial account owned or maintained by the institution if the officer or employee has no financial interest in the account:
- a. A bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.
  - b. A financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission.
  - c. An Authorized Service Provider for a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission.

**Note:** Authorized Service Provider is an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

- d. An entity with a class of equity securities listed (or American depository receipts listed) on any U.S. national securities exchange.

**Note:** Previously, instructions to the form allowed a “large corporation” exception for listed corporations. That exception was expanded to include all listed entities.

- e. An entity that has a class of equity securities registered (or American depository receipts registered) under section 12(g) of the Securities Exchange Act.



4.26.16.2.4.2  
(06-24-2021)

## Extended Due Dates for Certain Individuals Who Only Had Signature Authority

- (2) An officer or employee of a U.S. subsidiary of an entity in (d) above need not report signature or other authority over accounts of the subsidiary if the entity files a consolidated FBAR listing the accounts of the subsidiary.
- (1) IRS Notice 2009-62, issued in August 2009 extended the due date for filing an FBAR for calendar years 2008 and prior years until June 30, 2010 for:
  - a. U.S. persons with signature authority, but no financial interest, in an account.
  - b. U.S. persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund.
- (2) IRS Notice 2010-23 further extended the due date for filing an FBAR until June 30, 2011, for the filers named in IRS Notice 2009-62. The Notice stated the extension in IRS Notice 2009-62 was provided “in order for the Treasury Department to have the time necessary to develop comprehensive FBAR guidance”.
- (3) FinCEN Notice 2011-1 (Revised), issued June 2, 2011 extended to June 30, 2012, the 2010 FBAR due date for:
  - a. Employees or officers of an entity under 31 CFR 1010.350(f)(2)(i)-(v), Exceptions, with signature or other authority over, and no financial interest in, a foreign financial account of a controlled person of the entity.
  - b. Employees or officers of a controlled person of an entity under 31 CFR 1010.350(f)(2)(i)-(v) with signature or other authority over, and no financial interest in, a foreign financial account of the entity, the controlled person, or another controlled person of the entity.
- (4) FinCEN Notice 2011-2, issued June 17, 2011, extended to June 30, 2012, the FBAR due date for officers and employees of investment advisors registered with the Securities and Exchange Commission with signature or other authority over (but no financial interest in) foreign financial accounts of persons that are not registered investment companies. This extension applied to these filers’ FBARs for 2010, 2009, and earlier calendar years deferred under IRS Notice 2009-62 or IRS Notice 2010-23.
- (5) For filers impacted by FinCEN Notices 2011-1 and 2011-2, FinCEN provided identical extensions each year since then, as summarized in the table below.

Notice	Issue Date	Possible FBAR Years Impacted	Extended Due Date
FinCEN Notice 2012-1	February 14, 2012	Through 2011	June 30, 2013
FinCEN Notice 2012-2	December 26, 2012	Through 2012	June 30, 2014
FinCEN Notice 2013-1	December 17, 2013	Through 2013	June 30, 2015

Notice	Issue Date	Possible FBAR Years Impacted	Extended Due Date
FinCEN Notice 2014-1	November 24, 2014	Through 2014	June 30, 2016
FinCEN Notice 2015-1	December 8, 2015	Through 2015	April 15, 2017
FinCEN Notice 2016-1	December 16, 2016	Through 2016	April 15, 2018
FinCEN Notice 2017-1	December 22, 2017	Through 2017	April 15, 2019
FinCEN Notice 2018-1	December 14, 2018	Through 2018	April 15, 2020
FinCEN Notice 2019-1	December 13, 2019	Through 2019	April 15, 2021
FinCEN Notice 2020-1	December 9, 2020	Through 2020	April 15, 2022

- (6) Examiners should be aware of these extension provisions, and any issued in subsequent year(s), when determining the timeliness of FBAR filings. It is possible that some signature authority filers may have received several years of extensions due to these Notices.
- (7) Notices are available on the Servicewide FBAR Knowledge Base by clicking “Document Repository”, found on the right-hand side of <https://portal.ds.irsnet.gov/sites/VL101/Pages/default.aspx>.

4.26.16.2.5  
(11-06-2015)  
**Foreign Country**

- (1) A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010.100(hhh). An account is “foreign” for FBAR purposes if it is located outside:
- The States of the United States.
  - The District of Columbia.
  - The Indian lands (as defined in the Indian Gaming Regulatory Act).
  - The territories and insular possessions of the United States. See IRM 4.26.16.2.1 above.
- (2) It is the location of an account, not the nationality of the financial institution, that determines whether an account is “foreign” for FBAR purposes. Accounts of foreign financial institutions located in the U.S. are not considered foreign accounts for FBAR; conversely, accounts of U.S. financial institutions located outside the U.S. are considered foreign accounts. Examples are:
- An account with a Hong Kong branch of a U.S.-based bank is a foreign financial account for FBAR purposes.
  - An account with a New York City branch of a foreign-based bank is not a foreign financial account for FBAR purposes.

4.26.16.2.6  
(06-24-2021)  
**Aggregate Value Over  
\$10,000**

- (1) The final criterion triggering the requirement to report a foreign account on a timely-filed FBAR is the aggregate value of all foreign financial accounts in which the person has a financial interest, or over which the individual has signature or other authority, must be greater than \$10,000, valued in U.S. dollars, at any time (on a particular day) during the calendar year.
- (2) Steps to determine aggregate account values:
  - a. Each account should be separately valued according to the steps outlined in IRM 4.26.16.2.2.2 to determine its highest valuation during the year in the foreign denominated currency.  
**Exception:** Money moved from one foreign account to another foreign account during the year must only be counted once.
  - b. Each account should be converted from foreign denominated value to U.S. dollars using the Treasury Reporting Rates of Exchange for December 31st of the calendar year being reported. See IRM 4.26.16.2.2.2 above.
- (3) All reportable accounts should be aggregated, including:
  - a. Solely-owned accounts.
  - b. Jointly-owned accounts.
  - c. Direct financial interest accounts (see IRM 4.26.16.2.3).
  - d. Indirect financial interest accounts (see IRM 4.26.16.2.3).
  - e. Signature or other authority accounts (see IRM 4.26.16.2.4).

4.26.16.3  
(06-24-2021)  
**FBAR Filing Procedures**

- (1) The determination of whether a U.S. person is required to report accounts on the FBAR is made annually. For example, a person may be required to report an account on an FBAR for one calendar year but not for a subsequent year if the person's aggregate foreign account balance does not exceed \$10,000 at any time during the year.
- (2) An FBAR must be filed for each calendar year that the person has a financial interest in, or signature or other authority over, foreign financial account(s) whose aggregate balance exceeds the \$10,000 threshold at any time during the year. Each foreign financial account must be reported on the FBAR.

4.26.16.3.1  
(06-24-2021)  
**General FBAR Filing**

- (1) The annual due date for filing FBARs to report foreign financial accounts maintained during calendar years 2016 and later, is being treated as April 15 of the following year. This date change was mandated by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41 (the Act). Specifically, section 2006(b)(11) of the Act required the Secretary of the Treasury to change the FBAR due date to April 15, and FinCEN announced a change to April 15 on its website. The annual due date for filing FBARs for accounts maintained during calendar years 2015 and earlier, is June 30 of the following year.
- (2) All FBARs filed after June 30, 2013, must be filed electronically through the FinCEN BSA E-Filing website at [www.bsaefiling.fincen.gov/main.html](http://www.bsaefiling.fincen.gov/main.html) unless the filer requested, and was granted, an exception to e-filing by FinCEN.
- (3) The FBAR should not be filed with the filer's federal income tax return or information return.

4.26.16.3.2  
(06-24-2021)  
**FBAR Filing Help**

- (1) Help with general questions about account reporting requirements and filing an FBAR, including due dates and filing methods, is available to the public from the IRS by:
  - a. Calling the IRS Help Lines Monday through Friday, 8 AM to 4:30 PM ET, at 866-270-0733 (toll-free for U.S. callers) or 313-234-6146 (for callers outside the U.S.). Callers select Option 1 for FBAR questions.
  - b. Reviewing the FBAR Home Page on IRS.gov. Enter "FBAR" in the search box.
- (2) Help with electronic filing and BSA regulations is available to the public from FinCEN:
  - a. For technical questions about BSA E-Filing System by emailing *BSAEFilingHelp@fincen.gov*, or by calling the BSA E-File Help Desk at 866-346-9478.
  - b. For E-filing exemption requests to allow FBAR paper-filing, or questions about BSA regulations by calling the FinCEN Resource Center at 800-949-2732 (toll-free for U.S. callers) or 703-905-3975 (for callers outside the U.S.).

4.26.16.3.3  
(11-06-2015)  
**FBAR Filing Exceptions**

- (1) Individual Retirement Account (IRA) owners and beneficiaries, and participants in and beneficiaries of U.S. tax-qualified retirement plans, are not required to report a foreign financial account held by or on behalf of the IRA or retirement plan.
 

**Caution:** This exception is for U.S. plans only. Foreign plans, such as a Canadian Registered Retirement Savings Plan (RRSP) and accounts managed by Mexico's Administrators of Retirement Funds (AFORES), are normally reportable on an FBAR.
- (2) A trust beneficiary with a financial interest is not required to report the trust's foreign financial accounts on an FBAR if the trust, trustee of the trust, or agent of the trust:
  - a. Is a U.S. person, and
  - b. Files an FBAR disclosing the trust's foreign financial accounts.

4.26.16.3.4  
(06-24-2021)  
**FBAR Filing by Married Couples**

- (1) Accounts owned jointly by spouses may be filed on one FBAR. The spouse of an individual who files an FBAR is not required to file a separate FBAR if the following conditions are met:
  - a. All the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse.
  - b. The filing spouse reports the jointly owned accounts on a timely, electronically filed FBAR.
  - c. Both spouses complete and sign Part I of FinCEN Form 114a, Record of Authorization to Electronically File FBARs. The filing spouse completes Part II of Form 114a in its entirety.

**Note:** The completed Form 114a is not filed but must be retained for five years. It must be provided to IRS or FinCEN upon request.

- (2) If these conditions are not met, both spouses are required to file separate FBARs, and each spouse must report the entire value of the jointly-owned accounts.
- (3) For calendar years prior to 2014, use the instructions for spousal filing for that filing year.

4.26.16.3.5  
(11-06-2015)  
**Electronic FBAR Filing  
by a Third Party**

- (1) FBAR filers may authorize a paid preparer or other third party to electronically file the FBAR for them.
  - a. The person reporting a financial interest in, or signature or other authority over, foreign accounts must sign Part I of FinCEN Form 114a.
  - b. The preparer or other third-party filer must sign Part II of Form 114a.
  - c. Form 114a is not filed. Both parties must retain the form for five years. It must be provided to IRS or FinCEN upon request.
- (2) It remains the responsibility of the filer to ensure that filing takes place timely and the report is accurate. Form 114a contains a disclaimer that states: "...it is my/our legal responsibility, not that of the preparer listed in Part II, to timely file an FBAR if required by law to do so".

4.26.16.3.6  
(11-06-2015)  
**FBAR Filing for  
Financial Interest in 25  
or More Accounts**

- (1) 31 CFR 1010.350(g) provides that a United States person that has a financial interest in 25 or more foreign financial accounts only needs to provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account if the IRS or FinCEN requests it.
- (2) Filers must comply with FBAR record-keeping requirements. See IRM 4.26.16.4.1.

4.26.16.3.7  
(11-06-2015)  
**FBAR Filing for  
Signature or other  
Authority for 25 or More  
Accounts**

- (1) 31 CFR 1010.350(g) provides that a United States person that has signature or other authority over 25 or more foreign financial accounts only needs to provide the number of financial accounts and certain other basic information on the report but will be required to provide detailed information concerning each account if the IRS or FinCEN requests it.
- (2) Filers must comply with FBAR record-keeping requirements. See IRM 4.26.16.4.1.

4.26.16.3.8  
(11-06-2015)  
**FBAR Filing for U.S.  
Persons Residing and  
Employed Outside the  
United States**

- (1) The FBAR filing instructions allow for modified reporting by a U.S. person who meets all three of the following criteria:
  - a. Resides outside the U.S.
  - b. Is an officer or employee of an employer located outside the U.S.
  - c. Has signature authority over a foreign financial account(s) of that employer.
- (2) In such cases, the U.S. Person should file the FBAR by:
  - a. Completing filer information.
  - b. Omitting account information.
  - c. Completing employer information one time only.

- 4.26.16.3.9  
(11-06-2015)  
**Filing A Consolidated FBAR**
- (1) 31 CFR 1010.350(g) allows an entity that is a U.S. person that owns directly or indirectly a greater than 50 percent interest in another entity that is required to file an FBAR to file a consolidated FBAR on behalf of itself and such other entity.
  - (2) Each controlled entity that has an FBAR filing obligation must be listed in Part V, even if that entity owns foreign accounts only indirectly.
- 4.26.16.3.10  
(06-24-2021)  
**FBAR Filing Extension**
- (1) Prior to the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (The Act), there was no authority to extend the time for filing an FBAR.
  - (2) FinCEN granted filers an automatic extension of the FBAR filing deadline to October 15 each year beginning with FBARs required for calendar year 2016. Specific requests for an extension are not required.
  - (3) IRC 7508, Time for Performing Certain Acts Postponed by Reason of Service in Combat Zone or Contingency Operation, does not grant U.S. persons that are U.S. Armed Forces members an extension to file the FBAR.
  - (4) This is not to be confused with extension of the statute of limitations on assessment or collection of penalties, which is possible. See IRM 4.26.17.3.1.3, Extending the FBAR Statute of Limitations.
- 4.26.16.3.11  
(06-24-2021)  
**Delinquent FBAR Filing Procedures**
- (1) Delinquent FBARs should be filed using the current electronic report, but using the instructions for the year for which foreign accounts are being reported to determine if FBAR reporting requirements exist.
  - (2) Page one of FinCEN Form 114 should detail the reason the FBAR was not filed timely and a reason selected from the drop-down box. The "Other" selection allows for a 750-character text box explanation.
  - (3) A copy of the FBAR should be kept for recordkeeping purposes.
  - (4) A penalty will not be asserted for an account if it is determined that the failure to report the account on a timely filed FBAR was not willful, the failure to report the account on a timely-filed FBAR was due to reasonable cause, and the account was properly reported on the delinquent FBAR.
- 4.26.16.3.12  
(06-24-2021)  
**Amending a Filed FBAR**
- (1) To amend a filed FBAR, filers should:
    - a. Check the "Amended" box in Item 1 at the top of page two and fill in the "Prior Report BSA Identifier" for the original filing in the block provided. If the Prior Report BSA Identifier is not known, the filer is to enter 00000000000000 in the Prior Report BSA Identifier field.
    - b. Complete the report in its entirety using the amended information.
- 4.26.16.3.13  
(06-24-2021)  
**FBAR Filing Verification**
- (1) FBAR filing can be verified on the FinCEN Query System.
  - (2) A FinCEN Query printout of a filed FBAR can establish that a retained copy of an FBAR provided by a filer or representative was filed and that the retained FBAR has the same information as the filed FBAR. FinCEN Query printouts can be obtained by querying both the filer's name and Taxpayer Identification Number (TIN).

- (3) Filers receive immediate electronic verification for FBARs filed electronically with FinCEN.
- (4) Filers can request verification of FBARs filed, 60 days after the date of filing. Requests for verification of FBAR filing and/or paper copies of FBAR reports must be made in writing. The request must include the filer's name, Taxpayer Identification Number, and filing period(s) needed. Practitioners asking for this information must also include a copy of Form 2848, Power of Attorney and Declaration of Representative, authorizing them to receive it.
  - a. There is a \$5.00 fee for verifying five or fewer forms and a \$1.00 fee for each additional form. If copies of the filed FBAR is needed, there is an additional fee of \$0.15 per copy. Checks or money orders should be made payable to the United States Treasury. Written requests and payments for FBAR filing verifications and copies of filed FBARs should be mailed to:

IRS Detroit Federal Building

Compliance Review Team

Attn: Verification

P.O. Box 32063

Detroit, MI 48232-0063

4.26.16.4  
(11-06-2015)  
**FBAR Recordkeeping**

- (1) If the FBAR is required, certain records must be retained by the filer. 31 CFR 1010.420, Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts. Each person having a financial interest in or signature or other authority over any such account must keep the following records:
  - a. Name in which the account is maintained.
  - b. Number or other designation identifying the account.
  - c. Name and address of the foreign financial institution or other person with whom the account is maintained.
  - d. Type of account.
  - e. Maximum value of each account during the reporting period.
- (2) The records must be kept for five years from the due date for filing the FBAR for that calendar year and be available for inspection as provided by law.
- (3) Note that persons are not required to keep copies of FBARs filed, only the records that underlie the filing.
- (4) An officer or employee who files an FBAR to report signature authority over an employer's foreign financial account is not required to personally retain records regarding that account.



4.26.16.4.1  
(11-06-2015)  
**FBAR Recordkeeping for Filers Having 25 or More Accounts**

- (1) A filer who has a financial interest in or signature or other authority over 25 or more foreign financial accounts must also comply with the recordkeeping requirements in IRM 4.26.16.4.
- (2) Filers will be required to provide detailed information concerning each account if the IRS or FinCEN requests it.

4.26.16.5  
(06-24-2021)  
**FBAR Penalties**

- (1) The IRS has been delegated authority to assess civil FBAR penalties.
- (2) When there is an FBAR violation, the examiner will either issue the FBAR warning letter, Letter 3800, Warning for Report of Foreign Bank and Financial Accounts (FBAR) Apparent Violations, or determine a penalty.

**Note:** When multiple violations are under examination and a monetary penalty is imposed for some but not all the violations in the year(s) under examination, a Letter 3800 will not be issued for the violation(s) for which a monetary penalty is not imposed.

- (3) Civil FBAR penalties have varying upper limits, but no floor. The examiner has discretion in determining the amount of the penalty, if any. See IRM 4.26.16.5.2.1 for more information about examiner discretion, mitigation, and other guidelines to assist examiners in determining the amount of civil FBAR penalties.
- (4) There may be multiple civil FBAR penalties if there is more than one account owner, or if a person other than the account owner has signature or other authority over the foreign account. Each person can be liable for the full amount of the penalty.
- (5) Maximum civil monetary penalties must be adjusted annually for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, ("FCPIA Act"), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The inflation-adjusted maximum civil FBAR penalty amounts are found at 31 CFR 1010.821, Penalty Adjustment and Table.
- (6) Managers must perform a meaningful review of the employee's penalty determination prior to assessment. See IRM 4.26.16.5.6.

4.26.16.5.1  
(11-06-2015)  
**FBAR Penalty Authority**

- (1) IRS was delegated the authority to assess and collect civil FBAR penalties. See 31 CFR 1010.810(g). The delegation includes the authority to investigate possible civil FBAR violations and the authority to assess and collect the penalties for violations of the reporting and recordkeeping requirements.
- (2) When performing these functions, IRS is not acting under Title 26 but, instead, is acting under the authority of Title 31. Provisions of the IRC generally do not apply to FBARs.
- (3) Criminal Investigation was delegated the authority to investigate possible criminal violations of the Bank Secrecy Act. See 31 CFR 1010.810(c)(2).

4.26.16.5.2  
(06-24-2021)  
**FBAR Penalty Structure**

- (1) Information in this section applies to the three civil penalties available for FBAR violations:



Penalty	Authority	IRM Reference	Note
Negligence	31 USC 5321(a)(6)(A)	IRM 4.26.16.5.3	Penalty not applicable to individuals.
Pattern of Negligent activity	31 USC 5321(a)(6)(B)	IRM 4.26.16.5.3	Penalty not applicable to individuals.
Violation of 31 USC 5314	<ul style="list-style-type: none"> <li>31 USC 5321(a)(5)(A) and (B) for non-willful violations;</li> <li>31 USC 5321(a)(5)(A) and (C) for willful violations</li> </ul>	<ul style="list-style-type: none"> <li>IRM 4.26.16.5.4 for non-willful violations;</li> <li>IRM 4.26.16.5.5 for willful violations</li> </ul>	Although the term “non-willful” is not used in the statute, we use it to distinguish these violations from willful violations

- (2) For FBAR penalty purposes, the “violation date” for reporting violations occurs:
  - a. For calendar years 2015 and earlier, at the end of the day June 30th of the year following the calendar year for which accounts must be reported (the due date for filing the FBAR).
  - b. For calendar years 2016 and subsequent, at the end of the day April 15th of the year following the calendar year for which accounts must be reported, if a complete and accurate FBAR is not filed by October 15th (the automatic, extended due date announced by FinCEN).
- (3) For FBAR penalty purposes, the “violation date” for a recordkeeping violation occurs on the date the records are first requested via summons by the IRS examiner if the records are not provided. See IRM 4.26.17.3.1.1, FBAR Statute of Limitations on Assessments, for important information about this requirement. The date of the violation is tied to the date of the request, and not a later date, to assure the filer is unable to manipulate the amount in the account after receiving a request for records.
- (4) There may be both a reporting and a recordkeeping violation regarding each account. Examiner discretion applies in determining whether to penalize both violations for a single account, but examiners must consult with Counsel before making a final decision to assert penalties for both violations.
- (5) A civil money penalty may be imposed for an FBAR violation even if a criminal penalty is imposed for the same violation. See 31 USC 5321(d).
- (6) For purposes of the penalty authorized by 31 USC 5321(a)(5), where there are multiple owners of a foreign financial account to which the violations relate, examiners must make a separate determination with respect to each co-owner of the foreign financial account as to whether there was a violation and, if so, whether the violation was willful or non-willful. For each co-owner against whom a penalty is determined, the penalty will be based on the co-owner’s ownership percentage of the highest balance of the foreign financial account. If examiners are unable to determine a co-owner’s ownership percentage, the penalty will be based on the amount, determined by dividing the highest account balance equally among the co-owners. If examiners believe, based on the facts and circumstances of a particular case, that the penalty should be

allocated among the co-owners in some other manner, they may do so with the group manager's approval after consultation with an Operating Division FBAR Coordinator. The examiner's workpapers must support such a determination and document the group manager's approval.

- (7) The penalty for each violation is limited to the applicable statutory maximum in 31 USC 5321(a)(5), Foreign Financial Agency Transaction Violation, and 31 USC 5321(a)(6), Negligence, adjusted for inflation as described in IRM 4.26.16.5.

4.26.16.5.2.1  
(06-24-2021)

**FBAR Penalties -  
Examiner Discretion**

- (1) The examiner may determine that the facts and circumstances of a particular case do not justify asserting a penalty.
- (2) The examiner has discretion in determining the amount of the penalty, if any, based on the facts and circumstances of the case. Examiners may consider whether the issuance of a warning letter and the securing of delinquent and/or amended FBARs, rather than the determination of a penalty, will achieve the desired result of improving compliance with the FBAR reporting and record-keeping requirements in the future.
- (3) Factors to consider when applying examiner discretion may include, but are not limited to, the following:
  - a. Whether compliance objectives would be achieved by issuance of a warning letter,
  - b. Whether the person who committed the violation had been previously issued a warning letter or assessed an FBAR penalty,
  - c. The nature of the violation and the amounts involved,
  - d. The filer's conduct contributing to the violation,
  - e. Whether the filer cooperated during the examination,
  - f. The balance in each account during the year, and
  - g. The total amount of all penalties to be asserted for all violations.
- (4) When a penalty is appropriate, given the magnitude of the statutory maximum penalties permitted for each violation, the assertion of multiple penalties should be carefully considered and calculated to ensure the amount of the penalty is commensurate to the harm caused by the FBAR violation.
- (5) The IRS developed mitigation and other guidelines to assist examiners in determining the amount of civil FBAR penalties. See IRM 4.26.16.5.3, IRM 4.26.16.5.4, and IRM 4.26.16.5.5 for discussion of these guidelines with respect to negligence penalties, penalties for non-willful violations, and penalties for willful violations, respectively.
- (6) Managers must perform a meaningful review of the employee's penalty determination prior to assessment. See IRM 4.26.16.5.6.

4.26.16.5.3  
(06-24-2021)

**BSA Negligence  
Penalties**

- (1) There are two negligence penalties that apply generally to all BSA provisions. See 31 USC 5321(a)(6), Negligence. These penalties may be assessed against a financial institution or non-financial trade or business for any negligent violation of the BSA, including FBAR violations.
  - a. Negligence penalty
  - b. Pattern of negligent violations

- (2) These two negligence penalties apply only to trades or businesses, including financial institutions, and not to individuals. Generally, only examiners in BSA Examination assert negligence penalties under 31 USC 5321(a)(6).
- (3) The FBAR penalties under 31 USC 5321(a)(5) and the FBAR warning letter, Letter 3800, adequately address most FBAR violations identified. The FBAR warning letter may be issued in the cases where the examiner determines none of the 31 USC 5321(a)(5) FBAR penalties are warranted. If the examiner believes, however, that assertion of a 31 USC 5321(a)(6) negligence penalty is warranted in a particular case, the examiner should contact a Bank Secrecy Act FBAR program analyst for guidance.

4.26.16.5.3.1  
(06-24-2021)  
**Negligence Defined**

- (1) Actual knowledge of the FBAR reporting and recordkeeping requirements is not required to find a violation was negligent. If the financial institution or nonfinancial trade or business should have known about these requirements, failure to file, report, or maintain records is negligent.
- (2) Use general negligence principles in determining whether to apply the negligence penalty. In evaluating whether the financial institution or nonfinancial trade or business exercised ordinary business care and prudence, consider industry standards of practice. 26 CFR 1.6664-4, Reasonable Cause and Good Faith Exception to Section 6662 Penalties, may serve as useful guidance in determining the factors to consider.
- (3) If an FBAR violation is due to reasonable cause, and not due to negligence by the financial institution or nonfinancial trade or business, the negligence penalty should not be asserted.

4.26.16.5.3.2  
(06-24-2021)  
**BSA Simple Negligence  
Penalty**

- (1) 31 USC 5321(a)(6), Negligence, and 31 CFR 1010.820(h), Civil Penalty, provide for a penalty for each negligent violation of any requirement of the Bank Secrecy Act, including FBAR reporting and recordkeeping requirements.
- (2) The simple negligence penalty applies only to businesses, not individuals.

4.26.16.5.3.3  
(06-24-2021)  
**BSA Simple Negligence  
Penalty Amount**

- (1) For each negligent violation of any requirement of the Bank Secrecy Act committed after October 27, 1986, a civil penalty may be assessed not to exceed the \$500 penalty amount in 31 USC 5321(a)(6)(A), adjusted for inflation as described in paragraph (2).
- (2) For penalties assessed after August 1, 2016, for violations occurring after November 2, 2015, the negligence penalty amount under 31 USC 5321(a)(6)(A) is subject to annual inflationary adjustment under the FCPIA Act. Adjusted maximum penalty amounts are set forth in 31 CFR 1010.821, Penalty Adjustment and Table.
- (3) Generally, the statutory maximum penalty amount is assessed. Although 31 USC 5321(a)(6) permits discretion to assert a lower amount, there are no mitigation guidelines for this penalty.

4.26.16.5.3.4  
(06-24-2021)  
**BSA Pattern of  
Negligence Penalty**

- (1) 31 USC 5321(a)(6)(B), Pattern of Negligent Activity, provides for a civil money penalty on a business that engages in a pattern of negligent BSA violations including violations of the FBAR rules. This penalty is in addition to any negligence penalty.
- (2) The pattern of negligence penalty has applied to financial institutions since 1992. For violations occurring after October 26, 2001, the penalty applies to all trades or businesses. This penalty does not apply to individuals.

4.26.16.5.3.5  
(06-24-2021)  
**BSA Pattern of  
Negligence Penalty  
Amount**

- (1) If any trade or business engages in a pattern of negligent violations of any provision, including the FBAR requirements, of the BSA, a civil penalty may be imposed up to the \$50,000 penalty amount in 31 USC 5321(a)(6)(B), adjusted for inflation as described in paragraph (2). This is in addition to the simple negligence penalty in 31 USC 5321(a)(6)(A). The examiner is given discretion to determine the penalty amount up to the maximum in 31 USC 5321(a)(6)(B).
- (2) For penalties assessed after August 1, 2016, for violations occurring after November 2, 2015, the pattern of negligence penalty amount under 31 USC 5321(a)(6)(B) is subject to annual inflationary adjustment under the FCPIA Act. Adjusted maximum penalty amounts are set forth in 31 CFR 1010.821, Penalty Adjustment and Table.
- (3) Although 31 USC 5321(a)(6) permits discretion to assert a lower amount, there are no mitigation guidelines for this penalty. The pattern of negligence penalty should be asserted only in egregious cases.

4.26.16.5.4  
(06-24-2021)  
**Penalty for Non-willful  
FBAR Violations**

- (1) For violations occurring after October 22, 2004, a penalty for a non-willful FBAR violation may be imposed on any filer who violates or causes any violation of the FBAR filing, reporting and recordkeeping requirements. See 31 USC 5321(a)(5)(A), Penalty Authorized, and 31 USC 5321(a)(5)(B), Amount of Penalty.
- (2) The penalty applies to individuals as well as entities, including financial institutions and nonfinancial trades or businesses.
- (3) The penalty should not be imposed if:
  - a. The violation was due to reasonable cause, and
  - b. Accurate delinquent or amended FBAR(s) are filed, rectifying prior violation(s).

**Note:** A few courts have concluded that the principles of reasonable cause within Title 26 can be used to determine the existence of reasonable cause for FBAR penalties for non-willful violations. *United States v. Ott*, 2019 U.S. Dist. LEXIS 132013, at \*5-7 (E.D. Mich. August 7, 2019); *Jarnagin v. United States*, 134 Fed. Cl. 368, 376 (2017); *Moore v. United States*, No. C13-2063RAJ, 2015 U.S. Dist. LEXIS 43979, at \*1, \*\*12-13 (W.D. Wash. Apr. 1, 2015) (“There is no reason to think that Congress intended the meaning of ‘reasonable cause’ in the Bank Secrecy Act to differ from the meaning ascribed to it in tax statutes.”), dismissed by 2015 U.S. Dist. LEXIS 99804 (W.D. Wash. July 24, 2015). [A] person has “reasonable cause” for an FBAR violation when he committed that violation despite an exercise of ordinary business care and prudence. *Moore*, at \*4.

- (4) For each non-willful violation occurring after October 22, 2004, a penalty may be imposed up to the \$10,000 penalty amount under 31 USC 5321(a)(5)(B)(i), adjusted for inflation as described in paragraph (5).
- (5) For penalties assessed after August 1, 2016, for non-willful violations occurring after November 2, 2015, the statutory maximum penalty amount under 31 USC 5321(a)(5)(B)(i) is subject to annual inflationary adjustment under the FCPIA Act. Adjusted maximum penalty amounts are set forth in 31 CFR 1010.821, Penalty Adjustment and Table.
- (6) Examiners have discretion in determining the penalty amount and should use the mitigation and other guidelines in this section in making their determinations. The purpose of FBAR penalties is to promote compliance with the FBAR reporting and recordkeeping requirements. See IRM 4.26.16.5.2.1 for more information about examiner discretion.

4.26.16.5.4.1  
(06-24-2021)

**Penalty for Non-willful  
Violations - Calculation**

- (1) In ascertaining the penalty amount for non-willful violations (assuming the reasonable cause exception does not apply), first determine whether the mitigation criteria in Exhibit 4.26.16-2 are met.
- (2) If the mitigation criteria are met, make a preliminary penalty calculation using the mitigation guidelines in Exhibit 4.26.16-2, except limit the total mitigated penalties for each year to the statutory maximum for a single non-willful violation. Allocate the total penalty amount for each year among all violations in that year for which a penalty is recommended. This is the penalty amount, unless, in the examiner's discretion as noted in IRM 4.26.16.5.2.1, the facts and circumstances of a case warrant a different penalty amount. The provisions in paragraph (7) below apply to this paragraph.
- (3) If the mitigation criteria are not met, the mitigation guidelines do not apply. Do not make a preliminary penalty calculation using the guidelines in Exhibit 4.26.16-2.
- (4) If the mitigation criteria are not met, or are met but the facts and circumstances of a case warrant a different penalty amount than calculated in paragraph (2), examiners will consider, as appropriate:
  - a. Asserting penalties, totaling (in each year for which non-willful violations are being penalized) no more than the statutory maximum penalty amount for a single violation, regardless of the number of non-willful violations. Since FBAR penalties are determined under the statute on a per-violation basis, the total penalty amount for each year should be allocated among all non-willful violations for which a penalty is recommended.
  - b. If asserting penalties computed under subparagraphs (a) and (c) are not warranted, asserting penalties, totaling (for all years for which non-willful violations are being penalized) no more than the statutory maximum penalty amount for a single violation, regardless of the number of non-willful violations. Allocate the total penalty amount among all years for which non-willful violations are being penalized. Since FBAR penalties are determined under the statute on a per-violation basis, the total penalty amount allocated to each year should be further allocated among all non-willful violations for which a penalty is recommended.

- c. If asserting penalties computed under subparagraphs (a) and (b) are not appropriate, asserting penalties for each non-willful violation in each open year, with a penalty amount for each violation up to the statutory maximum penalty amount.
  - d. In determining an appropriate penalty amount, consider the facts and circumstances of the case and apply discretion as appropriate. See IRM 4.26.16.5.2.1 for more information about examiner discretion.
  - e. The provisions in paragraph (7) below apply to this paragraph.
- (5) The examiner's workpapers must support each penalty determination and document the group manager's approval.
  - (6) Where there are multiple owners of an unreported foreign financial account, examiners must make a separate determination with respect to each co-owner of the foreign financial account as to whether there was a violation and, if so, whether the violation was willful or non-willful. See IRM 4.26.16.5.2 for additional information.
  - (7) Except in egregious cases, the penalty asserted for an account should not exceed 50 percent of the account's maximum value during the year (see IRM 4.26.16.2.2.2) in which a penalty is being asserted. In no event will the total amount of the penalties for non-willful violations (among all open years) exceed 50 percent of the highest aggregate balance of all foreign financial accounts to which the violations relate for the years under examination. The "highest aggregate balance" is calculated as described in IRM 4.26.16.1.6.

4.26.16.5.5  
(06-24-2021)

**Penalty for Willful FBAR Violations**

- (1) The penalty for willful FBAR violations may be imposed on any filer who willfully violates or causes any violation of any provisions of 31 USC 5314 (the FBAR reporting and recordkeeping requirements). See 31 USC 5321(a)(5)(A) and 31 USC 5321(a)(5)(C).
- (2) The penalty applies to individuals as well as entities, including financial institutions and nonfinancial trades or businesses.
- (3) For violations occurring after October 22, 2004, a penalty for each willful FBAR violation may be imposed up to the greater of the \$100,000 penalty amount under 31 USC 5321(a)(5)(C)(i)(I), adjusted for inflation as described in paragraph (4), or 50% of the amount in the account at the time of the violation (the "violation date" as described in IRM 4.26.16.5.2). See 31 USC 5321(a)(5)(C) and 31 USC 5321(a)(5)(D).
- (4) For penalties assessed after August 1, 2016, for violations occurring after November 2, 2015, the \$100,000 penalty amount under 31 USC 5321(a)(5)(C)(i)(I) is subject to the annual inflationary adjustment under the FCPA Act. Adjusted maximum penalty amounts are set forth in 31 CFR 1010.821, Penalty Adjustment and Table.
- (5) Examiners have discretion in determining the penalty amount and should use the mitigation and other guidelines in this section in making their determinations. The purpose of FBAR penalties is to promote compliance with the FBAR reporting and recordkeeping requirements. See IRM 4.26.16.5.2.1 for more information about examiner discretion.



4.26.16.5.5.1  
(06-24-2021)

## **Willful FBAR Violations - Defining Willfulness**

- (1) The civil test for willfulness is whether a person either: (1) knowingly violated a legal duty; (2) recklessly violated a legal duty; or (3) acted with “willful blindness” by making a conscious effort to avoid learning about a legal duty.
- (2) A finding of willfulness under the BSA must be supported by evidence of willfulness.
- (3) The burden of establishing willfulness is on the Service.
- (4) Knowing violation. Willfulness is shown when a person knew of the FBAR reporting and recordkeeping requirements and made a voluntary, intentional, or conscious choice not to accurately report an account on a timely filed FBAR or keep required records.
- (5) Reckless violation. Willfulness is also shown when a person recklessly disregarded the FBAR reporting and recordkeeping requirements. Recklessness is evaluated using an objective standard, not by looking at whether a person subjectively believed that he or she was not required to accurately report the account on a timely filed FBAR or keep required records. The objective standard looks at whether conduct entailed an unjustifiably high risk of harm that is either known or so obvious that it should be known. The harm in the FBAR context is that the reporting or recordkeeping requirements are not being met. A person recklessly violates the FBAR reporting or recordkeeping requirements when the person clearly ought to have known that there was a grave risk that the requirements were not being met and the person was in a position to very easily find out for certain whether or not the requirements were being met.
- (6) Willful Blindness. Willfulness is also shown when a person acted with willful blindness by making a conscious effort to avoid learning about the FBAR reporting or recordkeeping requirements.

**Example:** Willful blindness may be present when a person admits knowledge of, and fails to answer questions concerning, their interest in or signature or other authority over financial accounts at foreign banks on Schedule B of their Federal income tax return. This section of the income tax return refers taxpayers to the instructions for Schedule B, which provides guidance on their responsibilities for reporting foreign bank accounts and discusses the duty to file the FBAR. These resources indicate that the person could have learned of the reporting requirements quite easily. It is reasonable to assume that a person who has foreign bank accounts should read the information specified by the government in tax forms. The failure to act on this information and learn of the further reporting requirement, as suggested on Schedule B, may provide evidence of willful blindness on the part of the person.

**Note:** The failure to learn of the reporting requirements coupled with other factors, such as the efforts taken to conceal the existence of the accounts and the amounts involved, may lead to a conclusion that the violation was due to willful blindness. A person checking the wrong box, or no box, on a Schedule B is a significant fact to consider when establishing whether the FBAR violation was attributable to willful blindness. That fact should be coupled with other facts and circumstances to prove willful blindness. A person

checking the wrong box, or no box, on a Schedule B is also a significant fact to consider when determining whether the FBAR violation was the result of reckless disregard.

- (7) The following examples illustrate situations in which willfulness may be present:
- a. A person files the FBAR but omits one of three foreign bank accounts. The person had previously closed the omitted account at the time of filing the FBAR. The person explains that the omission was due to unintentional oversight. During the examination, the person provides all information requested with respect to the omitted account. The information provided does not disclose anything suspicious about the account, and the person reported all income associated with the account on their tax return. The penalty for a willful violation should not apply absent other evidence that may indicate willfulness.
  - b. A person reported one or more foreign accounts on a timely FBAR in earlier years but failed to report a foreign account on timely-filed FBARs in subsequent years when required to do so. In addition, the person may have failed to report income associated with the unreported foreign bank account for the year that the FBAR was not filed. If the person's explanation for the failure to report the account and other available evidence do not outweigh the facts supporting a determination that the failure was intentional or the result of reckless disregard or willful blindness, the penalty for a willful violation should apply.
  - c. A person received a warning letter informing him of the foreign account reporting and recordkeeping requirements, but the person fails to file an FBAR in a subsequent year. In addition, the person may have failed to report income associated with the foreign bank accounts for the year that the FBAR was not filed. If the person's explanation for the failure to file an FBAR and other available evidence do not outweigh the facts supporting a determination that the failure was intentional or the result of reckless disregard or willful blindness, the penalty for a willful violation should apply.

4.26.16.5.5.2  
(06-24-2021)

**Willful FBAR Violations -  
Evidence**

- (1) Willfulness can rarely be proven by direct evidence since it is a state of mind. It is usually established by drawing a reasonable inference from the available facts. The government may base a determination of willfulness on inference from conduct meant to conceal sources of income or other financial information. For FBAR purposes, this could include concealing signature authority, interests in various transactions, and interests in entities transferring cash to foreign banks.
- (2) Documents that may be helpful in establishing willfulness include:
  - a. Copies of statements for the foreign bank account.
  - b. Notes of the examiner's interview with the foreign account holder about the foreign account.
  - c. Correspondence with the account holder's tax return preparer that may address the FBAR filing requirement.
  - d. Documents showing criminal activity related to the non-filing of the FBAR (or non-compliance with other BSA provisions).
  - e. Promotional material (from a promoter or offshore bank).



- f. Statements for debit or credit cards from the offshore bank that, for example, reveal the account holder used funds from the offshore account to cover everyday living expenses in a manner that conceals the source of the funds.
  - g. Copies of any FBARs filed previously by the account holder (or FinCEN Query printouts of FBARs).
  - h. Copies of Information Document Requests with requested items that were not provided highlighted along with explanations as to why the requested information was not provided.
  - i. Copies of debit or credit card agreements and fee schedules with the foreign bank, which may show a significantly higher cost than typically associated with cards from domestic banks.
  - j. Copies of any investment management or broker's agreement and fee schedules with the foreign bank, which may show significantly higher costs than costs associated with domestic investment management firms or brokers.
  - k. The written explanation of why the FBAR was not filed, if such a statement is provided. Otherwise, note in the workpapers whether there was an opportunity to provide such a statement.
  - l. Copies of any previous warning letters issued or certifications of prior FBAR penalty assessments.
- (3) Documents available in an FBAR case worked under a Related Statute Determination under Title 26 that may be helpful in establishing willfulness include:
- a. Copies of documents from the administrative case file (including the Revenue Agent Report) for the income tax examination that show income related to funds in a foreign bank account was not reported.
  - b. A copy of the signed income tax return with Schedule B attached, showing whether the box pertaining to foreign accounts is checked or unchecked.
  - c. Copies of tax returns (or RTVUE/BRTVU) for at least three years prior to the opening of the offshore account and for all years after the account was opened, to show if a significant drop in reportable income occurred after the account was opened. (Review of the three years' returns prior to the opening of the account would give the examiner a better idea of what the taxpayer might have typically reported as income prior to opening the foreign account).
  - d. Copies of any prior Revenue Agent Reports that may show a history of noncompliance.
  - e. Two sets of cash T accounts (a reconciliation of the taxpayer's sources and uses of funds) with one set showing any unreported income in foreign accounts that was identified during the examination and the second set excluding the unreported income in foreign accounts.
  - f. Any documents that would support fraud (see IRM 4.10.6.2.2, Fraud, for a list of items to consider in asserting the fraud penalty).
  - g. Copies of filed Form 8938, Statement of Specified Foreign Financial Assets.

4.26.16.5.5.3  
(06-24-2021)

**Penalty for Willful FBAR  
Violations - Calculation**

- (1) In ascertaining the penalty amount for willful violations, first determine whether the mitigation criteria in Exhibit 4.26.16-2 are met.
- (2) If the mitigation criteria are met, make a preliminary penalty calculation using the mitigation guidelines in Exhibit 4.26.16-2, except limit the total mitigated penalties (among all open years) to no more than 50 percent of the highest aggregate balance of all unreported foreign financial accounts (to which the violations relate) during the years under examination. Allocate the total mitigated penalty amount for each year among all violations in that year for which a penalty is recommended. This is the penalty amount, unless, in the examiner's discretion as noted in IRM 4.26.16.5.2.1, the facts and circumstances of a case warrant a different penalty amount. The provisions in paragraphs (7) and (8) below apply to this paragraph.
- (3) If the mitigation criteria are not met, the mitigation guidelines do not apply. Do not make a preliminary penalty calculation using the guidelines in Exhibit 4.26.16-2.
- (4) If the mitigation criteria are not met or are met but the facts and circumstances of a case warrant a different penalty amount than calculated in paragraph (2), examiners will consider, as appropriate.
  - a. Asserting penalties, totaling (among all open years) no more than 50 percent of the highest aggregate balance of all unreported foreign financial accounts during the years under examination, regardless of the number of willful violations. Allocate the total penalty amount among all open years (with willful violations) based on the ratio of the combined high balance for each year to the total of the combined high balances for all years. Since FBAR penalties are determined under the statute on a per-violation basis, the total penalty allocated to each year will be further allocated among all violations being penalized in that year, subject to the maximum penalty limitation in 31 USC 5321(a)(5)(C) for each violation. The "highest aggregate balance" and the "combined high balance" are calculated as described in IRM 4.26.16.1.6.
  - b. If asserting penalties computed under subparagraph (a) is not appropriate, asserting penalties for each willful violation in each open year with a penalty amount for each violation up to the statutory maximum penalty amount for that violation.
  - c. In determining an appropriate penalty amount, consider the facts and circumstances of the case and apply discretion as appropriate. See IRM 4.26.16.5.2.1 for more information about examiner discretion.
  - d. The provisions of paragraphs (7) and (8) below apply to this paragraph.
- (5) The examiner's workpapers must support all willful penalty determinations and document the group manager's approval.
- (6) Where there are multiple owners of an unreported foreign financial account, examiners must make a separate determination with respect to each co-owner of the foreign financial account as to whether there was a violation and, if so, whether the violation was willful or non-willful. See IRM 4.26.16.5.2 for additional information.

**Note:** Since each account holder has a separate responsibility to report an account, for an account that had a zero balance on the violation date, each account holder can be liable for a penalty in the amount prescribed in 31 CFR 1010.821 for 31 USC 5321(a)(5)(C)(i)(I).

- (7) In no event will the total penalty amount (among all open years) exceed 100 percent of the highest aggregate balance of all foreign financial accounts to which the violations relate during the years under examination. The “highest aggregate balance” is calculated as described in IRM 4.26.16.1.6.
- (8) Once penalty amounts are determined, examiners will compare the determined penalty amounts with the statutory maximum penalties to ensure that no penalty exceeds the statutory maximum. In determining the statutory maximum penalty amount under 31 USC 5321(a)(5)(c)(i)(II), use the balance for each account as of the violation date, defined in IRM 4.26.16.5.2.
  - a. If, after reasonable efforts by the examiner to obtain it, the violation date balance is not available, the examiner may estimate it using available information, including the balance in the account on another date.
  - b. The examiner should document in the case file: 1) the efforts made to obtain the violation date balance, 2) the fact that the violation date balance is being estimated, and 3) the reason an estimate is used.
  - c. The examiner should also document what information was used to estimate the violation date balance. For example, if the examiner used the account balance on another date to estimate the violation date balance, the examiner should document 1) the date of that account balance; 2) where that account balance was obtained, for example the balance was included on an account statement; 3) any changes made to that account balance to arrive at the estimated violation date balance, such as changes made to reflect known transfers into or out of the account between the date of the account balance and the violation date; 4) and any other information the examiner considers relevant to the estimated balance.
  - d. If the account balance on another date is used to estimate the violation date balance, the examiner should use the closest balance date available, unless the examiner determines that the closest available balance is not the most accurate balance to use. If the examiner uses the account balance on another date to estimate the violation date balance but does not use the closest available balance, the reason the closest available balance was not used should be documented.
  - e. For purposes of determining the violation date balance for accounts where a currency other than U.S. dollars is used, follow additional guidance in paragraph (4) of IRM 4.26.16.2.2.2.

4.26.16.5.6  
(06-24-2021)

**Managerial Involvement  
and Approval of FBAR  
Penalties**

- (1) Managers must perform a meaningful review of the examiner’s penalty determination prior to assessment.
- (2) The manager must verify that the penalties were fairly imposed and accurately computed; that the examiner did not improperly assert the penalties in the first instance; and that the conclusions regarding “reasonable cause” (or the lack thereof) were proper.
- (3) Written managerial approval must be documented on the FBAR Penalty Approval Form. This form is available on the Servicewide FBAR Knowledge Base by clicking “Document Repository”, found on the right-hand side of <https://portal.ds.irsnet.gov/sites/VL101/Pages/default.aspx>.

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**Exhibit 4.26.16-1 (06-24-2021)****Acronyms**

The following table contains acronyms used in this IRM and their definitions.

<b>Acronym</b>	<b>Definition</b>
BSA	Bank Secrecy Act
CFR	Code of Federal Regulations
FBAR	Report of Foreign Bank and Financial Accounts
FinCEN	Financial Crimes Enforcement Network

**Exhibit 4.26.16-2 (06-24-2021)****FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004**

To qualify for the mitigation guidelines in this Exhibit for violations occurring after October 22, 2004, the filer must meet four criteria:

- a. The filer has no history of criminal tax or BSA convictions for the preceding 10 years and has no history of prior FBAR penalty assessments.
- b. No money passing through any of the foreign accounts associated with the filer was from an illegal source or used to further a criminal purpose.
- c. The filer cooperated during the examination (such as, IRS did not have to resort to a summons to obtain non-privileged information; the filer responded to reasonable requests for documents, meetings, and interviews; and the filer back-filed correct reports.
- d. IRS did not determine a civil fraud penalty against the person for an underpayment for the year in question due to the failure to report income related to any amount in a foreign account. If Examination determined a civil fraud penalty, mitigation is not appropriate for the year in question even if the determination was appealed and the Appeals process is pending. If, however, Appeals concluded its review and did not sustain the civil fraud penalty prior to the examiner's consideration of whether the mitigation criteria are met, this criterion is met for the year in question. If Examination determined a civil fraud penalty, mitigation is not appropriate for the year in question even if a Tax Court case challenging the determination is pending. If, however, a Tax Court decision holding that the taxpayer is not subject to the civil fraud penalty becomes final, or the parties stipulate that the taxpayer is not subject to the civil fraud penalty, prior to the examiner's consideration of whether the mitigation criteria are met, this condition is met for the year in question.

If the filer qualifies for mitigation, calculate the mitigated penalty amount using the applicable mitigation guidelines in this Exhibit. Use the computed mitigated penalty amount in conjunction with guidance in IRM 4.26.16.5.4 and IRM 4.26.16.5.5 to complete the penalty determination for non-willful and willful violations, respectively.

The following table contains FBAR penalty mitigation guidelines for penalties per filer per year for non-willful (NW) violations.

<b>Mitigation Level</b>	<b>If the maximum aggregate balance (per IRM 4.26.16.2.6) for all accounts to which the violations relate</b>	<b>The Mitigated Penalty Amount Is</b>
Level I-NW	Did not exceed \$50,000 at any time during the calendar year, then Level I – NW applies to all violations, and	\$500 per non-willful violation. Total non-willful penalties cannot exceed \$5,000 per year.
Level II-NW	exceeds \$50,000, but does not exceed \$250,000, then Level II-NW applies to all violations, and	\$5,000 per non-willful violation.
Level III-NW	exceeds \$250,000, then Level III-NW applies to all violations, and	the statutory maximum per non-willful violation.

The following table contains FBAR penalty mitigation guidelines for penalties per filer per year for willful violations.

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Exhibit 4.26.16-2 (Cont. 1) (06-24-2021)

## FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004

Mitigation Level	If the maximum aggregate balance (per IRM 4.26.16.2.6) for all accounts to which the violations relate	The Mitigated Penalty Amount Is
Level I-Willful	Did not exceed \$50,000 during the calendar year, then Level I-Willful mitigation applies to all violations, and	The greater of \$1,000 per year or 5% of the maximum aggregate balance of the accounts (to which the violations relate) during the year. Allocate the total penalty for the year among all willful violations being penalized in that year.
Level II-Willful	exceeds \$50,000 but does not exceed \$250,000, then Level II-Willful mitigation applies to all violations, and	For each account for which there was a violation, the greater of \$5,000 or 10% of the maximum account balance during the calendar year at issue.
Level III-Willful	exceeds \$250,000 but does not exceed \$1,000,000, then Level III-Willful mitigation applies to all violations, and	For each account for which there was a violation, the greater of 10% of the maximum account balance during the calendar year at issue or 50% of the account balance on the violation date (defined in IRM 4.26.16.5.2).
Level IV-Willful	exceeds \$1,000,000, then Level IV-Willful mitigation applies to all violations, and	For each account for which there was a violation, the greater of 50% of the account balance on the violation date (defined in IRM 4.26.16.5.2) or the statutory maximum penalty for willful violations.

**Exhibit 4.26.16-3 (11-06-2015)****Money Transmitter FBAR Filing Requirements**

This material was originally issued as Interim Guidance Memorandum SBSE-04-0607-024, Interim Guidance on Money Transmitter Report of Foreign Bank and Financial Accounts (FBAR) Filing Requirements.

BSA Examiners should continue to be alert to FBAR reporting and recordkeeping requirements encountered during all BSA compliance examinations. Examiners often encounter FBAR issues specific to the money transmission industry. Some of the most common issues and questions have been summarized and are addressed below.

Money transmitters in the U.S. send money overseas generally using foreign banks or non-bank agents located in foreign countries. The arrangement permits the money transmitter to readily send payments, in the currency of the foreign country, to the recipient. The U.S. money transmitter wires funds to the foreign bank or non-bank agent and provides instructions to make payments to the recipient located in the foreign country. The money transmitter typically does not have signature or other authority over the agent's bank account. In this situation, the money transmitter is not required to file an FBAR for the agent's bank account.

However, if the money transmitter has a direct financial interest in the foreign financial account, has signature authority, or other authority, over the foreign financial account and the aggregate value is in excess of \$10,000 at any time during the year in question, the money transmitter is required to file an FBAR. Another person holding the foreign account on behalf of the money transmitter does not negate the FBAR filing requirement.

Frequently Asked Questions (FAQ's) concerning money transmitters filing FBARs:

1. Is there an FBAR filing requirement when the money transmitter wires funds to a foreign bank account or has a business relationship with someone located in a foreign country?

Answer: No. Merely wiring funds to a foreign bank account or having a business relationship with someone located in a foreign country does not create an FBAR filing requirement.

2. Is there an FBAR filing requirement where the money transmitter owns a bank account located in a foreign country or has signature authority over someone else's bank account located in a foreign country?

Answer: Yes, if the account exceeded \$10,000 at any time during the calendar year and the money transmitter was a United States person for FBAR purposes.

3. Is an FBAR required to be filed by a money transmitter engaged in Informal Value Transfer System (IVTS)/Hawala transactions?

Answer: There would be no FBAR filing requirement if there is no foreign bank or other foreign financial accounts involved. The money transmitter's relationship with a foreign affiliate, by itself, does not create an FBAR filing requirement. However, if the money transmitter owned a bank account located in a foreign country or had signature authority over someone else's bank account located in a foreign country, was a United States person, and the account value exceeded \$10,000 at any time, the money transmitter would be required to file an FBAR.

4. What constitutes "other authority" for FBAR reporting purposes?

Answer: "Other authority" is comparable to signature authority in that a person exercising "other authority" can through communication to the bank or other person with whom the account is maintained exercise power over the account. A distinction, however, must be drawn between having authority over a bank account of a non-bank foreign agent and having authority over a foreign agent who owns a foreign bank account. Having authority over a person who owns a foreign bank account is not the same as having authority over a foreign bank account.



**Exhibit 4.26.16-3 (Cont. 1) (11-06-2015)****Money Transmitter FBAR Filing Requirements**

5. Does a money transmitter who has a business relationship with a person located in a foreign country have a financial interest in a foreign financial account if the person in the foreign country is providing services of a financial institution (such as money transmission services) and both parties maintain books and records of their business transactions (including books and records of offsetting transactions or trade accounts receivable or payable)?

Answer: No. The money transmitter does not have a financial interest in a foreign financial account. A “financial account” for FBAR filing purposes includes bank accounts, investment accounts, savings accounts, demand checking, deposit accounts, time deposits, or any other account maintained with a financial institution or other person engaged in the business of a financial institution. “Accounts” as used to describe or identify the books and records of ordinary business transactions between businessmen are not “financial accounts” for FBAR filing purposes.

6. Do receivables accounts maintained by foreign non-bank agents which net out the US money transmitter settlement obligations to the foreign agent constitute a financial account for FBAR filing purposes?

Answer: No. Such receivables in accounting records are not financial accounts for FBAR reporting purposes.

7. Do the FBAR filing requirements apply when a money transmitter maintains a bank account with a foreign bank for the purpose of settling money transmission transactions with a foreign bank?

Answer: Yes. If a money transmitter owns the account maintained with the foreign bank or has signature or other authority over it, the money transmitter may be required to file an FBAR.

