



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.26.17

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EFFECTIVE DATE

(11-22-2021)

PURPOSE

- (1) This transmits revised IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.

MATERIAL CHANGES

- (1) Italics have been removed from titles throughout this IRM.
- (2) Exhibit 4.26.17-2 titles, links, and mailing addresses have been updated.
- (3) Exhibit 4.26.17-3 broken link has been updated.
- (4) Exhibit 4.26.17-5 addresses and fax numbers have been updated.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.26.17 dated December 11, 2019.

AUDIENCE

Intended audience is all employees and managers who are responsible for ensuring compliance with the reporting and record keeping requirements of the Report of Foreign Bank and Financial Accounts.

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

4.26.17

Report of Foreign Bank and Financial Accounts (FBAR) Procedures

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4.26.17.1
(12-11-2019)
**Program, Scope and
Objectives**

- (1) **Purpose.** This IRM contains procedures for cases relating to the Report of Foreign Bank and Financial Accounts (FBAR).
 - Objectives – consistency in audit procedures and processing of FBAR cases selected for examination.
 - Revenue agents and their managers are responsible for adhering to the content of this IRM.
 - Employees will perform examinations of FBAR returns 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 record keeping requirements of the FBAR.
- (3) **Policy Owner.** The Director, SB/SE Examination, Specialty 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 record keeping requirements of the FBAR. IRS Office of Chief Counsel employees who provide guidance and clarification on interpreting laws related to FBAR provisions.

4.26.17.1.1
(12-11-2019)
Background

- (1) The Report of Foreign Bank and Financial Accounts (FBAR) is required by the Bank Secrecy Act (BSA). The statutory and regulatory authority for the FBAR requirements 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 the IRS to administer civil compliance with Title II of the BSA to the Director, Financial Crimes Enforcement Network (FinCEN). FinCEN redel-egated 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.
- (2) The Surface Transportation and Veterans Health Care Choice Improvement Act of 2014, Public Law 114-41, changed the due date for FBAR reports due for calendar year 2016 and subsequent years to April 15th. FinCEN granted filers failing to meet the FBAR annual due date of April 15th an automatic extension to October 15th each year. When the FBAR due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.

4.26.17.1.2
(12-11-2019)
Authority

- (1) FBAR rules emanate from 31 USC 5314, Records and Reports on Foreign Financial Agency Transactions, and related regulations under 31 CFR 1010.350, Reports of Foreign Financial Accounts.

4.26.17.1.3
(12-11-2019)
Responsibilities

- (1) The Director, SB/SE Examination, Specialty 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.

4.26.17.1.4
(12-11-2019)
**Program Management
and Review**

- (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:
 - FBAR Improvement Team Briefings
 - Program Manager Monthly Briefings
 - Examination Operational Review and
 - Business Performance Reviews
- (3) **Program Effectiveness:** Periodic program reviews are conducted to:
 - Assess the effectiveness of specific programs within Examination or across the organization,
 - Determine if procedures are being followed,
 - Validate policies and procedures, and
 - Identify and share best/proven practices.
- (4) **Periodic Review:** The BSA Policy Program Manager is responsible for reviewing the information in this IRM to ensure accuracy and promote consistent tax administration.

4.26.17.1.5
(12-11-2019)
Acronyms

- (1) See Exhibit 4.26.17-1 for a list of commonly used acronyms and their definitions.

4.26.17.1.6
(12-11-2019)
Terms

- (1) In this section of the Internal Revenue Manual, whenever the terms “extend”, “extended”, “extending”, “extension”, or “extensions” are used in reference to a statute of limitations or the period of assessment for a penalty for failing to file an FBAR or for failing to keep records, the definition of such term includes a waiver of the statute of limitations defense.
- (2) In this section of the Internal Revenue Manual, whenever the terms “assessment statute”, “statute date”, or “statute”, are used in reference to a statute of limitations or the period of assessment for a penalty for failing to file an FBAR or for failing to keep records, the definition of such term includes the time period for which a filer has waived his/her statute of limitations defense.

- (3) In this section of the Internal Revenue Manual, whenever the term “filer” is used, the definition of such term includes a US person required to file the FBAR that does not file the FBAR.

4.26.17.1.7
(12-11-2019)
Related Resources

- (1) This section should be read together with IRM 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR), for a complete understanding of FBAR law and procedures. See the following for additional information:
- a. IRM 1.2.52.14, 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

4.26.17.2
(12-11-2019)
Starting an FBAR Examination

- (1) Procedures to start an FBAR examination depend on whether the FBAR examination was initiated from a Title 26 (Internal Revenue Code) examination. If the FBAR examination stems from a Title 26 examination, Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum (RSM), is required. See IRM 4.26.17.2.1. If the FBAR examination does not result from a Title 26 examination, no RSM is required. Instead, Form 13536, FBAR Monitoring Document (FMD), is used. See IRM 4.26.17.2.2.
- (2) In all FBAR examinations:
- a. The approved originating document (RSM or FMD) must be submitted to CTR Operations to record the case on the FBAR database.
 - b. ERCS controls must be secured.
- Exception:** This requirement does not apply to TE/GE.
- c. The examiner will set up a separate FBAR case file.

4.26.17.2.1
(12-11-2019)
Starting an FBAR Examination Resulting from Title 26 – Related Statute Memorandum (RSM) Required

- (1) A Title 26 examination may contain or obtain information that may also be relevant to a Title 31 FBAR examination. For example:
- a. Bank account information that is a necessary part of an income probe may reveal the existence of a foreign financial account requiring the filing of an FBAR,
 - b. Information provided to IRS may reveal the existence of a foreign financial account requiring the filing of an FBAR, or
 - c. A taxpayer may voluntarily file amended income tax returns to disclose previously unreported foreign income that may reveal the existence of a foreign financial account requiring the filing of an FBAR.
- (2) Examples of examinations conducted under Title 26 include, but are not limited to, income tax, international information return penalty investigations and Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, examinations.
- (3) If the information indicating potential FBAR noncompliance is from a Title 26 examination that information is considered “return information” and is protected by IRC 6103, Confidentiality and Disclosure of Returns and Return Information. As such, that information cannot be used or disclosed in a Title 31 FBAR ex-

amination unless a determination is made that the two statutes, Title 26 and Title 31, are related. For an in-depth discussion of the related statute determination, its basis in IRC 6103, the factors in making the determination and its effect, see IRM 4.26.14, Disclosure.

- (4) If the statutes are related, then Title 31 is considered “tax administration” under the “related statute” portion of the definition of tax administration in IRC 6103 and all information gathered as part of the investigation is considered return information protected by IRC 6103. See IRM 9.3.1.4.3.1.1.2(4), Related Statute Determination.
- (5) The determination of whether the two statutes are related is documented on Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum (RSM) and signed by the designated official. Two situations arise:
 - a. If the statutes are not related, the RSM indicates the potential FBAR violation was not in furtherance of a potential Title 26 violation. See IRM 4.26.17.2.1.1 for additional information.
 - b. If the statutes are related, the RSM indicates the potential FBAR violation was in furtherance of a potential Title 26 violation. See IRM 4.26.17.2.1.1 for additional information.
- (6) For purposes of the RSM, the “designated official” is as follows:
 - a. For TEGE, Area Manager.
 - b. For all other BODs, Group Manager

4.26.17.2.1.1
(12-11-2019)

Impact of an RSM

- (1) Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum (RSM), is used to document a good faith determination, based on the facts and circumstances, of whether a potential FBAR violation was in furtherance of a potential Title 26 violation. See IRM 4.26.17.2.1.2 for procedures to obtain an RSM.
- (2) If the designated official determines, via the RSM, that a potential FBAR violation was not in furtherance of a potential Title 26 violation, Title 26 information cannot be used in the Title 31 FBAR examination. Any such use could subject the person(s) to penalties for violating the disclosure provisions protecting Title 26 return information. Therefore, the examiner is not authorized to initiate an FBAR examination. Additionally, the examiner should not ask questions or request documents that are relevant only to the FBAR examination.
 - a. Examiners are prohibited from making inquiries of a filer, an authorized representative, or a third party as to whether the FBAR was required, filed, or records required by the FBAR instructions and 31 CFR 1010.420, Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts, or records required by the FBAR instructions and CFR 1010.420 were retained.
 - b. Internal inquiries, such as research of FinCEN Query, searches of other internal databases, or review of documents and information included in the case file are permitted.
 - c. Even without an approved RSM, the examiner can ask questions or request documents that are relevant to the Title 26 examination even though they may also be relevant to an FBAR examination. For example,

bank statements, which may be relevant to an FBAR examination, can be requested without an RSM, because these documents are relevant to the income tax examination.

- (3) If the designated official determines, via the RSM, that a potential FBAR violation was in furtherance of a potential Title 26 violation (hereafter known as an “approved RSM”). Title 26 information can be used in the Title 31 FBAR examination. The “approved RSM” authorizes the examiner to initiate an FBAR examination.
 - a. Once approved, the RSM allows the sharing of all “return information” obtained in the examination, including that which was obtained prior to the RSM being secured.
 - b. A subsequent determination that there was no Title 31 violation does not terminate the approved RSM or prevent the Title 26 examination from going forward or from using the information secured during either examination.
- (4) The approved RSM also serves as the initial input document for the FBAR examination database maintained by CTR Operations. All the information required in the RSM will be used to track the FBAR examination and provide information to the Department of the Treasury and Congress in required annual reports.

4.26.17.2.1.2
(12-11-2019)

Procedures to Obtain a RSM

- (1) Upon identification of a potential FBAR violation in furtherance of a Title 26 violation that warrants further investigation, the examiner will prepare the Form 13535. A separate RSM is required for each year and each person or entity potentially required to file an FBAR, even if a joint tax return or joint FBAR was filed.

Example: If years 2015 and 2016 are under audit, then an RSM is required for years 2015 and 2016. This RSM can be based however on information related to a year not under audit (such as 2014).

- (2) The following tables list fields that are required to be completed on Form 13535:

Always Required
Date
Group Manager
Division
Area
Territory
Examiner
Group
Examiner POD
Case (filer) name

Always Required
SSN/EIN
Type of person
Street
City
State
Zip Code
Country
Filing for calendar year
Assessment Statute Expirations Date (ASED)
[Case explanation section]
Was/was not in furtherance of a Title 26 violation
Manager signature
Date

Required, if Applicable
Project Code
ERCS Tracking Code
POA [name]
[POA] Street
[POA] Street
[POA] City
[POA] State
[POA] Zip Code

- (3) The examiner uses the RSM to document the reasons the examiner believes the statutes (Title 31 and 26) are related. In the case explanation section, and on an attachment if needed, the examiner will:
- a. Specifically identify the potential FBAR and Title 26 violations. For purposes of securing an RSM, it is not necessary to establish with certainty that there was an FBAR or Title 26 violation or that the FBAR violation was in furtherance of the Title 26 violation to meet the related statute test. Title 26 violations should be singular: A good faith determination that there may be an FBAR violation in furtherance of a Title 26 violation is all that is required. The following table provides some examples of violations:

FBAR	Title 26
Failure to file	Unreported income related to the unreported foreign financial account, such as investment income or pre-tax deposits
Failure to file timely	Erroneous or omitted information on Schedule B, Part III regarding foreign accounts and trusts
Filed but omitted foreign financial accounts	Failure to file timely or accurate international information returns, such as Form 3520, Form 3520-A, Form 5471, Form 8865, or Form 8938
Filed but materially misstated account information such as ownership or account balance	Failed to accurately report account information

- b. Explain the relationship between the Title 31 violations and the Title 26 violations. "In furtherance of" means that there is a connection between the potential FBAR violation and the potential Title 26 violation. The potential FBAR violation need not occur in the same year as a potential Title 26 violation to be considered "in furtherance of" the Title 26 violation.

Example: A U.S. person with a financial account in a foreign country may be required, under the BSA, to file an FBAR disclosing the existence of the foreign account. When the person fails to comply with the Title 31 FBAR filing requirement and fails to report interest income from the foreign financial account in violation of Title 26, this may indicate the FBAR noncompliance was in furtherance of a tax violation under Title 26.

- c. Explain how the foreign financial account(s), or the likelihood of such account(s), became known to the examiner.
 - d. Detail all relevant information, including but not limited to, bank name(s) and location(s), bank account number(s), name on the account(s), the filer's role in the account(s), account balance(s).
 - e. Identify whether any foreign income appears to be reported on the income tax return and if so, why it appears incomplete or inaccurate.
 - f. Identify if Schedule B was filed with the income tax return (for individual filers) and if so, how the foreign account/asset questions were answered in Part III.
- (4) The examiner will forward the RSM, with any relevant documents attached, to the designated official.
- (5) The designated official reviews the RSM and any attachments and determines whether a potential FBAR violation is in furtherance of a potential Title 26 violation. The designated official will check the applicable box and sign the determination portion of the RSM. Electronic signature of documents is acceptable.

4.26.17.2.1.3

(12-11-2019)

Procedures Following the RSM

- (6) The designated official can decide based on the examiner's attestation in the RSM regarding the potential violations. Further, the designated official does not have to be certain that there was an FBAR violation and that the violation was made in furtherance of a Title 26 violation; a good faith determination is all that is required.
 - (7) The signed RSM and attachments are returned to the examiner.
- (1) After receiving the signed RSM, the examiner will review the RSM for the designated official's determination.
 - (2) If the designated official determined that the potential FBAR violation was not in furtherance of a potential violation of Title 26, the examiner places the RSM in the Title 26 case file. This terminates the examiner's FBAR responsibilities. The examiner will not conduct an FBAR examination.
 - (3) If the designated official determined that the potential FBAR violation was in furtherance of a potential Title 26 violation, any evidence acquired in the Title 26 examination can be used in the FBAR examination and the FBAR examination can begin.
 - (4) Within 3 business days of receipt of an approved RSM:
 - a. All examiners must email the signed, approved RSM to CTR Operations using the contact information in Exhibit 4.26.17-2, and
 - b. All SB/SE and LB&I examiners must request control of the FBAR case on ERCS. See IRM 4.26.17.2.3.

Note: Under no circumstance should an approved RSM be secured and not submitted to CTR Operations. Similarly, under no circumstance should an approved RSM submitted to CTR Operations not be controlled on ERCS.
 - (5) The examiner will create a physical FBAR case file in accordance with IRM 4.26.17.2.4 and proceed with the FBAR examination.
 - (6) The original RSM and copy of the email submission to CTR Operations must be retained in the FBAR case file.
 - (7) Upon receipt of the approved RSM, CTR Operations will enter the RSM information into the FBAR database, establishing a record of the FBAR examination.
 - (8) In an FBAR examination that started from a Title 26 examination and used an RSM to establish the case in the FBAR database, the examiner will prepare Form 13536 and submit to CTR Operations only:
 - a. With updates as they occur throughout the examination. (see IRM 4.26.17.3)
 - b. With case closing information pursuant to IRM 4.26.17.4.

4.26.17.2.2
(12-11-2019)

**Starting an FBAR
Examination Where No
RSM is Required –
SB/SE Specialty
Examination, BSA Only**

- (1) Within IRS, only SB/SE Examination – Specialty, BSA has authority to conduct Title 31 examinations that do not originate from a Title 26 examination. As such, this section is applicable only to BSA.
- (2) If the examiner is conducting an examination under the BSA, Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum (RSM), is not required to start an FBAR examination. This is because no information from a tax examination or other IRC 6103, Confidentiality and Disclosure of Returns and Return Information, protected source is involved.
- (3) In accordance with IRM 4.26.6, Bank Secrecy Act Examiner Responsibilities for BSA Examinations, and IRM 4.10.5, Examination of Returns, Required Filing Checks, examiners should make appropriate inquiries in all BSA examinations to detect potential FBAR violations. Document these general inquiries in the BSA case file. Avoid action that may constitute an FBAR examination if an FBAR examination has not yet been initiated.

Note: Without an RSM, the examiner is precluded from accessing Title 26 data, such as IDRS.

- (4) If there appears to be no FBAR violation, the FBAR examination is not initiated and no separate FBAR case file is set up.
- (5) Upon identification of a potential FBAR violation that warrants further investigation, the examiner will prepare Form 13536 requesting to start the FBAR case. A separate FMD is required for each year and each person or entity potentially required to file an FBAR.
- (6) The following fields are required to be completed on Form 13536 to start the FBAR examination when there is no RSM:

Always Required
Filing for Calendar Year
Assessment Statute Expiration Date (ASED)
Filer Name
Street Address
City
State
Zip/Postal Code
Country
Taxpayer Identification Number
[Filer/POA] Telephone Contact Name
[Contact] Number
Division
Compliance Area

Always Required
Territory
Group
Manager
Examiner
Date started [GM completes]

Required, if Applicable
Project code
Power of Attorney Name
[POA] Street Address
[POA] City
[POA] State
[POA] Zip/Postal Code
[Owner] Name
[Owner] Street Address
[Owner] City
[Owner] Zip/postal code
[Owner] Country
[Owner] Taxpayer Identification Number

Optional
Examiner Email Address
Examiner Fax Number

- (7) Prepare a memorandum explaining that the FMD is to be used by CTR Operations as an originating document, like an RSM, but that no RSM is prepared for this case because no Title 26 information is used.
- (8) Submit the FMD and memo to the group manager (GM). It may be submitted via secure, encrypted email.
- (9) The GM will review the FMD and memo for completeness and accuracy.
 - a. If the GM identifies errors, desires more information or does not concur with the initiation of the FBAR examination, the GM will discuss this with the examiner.
 - b. If no FBAR examination will be conducted, the examiner will document the decision in the regular BSA case file.

- c. If the GM concurs with establishment of the FBAR exam, the GM will complete the Date Started field, sign the form (anywhere), and return the approved FMD/memo to the examiner
 - d. Electronic signatures are acceptable, and documents may be shared via secure, encrypted email.
- (10) Within 3 business days of receipt of an approved FMD, the examiner must:
 - a. Email the approved FMD and memorandum to CTR Operations using contact information in Exhibit 4.26.17-2 and
 - b. Request control of the FBAR case on ERCS. See IRM 4.26.17.2.3.
- (11) The examiner will create a physical FBAR case file in accordance with IRM 4.26.17.2.4 and proceed with the FBAR examination.

Note: FBAR case files cannot be included in the regular BSA case file. FBAR examinations are tracked on a database separate from all other Title 31 examinations. FBAR penalties are assessed by IRS and the separate FBAR case file is necessary to support the decision to assert penalties or issue a warning letter. Non-FBAR related BSA penalties are referred to FinCEN for assessment using procedures set forth in IRM 4.26.8, Special Procedures.

- (12) The original approved FMD, memorandum, and a copy of the email submission to CTR Operations must be retained in the FBAR case file.
- (13) Upon receipt of the approved FMD, CTR Operations will enter the FMD information into the FBAR database, establishing a record of the FBAR examination.

Note: The examiner will update Form 13536 as needed throughout the examination, submitting to CTR Operations as updates occur (see IRM 4.26.17.3) and with case closing information pursuant to IRM 4.26.17.4.

4.26.17.2.3
(12-11-2019)

**Procedures to Control
FBAR Examinations on
ERCS – LB&I and SB/SE
Only**

- (1) Because TE/GE does not use the Examination Returns Control System (ERCS), this section does not apply to TE/GE personnel.
- (2) ERCS is the system used for controlling and monitoring FBAR examinations, including statutes, and charging direct examination time. FBAR information is not available on the Audit Information Management System (AIMS), commonly accessed via Integrated Data Retrieval System (IDRS).
- (3) Examiners are required to establish FBAR examination ERCS controls for the same year and individual or entity for which an RSM or FMD was submitted to CTR Operations to establish a case on the FBAR database. Joint ERCS controls are not appropriate for FBAR cases.
- (4) Every FBAR examination case controlled on ERCS must have a corresponding record in the FBAR database. Every open record in the FBAR database under the jurisdiction of SB/SE and LB&I Examination, including Technical Services, must be controlled on ERCS.
- (5) For examiners that use Form 5345-D to establish examination controls on ERCS, prepare it in accordance with IRM 4.26.17.2.3.1.

- (6) Examiners in SB/SE Examination – Specialty, BSA refer to IRM 4.26.17.2.3.
- (7) LB&I Issue Management System (IMS) users, use the following information in IMS case setup:

Field	Input
Return Type	FBAR
MFT	Y0 (Y-zero)
Activity Code	545
SAIN	For EOI groups: 999-22 FBAR For all other groups: 624-10 Other Penalties (includes FBAR)
UIL	9999.99-01 FBAR Penalty

- (8) All other examiners, follow the normal procedures for establishing a new case on ERCS, using applicable codes in accordance with IRM 4.26.17.2.3.2.
- (9) A copy of the approved Form 5345-D or other ERCS control request document must be kept in the FBAR case file.
- (10) Though rare, there may be situations where the Exam group must re-establish controls on ERCS for corrective action, such as to secure a statute extension, or when Appeals returns a case to the group. Refer to existing procedures for re-establishing penalty records on ERCS. Contact your local AIMS/ERCS analyst, or FBAR coordinator/analyst for further assistance.

4.26.17.2.3.1 (12-11-2019)

Preparing ERCS Control Requests

- (1) Complete Form 5345-D, Examination Request - Examination Returns Control System (ERCS), in accordance with the following information:

Form 5345-D Field/Section	Input
Check 1 box only (upper-left of form)	Control Penalty Investigation
Taxpayer name, name control	Only 1 individual or entity name
Taxpayer address	Self-explanatory
PBC, SBC, EGC	Self-explanatory
Examiner's ERCS ID and Name	Self-explanatory
Taxpayer's TIN	Only 1 individual or entity TIN
MFT	Y0 (Y-zero)
Form Type	FBAR
Tax Period	Each FBAR year being established for this TIN
Activity Code	545
Source Code	99

Form 5345-D Field/Section	Input
Status Code	10 or 12, as appropriate
Statute Date	Normally six years from the FBAR due date, whether filed or not. Can be extended
Tracking Code	Same code as the Primary/Key Case
Project Code	Same code as the Primary/Key
Related Return	Y
TEFTA Indicator	N
Do you want the original return?	N
Do you want labels?	N
Joint Committee	N
Foreign Control	N
Is case LB&I/CIC	N
Control PBC	Leave blank
Related return information section	Primary Key Case information
Reason for Request	to control an FBAR examination

Note: Activity Code 545 is used only for purposes of FBAR ERCS (MFT Y0) controls.

Note: For guidance regarding the statute date, see IRM 4.26.17.3.1.1.

- (2) The examiner will print or type his/her name in the appropriate box, sign and date Form 5345-D. Following local procedures, submit to the group manager as required by IRM 1.4.40.4.2.1, Requisition of Returns.
- (3) The group manager will review Form 5345-D for completeness and accuracy. If the group manager identifies errors or desires more information, the group manager will discuss with the examiner. If approved, the GM will sign and date the form (anywhere) and will provide the approved Form 5345-D to the group secretary for input into ERCS. Electronic signatures are acceptable. The form may be submitted via secure, encrypted email.
- (4) Additional information regarding preparation and use of Form 5345-D can be found in IRM 4.4.23, AIMS Procedures and Processing Instructions, Openings.

4.26.17.2.3.2
(12-11-2019)

Establishing Controls in ERCS

- (1) Upon receipt of the GM-approved Form 5345-D, the group secretary will input the establishment request into ERCS using the following procedures.

Note: If any errors or issues are noted during this process, contact the group manager or examiner, or the local AIMS/ERCS analyst.

1. From the ERCS main menu, select 1 – **Request Tax Return**.
2. Select 2 – **Control Penalty Investigation**.
3. Enter **PBC/SBC/EGC** and **Employee ID** before continuing.
4. Enter **Taxpayer TIN**, then the first **Tax Period** being picked up.
5. Enter Activity Code 545. Once entered, the MFT will automatically be set to Y0 (Y- zero) and the **Source Code** will be set to **99**.
6. Enter **Status Code**, hit Enter and a default statute date will appear below the status code.

Note: ERCS defaults to a six-year, June 30 statute date.

7. Compare the statute date in **Statute Info** to the input document, such as Form 5345-D. If the examiner did not provide a statute date on the input document, secure the statute date from the examiner. If the default statute date in **Statute Info** is incorrect, input the appropriate statute date. After the **Statute Info** field is correct in ERCS, hit Enter.
8. Input the **Tracking Code** and **Project Code**, as applicable, hit Enter, and then hit **Y** to accept the information.
9. Enter **additional years** to be established, if any. When entering additional years, ensure the correct ASED is input for each year.
10. Enter the **Key TIN**, **Key MFT** and **Key TP (Tax Period) for the key case**, if any.
11. Input the **Name and Address** of the taxpayer being established.

Note: For penalty records, ERCS will not automatically “pull” the address from the taxpayer’s key case (such as MFT 30); it must be input.

12. Managerial approval is required in ERCS to complete establishment of the record.
13. For each record (year) successfully established on ERCS, the group secretary will initial and date the **Input on ERCS** field in the **Code/Data Area** of Form 5345-D.
14. Upon completion, the group secretary will return Form 5345-D to the examiner for retention in the FBAR case file workpapers.

4.26.17.2.3.3
(12-11-2019)
Re-Establishing ERCS Controls

- (1) Though rare, there may be situations where the group must re-establish controls on ERCS for corrective action, such as to secure a statute extension, or when Appeals returns a case to the group.
- (2) Refer to existing procedures for re-establishing penalty records on ERCS. Contact your local AIMS/ERCS analyst, or BOD FBAR coordinator/analyst for further assistance.

4.26.17.2.4
(12-11-2019)
FBAR Case File Assembly

- (1) If an FBAR examination is initiated, the examiner will set up a separate FBAR case file, one for each individual/entity under FBAR exam. A separate case file is required for each spouse under FBAR examination.
- (2) Multi-year FBAR examinations for the same individual/entity can use the same FBAR case file; a separate file is not required for each year.

4.26.17.2.4.1
(12-11-2019)
**FBAR Case File
Documents**

(1) Each FBAR examination case file must include:

- a. Examination workpapers index
Note: TE/GE examiners use Form 5773, EO Workpaper Summary Continuation Sheet.
- b. Examiner Activity Record.
- c. If the FBAR exam is started from Title 26: Form 13535. See IRM 4.26.17.2.1.
- d. If the FBAR exam is started from Title 31: Form 13536 providing opening information for the FBAR database. See IRM 4.26.17.2. (Form 13536 is used for all FBAR examinations and should be updated as the examination progresses. See IRM 4.26.17.3.)
- e. Copy of email submission verifying the date that notification of RSM/opening FMD was submitted to CTR Operations.
- f. Form 5345-D, Examination Request - Examination Returns Control System (ERCS) Users.
- g. FBAR Lead Sheet or another written summary, and workpapers. See IRM 4.26.17.4 for further discussion
- h. FBAR penalty computations.
- i. Copies of FinCEN Query (and if applicable, prior system CBRS) research.
- j. Copies of any delinquent FBARs secured prior to e-filing requirement, annotated in red on the top **Secured by Examination**, if applicable (see Note below). For e-filed FBARs, copies of research from FinCEN Query showing that the FBARs were filed.
Note: Examiners must not accept delinquent paper FBARs. All FBARs must be electronically filed with FinCEN by the filer or a third party (tax preparer, for example) that the filer authorized to file the FBAR. See IRM 4.26.17.5.1 for delinquent FBAR procedures.
- k. Information Document Requests (IDRs) with certified mail receipts, if applicable.
- l. Copies of other correspondence, including, but not limited to Letter 4265, FBAR Appointment Letter, and all other correspondence with the account holder.
- m. Copies Original Form 2848, Power of Attorney and Declaration of Representative, if applicable.
- n. For all FBAR examinations starting from Title 26, (except those closing "No Action",) copies of relevant records from any related Title 26 case file, including, but not limited to: Copies of original and/or amended tax returns, and/or international information returns (such as Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation, Form 8938, Statement of Specified Foreign Financial Assets, or other similar forms) as applicable.
- o. Entity formation and/or dissolution documents, if applicable.
- p. Any other relevant workpapers or other documents such as bank statements and summonses, if any.

- q. Documentation of examination results, such as RAR and leadsheets, agreement form, and the taxpayer's reasonable cause argument and/or protest, as applicable.
- r. If any related Title 26 case is closed, indicate in the FBAR activity record how the Title 26 case(s) closed.
- s. If any related Title 26 case is still open, indicate in the FBAR activity record the anticipated closure of the Title 26 case.
- t. Possibility of substantial duplication of records is recognized, but required due to different processing, assessment and appeal procedures for each case.

4.26.17.2.4.2

(12-11-2019)

Other FBAR Case File Closing Documents

- (1) There are documents that, in addition to those found in IRM 4.26.17.2.4.1, are to be included in the case file. The following is a list of those documents:

- a. Documentation of required coordination with an operating division FBAR coordinator. This should be in writing, such as an email.
- b. Documentation of coordination with a Fraud Technical Advisor, as appropriate. See IRM 4.26.17.5.3.
- c. For willful cases, Counsel's written advice memorandum.
- d. Documentation of managerial approval in accordance with IRM 4.26.16.6.8, Managerial Involvement and Approval of FBAR Penalties.
- e. Form 13536 providing closing information for the FBAR database. This applies to all FBAR examinations. Follow the applicable closing procedures in IRM 4.26.17.4 to determine when and how to submit this document to CTR Operations.
- f. Copy of Letter 3800, Warning Letter for Report of Foreign Bank and Financial Accounts (FBAR) Apparent Violations, if applicable.
- g. Copy of Letter 3709, FBAR 30 Day Letter, if applicable.
- h. Original Form 13449, Agreement to Assessment and Collection of Penalties Under 31 USC 5321(a)(5) and 5321 (a)(6), if applicable.
- i. Notice 1330, Information on Making FBAR Penalty Payment by Check, if applicable
- j. Filer's reasonable cause argument and/or protest, as applicable
- k. Rebuttal to filer's protest, if applicable.

Note: If prepared, a rebuttal must comply with IRM 4.2.7.4.1, Ex Parte Communication Procedures – Rebuttals of the Taxpayer's Protest.

- l. Form 4665, Report Transmittal, for unagreed cases being sent to Appeals. See IRM 4.26.17.4.3.4 for guidance in preparing Form 4665.
- m. Copies of any payments and Form 3210 used to submit payment for processing.

4.26.17.2.4.3

(12-11-2019)

FBAR Documents Outside of Case Folder

- (1) Outside of case folder: Form 3198, Special Handling Notice for Examination Case Processing:

- 1. List all related Title 26 income tax and penalty cases in the "Related Taxpayers or Key Cases section".
- 2. Include the following in the "Other" section within the "Forward to Technical Services" section:
- 3. "FBAR" and type of closing per FMD.
- 4. Project/tracking codes for the FBAR penalty case.

4.26.17.2.4.4
(12-11-2019)

FBAR Documents - CTR Operations

- (1) CTR Operations will include the following documents, as appropriate:
 1. Form 13448, Penalty Assessments Certification Summary (Title 31 "FBAR"), (Internal document).
 2. Letter 3708, Notice and Demand for Payment of FBAR Penalty (copy).
 3. Notice 1330, Information on Making FBAR Penalty Payment by Check (copy).
 4. Receipt of check processing attached to original check.
 5. Filer's protest, if secured by CTR Operations.
 6. Any other correspondence with, the filer or POA, Bureau of Fiscal Services, Appeals, Counsel, Department of Justice, as applicable
- (2) If the FBAR penalty is appealed, Appeals will include documents in accordance with IRM 8.11.6, Penalties Worked in Appeals, FBAR Penalties.

4.26.17.3
(12-11-2019)

Working the FBAR Examination

- (1) The examiner conducting the FBAR examination will adhere to the following general guidelines:
 - a. Set up workpapers on the FBAR issues in the FBAR file separate from the Title 26 file in accordance with IRM 4.26.17.2.4.
 - b. If IRM 4.26.17.2.1 applies, ensure that a valid RSM is prepared, executed, and placed in the case file separately for each FBAR year before commencing the FBAR investigation.
 - c. Throughout the examination, as any of the information on the FMD changes, update the FMD and submit it to CTR Operations using the contact information in Exhibit 4.26.17-2. When preparing Form 13536, FBAR Monitoring Document (FMD), to submit updates to CTR Operations, the following fields are required to be completed:

Always Required
Filing for Calendar Year
Filer name
Street address
City
State
Zip/Postal Code
Country
Taxpayer Identification Number
[Filer/POA] Telephone Contact Name
[Contact] Number
Division
Compliance Area
Territory
Group

Always Required

Manager

Examiner

Date Started

Required, if Applicable

Assessment Statute Expiration Date (ASED)

Project Code

Power of Attorney Name

[POA] Street address

[POA] City

[POA] State

[POA] Zip/postal code

[Owner] Name

[Owner] Street address

[Owner] City

[Owner] State

[Owner] Zip/postal code

[Owner] Country

[Owner] Taxpayer Identification Number

Optional

Examiner Email Address

Examiner Fax Number

- d. The proper use of time is an essential element of a quality examination. General guidelines for timely actions during each phase of the FBAR examination apply. See IRM 4.10.2, Pre-Contact Responsibilities. Because the nature of FBAR examinations involves securing offshore records, reasonable deviations from those timelines are allowed. Examiners must attempt to accommodate the valid needs of the filer(s) in providing records and scheduling appointments. However, examiners must not allow the filer(s) to delay or circumvent the FBAR examination. See IRM 4.10.2.9.4, Rescheduling the Initial Appointment.
- e. Charge all FBAR examination time to the appropriate FBAR examination case established on ERCS via MFT Y0. Do not charge time directly to activity code 545.

Note: BSA examiners will record the MFT (Y0), name, TIN, and year(s) of the individual or entity subject to FBAR examination, and the time applied to each FBAR examination year on the ERCS-Form 4502.

Follow local procedure to submit the ERCS- Form 4502 to the group secretary for input into ERCS.

- f. Each issue identified in IRM 4.26.16.3, FBAR Filing Criteria, should be addressed in determining if a U.S. person was required to file an FBAR, whether the FBAR was filed when required, and whether required records were kept. If facts have been derived from other cases (such as a related income tax examination), the examiner must make copies of the relevant documents for the FBAR examination file.
 - g. As the examination progresses, document the audit steps taken. Contact an operating division FBAR coordinator or analyst for assistance in obtaining an FBAR examination leadsheet with template audit steps.
 - h. Review and discuss FBAR issues with the filer along with other examination issues and make a decision concerning violations and penalties.
- (2) Local support personnel, for example FBAR coordinators and FinCEN Query Super Users, charge FBAR-related time to the specific examination case or to activity code 514, Specialist Consultations or Informal Assistance, as appropriate as outlined in IRM 4.7.5, Examination Returns Control System (ERCS), Group and Territory, and IRM 4.9.1, Examination Technical Time Reporting System, Outline of System.

Note: Local support personnel are not assigned the case on ERCS and are not responsible for establishing the FBAR case on ERCS

- (3) Utilize ERCS to monitor FBAR cases in accordance with ERCS. See IRM 4.7.1, Overview; IRM 4.7.3, Statute of Limitations; IRM 4.7.5, Group and Territory; IRM 4.7.6, Reports; IRM 4.7.7, Technical Services; and IRM 4.7.10, AIMS/ERCS Staff.

4.26.17.3.1
(12-11-2019)
**FBAR Statute of
Limitations**

- (1) Title 26 statutes of limitation do not apply to FBAR examinations, which are governed by Title 31 laws.
- (2) The statute of limitations on assessment of civil FBAR penalties is six years from the date of the violation.
- (3) The statute of limitations to initiate litigation to collect the assessment of civil penalties is two years from the later of:
 - a. The date of assessment, or
 - b. The date any judgment becomes final in any criminal action under 31 USC 5322, Criminal Penalties.
- (4) The statute of limitations on FBAR criminal penalties is five years from the date the offense is committed.
- (5) To facilitate tracking of the statute of limitations, each FBAR year under examination requires a separate RSM and ERCS controls (if required). See IRM 4.26.17.2.1 and IRM 4.26.17.2.3.

4.26.17.3.1.1
(12-11-2019)
**FBAR Statute of
Limitations on
Assessments**

- (1) The period of limitation on assessment of FBAR civil penalties is found in 31 USC 5321(b)(1), Assessments. This section provides that the Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the six-year period beginning on the date of the transaction with respect to which the penalty is assessed.
- (2) For report filing violations purposes, the date of the transaction is the due date of the FBAR.
- (3) The annual due date for filing FBARs required for foreign financial accounts maintained during calendar years 2015 and earlier, is June 30 of the following year.
- (4) The annual due date for filing FBARs required for foreign financial accounts maintained during calendar years 2016 and later, is April 15th 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 changes the FBAR due date to April 15th.
- (5) The Act also mandates a maximum six-month extension of the filing deadline. To implement the statute with minimal burden to the public and FinCEN, FinCEN will grant filers failing to meet the FBAR annual due date of April 15th an automatic extension to October 15th of each year. Accordingly, specific requests for this extension are not required.
- (6) When the April or October due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.
- (7) For FBAR reports due for calendar year 2016 and subsequent years, even if subparagraph (5) or (6) applies, examiners should treat April 15th as the date that the statute of limitations begins to run. However, if an assessment cannot be made before the April 15th statute date (such as six years after April 15th in the year that the FBAR should have been filed), contact Counsel for advice regarding whether an assessment can be made after the April 15th statute date.
- (8) The date of the transaction for recordkeeping purposes is the date that the examiner first requests, via summons, the records required to be maintained under 31 CFR 1010.420, Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts.

Note: Records must be maintained for five years from the date that the FBAR was due. The examiner's first request for the required records must be made within this five-year period. The date that the examiner first requests the records starts the running of the six-year statute of limitations.

Note: A Title 26 summons and a Title 31 summons are considered requests for the documents for the purposes of a recordkeeping violation.

- (9) The date that the FBAR civil penalty is assessed is the date that the IRS designated official stamps the assessment certification form, Form 13448, Penalty Assessment Certification Summary (Title 31 "FBAR"). The designated official is the department manager, CTR Operations or delegate.

4.26.17.3.1.1.1
(12-11-2019)

Using ERCS to Track and Monitor FBAR Statutes (SB/SE & LB&I)

(1) IRM 4.26.17.3 requires FBAR case monitoring via ERCS in accordance with various sections of IRM 4.7, Examination Returns Control System (ERCS). Additional information regarding statute monitoring is available in IRM 25.6.23, Statute of Limitations, Examination Process-Assessment Statute of Limitations Controls. Because of the unique nature of FBAR examinations, some of these procedures may not apply, or may require adaptation. For instance:

- Procedures involving AIMS do not apply to FBAR examination cases because MFT Y0 (Y-zero) penalty records are not on AIMS. Therefore, FBAR cases will not appear on AIMS tables 4.0 or 4.1, for example.
- Examiners will receive an ERCS-generated Form 895, Notice of Statute Expiration, as the FBAR assessment statute of limitations nears expiration. Form 895 is typically generated in ERCS when 210 days remain on the statute to ensure examiners receive it with at least 180 days remaining (See IRM 4.7.3.7, Form 895 Requirements). Examiners must complete, sign and return Form 895 to the group manager within 10 days. ERCS requires a response. Refer to Form 895 procedures in IRM 4.7.3, Examination Returns Control System (ERCS), Statute of Limitations, and IRM 25.6.23.5, Statute Controls in Examination, adapted for FBAR as appropriate. Additionally, IRM 25.6.23-2, ERCS Form 895 Instructions, provides guidance to complete Form 895, adapted for FBAR cases as follows:
- **Date Return Filed or Due (whichever is later)** – The FBAR assessment statute of limitations begins to run on the FBAR due date, regardless of whether or when the FBAR was filed. As such, the FBAR filing date is irrelevant and there is no evaluation of which date is later. Record the FBAR due date in this field. Refer to IRM 4.26.17.3.1.1 for additional information regarding FBAR due dates.
- **Statute Expiration Date** – Ignore reference in the instructions to the FBAR filing date and AIMS, as explained above. In general, alpha codes do not apply to FBAR. Options to extend the FBAR assessment statute are securing a consent or a waiver, for example, in a plea agreement.
- **Appropriate Blank to be Checked by Individual Charged with Return** – This will typically be limited to **Consent Secured, Taxpayer Refused to Execute Consent, or Other Irregular Assessment Period**. In general, alpha codes do not apply to FBAR. Options to extend the FBAR assessment statute are securing a consent or a waiver, for example, in a plea agreement.
- To update the statute in ERCS, refer to procedures in IRM 4.7.3.6, Updating the ERCS ASSED, IRM 25.6.23.5.9, Updating AIMS and ERCS, and IRM 25.6.23-3, Instructions for Updating the Statute on AIMS, adapted for FBARs as appropriate.
- For additional assistance, contact your BOD FBAR analyst.

4.26.17.3.1.2
(12-11-2019)

FBAR Statute of Limitations on Commencing Civil Action

(1) The period of limitation to commence a civil action to recover assessed FBAR penalties is found in 31 USC 5321(b)(2), Civil Actions. The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the two-year period beginning on the later of:

- a. The date the penalty was assessed, or
 - b. The date any judgment becomes final in any criminal action under 31 USC 5322, Criminal Penalties, relating to the same transaction with respect to which the penalty is assessed.
- (2) The date the FBAR penalty is assessed is the date that the IRS designated official stamps Form 13448, Penalty Assessment Certification Summary (Title 31 "FBAR").
- (3) See IRM 4.26.17.4.4 for further details on the collection of FBAR penalties.

4.26.17.3.1.3

(12-11-2019)

**Extending the FBAR
Statute of Limitations**

- (1) Filers may voluntarily consent to extend the civil statute of limitation on FBAR penalty assessment such that assessment may be made on or before an agreed date. The statute of limitations on assessment of the FBAR penalties is found in 31 USC 5321(b)(1), Assessments. It is six years from the date of the transaction. In the case of filing violations, the date of the transaction is the due date for filing the FBAR. In the case of a recordkeeping violation, the date of the transaction is the date that the examiner first requests, by summons, the records required by 31 CFR 1010.420, Records to be made and retained by persons having financial interests in foreign financial accounts.

Note: Contact Counsel before soliciting a consent to extend the statute of limitations to commence civil action in 31 USC 5321(b)(2), Civil Actions. There is no statute of limitations on the collection of assessed FBAR penalties.

- (2) The recommended language to be used for extending the statute of limitations on FBAR penalty assessment is shown in Exhibit 4.26.17-6.
- (3) A consent to extend the statute of limitations for the Title 26 examination will not extend the statute of limitations on the FBAR examination.
- (4) General guidelines in IRM 25.6.22.2, Guidelines for Soliciting Extensions, as modified to accommodate FBAR matters, should be used as general guidance for soliciting a consent to extend the FBAR assessment statute of limitations. These general guidelines should be further adapted and supplemented to reflect the most current and updated rules and procedures affecting FBAR assessment statute of limitations including, but not limited to:
- a. Time frames, processes, and procedures impacted by the Appeals Judicial Approach and Culture (AJAC). Rules include, but are not limited to, the requirement of at least 365 days remaining before the expiration of the FBAR statutory period for assessment on the day the case file reaches Appeals and allowing an additional 30 days for the case file to reach Appeals once it has left exam's jurisdiction.
 - b. For cases requiring Counsel review, there should be at least 90 days remaining on the FBAR statute of limitations when the FBAR case file is forwarded to Counsel. Counsel should review the case file within 45 days of receipt.
 - c. FBAR penalty assessment case files should be sent to CTR Operations for processing with at least 30 days remaining on the statute to allow enough time to process the case and assess the penalty.
 - d. If there is any delay in preparing a case file for closure from the exam group, the exam group manager must coordinate and obtain agreement from the CTR Operations group manager to send the case to CTR Operations for processing with less than 30 days remaining on the statute.

- e. For guidelines related to the FBAR statute of limitations matters in criminal referral cases and CI involvement in the civil FBAR statute of limitations protection actions, see IRM 4.26.17.5.3 for more details.
- (5) Procedures to solicit a consent to extend the FBAR statute of limitations are as follows:
- a. Obtain managerial approval to solicit a consent.
 - b. Prepare the appropriate consent form in duplicate, working with Counsel when warranted. Consent should be prepared separately for each US person for whom the examination is being conducted (even for spouses filing joint income tax returns).
 - c. Verify correct filer identification number.
 - d. Determine correct filer name for consent. Follow procedures for filer name in accordance with IRM 25.6.22.6, Preparation of Consents for Specific Entities and Taxes.
 - e. Verify current address.
 - f. Verify the FBAR year(s) to be extended.
 - g. Verify the expiration date is correct.
 - h. Mail or present consent in duplicate to the filer and the POA on file.
 - i. Update activity record as to actions taken.
- (6) After receiving a properly executed consent form extending the FBAR assessment statute of limitations, the examiner should:
- a. Ensure the consent is properly date stamped by the receiving office.
 - b. Ensure the consent is properly executed by the filer or representative, with original signature(s).
 - c. Ensure the filer and/or representative did not make any alterations, deletions, or impose any restrictions on the consent. A consent which was signed by a filer must not be unilaterally altered by a Service employee.
 - d. If the consent is signed by a POA, verify the representative is authorized to sign the consent. The POA authorization must be valid at the time the consent is signed.
 - e. If the consent is signed by a corporate officer, verify the officer is empowered to sign the consent. Confirm the filer included the correct corporate name and the officer's title.
 - f. If the consent is signed by a fiduciary, secure Form 56, Notice Concerning Fiduciary Relationship, and documents that verify a fiduciary relationship.
 - g. Prepare Form 5348, AIMS/ERCS Update (Examination Update), to update the statute of limitations for the FBAR case (ASED) on ERCS.
 - h. Submit consent package (for example, consent, Form 5348, FBAR, if available, POA document or other items bearing on validity of consent) to the group manager.
- (7) The group manager is to:
- a. Review the consent and necessary supporting documents to determine the validity of the consent.
 - b. Sign and date the consent. The consent must be properly countersigned by the appropriate Commissioner's delegate per Delegation Order 25-13 (formerly DO 4- 35, Rev. 1) in IRM 1.2.52.14. Ensure that when consents

are being signed by an acting manager, that person is appropriately designated to do so. A copy of any written acting manager designation should be attached to the consent.

- c. Verify the accuracy of Form 5348, initial and date.
- d. Direct the ASER to be updated on ERCS.
- e. Return the consent package to the examiner.

(8) The examiner takes these final actions:

- a. Copy of consent, together with a copy of the updated FMD are forwarded to CTR Operations by email. See Exhibit 4.26.17-2 for contact information.
- b. Retain one of the original fully executed consents in the FBAR case file
- c. Send one of the original fully executed consents to the filer (with copy to POA, if applicable). If the filer only returns one original consent, a copy of the fully executed consent should be sent to the filer and the POA, if applicable, and the original should remain in the FBAR case file.
- d. Retain original FMD in the FBAR case file.

(9) If the filer refuses to execute the consent and indicates a desire to appeal the FBAR penalty, refer to IRM 4.26.17.4.3.4.2 for post-assessment appeal information.

4.26.17.3.1.4

(12-11-2019)

**FBAR Statute of
Limitations on Criminal
Offenses**

(1) The statute of limitations on FBAR criminal penalties is five years from the date the offense is committed. The period of limitation for FBAR criminal penalties is the general criminal statute of limitations found at 18 USC 3282, Offenses Not Capital. This section provides that: except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any non-capital offense, unless the indictment is found, or the information is instituted within five years after such offense shall have been committed.

4.26.17.3.2

(12-11-2019)

**Power of Attorney in
FBAR Examinations**

(1) A person may authorize a representative to receive information with respect to the FBAR examination by using Form 2848, Power of Attorney and Declaration of Representative, if an approved related statute memorandum has been secured. Line 3 on the Form 2848 should reflect "FBAR Examination" or "Matters Related to FBAR".

(2) For deceased individuals, Form 56, Notice Concerning Fiduciary Relationship, must include wording covering the FBAR examination.

(3) Alternatively, a general power of attorney (POA) valid under state law may be used regarding the Title 31 investigation.

- a. A power of attorney is a document that evidences the creation of a relationship between two people who are designated as the "principal" and the "agent". The principal designates the agent in the document, and the agent is authorized to act on the principal's behalf -- to stand in the shoes of the principal -- for whatever business the POA permits.
- b. The examiner should not draft a general power of attorney but should direct the person under examination to have his or her representative provide a general power of attorney.
- c. The power of attorney should state that it is for the limited purpose of representation of the person during the FBAR examination. All represen-

tatives should be named. The same topics as are on the Form 2848 should be covered, for example, if communications need to be made in duplicate.

- (4) Regardless of the type of power of attorney, the original should be retained in the FBAR examination file.
- (5) The FMD should always be updated with POA information and submitted to CTR Operations. See Exhibit 4.26.17-2 for contact information.
- (6) Whenever a Form 13449, Agreement to Assessment and Collection of Penalties under 31 USC 5321(a)(5), is sent to CTR Operations for penalty assessment, a copy of all valid POAs should accompany it.

4.26.17.3.3 (12-11-2019) **FBAR Examination - Initial Contact**

- (1) The examiner should notify the filer that an FBAR examination has started and document that notification in the Examiner's Activity Record. Written notification is advised using Letter 4265, FBAR Appointment Letter, mailed to the filer's last known address.
 - a. If the filer does not respond to the initial contact letter and it is not returned as undeliverable, follow the general procedures in IRM 4.10.2.8.3, No Response/No Show Procedures, adjusted to meet the FBAR exam needs.
 - b. If the letter is returned undeliverable, follow the general procedures in IRM 4.10.2.8.4, Undeliverable Initial Contact Letters, adjusted to meet the FBAR exam needs.
 - c. See IRM 4.10.2.8.6, Case Closing Procedures if the Taxpayer Cannot Be Located, for general procedures if the filer cannot be located. Adjust the procedures to meet the FBAR exam needs.

4.26.17.3.4 (12-11-2019) **FBAR Examination - Requesting Records**

- (1) The following subsections discuss information document requests, formal document requests, summonses, and using FinCEN Query in FBAR examinations.

4.26.17.3.4.1 (12-11-2019) **Information Document Requests**

- (1) The examiner should request records necessary to document: ownership and type of authority over foreign accounts, account transactions, aggregate and maximum balances and facts regarding willfulness.
- (2) The information document request (IDR) for FBAR records should be issued either: by registered or certified mail, with return receipt requested, or in person, by having the filer initial and date the IDR to confirm receipt. The examiner should document the activity record as to the date the filer received the IDR.
- (3) The IDR should request all relevant documents needed to determine compliance with the FBAR filing and recordkeeping requirements. Therefore, the examiner should prepare an IDR after considering the issues that need to be developed and the records that the filer should have (or is required to maintain) relevant to those issues. The examiner should avoid asking for irrelevant information. The examiner should draft the IDR precisely, with care taken

in describing the records, indicating due dates, and identifying specific tax years. See IRM 4.10.2.10.2, Requesting Information or Documents from the Taxpayer, for further information.

4.26.17.3.4.2
(12-11-2019)
**Formal Document
Requests**

- (1) If an approved RSM has been secured by the examiner, any records secured via a Formal Document Request (FDR) under IRC 982, Admissibility of documentation maintained in foreign countries, can be used in an FBAR investigation because if the statutes are related in a case, Title 31 is considered "tax administration" under the "related statute" portion of the definition of tax administration in IRC 6103(b)(4)(A)(i), and the Service may access return information in furtherance of its Title 31 FBAR investigation. (IRC 6103(h)(1), Department of the Treasury)
- (2) Under IRC 982(a), General Rule, when a taxpayer fails to substantially comply with any FDR within 90 days, the IRS may file a motion in any civil court proceeding (in which the tax treatment of the examined item is an issue) for the court to prohibit the introduction (by the taxpayer) of any foreign-based documents covered by the FDR request in Title 26 examinations. This provision does not apply to Title 31 examinations.

4.26.17.3.4.3
(12-11-2019)
Summonses

- (1) If records requested via an IDR are not provided, the examiner should use a summons to obtain the records. In preparing a summons, the examiner may only request items requested on prior IDRs but must exclude any records already produced in response to those IDRs and rephrase any questions to a description of records that may be responsive to the unanswered questions.
- (2) The date the summons is issued fixes the date on which account balances are used to compute recordkeeping violation statutory penalty maximums.
- (3) Examiners must use a BSA summons (FinCEN Form 113) if there is no approved RSM and the information will not be used in a Title 26 examination. Summons authority, completion, issuance, and special disclosure rules for BSA summons are covered in IRM 4.26.17.5.2.
- (4) A Title 26 summons, Form 2039, Summons, may be used if there is an approved RSM and the information requested can be used in a Title 26 examination.
- (5) See Exhibit 4.26.17-4 for the language to be added to the Title 26 summons with respect to the records required to be kept under 31 CFR 1010.420, Records to be made and retained by persons having financial interests in foreign financial accounts.

4.26.17.3.4.4
(12-11-2019)
FinCEN Query

- (1) FinCEN Query (FCQ) is a tool designed to improve authorized users' ability to access and analyze FinCEN data including FBAR records. Refer to IRM 4.26.4, Bank Secrecy Act – FinCEN Query, for general considerations.
- (2) Obtaining FinCEN Data via Gatekeeper: The following procedures must be followed when requesting General (Non-SAR) FinCEN data, such as CTR, FBAR, Form 8300 and other similar forms.
 - a. The examiner will complete the Form 10509, FinCEN Query (FCQ) Request, and forward it via encrypted email to their manager
 - b. The manager will digitally approve the form and send it to their gatekeeper.

- c. The gatekeeper will access the BSA data and keep the approved Form 10509 for six years.
- (3) FCQ users must be careful not to disclose sensitive information to FCQ Help Desk staff. Do not seek help in conducting specific queries from the FCQ Help Desk.
- (4) Access to FCQ information is subject to UNAX guidelines and must only be made regarding specific and assigned tax administration matters.

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- (6) For additional information on disclosure of FCQ information, including SARs, refer to IRM 4.26.14, Bank Secrecy Act, Disclosure.

4.26.17.3.5
(12-11-2019)
**FBAR Examination -
Interview**

- (1) See IRM 4.10.2.9, Scheduling the Appointment: Overview, for general guidelines on scheduling appointments with filers. Adjust the procedures accordingly to meet the FBAR exam needs.
- (2) The third-party notification requirements set forth in IRC 7602(c), Notice of Contact of Third Parties, do not apply in FBAR cases, unless the examiner obtains information in the FBAR case that the examiner intends to use in the Title 26 case. In such cases, it would be a best practice for the examiner to comply with the requirements of IRC 7602(c), IRM 4.11.57, Third Party Contacts, and IRM 25.27.1, Third Party Contact Program. Otherwise, the examiner should follow third-party contact procedures in IRM 4.26.6.4.5, Lack of Records.
- (3) Examiner should interview the filer and, as needed, third parties.
- (4) If the designated official does not approve the RSM, the examiner will not ask interview questions or request documents related to FBAR matters in a non-BSA examination. See IRM 4.26.17.2.1.1 for more information. However, if the examiner is conducting an examination under the BSA, an RSM is not needed to examine for FBAR compliance. See IRM 4.26.17.2.2 for more details.

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- (18) For more information, see IRM 4.10.3.3, Interviews: Authority & Purpose, IRM 4.10.3.3.7, Interview Techniques, IRM 4.10.7.3.2, Oral Testimony, and Form 2311, Affidavit.

4.26.17.3.6
(12-11-2019)
Penalty Application

- (1) The examiner should follow guidelines in IRM 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR), to arrive at the final FBAR penalty determination.
- (2) Fair and equitable outcome of the FBAR exam requires that the examiner:
 - a. Considers whether the issuance of a warning letter is appropriate given the facts and circumstances of the case,
 - b. Determines, based on the available facts, if the filer's failure to comply with the FBAR filing requirement was willful or non-willful,
 - c. Ensures that the penalty determinations are adequately supported, and penalties are asserted in a fair and consistent manner,
 - d. Uses discretion and considers all the available facts and circumstances of the case and coordinates the findings with the operating division FBAR Coordinator and Counsel, as applicable,
 - e. Adheres to certain specific program and project guidelines regarding the assertion of FBAR Penalties, as applicable, and
 - f. Coordinates with a Fraud Technical Advisor (FTA), if the case warrants referral for possible criminal investigation.

4.26.17.4
(12-11-2019)**Closing the FBAR Case**

- (3) See IRM 4.26.17.5.3 for additional information regarding FTA involvement in FBAR examinations.
- (1) General closing procedures apply to all FBAR examinations. Specific procedures apply depending on the type of closure. These are detailed below.
- (2) In all FBAR cases, the examiner will perform the following general closing procedures:
- Prepare a written summary of the examination results. This may be a summary memorandum, Form 886-A, Explanation of Items, or FBAR Leadsheet. The determination should be fully supported and include references to the work papers. At a minimum, it should contain the following sections: Facts & History, Law, Analysis/Government's Position, Reasonable Cause, Penalty Computation, Mitigation, Taxpayer's Position, and Conclusion. Supporting documents should be clearly defined as attachments. The summary should show all FBAR years opened for examination and the determination reached for each year. If several years are opened but a penalty is asserted only with respect to one year, the summary should provide an explanation. If the FBAR Leadsheet is used, the audit steps should be removed before being sent to the filer and representative.
 - Submit the written summary to an operating division FBAR coordinator for review to ensure that the proposed position is appropriate and fair, considering all facts and circumstances of the case and other similarly situated filers. After review, the FBAR coordinator will provide a written concurrence.
 - Obtain concurrence from FBAR Counsel for any willful FBAR penalty proposed. Willful FBAR penalty cases are required to be reviewed by FBAR Counsel to determine the sustainability of the proposed penalty. See IRM 4.26.17.4.3.1.
 - Secure all required concurrences (group manager, FBAR coordinator and, if applicable, FBAR Counsel) **prior** to discussing the examiner's proposed position with the person in violation of the FBAR requirements or their authorized Power of Attorney.
 - Indicate the applicable disposition on Form 13536, FBAR Monitoring Document (FMD), for each year. When preparing Form 13536 to close the case, the following fields are required to be completed:

Always Required
Filing for Calendar Year
Filer name
Street address
City
State
Zip/Postal Code
Country
Taxpayer Identification Number

Always Required
[Filer/POA] Telephone Contact Name
[Contact] Number
Division
Compliance Area
Territory
Group
Manager
Examiner
Date started
Required, if Applicable
Project code
Power of Attorney name
[POA] Street address
[POA] City
[POA] State
[POA] Zip/Postal Code
[Owner] Name
[Owner] Street address
[Owner] City
[Owner] State
[Owner] Zip/postal code
[Owner] Country
[Owner] Taxpayer Identification Number
Date Closed from Group [GM completes]
Time on Case
Disposition
Optional
Examiner Email address
Examiner Fax Number

- f. The examiner does not submit this FMD to CTR Operations. Keep it in the case file for the group manager to complete and submit to CTR Operations in accordance with the procedures in paragraph 3 below.

Note: FMD is also used as an opening document in certain cases (see IRM 4.26.17.2.2) and as an update document in all cases (see IRM 4.26.17.3).

- g. Assemble the case file for closure in accordance with IRM 4.26.17.2.4.4.
- h. Close the case file to the group manager.

(3) In all FBAR cases, the group manager will:

- a. Review the FBAR case file for both technical and procedural accuracy and update the activity record.
- b. Make the final determination regarding the assertion or non-assertion of the FBAR penalty.
- c. Complete the Date Closed from Group field on the FMD.
- d. Retain the FMD in the FBAR case file. Do not submit the completed FMD to CTR Operations at this point.

Exception: Completed FMD in pre-assessment appealed cases (see IRM 4.26.17.4.3.4.1 and accepted criminal referral cases (see IRM 4.26.17.5.3.5) should be submitted to CTR Operations.

- e. Forward the FBAR file to CTR Operations using Form 3210, Document Transmittal, in accordance with Exhibit 4.26.17-2.
- f. Update the FBAR controls for closing in ERCS in accordance with IRM 4.26.17.2.3.

(4) In all FBAR cases, CTR Operations will:

- a. Enter the FMD information into the FBAR database.
- b. Place the case file in the FBAR historic files. The timing of this step may vary depending on other factors in the case, such as payments, collection referrals or appeals.

(5) Additional specific closing procedures vary depending on the type of closure. Each of these specific procedures are covered in detail below:

Type of Closure	IRM Citation
Case closed with no action	IRM 4.26.17.4.1
Case closed with warning letter	IRM 4.26.17.4.2
Case closed with penalties	IRM 4.26.17.4.3
Closing the FBAR Case with Penalties – Agreed	IRM 4.26.17.4.3.2
Closing the FBAR Case Unagreed	IRM 4.26.17.4.3.3
Closing the FBAR Case Appealed	IRM 4.26.17.4.3.4
Case referred to Criminal Investigation	IRM 4.26.17.5.3.5

4.26.17.4.1
(12-11-2019)

**Closing the FBAR Case -
No Action**

- (1) The examination is closed “No Action” when no FBAR violation is found or the FBAR examination will not be continued. Follow all general closing procedures in IRM 4.26.17.4.
- (2) Written notification of the closure should not be provided to the subject of the FBAR examination.
- (3) Assemble the case file for closure in accordance with IRM 4.26.17.2.4.
- (4) Close the case file to the group manager.

4.26.17.4.2
(12-11-2019)

**Closing the FBAR Case -
Warning Letter**

- (1) The examiner may determine that there was a violation but that penalties are not warranted, after considering the facts and circumstances of the case. When no penalty is being asserted, the examiner will issue Letter 3800, Warning for Report of Foreign Bank and Financial Accounts (FBAR) Apparent Violations, with group manager and operating division FBAR coordinator concurrence. Letter 3800 should **not** be issued in years where:
 - a. The examiner asserts a single willful penalty in one year to cover violations in multiple years, or
 - b. A risk-based decision is made to stop the examination in one year and the examination will continue in other years. Consult the operating division FBAR coordinator for assistance.
- (2) If the determination is made to issue Letter 3800 in addition to following all general procedures in IRM 4.26.17.4, the examiner will prepare Letter 3800. Complete the violation information and recommendations. Recommendations may include: timely filing accurate FBARs and/or maintaining all required records. Include relevant authoritative citations. The group manager signs Letter 3800.
- (3) Issue Letter 3800 to the person in violation of the FBAR requirements and attach the approved written summary. See IRM 4.26.17.4. Retain a copy of Letter 3800 and the written summary in the file.
- (4) Letter 3800 gives the person in violation of the FBAR requirements 30 days to respond. The issuance of Letter 3800 is not a case closing action by itself but leads to the filer admitting and/or correcting errors.
- (5) Delinquent or incorrect FBARs.
 - a. If filed as instructed by Letter 3800, the examiner secures confirmation of e-filing via the filer or FinCEN query. If accepted as filed, proceed to closing the case with no penalty. If not accepted as filed, additional examination work may be necessary.
 - b. If delinquent or corrected FBARs are not filed or are inaccurate, consider penalties for continued failure to file accurate FBARs.
 - c. Additional information may be found in IRM 4.26.17.5.1.
- (6) **Agreed/Unagreed.**
 - a. If agreement to the violations listed in Letter 3800 is received prior to the 30-day deadline, proceed with closing. Agreement may be verbal or in writing and should be documented in the Examination Activity Record.

- b. If written disagreement is provided by the deadline, consider this in the examination.
 - c. If no written disagreement is provided by the deadline, consult with the group manager as to the proper disposition. Close the case following procedures in IRM 4.26.17.4.
- (7) Assemble the case file for closure in accordance with IRM 4.26.17.2.4.
 - (8) Close the case file to the group manager.

4.26.17.4.3
(12-11-2019)
**Closing the FBAR Case
with Penalties**

- (1) If the examiner, after discussion with the group manager, determines that it is appropriate to assert an FBAR penalty and that a referral to Criminal Investigation is not appropriate or has been declined, the examiner will compute penalties in accordance with the FBAR penalty guidelines. See IRM 4.26.16.6, FBAR Penalties, for the FBAR penalty computation rules and penalty mitigation guidelines.
- (2) FBAR Counsel review is required in willful FBAR violation penalty cases. This review occurs after the group manager, operating division FBAR coordinator, and if applicable, Fraud Technical Advisor, have reviewed and concurred with the assertion of the willful violation penalty. See IRM 4.26.17.4.3.1.
- (3) An FBAR penalty can be eligible for Fast Track Settlement only if it has not been assessed. See IRM 4.26.17.4.3.4.1 for more information.
- (4) In all FBAR cases proposing penalties, the examiner will follow all general closing procedures found in IRM 4.26.17.4 and issue the FBAR report package which includes:
 - a. Letter 3709, FBAR 30 Day Letter, signed by the group manager. Letter 3709 must be issued unless the filer wishes to pursue Fast Track Settlement. See paragraphs 6 and 7 in this subsection for important information regarding the Letter 3709 preparation.
 - b. Form 13449, Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6). Although Form 13449 is shown as an agreement, it also functions as the examiner's report of FBAR violations. It is the basis for the FBAR penalty assessment(s).
 - c. Notice 1330, Information on Making FBAR Penalty Payment by Check. This notice advises that the payment will be recorded electronically and that the person submitting payment will not receive a copy of the cancelled check.
 - d. The written summary explaining violations, proposed penalties, and the calculation of penalties.
- (5) The examiner should solicit payment upon issuance of the FBAR report package. See IRM 4.26.17.4.4.
- (6) If insufficient time remains on the assessment statute of limitations to allow a 30-day response date for Letter 3709, the examiner should set a shorter response date that will still allow sufficient time for case closing procedures, processing and penalty assessment. Contact the FBAR coordinator for assistance in determining the appropriate response date.
- (7) If insufficient time remains on the assessment statute of limitations to allow a pre-assessment appeal hearing, the following statements should be included with Letter 3709:

- a. "As noted in the accompanying Form 13449 this office has determined that one or more violations have occurred with respect to FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBARs), for foreign financial accounts maintained during XXXX year. Too little time remains to provide an Appeals hearing before the expiration of the statute of limitations for assessing the proposed penalty; however, you may request a post-assessment hearing with our Appeals office once you receive Letter 3708, Notice and Demand for Payment of FBAR Penalty. Letter 3708 will be mailed to you shortly. Please retain the enclosed Letter 3709 for reference if you plan to request a post- assessment hearing. You should follow the same procedures for requesting a post- assessment hearing as those listed in the enclosed Letter 3709 for pre-assessment hearings."
- b. If the proposed penalty is greater than \$100,000, the following should also be included in the explanation: "Post-assessed FBAR cases in excess of \$100,000 cannot be compromised by Appeals without approval of Department of Justice (DOJ). See 31 USC 3711(a)(2), Collection and Compromise, 31 CFR 901.1(a) and 31 CFR 901.1(b), Aggressive Agency Collection Activity. Once assessed, the penalty becomes a claim of the U.S. Government". See IRM 8.11.6.2, FBAR Overview.

(8) In all FBAR cases proposing penalties, CTR Operations will:

- a. Follow all general closing procedures in IRM 4.26.17.4.
- b. Forward the penalty assessment information to the department manager, CTR Operations, or an authorized designee. This designated official completes the assessment using Form 13448, Penalty Assessments Certification Summary (Title 31 "FBAR"). Form 13448 is for internal use only. It validates the assessment by documenting the Service's determination that the penalty assessed is legally due and payable. It functions in the same way as Form 23C, Assessment Certificate - Summary Record of Assessments, in the campus. A copy of Form 13448 is placed in the case file.
- c. Review the case for payment. See IRM 4.26.17.4.4.

4.26.17.4.3.1
(12-11-2019)

**Closing the FBAR Case
with Penalties - Counsel
Review**

- (1) In willful violation penalty cases, the examiner will forward the written summary and the entire FBAR case file (unless FBAR Counsel agrees otherwise) to the appropriate FBAR Counsel for review and concurrence after the group manager, operating division FBAR coordinator, and if applicable, Fraud Technical Advisor, have reviewed and concurred with the assertion of the willful violation penalty.
- (2) Counsel's review will be limited to providing advice on whether:
 - a. An FBAR violation occurred,
 - b. The FBAR violation was willful,
 - c. The proposed penalty is within the statutory limitations of 31 USC 5321(a)(5)(C), Willful Violations, and
 - d. If Counsel believes the penalty may not be appropriate given the facts and circumstances of the case, additional facts the examiner may want to consider in determining the amount of the penalty.
- (3) Review by Counsel is not required when the examiner has determined:

- a. That there is no FBAR violation.
 - b. The issuance of Letter 3800, Warning for Report of Foreign Bank and Financial Accounts (FBAR) Apparent Violations, is appropriate.
 - c. A non-willful violation penalty is appropriate.
- (4) Each SB/SE Counsel Area has at least one FBAR coordinator. LB&I Counsel also has FBAR coordinators. See Exhibit 4.26.17-3 for FBAR Counsel listings. The examiner may also contact local counsel for the name of the appropriate FBAR Counsel or for other assistance with respect to FBAR cases.
- (5) Upon receipt of the written summary and appropriate attachments for review and concurrence, Counsel will:
- a. Render its legal advice within 45 days or inform the examiner of potential delay. If coordination with an Associate Chief Counsel is necessary and will cause a delay, Counsel will inform the examiner. Counsel will work with the examiner to establish a shorter time frame if expedited review is needed.
 - b. Prepare a written memorandum of review of the FBAR case. If Counsel recommends proposal of a willful penalty, Counsel will write a memo to support the Government's legal position.
 - c. If Counsel does not recommend proposal of a willful penalty, the memo will state the reasons for the disagreement. If the disagreement is based upon inadequate factual development, the memo should recommend areas for further examination.
 - d. The written advice memorandum is privileged information and can NOT be disseminated to the filer or other third parties.
- (6) After the Counsel review has been completed, the group manager reviews the case and makes the final decision on the penalty. If needed, the FBAR Coordinator may assist in the penalty decision.
- (7) If the group manager approves the penalty proposal, the examiner will issue the FBAR report package. See IRM 4.26.17.4.3.

4.26.17.4.3.2
(12-11-2019)

**Closing the FBAR Case
with Penalties - Agreed**

- (1) When the person violating the FBAR requirements agrees to assessment of the penalties, the person generally submits a signed and dated Form 13449, Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6), and payment to the examiner.
- (2) The examiner will:
- a. Follow all general FBAR closing procedures in IRM 4.26.17.4.
 - b. Follow all procedures for cases proposing penalties in IRM 4.26.17.4.3.
 - c. Place the signed agreement Form 13449 in the FBAR case file.
 - d. Process any payments received according to IRM 4.26.17.4.4.
 - e. Assemble the case file for closure according to IRM 4.26.17.2.4.
 - f. Forward the FBAR case for closure to the group manager.

4.26.17.4.3.3
(12-11-2019)

**Closing the FBAR Case
Unagreed**

- (1) When the FBAR penalty is proposed but not agreed, the examiner waits 30 days from issuance of Letter 3709, FBAR 30 Day Letter, to see if the person will request an appeal as provided in Letter 3709.
- (2) If less than 365 days remain on the statute and the filer will not extend the statute, the case will need to be closed for assessment of the FBAR penalty. See IRM 4.26.17.4.3.4.

- (3) To appeal a proposed penalty, the person against whom an FBAR penalty is proposed must submit a written protest to the examiner, postmarked on or before the designated response date listed in the Letter 3709. The group manager may grant reasonable extensions of time to provide a protest. This should be documented in the Examination Activity Record.
- (4) A valid protest must contain all the information required in Letter 3709. If the protest is valid, see IRM 4.26.17.4.3.4 for further procedures.
- (5) If the protest is invalid, the examiner communicates the errors and/or omissions to the person against whom the FBAR penalty is proposed or their authorized power of attorney. If there is sufficient time remaining on the assessment statute of limitations to allow the person time to correct the protest, the examiner sets a reasonable deadline for its return. If insufficient time remains on the assessment statute of limitations, inform the person or authorized POA. Solicit a consent to extend the FBAR statute of limitations in accordance with IRM 4.26.17.3.1.3. If the statute is not extended, proceed with closing the case for assessment, as outlined in paragraph (6).
- (6) If there is no response to the Letter 3709 the case is closed unagreed to CTR Operations, the penalty is assessed, and, if not already fully paid, the collection process begins. To prepare the case for closure, the examiner will:
 - a. Follow all general closing procedures in IRM 4.26.17.4.
 - b. Follow all procedures for cases proposing penalties in IRM 4.26.17.4.3.
 - c. Document on the Examination Activity Record in the FBAR case file, that no response to Letter 3709 was received.
 - d. Assemble the case file for closure in accordance with IRM 4.26.17.2.4.
 - e. Forward the FBAR case to the group manager for closure.

4.26.17.4.3.4
(12-11-2019)
**Closing the FBAR Case
Appealed**

- (1) Deficiency procedures under Title 26 (Subchapter B of Chapter 63) do not apply to FBAR penalties, which are authorized under Title 31. Therefore, penalties may be appealed pre-assessment or post-assessment.
- (2) Payment of the proposed penalty is not required to appeal.
- (3) The filer is allowed only **one** appeal, whether pre- or post-assessment.
- (4) Pre-assessment appeal is only available if there is sufficient time left on the FBAR assessment statute of limitations. Otherwise, only post-assessment appeal is available. A filer may agree to extend the assessment statute in order to make pre-assessment appeal available.
- (5) If a protest is received and is valid according to IRM 4.26.17.4.3.3 the examiner reviews the FBAR assessment statute of limitations to determine the type of appeal.
 - a. For a pre-assessment appeal, 365 days must remain on the FBAR assessment statute of limitations when the case file arrives in Appeals. See IRM 4.26.17.4.3.4.1 for pre-assessment appeal procedures.
 - b. If less than 365 days remain on the FBAR assessment statute of limitations, and the filer refuses to extend the FBAR statute of limitations, pre-assessment appeal is not available. See post-assessment appeal procedures in IRM 4.26.17.4.3.4.2.

- c. See IRM 4.26.17.3.1 for information on determining the FBAR statute of limitations.
- (6) In all appealed FBAR cases, the examiner follows general closing procedures in IRM 4.26.17.4 and procedures for cases with proposed penalties IRM 4.26.17.4.3. In addition, the examiner will:
 - a. Explain the differences in pre-assessment and post-assessment appeals to the filer.
 - b. Ensure that any documents needed in any related cases or in the FBAR case are copied so that there is a fully documented case file for each.
 - c. Prepare Form 4665, Report Transmittal, in accordance with Rev. Proc. 2012-18, section 2.03(4) and IRM 8.1.10.4.2, Administrative File. Form 4665 should not contain any statements or information intended to influence Appeals or that otherwise may violate the ex parte communication rules. In general, the Form 4665 should be limited to a neutral list of unagreed issues, without comment. The examiner should not include any commentary regarding the merits of the penalty appeal. The case file compiled at the time of the original FBAR civil penalty determination should have sufficient documentation regarding the determination to sustain the penalty. No separate memorandum should be prepared for Appeals discussing the basis for the original penalty determination. Note on Form 4665 that the case is an FBAR category case, UIL 9999.99- 01, in the Appeals Coordinated Issue (ACI) Program.
 - d. Assemble the case file for closure in accordance with IRM 4.26.17.2.4.
 - e. Forward the FBAR case to the group manager for closure.
- (7) Appeals will:
 - a. Follow procedures in IRM 8.11.6, Penalties Worked in Appeals, FBAR Penalties, and on the Appeals website.
 - b. The appeals officer receiving the FBAR case must contact the Appeals FBAR coordinator prior to scheduling the initial conference. See IRM 8.11.6.2, FBAR Overview, for Appeals FBAR coordinator contact information.
 - c. Provide the examiner, via the group manager, Form 5402, Appeals Transmittal and Case Memo, or an equivalent Appeals Case Memorandum regarding the outcome of the appealed FBAR case.
 - d. Close the FBAR case to CTR Operations, following the closing procedures in IRM 8.11.6.
- (8) See additional procedures in IRM 4.26.17.4.3.4.1 for pre-assessment appeals and IRM 4.26.17.4.3.4.2 for post-assessment appeals.

4.26.17.4.3.4.1
(12-11-2019)

**Closing the FBAR Case -
Pre-Assessment Appeal**

- (1) Pre-assessment appeal is allowed if at least 365 days remain on the FBAR assessment statute of limitations when the case file arrives in Appeals.
- (2) An FBAR penalty is only eligible for Fast Track Settlement if it has not been assessed, and:
 - a. Letter 3709, FBAR 30 Day Letter, has **not** been issued to the filer, or
 - b. The filer requests Fast Track Settlement after issuance of Letter 3709 and before the examination group releases jurisdiction of the case.

- c. Refer to IRM 8.26.1, Fast Track Settlement for Large Business and International (LB&I) Taxpayers, and IRM 8.26.2, Fast Track Settlement for Small Business/Self Employed (SB/SE) Taxpayers. See also IRM 8.11.6.2(6), FBAR Overview.
- (3) In addition to following all general closing procedures in IRM 4.26.17.4, all procedures for cases with proposed penalties in IRM 4.26.17.4.3, and all general appeal closing procedures in IRM 4.26.17.4.3.4, the examiner will assemble the case file for closure (unagreed-appealed) in accordance with IRM 4.26.17.2.4 and forward the case file to the group manager for closure.
- (4) The group manager will complete the FMD and email it to CTR Operations. See Exhibit 4.26.17-2. Keep the original FMD in the FBAR case file. Close the pre- assessment appealed case to local Technical Services for routing to the proper Appeals office.
- (5) Upon receipt of the FMD indicating the case is appealed, CTR Operations will record the appeal on the FBAR database and continue to monitor the statute of limitations. CTR Operations will contact Appeals when the statute of limitations has less than a year until it expires and thereafter on a regular basis.
- (6) Upon receipt of the pre-assessment appealed FBAR case, Technical Services will follow the procedures in IRM 4.8.2, Technical Services, Case Processing.
- (7) Upon receipt of the pre-assessment appealed case, in addition to following the procedures in this IRM section, Appeals will follow the procedures in IRM 8.11.6, FBAR Penalties.

4.26.17.4.3.4.2
(12-11-2019)

Closing the FBAR Case - Post-Assessment Appeal

- (1) Appeals requires 365 days remaining on the assessment statute of limitations at the time the administrative file is received in Appeals. If this requirement is not met, the FBAR penalty must be assessed before it can be appealed.
- (2) Assessed FBAR penalties are not eligible for Fast Track Settlement.
- (3) Appeals settlement authority is limited if the assessed FBAR penalty exceeds \$100,000.
 - a. Once a penalty in excess of \$100,000 has been assessed, the penalty becomes a claim of the U.S. Government. See IRM 8.11.6.2, FBAR Overview.
 - b. To propose a settlement of a penalty greater than \$100,000, Department of Justice (DOJ) approval is required. See 31 USC 3711(a)(2), Collection and compromise, and 31 CFR 901.1(a) and 31 CFR 901.1(b). See also IRM 8.11.6.12, Time Limitations on FBAR Cases with DOJ Involvement.
 - c. When DOJ approves Appeals' settlement proposal, DOJ sends an authorization letter that gives Appeals the authority to make the settlement proposal to the filer. Any changes to the proposal must be approved by DOJ. To the extent possible, DOJ expects full payment with settlements.
- (4) In addition to following all general closing procedures in IRM 4.26.17.4, all procedures for cases proposing penalties in IRM 4.26.17.4.3, and all general appeal closing procedures in IRM 4.26.17.4.3.4, the examiner will assemble the case file for closure (unagreed-appealed) in accordance with IRM 4.26.17.2.4 and forward the case file to the group manager.

- (5) The group manager will immediately close the case to CTR Operations for post-assessment appeal. Post-assessment appealed cases are routed to Appeals by CTR Operations, not by Exam or Technical Services.
- (6) Upon receipt of the **post-assessment appealed case**, CTR Operations will:
 - a. Assess the FBAR penalty.
 - b. Issue Letter 3708, Notice and Demand for Payment of FBAR Penalty, to the filer and POA, even though Exam already secured a protest.
 - c. Include Letter 3708 and Form 13448, Penalty Assessment Certification Summary (Title 31 "FBAR"), in the case file.
 - d. Forward the file to Appeals immediately after issuance of Letter 3708. To be accepted, Appeals requires 18 months remaining on the two-year statute to file suit. In other words, the file must be received by Appeals within six months after assessment.
- (7) For **unagreed cases received in CTR Operations from Exam, with less than one year remaining on the assessment statute, if the filer submits a protest to CTR Operations in response to Letter 3708**, CTR Operations will:
 - a. Assess the FBAR penalty,
 - b. Include Form 13448 and the protest in the case file, and
 - c. Forward the file to Appeals upon receipt of the protest. To be accepted, Appeals requires 18 months remaining on the two-year statute to file suit. In other words, the file must be received by Appeals within 6 months after assessment.
- (8) Upon receipt of the post-assessment appealed case, in addition to following procedures in IRM 4.26.17.4.3.4, Appeals, the examiner will follow the procedures in IRM 8.11.6, Penalties Worked in Appeals, FBAR Penalties.

4.26.17.4.4
(12-11-2019)

**Closing the FBAR Case -
Payment and Collection**

- (1) Payment on the FBAR penalty must be evidenced by a separate check or money order payable to the United States Treasury and should include the taxpayer identification number (TIN) and year(s) for which the FBAR payment is made. Electronic payments are not available for FBAR penalties.
- (2) Because FBAR and the Title 26 payments are processed by different functions within the IRS, separate checks or money orders must be written for FBAR and Title 26 payments. The examiner should not issue a tax receipt form, such as Form 809, Receipt for Payment of Taxes, for the FBAR payment.
- (3) Under 31 USC 3717(b), Interest and Penalty on Claims, interest begins to accrue on the date a notice of penalty amount due (Letter 3708, Notice and Demand for Payment of FBAR Penalty) is first mailed by CTR Operations to the filer. However, 31 U.S.C. 3717(d) prohibits the charging of interest if the amount due on the claim is paid within thirty days from the date Letter 3708 is first mailed to the filer. The applicable interest rate is found at <https://www.fiscal.treasury.gov/reports-statements/cvfr/index.html>.
- (4) In addition to interest, a delinquency penalty of not more than 6 percent a year under 31 USC 3717(e)(2) applies to amounts remaining unpaid ninety days from the date a notice of the penalty amount due is first mailed to the filer.
- (5) When a payment is received, the examiner will:
 - a. Copy the check or money order.

- b. Copy Form 13449, Agreement to Assessment and Collection of Penalties Under 31 USC 5321(a)(5) and 5321(a)(6), front and back, and paper clip the check or money order to the copy.
 - c. If the payment is received and Form 13449 is not available, write the TIN and FBAR year on the check and follow the procedures for forwarding the check to CTR Operations.
 - d. The original Form 13449 and copy of the check or money order are retained in the file.
 - e. Complete Form 3210 describing all documents.
 - f. Within 24 hours of receipt, forward the payment, copy of Form 13449 (if applicable), and Form 3210 to CTR Operations. See Exhibit 4.26.17-2 for contact information.
 - g. The examiner will **not** use a Form 3244, Payment Posting Voucher. If Form 3244 is inadvertently used and the payment erroneously sent to IRS Remittance Processing (not CTR Operations), the examiner is responsible for tracing the payment to ensure it is refunded from the tax
- #
- 2424, Account Adjustment Voucher.
- (6) Upon receipt of a closed case file, CTR Operations will review the case for payment of the penalty. If the penalty has been paid in full, CTR Operations will follow the FBAR procedures in IRM 4.26.17.4 and place the case file in the FBAR historic files. If the penalty is not paid in full, CTR Operations will:
- a. Prepare Letter 3708 signed by the CTR Operations department manager. Enter the interest rate on Letter 3708 according to the interest rate currently published by the Bureau of the Fiscal Service (BFS) at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm.
 - b. Issue Letter 3708 with Notice 1330, Information on Making FBAR Penalty Payment by Check, via certified or registered mail with a return receipt requested.
 - c. Review the FMD to determine if there is a POA and if so, send the POA a copy of Letter 3708 using regular mail.
 - d. Place a copy of the dated Letter 3708 in the case file; and
 - e. If the penalty is not full paid within 45 days after issuance of Letter 3708, refer the case to BFS for collection action.
- (7) All collection activity for FBAR penalties is handled by BFS and/or Department of Justice (DOJ), not by IRS. Any collection activity will consider the following:
- a. Letter 3708 solicits full payment, partial payment if full payment cannot be made, and/or written request for installment agreement, which is then forwarded to BFS for consideration.
 - b. IRS has no authority to enter into repayment/compromise agreements or enforce collection activity on FBAR penalties.
 - c. Collection enforcement action is explained on Letter 3708.
 - d. IRS refers unpaid FBAR penalties to BFS, DOJ or private collection agencies, as appropriate, for collection activity. Referral fees, which can be substantial, are the responsibility of the person or entity for which the referral is made; and
 - e. Offer-in-Compromise is not applicable to FBAR penalties. IRC 7122, Compromises, grants the power to compromise a liability arising under the Internal Revenue laws. Since FBAR penalties do not arise under the Internal Revenue laws, IRC 7122 is not applicable to FBAR penalties.

- (8) Although the Department of Justice (DOJ) and BFS handle collection of judgments in FBAR cases, in cases where a related statute determination has been made, the IRS may provide certain assistance to DOJ related to collection. At the request of DOJ, the IRS may conduct follow-up investigations or determine collection potential. See IRM 25.3.5.3, General Responsibilities.
- (9) Refunds of FBAR penalty payments are not systemically issued, as Title 26 overpayments typically are. Generally, to obtain a refund, the person against whom the FBAR penalty was assessed must file a refund suit against the government in District Court. However, in agreed cases (including cases where a filer agrees with an assessment or to a settlement while the case is with Appeals, Counsel, or DOJ), CTR Operations may initiate a refund using Form 3753, Manual Refund Posting Voucher. See Exhibit 4.26.17-2 for CTR Operations contact information.

4.26.17.4.4.1
(12-11-2019)
**Instructions for
Misposted FBAR
Payments**

- (1) If FBAR payments have been misposted (such as MFT 55, 30) or the Offshore Penalty has been misposted (such as an FBAR payment), you must complete Form 2424, Account Adjustment Voucher, to make the correction to move the payment to the correct account.
- (2) Use Form 2424 to debit Master File and credit the 6400 Account. Use subaccount 2320. The form must be mailed/faxed to the campus where the payment was originally deposited. The campus where the payment was originally deposited can be determined by the first two digits in the Trace ID field. Any Trace ID number that begins with any number except 17 (Cincinnati) needs to

#

Note: The Trace ID is required for every transfer. The Trace ID is shown under the TC 640 on TXMOD. The Trace ID is shown under VARIABLE DATE on the IMFOLT print. Include the letters & numbers of the trace ID on the request.

- (3) Include an IDRS print with each Account Adjustment Voucher. TXMOD is preferred by accounting however IMFOLT & INOLES can be used.
- (4) The following items should be completed on the top (debit) half of Form 2424:
 - a. Taxpayer Name and Address
 - b. X-ref TIN (Taxpayer SSN)
 - c. X-ref MFT
 - d. X-ref tax period
 - e. Transaction date
- (5) The following items are completed on the bottom (credit) half of Form 2424:
 - a. Document Locator Number – leave blank
 - b. 1st T.C. - 642
 - c. Debit amount \$
 - d. Form 813 amount – leave blank
 - e. Credit amount \$
 - f. Date prepared
 - g. Prepared by – RA name

4.26.17.4.5
(12-11-2019)

Closing ERCS Controls

- (1) LB&I Issue Management System (IMS) users, follow regular IMS closing procedures. Ensure that the FBAR penalty is entered as a "Deficiency Amount" and not as a "Penalty". All others follow the procedures below to close FBAR controls on ERCS.
 1. From the ERCS main menu, select 6 – **Transfer, Close, Establish Control**
 2. Select 1 – **Transfer/Close**
 3. Enter the **TIN**
 4. Select the appropriate modules to be closed
 5. Update the Status Code as follows, and hit Enter:
 6. Status **21** for year(s) closing to Technical Services

Note: FBAR cases do not use Appeals status codes.

Note: If less than **425** days remain on the ASERD, **do not** close the case to Technical Services for forwarding to Appeals. Contact your local FBAR coordinator or analyst for guidance.

 7. Status **90** for year(s) closing to CTR Operations for any other type of disposition.
 8. Update the **Disposal Code** to **12** for all dispositions. **Do not use any other disposal code.**
 9. In the **Deficiency** field, enter the FBAR penalty amount, or if no FBAR penalty is proposed, enter \$1. The **Tot Penalty** field must be \$0.
 10. When asked to **Add or update penalties (Y/N)**, enter N. **Do not enter Y.**
 11. Enter \$0 in **Interest** and **Adjustment** fields and complete all remaining fields as appropriate.
- (2) When all information has been entered, ERCS will ask if all information is correct. When it is, enter **Y** to close the record. Managerial approval is not required in ERCS to close the record.
- (3) Send the physical case file to the proper location in accordance with IRM 4.26.17.4 and local procedure. For cases closing to CTR Operations, refer to Exhibit 4.26.17-2 for address and shipping information.
- (4) For appealed FBAR cases sent to Technical Services, ERCS controls will remain in a Technical Services status code until Appeals returns Form 3210 to Technical Services. When Appeals acknowledges receipt of the FBAR case, Technical Services will update the ERCS record to status 90. FBAR cases do not use Appeals status codes.

4.26.17.5
(12-11-2019)
**FBAR Special
Procedures**

- (1) Procedures used in FBAR compliance activities are substantially different from those used in an income tax examination.
- (2) Some of the special procedures that may be encountered in an FBAR examination include procedures for:
 - a. Delinquent FBAR procedures (See IRM 4.26.17.5.1)
 - b. BSA summons in FBAR examinations (See IRM 4.26.17.5.2)
 - c. Fraud referrals (See IRM 4.26.17.5.3)
 - d. Bankruptcy procedures (See IRM 4.26.17.5.4)

4.26.17.5.1
(12-11-2019)
**Delinquent FBAR
Procedures**

- (1) Examiners **must not** secure delinquent or amended FBARs in **paper** form.
- (2) To solicit electronic filing of delinquent or corrected FBARs, an FBAR examination for the applicable year(s) must be open. See IRM 4.26.17.2 for procedures to start an FBAR examination.
- (3) During the FBAR examination, electronic filing of delinquent or corrected FBARs, as applicable, should be solicited **unless** a criminal referral is contemplated. If Letter 3800, Warning for Report of Foreign Bank and Financial Accounts (FBAR) Apparent Violations, is issued, see IRM 4.26.17.4.2 for additional solicitation procedures.
- (4) If the filer provides an original paper FBAR to the examiner, return the originals to the filer and instruct the filer to electronically file the delinquent or amended FBAR on FinCEN's BSA E-filing System. The filer should also be instructed to provide a copy of the filing to the examiner. Additional filing information is provided in IRM 4.26.16.4.11, Delinquent FBAR Filing Procedures, and IRM 4.26.16.4.12, Amending a Filed FBAR. The examiner can also verify the filing on the FinCEN Query system within days of the electronic filing. See IRM 4.26.17.3.4.4 for details.
- (5) A copy of the delinquent FBAR or proof of filing should be placed in the case file.

4.26.17.5.2
(12-11-2019)
**BSA Summons in FBAR
Examinations**

- (1) The examiner must use FinCEN Form 113, BSA Summons, not the Title 26 summons in FBAR examinations that:
 - Did not derive from Title 26 with an approved RSM, or
 - Did derive from Title 26 with an approved RSM **but** as of the date of summons issuance, a Title 26 examination is not open in the exam group for the year(s) to which the summons pertains.

Example: Assume an approved RSM was secured to open an FBAR examination for 2016. When the summons is to be issued, the only Title 26 examination open is for tax year 2017. Because the summons will request records in the matter of the 2016 FBAR examination, and the same year (2016) is not open for income tax examination, Form 2039, Summons, cannot be used.
- (2) The FinCEN Form 113 is used to summon and require an individual to appear and give testimony and/or produce books, papers, records, and other data identified as essential to the civil enforcement requirements of the Currency and Foreign Transactions Reporting Act, as amended. See 31 USC 5311-5324, section 21 of the Federal Deposit Insurance Act (12 USC 1829b) and Title 1 of Public Law 91- 508 (12 USC 1951, et seq.). See IRM 25.5.11, Title 31 Bank Secrecy Act Summons, for additional information.
- (3) See IRM 4.26.8.4, FinCEN Form 113, BSA Summons, for additional information such as:
 - a. IRM 4.26.8.4, FinCEN Form 113, BSA Summons
 - b. IRM 4.26.8.4.1, Completion of Summons
 - c. IRM 4.26.8.4.3, Service of a Summons
 - d. IRM 4.26.8.4.4, Examination of Books and Witnesses
 - e. IRM 4.26.8.4.6, Disclosure of Summons, Testimony, or Records

4.26.17.5.2.1
(12-11-2019)

**BSA Summons Approval
in FBAR Examinations**

- (1) Prior to issuance of a BSA summons, the summons must be reviewed. BSA examiners will follow the review and approval process in IRM 4.26.8.4.2, Review of BSA Summons Prior to Issuance. All other examiners follow the process in this section.
- (2) The summons package forwarded for review includes:
 - a. The cover memorandum (see IRM 4.26.8.4.1.2, Summons Package Memoranda),
 - b. Copy of the first page of FinCEN Form 113, and
 - c. Attachments to the summons as described in IRM 4.26.8.4.1.1, Attachments to the Summons, including the listing of documents and records being summoned, definitions and information of reimbursement of expenses. (IRM 4.26.8.4, FinCEN Form 113, BSA Summons)
- (3) The cover memorandum is addressed from the examiner through the group manager and Counsel to the examiner's territory manager (TM) and:
 - a. Provides a brief history of the case,
 - b. Describes the potential FBAR violations,
 - c. States why the summons is being sought, and
 - d. States if the party being summoned indicated if they will comply with the summons.
- (4) The examiner forwards the summons package for review through the group manager to Counsel.
- (5) Counsel reviews the summons and if approved, prepares a memorandum to the TM approving issuance of the BSA summons and sends the memo to the TM with the rest of the summons package. If disapproved, Counsel works with the examiner to resolve the problem.
- (6) The TM reviews Counsel's approval memo and the summons package before signing the summons.
 - a. If in disagreement with the decision to issue the summons, the TM discusses with Counsel, the group manager, and the examiner, as appropriate.
 - b. If in agreement, the TM signs the summons as the issuing person. The TM then returns the signed summons and summons package to the examiner through the group manager for service of the summons.
- (7) Procedures for service of the summons are described in IRM 4.26.8.3.3, Service of a Summons.

4.26.17.5.2.2
(12-11-2019)

**BSA Summons
Enforcement in FBAR
Examinations**

- (1) The examiner will immediately report any refusal to comply or any proceeding brought by the summoned party to quash a summons to group and territory managers and Counsel.
- (2) In cases where there is a refusal to comply or a proceeding brought by the summoned party, the examiner will:
 - a. Review IRM 25.5.10, Summons – Enforcement of Summons, for considerations in summons enforcement. The examiner will not refer a summons for enforcement in the situations given in IRM 25.5.10, such as

- 1) the summoned party or their representative has contacted the Service and indicated a willingness to comply and requests a reasonable extension of time to comply; or 2) the summoned party has appeared and denied under oath the possession or control of the documents summoned, unless there is good reason to believe otherwise.
- b. If appropriate, request enforcement action when the summoned party neglects or refuses to comply. See IRM 4.26.17.5.2.3 for procedures to make this request.

4.26.17.5.2.3
(12-11-2019)

**Requesting BSA
Summons Enforcement
in FBAR Examinations**

- (1) The examiner will prepare requests for enforcement of a BSA Summons in FBAR cases using the memorandum report format.
- (2) The summons enforcement request memorandum is addressed from the examiner through the group manager and territory manager (TM) to Counsel. The memorandum is to be signed by the examiner's TM.
- (3) The memorandum includes the information in IRM 4.26.8.4.5, Summons Enforcement.
- (4) The TM reviews the summons enforcement request memorandum prior to signing it. If in agreement with the decision to enforce the summons, the TM signs the memo and returns it to the group manager for forwarding to Counsel. If the TM does not agree, the TM discusses the decision with the examiner, group manager and Counsel, as appropriate.
- (5) Counsel considers the summons enforcement request and notifies the examiner whether the summons can or cannot be enforced. The examiner will notify the group manager and territory manager of Counsel's decision.
- (6) If Counsel believes the summons can be enforced, the summons request is forwarded to the appropriate U.S. Attorney's office. The original and one copy of the summons are transmitted through Counsel to the U.S. Attorney's office in which the venue lies.
- (7) If Counsel makes a referral for enforcement of a BSA summons to the U.S. Attorney's office, FinCEN must be notified per IRM 4.26.8.4.6, Disclosure of Summons, Testimony, or Records. To complete these procedures, the examiner's TM will contact the appropriate BSA Policy Program Manager listed on BSA's website identified in Exhibit 4.26.17-3.

4.26.17.5.3
(12-11-2019)

**Fraud Referrals in FBAR
Examinations**

- (1) If indications and/or affirmative acts of intentional or willful FBAR violations are discovered, the examiner will discuss the potential violations with the group manager and operating division FBAR coordinator. A Fraud Technical Advisor (FTA) can assist the examiner in determining whether there was a willful violation and provide the examiner with information concerning referrals to Criminal Investigation.
 - a. Examiners **may** coordinate their FBAR case with an FTA when there are indicators of willfulness but no reason to believe the case may warrant a criminal referral. FTAs can apply their experience to assist with determining if there was a willful violation and with developing indicators of willfulness or intent.

- b. Examiners **will** coordinate their FBAR case with an FTA when they have reason to believe the case may warrant a criminal referral. FTAs can apply their experience to assist with the criminal referral to ensure it is adequately developed.
- (2) If the decision is made to involve the FTA in the FBAR case, the examiner will complete Form 13639, Fraudulent Intent Referral Memorandum (FIRM), and forward to the FTA following local procedures. The FIRM documents the involvement of the FTA, the plan for developing the case with respect to the willfulness issue, and the referral recommendations of the FTA.
- (3) See IRM 25.1.12.3, Development of Willfulness, IRM 25.1.12.4, Referral Recommendations - Criminal Referral is Not Recommended, and IRM 25.1.12.5, Referral Recommendations – Criminal Referral is Recommended, for information regarding the FTA's review and recommendations.
- (4) Refer to IRM 4.26.16, Bank Secrecy Act, Report of Foreign Bank and Financial Accounts (FBAR), for information regarding willfulness in FBAR violations.
- (5) For any related Title 26 examination, follow all applicable fraud development and referral procedures in IRM 25.1, Fraud Handbook, including completion of Form 11661, Fraud Development Recommendation - Examination, and a separate Form 2797, Referral Report of Potential Criminal Fraud Cases. Fraud referrals for FBAR examinations and Title 26 examinations cannot be combined on the same form.
- (6) The FBAR assessment statute of limitations is **not** impacted by the existence of civil or criminal fraud in an FBAR violation or in any related Title 26 violation. Thus, the two-digit alphabetic codes (alpha codes) in IRM 25.6.23-3, Instructions for Updating the Statute on AIMS, designating special statute situations, such as NN (substantial omission of items), or OO (fraud or false return), are **not** applicable to FBARs. See IRM 4.26.17.3.1 and the remainder of this IRM subsection for additional FBAR statute of limitations information and procedures.

Note: If any related Title 26 examination is under criminal investigation, but the related FBAR examination is not and the FBAR case is protested to Appeals, the FBAR case may not be accepted by Appeals and may be returned to the field as a premature referral. Department of Justice may propose a settlement in the criminal case, which may include an FBAR penalty. To be included in the settlement, the FBAR case cannot be in Appeals' jurisdiction.

Caution: Examiners should exercise extreme awareness of the FBAR assessment statute of limitations in these cases and take timely actions to protect it. Discuss appropriate statute protection measures with the group manager, operating division FBAR coordinator, Counsel, and others, as appropriate.

4.26.17.5.3.1
(12-11-2019)
**Criminal FBAR
Violations**

- (1) IRS Criminal Investigation has BSA criminal examination authority under 31 CFR 1010.810(c)(2), Enforcement.
- (2) Criminal FBAR penalties appear at 31 USC 5322, Criminal Penalties, and 31 CFR 1010.840, Criminal Penalty.

- (3) Acceptance by Criminal Investigation of an FBAR referral for criminal investigation depends on the evidence establishing willfulness and sometimes other criteria.
 - a. Willfulness is a question of intent. Willfulness for criminal FBAR violations involves the intentional, voluntary violation of a known legal duty.
 - b. Criminal sentencing in FBAR cases depends on the federal sentencing guidelines. Federal sentencing guidelines for money laundering cases that include criminal FBAR reporting or recordkeeping violations appear in the U.S. Sentencing Guidelines, 2S1.3, Structuring Transactions to Evade Reporting Requirements. The relevant statutes require monetary reporting without regard to whether the funds were lawfully or unlawfully obtained.
 - c. The period of limitation for FBAR criminal penalties is the general criminal statute of limitations in 18 USC 3282, Offenses Not Capital. This section provides that except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any non-capital offense, unless the indictment is found, or the information is instituted within five years after such offense shall have been committed.

4.26.17.5.3.2
(12-11-2019)
Making a Criminal FBAR Referral

- (1) If the examiner considers that the case warrants referral for possible criminal investigation, the examiner, with the approval of the group manager, will involve an FTA as soon as possible, if one is not already involved. See IRM 4.26.17.5.3 for procedures, including discussion of when FTA involvement is mandatory and when it is optional.
- (2) If, on Form 13639, Fraudulent Intent Referral Memorandum (FIRM), the FTA determines that firm indications of willfulness and criminal criteria are present, the examiner will prepare Form 2797, Referral Report of Potential Criminal Fraud Cases, with a detailed explanation of the FBAR violations. The FTA will assist in the preparation of Form 2797 if requested by the examiner. When preparing Form 2797 for an FBAR referral, the examiner will follow the instructions attached to the form and:
 - a. Note that “filer” means the person required to file the FBAR regardless of whether the person filed;
 - b. Insert “FBAR Violation” in Item 2i (Basis for the Suspected Fraud - Other);
 - c. Include a narrative with Form 2797 to include 1) the results of FinCEN Query research for FBAR filings, 2) the filer’s knowledge of the filing requirements and 3) filing compliance status at the date of the referral (this must also be documented in the workpapers);
 - d. Omit items 3 (Tax Return Information) and 4 (Administrative Information); and
 - e. Attach a copy of Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum, if secured. See IRM 25.1.12.7(3), Joint Title 26 - Title 31 Criminal Referral Disclosure Concern, for important information regarding disclosure concerns.
- (3) **SB/SE Examination - Specialty, BSA only:** At the same time the referral package is sent to Criminal Investigation (CI), IRS is required by a Memorandum of Understanding to provide FinCEN a copy of the portion of the referral package to CI that is related to BSA violations or deficiencies. See IRM 25.1.12.7, Joint Title 26 - Title 31 Criminal Referral Disclosure Concern, for more information and procedures.

- (4) See IRM 25.1.3, Fraud Handbook, Criminal Referrals, for detailed instructions concerning the processing of Form 2797.
- (5) If a related tax case warrants a criminal referral per IRM 25.1.3, the examiner will:
 - Prepare a separate Form 2797 for the tax case,
 - Submit separate tax and FBAR referrals to CI concurrently, if possible, and
 - Follow procedures established for criminal referrals in IRM 25.1.3.

4.26.17.5.3.3
(12-11-2019)

Criminal FBAR Referral Evaluation

- (1) CI will evaluate the criminal FBAR referral following the general principles and procedures of IRM 25.1.3.3, Referral Evaluation, adapted as appropriate for FBARs.

4.26.17.5.3.4
(12-11-2019)

Declined Criminal FBAR Referrals

- (1) If the referral of the FBAR case to Criminal Investigation is declined, the general principles and procedures of IRM 25.1.3.5, Declined Criminal Referrals, adapted as appropriate for FBARs, apply. Additionally, the examiner will:
 - a. Place the transmittal memorandum that indicates declination in the retained FBAR file, and
 - b. Commence any appropriate civil FBAR penalty action in accordance with IRM 4.26.16 and this IRM. If no civil penalty action is appropriate, the examiner will follow applicable closing procedures in IRM 4.26.17.4.

4.26.17.5.3.5
(12-11-2019)

Accepted Criminal FBAR Referrals

- (1) If the referral of the FBAR case to Criminal Investigation is accepted, follow the general principles and procedures of IRM 25.1.3.4, Accepted Criminal Referrals, IRM 25.1.4, Administrative Joint Investigation, and IRM 25.1.5, Grand Jury Investigations. However, they must be adapted for FBAR matters, due to distinct differences between Title 26 and Title 31, including but not limited to the following:
 - a. FBAR information is not available on AIMS. Therefore, no FBAR accounts or modules are available on which to place TC 914 controls.
 - b. Other than a filer's consent to extend the SOL, there are no statutory exceptions, including fraud or willfulness, for FBAR SOLs. See IRM 4.26.17.5.3 for more information and IRM 4.26.17.5.3.5.1 for FBAR statute protection procedures in joint investigations.
 - (2) Additionally, the examiner will:
 - a. Retain the transmittal memorandum that indicates acceptance in the FBAR file,
 - b. Complete Form 13536, Foreign Bank and Financial Accounts Report Monitoring Document (FMD), showing CI acceptance;
 - c. Email the FMD to CTR Operations so that the FBAR database can be updated. Retain the FMD in the FBAR case file, and
- Note:** The case file is **not** sent to CTR Operations at this point.
- d. Keep the physical FBAR case file. Continue to work the civil FBAR examination as a joint investigation in accordance with IRM 25.1.4,

Administrative Joint Investigation, and IRM 25.1.5, Grand Jury Investigations, all adapted as appropriate for FBAR matters.

Note: Suspense applies to FBAR cases. See IRM 4.26.17.5.3.5.2 for more information.

- (3) CTR Operations will enter the information from the FMD to the FBAR database.
- (4) Criminal Investigation will cooperate in discussing statute problems with the examiner and manager.

4.26.17.5.3.5.1 (12-11-2019)

FBAR Statute Protection in Joint Investigations

- (1) Compliance employees are responsible for monitoring all civil SOLs during joint investigations, including prior and subsequent years, and related tax returns under examination and/or collection activity. This section will discuss statute protection during joint investigations only with respect to FBAR (Title 31) investigations. See IRM 25.1.4.3.8, Fraud Handbook, Administrative Joint Investigations, Statute Protection, for statute protection procedures and information with respect to Title 26 joint investigations.
- (2) The two-year FBAR statute of limitations on civil action does not begin to run until the FBAR penalty is assessed. See IRM 4.26.17.3.1.2, FBAR Statute of Limitations on Civil Action, and IRM 4.26.17.4.4 for more information.
- (3) The six-year FBAR assessment statute of limitations begins to run on the due date of the FBAR. See IRM 4.26.17.3.1 for more information.
- (4) Periodically, examiners must check FinCEN Query and inquire with CI to determine if any delinquent or amended FBARs have been filed. In failure-to-file cases, if CI comes into possession of any document that could be considered a filed FBAR, CI must notify the examiner.
- (5) Examiners should protect all SOLs for the years that are under investigation, particularly the most imminent SOL, if there are multiple years under examination. If the filer refuses to extend the period for assessment, no statutory exceptions to the assessment SOL exist. See IRM 4.26.17.5.3 for more information.
- (6) When fewer than 210 days remain on the SOL for assessment, the examiner should complete Form 10498-B, Intent to Commence Civil Action - Statute Protection, adapted as appropriate for FBAR matters, to request CI's permission to 1) solicit the filer's consent to extend the statutory period for assessment or 2) assess an FBAR penalty prior to the expiration of the assessment statute of limitations. Distinct differences to note between Title 26 and FBAR regarding Form 10498-B, are
 - a. FBAR penalties are not subject to deficiency procedures; thus, statutory notices of deficiency are not applicable to FBAR penalties.
 - b. Exceptions to the income tax assessment statute of limitations, such as fraud or substantial omission of items, do not apply to FBARs.
- (7) Procedures to complete and process Form 10498-B in FBAR cases are as follows:

- a. Examiner should modify Form 10498-B or otherwise make it clear to CI that the examiner is requesting advice regarding the Title 31 civil FBAR penalty,
 - b. If necessary, provide an explanation to CI regarding differences between income tax and FBAR cases as they pertain to CI's evaluation of this intent to commence civil action,
 - c. The completed Form 10498-B is sent by the Compliance group manager to the Supervisory Special Agent (SSA) via Microsoft Outlook Secure Messaging,
 - d. CI must accept or decline the request within 10 workdays after receipt of Form 10498-B,
 - e. The SSA indicates the desired action by checking the appropriate boxes on the form,
 - f. The SSA forwards the form to the Special Agent-in-Charge (SAC) via Microsoft Outlook Secure Messaging,
 - g. The SAC indicates approval by entering his/her signature and date,
 - h. The SAC forwards the completed form to the Compliance Authorizing Official, generally the TM or equivalent, via Microsoft Outlook Secure Messaging,
 - i. The TM or equivalent indicates approval by entering a signature, title and date, and
 - j. The TM or equivalent forwards the approved form to the Compliance group manager via Microsoft Outlook Secure Messaging.
- (8) If CI approves the request to solicit the filer's consent to extend the period for assessment, the examiner will follow FBAR statute waiver solicitation procedures in IRM 4.26.17.3.1.3. The examiner will document solicitation of the consent on Examiner's Activity Record, and on Form 895, Notice of Statute Expiration; see IRM 25.6.23.5.2, Completion of Form 895 by Area Office Examiner or Specialist. CI should be informed of the results of the consent solicitation and this action should be documented in the case history. Any subsequent inquiries from the filer should be referred to the SA assigned to the case.
- (9) If CI approves the decision to assess an FBAR penalty, the examiner will consult with the group manager, operating division FBAR coordinator and Counsel, if needed, to determine the next steps.
- (10) If a consent to extend the period for assessment is not secured, and the SAC does not approve assessment of an FBAR penalty, a decision must be made whether to allow the six-year period for assessment to expire. This decision must be approved by the TM or equivalent and documented in the case file and on Form 895.
- (11) The decision to allow expiration of the six-year period for assessment will be documented on Form 10498-B, Intent to Commence Civil Action – Statute Protection, with signatures of the TM or equivalent and the SAC. The executed Form 10498-B is attached to the applicable FBAR. Update the assessment statute of limitations using the CC alpha code.
- (12) If agreement cannot be reached, the Compliance Area Director or equivalent and the CI Director of Field Operations will decide. If an agreement is still not reached, the issue will be elevated to the operating division commissioner and Chief, CI for resolution.

4.26.17.5.3.5.2
(12-11-2019)

FBAR Suspense in Joint Investigations

- (1) The concept of suspense in IRM 25.1.4.3.11, Fraud Suspense, and IRM 25.1.5.2, Grand Jury Suspense, applies to FBAR cases, requiring examiners to suspend all civil FBAR examination activity when a joint investigation advances to one of the following points.
 - a. The joint investigation is completed, and CI recommends criminal prosecution (Fraud Suspense), or
 - b. The existing administrative criminal investigation, either with or without an assigned cooperating compliance employee, becomes an approved Grand Jury investigation (Grand Jury Suspense).
- (2) If civil examination activity is required to protect the government's interest before the criminal case can be resolved, such as when there is a short civil statute, CI must approve of the civil activity, which is typically limited to solicitation of a consent to extend the SOL or making an assessment. Refer to IRM 4.26.17.5.3.5.1 for procedures to solicit CI's approval.
- (3) A report of all known and supportable adjustments and penalties is required to be prepared at the suspense point and included in the case file; it is not issued to the taxpayer. This report is prepared based on all non-Grand Jury evidence gathered through the point suspense is required, even though civil development may not yet be completed.
- (4) Based on IRM 4.8.2.11.3(3), Fraud and Grand Jury Suspense, while a civil FBAR case is suspended, the function holding the case is responsible for the following:
 - a. Reviewing and determining whether suspended cases meet suspense criteria in paragraph (1),
 - b. Suspending the case, or, if needed, returning it to the examiner if it does not meet the suspense requirements,
 - c. Verifying or determining the correct statute and monitoring the statute of limitations for each return / period in suspense,
 - d. Protecting the statute of limitations on assessment for all cases in suspense. Refer to IRM 4.26.17.5.3.5.1,
 - e. Coordinating with area counsel and Criminal Investigation (CI) on issues that arise on cases that are in suspense,
 - f. Ensuring that status checks are performed every six months. Refer to IRM 4.8.11.4.1, Six Month (180 day) Status Checks - All Suspense Cases, as applicable,
 - g. Ensuring that a penalty assessment is made for cases in suspense when determined appropriate with concurrence from CI, Examination, and area counsel. Refer to IRM 4.26.17.5.3.5.1, and
 - h. Ensure cases are released from suspense when appropriate. See IRM 4.26.17.5.3.6 for more information.
- (5) Procedures to properly suspend and monitor FBAR cases in accordance with these guidelines are the responsibility of the group manager and examiner.
- (6) Suspense remains applicable until the criminal case is resolved.

4.26.17.5.3.6
(12-11-2019)

FBAR Procedures after the Criminal Investigation

- (1) Criminal Investigation will advise the examiner through the FTA about the final disposition of the case.

- (2) For criminal investigations that are discontinued at any point during the investigation, the general principles and procedures of IRM 25.1.4.3.9, Discontinued Investigation, adapted as appropriate for FBAR matters, apply.
- (3) The function holding the civil FBAR case in suspense is responsible for releasing it from suspense for Exam to proceed with the civil case.
- (4) Upon receipt of the civil FBAR case for resolution, the examiner will commence any appropriate civil FBAR action, following this IRM.
- (5) If no civil action is appropriate, the examiner will follow applicable closing procedures in IRM 4.26.17.4.

4.26.17.5.3.7
(12-11-2019)
**Collateral Estoppel in
FBAR Cases**

- (1) Under the doctrine of collateral estoppel, an issue already considered by a court cannot be re-litigated if that court has entered a final decision on the issue. See IRM 25.1.6.4, Collateral Estoppel, for further discussion of this doctrine.
- (2) The elements of collateral estoppel are:
 - a. Prior litigation with identical issue,
 - b. Issue litigated in the first judicial proceeding, and the party against whom collateral estoppel is being asserted had a full and fair opportunity to litigate the issue in the first judicial proceeding, and
 - c. Issue necessarily decided and rendered as a necessary part of the court's final judgment.
- (3) The doctrine of collateral estoppel applies to criminal FBAR cases only under the following circumstances:
 - a. The criminal case brought against an individual includes a charge of criminal failure to file an FBAR,
 - b. The criminal case concludes with the individual being found guilty, after trial, of criminally failing to file an FBAR charge or pleading guilty to the criminal failure to file the FBAR charge, and
 - c. The decision in the criminal case is final. In other words, all appeal rights must be exhausted or time to appeal must have expired.
- (4) Collateral estoppel will only support a civil penalty for the same year of the guilty verdict/plea agreement and the same individual at issue in the criminal case.
- (5) Although there is a different standard for criminal and civil failure to file an FBAR, and, therefore, one could say the issue is not identical, the showing required for a civil failure to file an FBAR is less than that needed for criminal failure to file, so the identical issue requirement is met.
- (6) Collateral estoppel only establishes that the willful penalty is appropriate; the individual can still dispute whether the amount of the penalty proposed or assessed is proper under the statute.

4.26.17.5.4
(12-11-2019)

**Bankruptcy Procedures
in FBAR Cases**

- (1) Bankruptcy may occur before or after assessment of an FBAR penalty.
- (2) If the IRS examiner is notified or otherwise knows of a bankruptcy filing with respect to the person against whom an FBAR penalty is proposed but not assessed, the examiner will:
 - a. Notify IRS local insolvency unit as soon as possible
 - b. Send a copy of the first notice of bankruptcy to CTR Operations in accordance with Exhibit 4.26.17-2.
 - c. Proceed with the examination but do not process an assessment. Assessments may not be made while the automatic stay is in place. Contact SB/SE Counsel Area FBAR Coordinators (see Exhibit 4.26.17-3). Counsel will work with DOJ to seek relief from the automatic stay to make an assessment.
- (3) If the IRS examiner has reason to believe a person under FBAR examination has filed for bankruptcy, the examiner may contact local Counsel for assistance in determining whether the person has filed for bankruptcy.
- (4) If the FBAR penalty has been assessed and the debtor reports it as a debt in the bankruptcy petition and schedules, clerks of bankruptcy courts will send notices to:

U.S. Treasury

Bureau of the Fiscal Service

Hager Bldg., Suite 7B

25 West Oxmoor Road

Birmingham, AL 35029

- (5) The Bureau of the Fiscal Service will forward bankruptcy notices to CTR Operations.
- (6) CTR Operations will provide bankruptcy account information to the FBAR Penalty Insolvency Bankruptcy Specialist in the appropriate insolvency territory.
- (7) In bankruptcy cases without an FBAR penalty assessment, the territory insolvency specialist will determine if a proof of claim is warranted and, if so, prepare and mail a proof of claim.
- (8) Bureau of the Fiscal Service and the IRS insolvency unit will handle bankruptcy cases with an FBAR penalty assessment.

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Exhibit 4.26.17-1 (12-11-2019)

Acronyms

Acronym	Definition
AIMS	Audit Information Management System
AJAC	Appeals Judicial Approach and Culture
BFS	Bureau of the Fiscal Service
BOD	Business Operating Division
BSA	Bank Secrecy Act
CBRS	Currency Banking and Retrieval System
CFR	Code of Federal Regulations
CI	Criminal Investigation
DOJ	Department of Justice
ERCS	Examination Return Control System
FBAR	Report of Foreign Bank and Financial Accounts
FCQ	FinCEN Query
FDR	Formal Document Request
FinCEN	Financial Crimes Enforcement Network
FMD	FBAR Monitoring Document (Form 13536)
FTA	Fraud Technical Advisor
GM	Group Manager
IDR	Information Document Request
IMS	Issue Management System
IRM	Internal Revenue Manual
MOI	Memorandum of Interview
MOU	Memorandum of Understanding
POA	Power of Attorney
RSM	Related Statute Memorandum (Form 13535)
SAR	Suspicious Activity Report
SOL	Statute of Limitation
TIN	Taxpayer Identification Number
TM	Territory Manager
UNAX	Unauthorized Access

Exhibit 4.26.17-2 (11-22-2021)**Contact Information for BSA Exam CTR Operations**

ITEM	WHERE TO SEND
Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum Form 13536, Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD) Consent to Extend FBAR Statute Bankruptcy notification(s)	Email: <i>sbse.bsa.compliance.fbar.penalty.coordinator@irs.gov</i>
Checks to Pay FBAR Penalties	<p>If sent by USPS (certified): Internal Revenue Service Attention: FBAR Coordinator P.O. Box 33115 Detroit, MI 48232-0115</p> <p>If sent via a small package carrier, such as UPS (overnight for priority items): Internal Revenue Service Attention: FBAR Coordinator 985 Michigan Ave, 8th floor Detroit, MI 48226</p> <p>Note: Tracking is required. IRM 4.4.24.3, Securing Remittances for Transit</p>
Case Files Closed to CTR Operations	<p>Follow IRM 1.22.5.10 to determine the appropriate shipping method.</p> <p>If shipping USPS: Internal Revenue Service Attention: FBAR Coordinator P.O. Box 33115 Detroit, MI 48232-0115</p> <p>If shipping via a small package carrier, such as UPS: Internal Revenue Service Attention: FBAR Coordinator 985 Michigan Ave, 4th Flr Detroit, MI 48226</p>

Exhibit 4.26.17-3 (11-22-2021)**FBAR Contacts by Operating Division**

Each BOD has designated FBAR coordinators/analysts to assist examiners with FBAR issues. To identify appropriate contact(s) for any FBAR questions or to request assistance, visit the Servicewide FBAR Knowledge Base, click "Contact an Expert", found on the right-hand side of <https://portal.ds.irsnet.gov/sites/VI101/pages/default.aspx>.

Exhibit 4.26.17-4 (12-11-2019)**FBAR Summons Language If Using Form 2039**

“Produce, for the years [first year] to [last year], any and all records required to be maintained pursuant to 31 CFR 1010.420 relating to foreign financial accounts that you had/have a financial interest in, or signature authority over, including records reflecting the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during each specified year. Such accounts include, but are not necessarily limited to, accounts in the names of [list the names of the taxpayer and any other known entity names]”.

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Exhibit 4.26.17-6 (12-11-2019)**Consent to Extend the Time to Assess Civil Penalties for FBAR Violations****Exhibit 4.26.17-6****Consent to Extend the Time to Assess Civil Penalties for FBAR Violations**

**CONSENT TO EXTEND THE TIME TO
ASSESS CIVIL PENALTIES PROVIDED BY
31 U.S.C. § 5321 FOR FBAR VIOLATIONS**

WHEREAS, the parties to this agreement desire to extend the time during which the penalties provided by 31 U.S.C. 5321 may be assessed and collected,

WHEREAS, the parties to this agreement are aware that they have the right to refuse to sign this consent,

(name and taxpayer identification number)

United States person, of _____
(address)

and the Commissioner of the Internal Revenue Service, hereby agree and consent to the following:

(1) For violations with respect to the requirement, established under 31 U.S.C. 5314, for a United States person to report having a financial interest in or signature authority, or other authority, over a financial account during the calendar year(s) _____ that was maintained with a financial institution located in a foreign country, the amount of any penalty provided by 31 U.S.C. 5321 may be assessed at any time on or before

_____.

(2) This consent does not reduce, waive, or extend any period of limitation under 26 U.S.C. 6501 for assessing or collecting tax. This consent also does not supersede or amend any other agreement between the United States person and the Internal Revenue Service.

<u>Date</u> _____	<u>Signature of the United States Person</u> _____
<u>Date</u> _____	<u>Signature of Authorized Representative</u> _____
<u>Date</u> _____	<u>Signature of the Commissioner's Delegate</u> _____
	_____ Title