



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.34.1

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EFFECTIVE DATE

(10-08-2021)

PURPOSE

- (1) This transmits new IRM 4.34.1, SB/SE Emerging Issues, SB/SE Emerging Issue Process.

MATERIAL CHANGES

- (1) This is a new IRM section that contains procedures for the SB/SE Emerging Issue program.
- (2) This IRM incorporates and updates guidance previously included in IRM 4.32.1, Process Guide for Combating Abusive Tax Avoidance Transactions, as indicated below:

Prior Reference	New Reference
IRM 4.32.1.4.1	IRM 4.34.1.2
IRM 4.32.1.4.4	IRM 4.34.1.2
IRM 4.32.1.4.5	IRM 4.34.1.1.7 (2)

EFFECT ON OTHER DOCUMENTS

This material supersedes content moved from IRM 4.32.1, Process Guide for Combating Abusive Tax Avoidance Transactions, dated 2-9-2018 as noted in material changes.

AUDIENCE

This section provides guidance for Small Business and Self-Employed (SB/SE) Examination employees, Tax Exempt and Government Entities (TE/GE) employees, Wage and Investment (W&I) employees, Large Business and International (LB&I) employees, and any other Internal Revenue Service employees who may identify and report emerging issues.

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4.34.1

SB/SE Emerging Issues Process

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4.34.1-1 SB/SE Emerging Issue Process Overview

4.34.1.1
(10-08-2021)
Program Scope and Objectives

- (1) The mission of the Emerging Issue initiative is to address both abusive and noncompliant tax transactions early in their development, before such noncompliance becomes widespread and begins to have a corrosive effect on the nation's tax system.
- (2) **Purpose:** This IRM provides an overview of the SB/SE Emerging Issue Process.
- (3) **Audience:** These procedures apply to SB/SE employees but may be utilized by all functions within the Internal Revenue Service.
- (4) **Policy Owner:** The Director, Exam Quality and Technical Support, which is under the Director, Headquarters Exam.
- (5) **Program Owner:** The Technical Legislation Implementation group within SB/SE Exam Quality and Technical Support.
- (6) **Primary Stakeholders:** The following areas can be affected by these procedures: SB/SE Field Exam, SB/SE Exam Case Selection, SB/SE Specialty Tax, SB/SE Collection Division, SB/SE Counsel, SB/SE Office of Fraud Enforcement, LB&I, W&I, and TE/GE.
- (7) **Program Goal:** The objective of the Emerging Issue Program is to identify and address emerging issues in a proactive, rather than reactive, posture.

4.34.1.1.1
(10-08-2021)
Background

- (1) This IRM provides assistance to employees who may identify and report emerging issues. It also serves to promote effective communication and coordination, consistent treatment, and efficient processing of reported issues.

4.34.1.1.2
(10-08-2021)
Authority

- (1) IRM 1.1.16.3.5.5, Exam Quality and Technical Support, states that the mission of Exam Quality and Technical Support is to implement strategies to prevent offshore tax noncompliance, address emerging issues, provide technical guidance, lead implementation of new legislation affecting SB/SE Examination and support Field, Campus, and Specialty Exam quality. To accomplish the mission, the Director, Exam Quality and Technical Support is authorized to develop and deliver mission-oriented strategies, identify and address emerging issues, and other potential areas of noncompliance.
- (2) The Technical Legislation Implementation group oversees implementation of new legislation, including the associated compliance plans, maintains the knowledge management portal to provide additional technical support and guidance to Exam employees, and manages the emerging issues identification and assessment process. To accomplish the mission, the Program Manager of the Technical Legislation Implementation group leads in identifying and analyzing emerging issues with support from the Technical Support Group (EQ&TS) and the Lead Development Center in the Office of Promoter Investigations, and submits recommendations on transactions deemed to be of priority concern for the SB/SE Operating Division. The Program Manager of the Technical Legislation Implementation group reports to the Director, Exam Quality and Technical Support.

4.34.1.1.3
(10-08-2021)
Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayer's rights. See IRM 1.1.16.3.5, Headquarters Examination, for additional information.
- (2) The Director, Exam Quality and Technical Support, reports to the Director, Headquarters Examination, and is responsible for delivery of policy and guidance that impacts the field examination processes.
- (3) The Program Manager of the Technical Legislation Implementation Group reports to the Director, Exam Quality and Technical Support and is responsible for the SB/SE Emerging Issue program.
- (4) All examiners and their managers who may identify and report emerging issues are responsible for familiarizing themselves with the information contained in this IRM.

4.34.1.1.4
(10-08-2021)
Program Management and Review

- (1) **Program Reports:** A quarterly Executive Governance Panel briefing report and a monthly Emerging Issue Process Team submission tracking report are produced and distributed to the respective Panel and Process Team members. Ad hoc reports are produced as requested by the Emerging Issues Process Team or Executive Governance Panel. The information for the reports is obtained from the issue submission data in a database where the information is also stored. The primary purpose of the data is to track the status of and make decisions related to submitted issues. The data is also used to identify and monitor trends.
- (2) **Program Effectiveness:** The Emerging Issue Process is new and how to measure effectiveness is still being evaluated. Effectiveness will potentially be measured by the number of submissions to the process, trend analysis, and monitoring the results of compliance strategies and risk mitigations.

4.34.1.1.5
(10-08-2021)
Program Controls

- (1) The Emerging Issue Process uses a Knowledge Management Community of Practice team page, an Access database, and a SharePoint site to track emerging issue submissions. Access to these sites are restricted by permission level on the site and limited to select members of the Emerging Issue Process team.

4.34.1.1.6
(10-08-2021)
Acronyms and Abbreviations

- (1) The following table lists acronyms used throughout this IRM and their definitions:

Acronym	Definition
BOD	Business Operating Division
CIP	Compliance Initiative Project
C&L	Communication and Liaison
CP&C	Compliance Planning and Classification
ECS	Examination Case Selection

Acronym	Definition
FCS	Field Case Selection
FOD	Functional Operating Division
GAO	Government Accountability Office
LB&I	Large Business & International
LDC	Lead Development Center
PSP	Planning & Special Programs
RPP	Return Preparer Program
SB/SE	Small Business/Self Employed
SME	Subject Matter Expert
SPA	Senior Program Analyst
TE/GE	Tax Exempt/Government Entities
TIGTA	Treasury Inspector General for Tax Administration

- (2) The following table lists abbreviations used throughout this IRM and their associated phrases:

Abbreviation	Phrase
Charter	Emerging Issue Process Charter
Panel	Emerging Issue Process Executive Governance Panel
Team	Emerging Issue Process Team

4.34.1.1.7
(10-08-2021)
Related Resources

- (1) For additional information see:
- *SB/SE Emerging Issue Knowledge Base*
 - *Emerging Issues Community of Practice*
- (2) **For TE/GE Emerging Issues:** The Compliance Planning and Classification (CP&C) function within TE/GE receives all emerging issues. The issues go through a vetting process. If the emerging issue warrants further analysis it is developed by the Issue ID function. Additional information can be found on the *TE/GE CP&C Website*.

4.34.1.2
(10-08-2021)
Identification of Emerging Issues

- (1) SB/SE defines an emerging issue as an issue that may involve a new or novel set of facts relating to the improper application of the tax law. It may also be a new technical issue or a new interpretation of existing tax law. Emerging issues do not necessarily need to be abusive or fraudulent to be considered an emerging issue.

- (2) If an employee identifies a potential emerging issue, the employee should submit the issue to the *Emerging Issue Submission Portal* on the *Emerging Issues Community of Practice* site on Knowledge Management.
- (3) There are numerous possible internal and external sources for emerging issues. Potential internal sources for emerging issues may include, but are not limited to, the following:
 - Employee submission
 - Field Case Selection (FCS) or Compliance Initiative Project (CIP) referral sharing
 - Lead Development Center (LDC) sharing of identified emerging issues on a referral
 - Referral from other internal programs, such as Planning and Special Programs (PSP) and the Return Preparer Program (RPP)
 - Referral from other BODs, such as LB&I, TE/GE, and W&I
 - Referral from Fraud Program
 - Campus referral
 - SB/SE Research identified issue
 - Referral from Headquarters exam programs
 - Referral from Executive-level public contacts
 - Referral from other IRS employees, such as Counsel and Appeals
- (4) Potential external sources for emerging issue submissions may include, but are not limited to, the following:
 - Treasury Inspector General for Tax Administration (TIGTA) or Government Accountability Office (GAO) identified issue
 - Referrals from the IRS Tax Shelter hotline
 - Practitioner or taxpayer submissions through Communication and Liaison (C&L) or another source
 - Other external sources

4.34.1.3 (10-08-2021)

Executive Governance Panel

- (1) The Emerging Issue Process Executive Governance Panel (Panel) provides executive oversight, feedback, and approval for the following activities in the Emerging Issue Process:
 - Approval of the Emerging Issue Process Charter (Charter) and any amendments.
 - Decision Point #1: Concurrence of the high risk issue prioritization and compliance strategy development for an emerging issue.
 - Decision Point #2: Approval for the recommended high risk issue compliance strategy and implementation for an emerging issue.
 - Decision Point #3: Approval for the high risk issue exit strategy implementation for an emerging issue.
- (2) The Panel consists of core and ad hoc members as provided in the Charter.
- (3) The Director, Exam Quality and Technical Support, schedules and facilitates meetings as needed to accomplish the Panel's mission and activities as provided in the Charter.

- 4.34.1.4
(10-08-2021)
Emerging Issue Process Team
- (1) The SB/SE Emerging Issue Process Team (Team) guides issue submissions through the Emerging Issue Process.
 - (2) The Team consists of core and ad hoc members as provided in the Charter.
 - (3) The core members of the Team complete the following activities:
 1. Gather information and assess the compliance risk of the emerging issue as high, medium, or low.
 2. Recommend compliance strategy activities on high risk issues.
 3. Approve risk mitigations for medium and low risk issues.
 4. Approve exit strategy recommendations for medium and low risk issues.
 5. Prepare summary briefings for the Panel for the three high risk issue decision points requiring leadership concurrence or approval.
 - (4) The core Team collaborates with impacted cross Business Operating Division (BOD)/Functional Operating Division (FOD) Team members on these activities when an issue affects the other operating divisions or functions.
 - (5) Exam Case Selection (ECS) administers, oversees, reviews, and approves all CIPs that result from emerging issue submissions and identifies the population, sample, and delivery of these projects as described in IRM 4.17.1, Overview of Compliance Initiative Projects, through IRM 4.17.4, Procedures.
 - (6) The core members of the Team meet monthly or as needed to complete Emerging Issue Process activities as provided in the Charter.
 - (7) The Emerging Issue Senior Program Analyst (SPA) core Team member(s) reports on emerging issues as provided in the Charter.

- 4.34.1.5
(10-08-2021)
Emerging Issue Process Phases
- (1) The Emerging Issue SPA identifies and elevates emerging issues to the Team for consideration through the five phases of the Emerging Issue Process:
 1. Preliminary evaluation of submission
 2. Risking assessment and approval
 3. Submission development
 4. Compliance strategy recommendation and approval (high risk issues only)
 5. Implement compliance strategy, risk mitigations, and exit strategy

Note: These phases will be discussed in detail in the following sections and are depicted in Exhibit 4.34.1-1, SB/SE Emerging Issue Process Overview.

- 4.34.1.5.1
(10-08-2021)
Phase 1: Preliminary Evaluation of Submission
- (1) Emerging issue submissions are numbered and tracked. The Emerging Issue SPA:
 1. Acknowledges the submission and discusses the issue with the submitter,
 2. Identifies similar trending and/or recurring issues, and
 3. Reviews and updates status of the emerging issue in tracking database.
 - (2) The Emerging Issue SPA confers with the submitter, LDC, ECS/FCS, and other stakeholders to obtain additional information on issues as needed to perfect the submission, provide coordination, and to eliminate any duplication of effort.

- (3) Upon completion of the preliminary evaluation, the Emerging Issue SPA advances the emerging issue to Phase 2: Risking Assessment and Approval.

4.34.1.5.2
(10-08-2021)

**Phase 2: Risking
Assessment and
Approval**

- (1) The Emerging Issue SPA presents the issue to the Team. The Team gathers issue information and research as needed for additional issue assessment and a compliance risk determination. The Team also collaborates with SB/SE stakeholders, such as the submitter; Subject Matter Expert (SME); Issue Champion; Counsel; the LDC; and ECS, and other BODs/FODs if also affected by the issue.
- (2) The Team assesses the issue's compliance risk as high, medium, or low risk level utilizing data analysis and risk assessment tools. The Team also identifies potential compliance activities.
- (3) The purpose of using risk assessment tools is to determine an emerging issue's strategic importance and compliance impact in a consistent manner. These tools should be used with other relevant information and factors to allocate compliance resources to target emerging risk areas. By utilizing these tools, each issue will be designated as being a high priority issue or a medium/low priority issue defined as follows:
 - High Priority: Issues having high strategic importance and significant compliance risk.
 - Medium/Low Priority: Issues having important compliance risk, but may affect a relatively small number of taxpayers, or the issue has been sufficiently addressed with legal guidance.
- (4) If the assessment identifies an issue as medium or low risk, the Team advances the issue to Phase 3A to consider recommendation of risk mitigations for medium and low risk issues.
- (5) If the assessment identifies an issue as high risk, the Team recommends the development of a compliance strategy to the Panel. The Team prepares a summary briefing to request approval of the high risk prioritization and development of a compliance strategy (Executive Decision Point #1 in the Emerging Issue Process). If approved, the Team advances the issue to Phase 3B.
- (6) If the Panel does not approve the high risk prioritization and development of a compliance strategy, the Team advances the issue to Phase 3A to consider recommendation of risk mitigations for medium and low risk issues.

4.34.1.5.3
(10-08-2021)

**Phase 3: Submission
Development**

- (1) This phase is divided into 3A: Submission Development - Medium and Low Risk Issues, and 3B: Submission Development - High Risk Issues, due to the differences in the process for each issue category.
- (2) For both 3A and 3B, the Team collaborates with stakeholders including, but not limited to, affected field personnel; Counsel; and issue specialists, as needed throughout the duration of the process to consider risk mitigations as appropriate. Affected ad hoc Team members will be included as indicated in the Charter for cross-BOD/FOD collaboration.

4.34.1.5.3.1
(10-08-2021)

**Phase 3A: Submission
Development - Medium
and Low Risk Issues**

- (1) The Team oversees Phase 3A in the development and selection of the risk mitigations of the medium and low risk issues. Most issues will fall into this category.
- (2) The Team determines appropriate risk mitigations or determines that no action is required. Possible risk mitigations may include one or more of the following:
 - Examination activity, including CIPs
 - Soft letter/notice campaign to taxpayers
 - Examiner issue awareness and training
 - Taxpayer/preparer education and outreach
 - Published guidance/change in law
 - Tax form/publication revision
 - Administrative guidance
 - Other activities as identified
 - No action
- (3) Once the Team determines the appropriate risk mitigations, the Team advances the medium or low risk issue to Phase 5. If the Team determines that no risk mitigations are appropriate, the Emerging Issue SPA inactivates the issue on the tracking database, but the information is retained for additional similar trending/recurring submissions.

4.34.1.5.3.2
(10-08-2021)

**Phase 3B: Submission
Development - High Risk
Issues**

- (1) The Team will conduct an in-depth analysis and gather information on the high-risk issue to include:
 - Issue overview discussion
 - Compliance risk assessment
 - Risk level and exam strategy
 - Recommendation on compliance strategy
- (2) Once analysis and information gathering are complete, the Team advances the issue to Phase 4.

4.34.1.5.4
(10-08-2021)

**Phase 4: Compliance
Strategy
Recommendation and
Approval (High Risk
Issues Only)**

- (1) The Team's data and preliminary recommendation on a compliance strategy are shared with affected stakeholders, which may include examiners, managers, and Counsel from all affected BODs/FODs to get input.
- (2) The Team develops a compliance strategy and exit strategy recommendation, determines resources needed, and recommends roles and responsibilities for implementation and exit.
- (3) The Team prepares and delivers a briefing on recommendations to the Panel, which may include the following compliance strategies:
 - Examination activity, including CIPs
 - Soft letter/notice campaign to taxpayers
 - Examiner issue awareness and training
 - Taxpayer/preparer education and outreach
 - Published guidance/change in law
 - Tax form/publication revision
 - Administrative guidance
 - Other activities as identified
 - No action

- (4) If the Panel approves the compliance strategy and implementation (Executive Decision Point #2), the Team advances the high risk issue to Phase 5.
- (5) If the Panel does not approve the compliance strategy and implementation, the Team will address any feedback from the Panel and consider gathering additional information to support the strategy or an alternative strategy for the issue. Alternatively, the issue may be downgraded to medium or low risk and routed to Phase 3A.

4.34.1.5.5
(10-08-2021)

**Phase 5: Implement
Compliance Strategy,
Risk Mitigations, and
Exit Strategy**

- (1) The Team implements the approved compliance strategy for high risk issues or the risk mitigations on medium and low risk issues.
- (2) The Team monitors the compliance strategy or risk mitigations' results and modifies the process as needed with input from stakeholders.
- (3) The Team evaluates the overall compliance strategy or risk mitigations implementation to determine if the emerged issue is ready for closure/exit.
- (4) For medium and low risk issues, the Team determines and implements an exit strategy. Once the exit strategy is complete, the Emerging Issue SPA closes the issue on the tracking database.
- (5) For high risk issues, the Team prepares an executive briefing to the Panel to recommend an exit strategy along with a recommendation for continued compliance support.
- (6) If the Panel approves the implementation of the exit strategy (Executive Decision Point #3), the Emerging Issue SPA closes the issue on the tracking database.
- (7) If the Panel does not approve the implementation of the exit strategy, the Team revises the exit strategy or continues monitoring the compliance strategy results. The Team continues to reevaluate the overall compliance strategy implementation to determine when the emerging issue is ready for closure/exit.

Exhibit 4.34.1-1 (10-08-2021)**SB/SE Emerging Issue Process Overview**

