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Department of the Treasury
Internal Revenue Service

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PURPOSE

- (1) This transmits revised IRM 9.5.5, Money Laundering and Currency Crimes.

MATERIAL CHANGES

- (1) IRM Subsection 9.5.5.3.4, paragraph (2) is revised to delete Personally Identifiable Information (PII) and/or Federal Tax Information (FTI).

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.5.5 dated February 27, 2015. This IRM was reviewed to ensure content is free from Personally Identifiable Information (PII) and/or Federal Tax Information (FTI), as implemented by the Director, Privacy Policy and Compliance Privacy, Governmental Liaison and Disclosure (PGLD), guidance memorandum dated: April 27, 2020, [Subject: "PII and FTI Review of current Internal Revenue Manuals (IRMs)"].

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9.5.5
Money Laundering and Currency Crimes

Table of Contents

- 9.5.5.1 Overview
- 9.5.5.2 Money Laundering-Title 18 Violations
 - 9.5.5.2.1 Title 18 USC §1956
 - 9.5.5.2.1.1 Title 18 USC §1956(a)(1), Domestic Financial Transactions
 - 9.5.5.2.1.2 Title 18 USC §1956(a)(2), International Transportation of Monetary Instruments or Funds
 - 9.5.5.2.1.3 Title 18 USC §1956(a)(3), Sting Operations
 - 9.5.5.2.1.4 Title 18 USC §1956(h), Conspiracy
 - 9.5.5.2.1.5 Definitions of Terms in Title 18 USC §1956, Violations
 - 9.5.5.2.1.5.1 Definition of Proceeds of Specified Unlawful Activity
 - 9.5.5.2.1.5.2 Definition of Knowing that the Property Involved...
 - 9.5.5.2.1.5.3 Definition of Intent to Promote...
 - 9.5.5.2.1.5.4 Definition of Conducts
 - 9.5.5.2.1.5.5 Definition of to Conceal or Disguise or Intent to Engage in Conduct
 - 9.5.5.2.1.5.6 Definition of Money Laundering Transaction
 - 9.5.5.2.1.5.7 Definition of Financial Transaction
 - 9.5.5.2.1.5.8 Definition of Monetary Instrument
 - 9.5.5.2.1.5.9 Definition of Financial Institution
 - 9.5.5.2.1.5.10 Definition of Avoiding a Transaction Reporting Requirement
 - 9.5.5.2.1.5.11 Definition 18 USC §1956(a)(3), Represented
 - 9.5.5.2.2 Title 18 USC §1957 Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity
 - 9.5.5.2.2.1 Definitions of Terms for Use in Title 18 USC §1957 Violations
 - 9.5.5.2.2.1.1 Definition of Monetary Transaction
 - 9.5.5.2.2.1.2 Definition of Criminally Derived Property
 - 9.5.5.2.3 Title 18 USC §1960, Prohibition of Unlicensed Money Transmitting Business
 - 9.5.5.2.4 Title 18 USC §1028 and 18 USC §1028A, Identity Theft
- 9.5.5.3 Title 31 Violations
 - 9.5.5.3.1 Title 31 Investigation of a Financial Institution
 - 9.5.5.3.2 Investigation of Title 31 Violations – Non Financial Institution
 - 9.5.5.3.3 Reports and Recordkeeping and Registration Required Under Title 31
 - 9.5.5.3.3.1 Reports Required by the Bank Secrecy Act - Title 31
 - 9.5.5.3.3.1.1 Currency Transaction Report (FinCEN Form 104)
 - 9.5.5.3.3.1.2 Currency Transaction Report by Casinos (FinCEN Form 103)
 - 9.5.5.3.3.1.3 Report of Foreign Bank and Financial Accounts (FBAR) (TD Form 90–22.1)

-
- 9.5.5.3.3.1.4 Report of International Transportation of Currency or Monetary Instruments (CMIR)
FINCEN Form 105 (formerly Customs Form 4790)
 - 9.5.5.3.3.1.5 Suspicious Activity Report (SAR) Forms
 - 9.5.5.3.3.2 Recordkeeping Required by Title 31
 - 9.5.5.3.3.2.1 Records Required by Persons with Foreign Financial Accounts
 - 9.5.5.3.3.2.2 Records to be Retained by Financial Institutions
 - 9.5.5.3.3.2.3 Additional Records to be Retained by Brokers or Dealers in Securities
 - 9.5.5.3.3.2.4 Additional Records to be Retained by Casinos
 - 9.5.5.3.4 Geographic Targeting Orders
 - 9.5.5.3.5 Title 31 Summons
 - 9.5.5.3.6 Money Laundering Form 8300, 26 USC §6050I Violations
 - 9.5.5.3.6.1 Definitions of Terms used in 26 USC §6050I (Defined by IRS Regulations)
 - 9.5.5.3.6.2 Form 8300 Filing Requirements
 - 9.5.5.4 The Money Laundering Investigation and Disclosure
 - 9.5.5.4.1 Pure Money Laundering Investigations vs. Concurrent Tax and Money Laundering Investigations
 - 9.5.5.4.2 Grand Jury vs. Administrative Investigation
 - 9.5.5.4.3 Database Queries
 - 9.5.5.4.4 Title 26 USC §6103 Disclosure Provisions for Money Laundering Investigations
 - 9.5.5.4.5 Pure Money Laundering Investigations Involving Information Not Protected by USC §6103
 - 9.5.5.4.6 Use of Tax Information in Tax or Tax-Related Money Laundering Investigations
 - 9.5.5.4.7 Use of Tax Information in Pure Money Laundering Investigations
 - 9.5.5.4.8 Use and Disclosure/Dissemination of Title 31 Report Information- Treasury Dissemination and Title 26 Return Information (Form 8300)
 - 9.5.5.4.8.1 Return Information – Form 8300
 - 9.5.5.4.8.2 Bank Secrecy Act Report Information
 - 9.5.5.4.8.3 Use and Disclosure of Form 8300 Information Filed Prior to January 1, 2002
 - 9.5.5.4.8.4 Authority to Release Form 8300 Information Filed Prior to January 1, 2002
 - 9.5.5.4.8.5 Procedure for Disseminating Form 8300 Information Filed Prior to 01-01-2002
 - 9.5.5.5 Prosecution Recommendations and Civil Referrals
 - 9.5.5.6 Requests for Witnesses to Testify
 - 9.5.5.6.1 Witnesses to Testify for Filing of CTRs, FBARs, and Forms 8300
 - 9.5.5.6.2 Money Laundering Expert Witnesses
 - 9.5.5.7 Whistle-blower Protection and Awards in Money Laundering Investigations
 - 9.5.5.8 Use of Money Laundering Posters
- Exhibits
- 9.5.5-1 Bank Secrecy/8300 Disclosure Log

9.5.5.1
(02-15-2008)
Overview

- (1) Money laundering is the process of disguising criminal proceeds and may include the movement of clean money through the United States with the intent to commit a crime in the future (e.g., terrorism). Common methods include disguising the source of the proceeds; changing the form of the proceeds; or moving the proceeds to a place where the proceeds are less likely to attract attention. The object of money laundering is ultimately to get the proceeds back to the individual who generated them. Money laundering is a necessary consequence of almost all profit generating crimes and can occur almost anywhere in the world. Money laundering is a threat to the United States tax system in that taxable illegal source proceeds go undetected along with some taxable legal source proceeds from tax evasion schemes. Both schemes use nominees, currency, multiple bank accounts, wire transfers, and international “tax havens” to avoid detection. This untaxed underground economy ultimately erodes public confidence in the tax system.
- (2) The National Money Laundering Strategy, established by the Secretary of the Treasury and the Attorney General, describes the goals, objectives and priorities for combating money laundering, terrorism and related financial crimes. Tax and money laundering violations are closely related and the Internal Revenue Service (IRS) has used the money laundering statutes to combat tax evasion.
- (3) The other operating divisions of the IRS coordinate to review data collected in compliance with the requirements of the money laundering statutes and Title 31 Bank Secrecy Act (BSA).
- (4) Criminal Investigation (CI) enforces the money laundering statutes relative to legal source income tax crimes (i.e., abusive trusts, offshore tax evasion schemes and corporate evasion schemes); large scale narcotics crimes (through the Organized Crime and Drug Enforcement Task Force (OCDETF) program); and non-narcotics illegal income tax crimes (i.e., illegal gambling and bankruptcy fraud). Criminal Investigation is also responsible for enforcing the BSA statutes under Title 31. Bank Secrecy Act information includes Currency Transaction Reports (CTR), and Suspicious Activity Reports (SAR), Reports of Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300), Reports of Foreign Bank and Financial Accounts (FBAR), Registration of Money Services Business (RMSB) and Report of International Transportation of Currency and Monetary Instrument (CMIR). The Internal Revenue Code (IRC) in Title 26 also contains reporting requirements on a Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business. Money laundering activity may violate 18 USC §1956, 18 USC §1957, 18 USC §1960, and provisions of Title 31, and 26 USC §6050I of the United States Code (USC). This section will discuss only those money laundering and currency violations under the jurisdiction of IRS, CI. These include:
 - Money Laundering - Title 18 Violations and lesser included offenses
 - Money Laundering/Currency Crimes - Title 31 Violations
 - Money Laundering - Form 8300 Violations
 - Definitions and Terms of Legal Applications
 - Forfeitures in Money Laundering Investigations
 - Money Laundering Expert Witness Cadre
 - Use of Money Laundering Posters
- (5) Money laundering statutes apply to transactions occurring after the completion of the underlying criminal offense. The same transaction cannot be both a money laundering offense and the underlying specified unlawful activity (SUA)

that generated the funds being laundered. For example, the initial drug deal between buyer and seller is not a transaction involving SUA proceeds because money exchanged for drugs is not proceeds at the time the exchange took place (*US v. Puig-Infante*, 19 F.3d 929 (5th Cir. 1994)).

- (6) The applicable sections of IRM Part 9 and Law Enforcement Manual (LEM) 9 should be referred to for the authorization and use of undercover operations, consensual monitoring, informants, confidential and non-confidential expenditures, search warrants, and other investigative tools in money laundering investigations.
- (7) See IRM 9.4.13, Financial Investigative Task Force regarding the participation of the various task forces that conduct money laundering investigations.

9.5.5.2
(08-27-2007)

Money Laundering-Title 18 Violations

- (1) Title 18 USC §1956 and 18 USC §1957, were brought into existence by the Money Laundering Control Act of 1986, which has since been expanded. In general, these statutes prohibit knowingly engaging in financial transactions using funds derived from a SUA. Title 18 USC §1956 investigations have no dollar amount limit, other than that found in the LEM, and no requirement that a financial institution be involved; 18 USC §1957 prohibits monetary transactions over \$10,000 or an aggregate of money transactions over \$10,000 of criminally derived funds obtained from a SUA while utilizing a financial institution.
- (2) Lesser-included offenses in money laundering investigations include:
 - 18 USC §2 (aiding and abetting)
 - 18 USC §371 or 18 USC §1956(h) (conspiracy)
 - 18 USC §1001 (false statements)
 - 18 USC §1510(b)(3)(B)(i) (obstruction of 18 USC §1956 or 18 USC §1957 or Title 31 investigations)
 - 18 USC §1621 (perjury)
 - 18 USC §1960 (illegal money transmitting business)
 - 31 USC §5322 (Title 31 criminal penalties)
 - 31 USC §5324 (structuring)
 - 31 USC §5332 (bulk cash smuggling)
 - 18 USC §1028 and 18 USC §1028A (identity theft)

Note: Refer to LEM 9.14.1, Criminal Investigation Official Use Only Procedures for criteria relating to prosecution recommendations for violations of 18 USC §1956, 18 USC §1957 and Title 31.

- (3) The list of SUAs change periodically and special agents should consult 18 USC §1956(c)(7), for a definition of the term “specified unlawful activity”. For a complete list of offenses visit: http://assembler.law.cornell.edu/uscode/html/uscode18/uscode18_usc_sec_18_00001956----000-.html. The government must prove that the transaction proceeds under 18 USC §1956(a)(1) were in fact derived from a SUA, or in the instance of 18 USC §1956(a)(3), represented money derived from SUA. Specified unlawful activities go far beyond narcotics related offenses and include, in part, bankruptcy fraud, health care fraud, and insurance fraud. Title 26 and Title 31 offenses are not SUAs. A SUA includes:
 - a. offenses listed as predicate acts under the Racketeer Influenced and Corrupt Organizations Act (RICO) statute of 18 USC §1961(1)
 - b. a separate list of non-RICO offenses set forth in 18 USC §1956(c)(7)

- (4) An August 1990 Memorandum of Understanding (MOU) between Department of the Treasury, the Postal Service, and Department of Justice (DOJ) requires that the IRS show Title 26 or Title 31 violations also exist in order to have jurisdiction over 18 USC §1956 or 18 USC §1957. The Title 26 or Title 31 activity requirement may be waived if no other agency objects or, if after positions are made known by each concerned agency, it is resolved to give the IRS jurisdiction.
- (5) A five year criminal statute of limitations applies to all money laundering violations of 18 USC §1956 and 18 USC §1957. The five year statute also applies to violations of 18 USC §1960 absent any other specific provision. The statute of limitations runs from the date on which the money laundering offense was completed.
- (6) Venue for money laundering offenses under 18 USC §1956 or 18 USC §1957 exist in:
 - any judicial district in which the financial or monetary transaction is conducted, or
 - any judicial district where a prosecution for the underlying SUA could be brought, if the defendant participated in the transfer of proceeds from the SUA from that judicial district to where the financial or monetary transaction is conducted

9.5.5.2.1
(08-27-2007)
Title 18 USC §1956

- (1) Title 18 USC §1956 is the basic Title 18 money laundering offense. It has three specific parts. They are:
 - 18 USC §1956(a)(1), Domestic Financial Transactions
 - 18 USC §1956(a)(2), International Transportation of Monetary Instruments or Funds
 - 18 USC §1956(a)(3), Sting Operations
- (2) The criminal penalty for a violation of 18 USC §1956(a)(1) and (2) is a fine of up to \$500,000 or twice the value of the monetary instruments involved, whichever is greater, or imprisonment of up to 20 years, or both; and for a violation of 18 USC §1956(a)(3) an undetermined fine, or imprisonment of up to 20 years, or both.
- (3) Title 18 USC §1956(b) provides that violators under 18 USC §1956(a)(1) or (2) are also liable for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction, or \$10,000. The civil penalty is intended to be imposed in addition to any criminal fine.
- (4) The Federal Deposit Insurance Act provides that individuals convicted of 18 USC §1956, or conspiracy to do so, shall be precluded from all affiliation with an Federal Deposit Insurance Company (FDIC) insured institution, including employment or ownership, for a minimum of 10 years from the date of conviction.
- (5) Title 18 USC §1956(h) and 18 USC §1957 do not carry corresponding civil penalties.

9.5.5.2.1.1
(08-27-2007)
**Title 18 USC §1956(a)(1),
Domestic Financial
Transactions**

- (1) With respect to 18 USC §1956(a)(1), the government must show each of the following elements:
 - a. the defendant conducted or attempted to conduct
 - b. a financial transaction
 - c. knowing that the property involved in the transaction represented the proceeds of some form of unlawful activity
 - d. which in fact involved the proceeds of SUA with one of the following specific intents listed in paragraph (2).
- (2) Without proof of one of these four specific intents, there is no crime.
 - a. Title 18 USC §1956(a)(1)(A)(i) acting with the intent to promote the carrying on of SUA
 - b. Title 18 USC §1956(a)(1)(A)(ii) acting with the intent to engage in conduct which violates 26 USC §7201 or 26 USC §7206
 - c. Title 18 USC §1956(a)(1)(B)(i) acting with the knowledge that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the SUA
 - d. Title 18 USC §1956(a)(1)(B)(ii) acting with the knowledge that the transaction is designed in whole or in part to avoid a Federal or state transaction reporting requirement
- (3) Special agents are cautioned to avoid charging 18 USC §1956(a)(1)(B)(i) in instances when a subject makes a purchase with illegal proceeds and titles the asset in his/her own name, without any additional sign of intent to conceal or disguise.

9.5.5.2.1.2
(08-27-2007)
**Title 18 USC §1956(a)(2),
International
Transportation of
Monetary Instruments or
Funds**

- (1) With respect to 18 USC §1956(a)(2), the government must prove the elements that a defendant:
 - a. transports, transmits or transfers (or attempts to do so)
 - b. a monetary instrument or funds
 - c. from a place in the United States to or through a place outside the United States; or, to a place in the United States from or through a place outside the United States with one of the following intents listed in paragraph (2)
- (2) The specific intent is either:
 - a. Title 18 USC §1956(a)(2)(A) with the intent to promote a SUA
 - b. Title 18 USC §1956(a)(2)(B) with the knowledge that the funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part to under (18 USC §1956(a)(2)(B)(i) conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the SUA); or to avoid a Federal or state transaction reporting requirement under 18 USC §1956(a)(2)(B)(ii)
- (3) Unlike the corresponding provision in 18 USC §1956(a)(1)(A)(i), there is no requirement in 18 USC §1956(a)(2) that the monetary instrument or funds be the product of unlawful activity. Title 18 USC §1956(a)(2)(B)(i) requires proof that the defendant knew that the monetary instruments or funds involved **represented** the proceeds of some form of unlawful activity. But this provision does not require the government to prove that the property was, in fact, the

proceeds of an SUA. Therefore, offenses under 18 USC §1956(a)(2)(A) can involve legally derived funds used to promote an SUA.

- (4) Under this section, the movement of funds does not include tax evasion. Tax evasion is not an SUA and intent to evade tax is not an enumerated intent of the transportation offense.

9.5.5.2.1.3
(08-27-2007)
**Title 18 USC §1956(a)(3),
Sting Operations**

- (1) Title 18 USC §1956(a)(3) is a sting provision that allows for undercover operations where the government, or a direct informant, represents funds as being derived from a SUA. This subsection was added to the statute expressly to permit prosecution where the defendant believes the proceeds were derived from a SUA because of a representation made by a law enforcement officer (LEO) or an informant working under the LEO's control. The elements include that a defendant conducts or attempts to conduct a financial transaction involving property represented by a LEO or another person at the LEO's direction, to be either:
 - a. proceeds of an SUA, or
 - b. property used to conduct or facilitate an SUA
- (2) The government must prove that the defendant's intent was to:
 - a. promote the carrying on of an SUA - Title 18 USC §1956(a)(3)(A);
 - b. conceal or disguise the nature, location, source, ownership, or control of property represented to be proceeds of the SUA - Title 18 USC §1956(a)(3)(B); or
 - c. avoid a Federal or state transaction reporting requirement - Title 18 USC §1956(a)(3)(C)
- (3) Under 18 USC §1956(a)(1), it is an offense to take known drug money and intentionally engage in a financial transaction. However, it is not a money laundering offense to engage in a financial transaction in a drug deal if the money was not the proceeds of an SUA before the transaction began. Therefore, an undercover agent or directed informant must represent that the money involved in a financial transaction is the proceeds of some past criminal activity (or property used to facilitate past criminal activity).
- (4) Criminal Investigation or the attorney for the government must decide how far to let a sting operation go to satisfy the financial transaction element. Circumstantial evidence will have to be used to show intent if an arrest is made before a defendant does anything with funds received from an undercover agent or a directed informant. In such instances, the delivery of funds must satisfy the definition of a financial transaction, the undercover agent or directed informant must properly represent the funds as being proceeds of a past SUA, and a defendant must accept the funds with one of the intents set forth in 18 USC §1956(a)(3)(A), (B) or (C).
- (5) Defenses in undercover operations include entrapment, i.e., government inducement or a lack of predisposition by a defendant to commit a crime, and outrageous government conduct whereby the government violates a defendant's constitutional rights. A review of predisposition must be made in any undercover operation, especially for a first-time offender with nothing criminal in his/her background.
- (6) The sting provision does not include conduct intended to evade tax.

- 9.5.5.2.1.4
(11-04-2004)
**Title 18 USC §1956(h),
Conspiracy**
- (1) Department of Justice has directed that conspiracy to violate 18 USC §1956 or 18 USC §1957 will be charged under 18 USC §1956(h), and not under 18 USC §371.
- 9.5.5.2.1.5
(11-04-2004)
**Definitions of Terms in
Title 18 USC §1956,
Violations**
- (1) The following is intended to assist the special agent in identifying the elements of 18 USC §1956 violations. The statutory language has been interpreted by the government and the courts and may not be applicable in all investigations and in all jurisdictions. Special agents must work closely with the attorney for the government to ensure the local jurisdictional court rulings are applied to the facts and evidence of each investigation.
- 9.5.5.2.1.5.1
(08-27-2007)
**Definition of Proceeds of
Specified Unlawful
Activity**
- (1) Proceeds is not statutorily defined. It has been interpreted to include more than the money derived from unlawful activity. It may include:
- a line of credit
 - real property
 - uncashed checks
 - inventory acquired in a fraud scheme
 - assets concealed in bankruptcy fraud
- (2) Circumstantial evidence is sufficient to prove that a transaction involved proceeds of a SUA, e.g., evidence that a defendant traffics drugs, has large amounts of currency, and has no or little legitimate income is sufficient. Because this is a criminal matter, each element of the crime must be proved beyond a reasonable doubt, including any elements proved by circumstantial evidence.
- (3) It is critical to determine when property or funds become the proceeds of an underlying crime. Money in a consummated drug transaction becomes proceeds; any subsequent transaction could be charged as a money laundering offense, e.g., an automobile purchased with SUA funds qualifies as proceeds. The definition of when funds become SUA proceeds in transactions that involve a middleman is based on the party employing the middleman. If a victim in a fraud scheme sends an innocent party to deliver funds to a defendant, the funds become proceeds upon receipt by the defendant; whereas, if the defendant sends an innocent assistant to receive funds, the funds become proceeds upon receipt by the assistant.
- (4) Defendants often commingle SUA proceeds with legitimate funds. The government need not prove that all proceeds in a transaction were unlawfully derived, but must be able to trace some of the proceeds to a SUA. Criminally derived proceeds deposited with legal funds are considered to be withdrawn last unless the account/business is deemed to be **permeated with fraud**. This implies that the business operations are so intertwined with fraud that to segregate the legitimate operation and profits is impossible. Special agents should work closely with the attorney for the government when investigations involve commingled funds to ensure the elements of the crime are met.

9.5.5.2.1.5.2
(08-27-2007)
Definition of Knowing that the Property Involved...

- (1) The term **knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity** means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state, Federal, or foreign law, regardless of whether or not such activity is specified in 18 USC §1956(c)(7).

9.5.5.2.1.5.3
(08-27-2007)
Definition of Intent to Promote...

- (1) Title 18 USC §1956(a)(1)(A)(i): intent to promote the carrying on of specified unlawful activity:
 - a. Circumstantial evidence is sufficient to show intent for this section. The government is not required to prove that a defendant intended to violate a specific statute, but did intend to promote or facilitate an activity that he/she knew to be illegal. A violation may occur even if the promoted SUA is never completed.
 - b. A defendant can engage in financial transactions that promote not only ongoing or future activity, but also prior activity, e.g., 18 USC §1956(a)(1)(A)(i) can be charged for the deposit of funds in a mail fraud scheme which issues IRS refund checks to fictitious employees.
 - c. Under 18 USC §1956(a)(1)(A)(i), the payment of proceeds to fraud victims to entice him/her to continue to invest in a fraudulent scheme, or to keep quiet about an ongoing scheme, could be promotion.
 - d. A prosecution recommendation for the simple deposit of criminal proceeds into one’s bank account as money laundering promotion is generally not advisable.

9.5.5.2.1.5.4
(11-04-2004)
Definition of Conducts

- (1) The term **conducts** includes initiating, concluding, or participating in initiating, or concluding a transaction.

9.5.5.2.1.5.5
(08-27-2007)
Definition of to Conceal or Disguise or Intent to Engage in Conduct

- (1) Title 18 USC §1956(a)(1)(B)(i): intent to conceal or disguise the nature, source, ownership, or control of proceeds of SUA.
 - a. Circumstantial evidence may be used to show intent that a transaction’s purpose was to conceal or disguise under this section.
 - b. The government need only prove that a defendant knew a transaction was designed to conceal the nature, location, source, ownership or control of proceeds of some felonious activity, that were, in fact, from an SUA. The evidence can include using a third party’s name or business account or commingling illegal funds with legitimate funds.
 - c. The government need only show that a defendant had knowledge a transaction was designed to conceal illegal activity proceeds and not that a defendant had the purpose of concealing illegal activity proceeds. This applies to individuals who are willfully blind. The majority of courts ruling in this area have held that converting proceeds into goods or services can violate 18 USC §1956(a)(1)(B)(i) if the expenditures demonstrate an ulterior design to conceal or disguise.

Note: The US Sentencing Commission as said simple “receipt and deposit” of SUA proceeds causes little or no harm to society and simply constitutes the completion of an underlying offense. Courts have held there is no intent to conceal by the mere deposit of funds into an account. Therefore, prosecution of a receipt and deposit

transaction should only be recommended for transactions that involve the movement or spending of funds subsequent to an initial deposit.

- (2) Title USC 18 §1956(a)(1)(A)(ii): intent to engage in conduct constituting a violation of 26 USC §7201 or 26 USC §7206.
- a. Under this section, a defendant's objective is to engage in conduct constituting a violation of 26 USC §7201 or 26 USC §7206.
 - b. An individual may be prosecuted under 18 USC §1956(a)(1)(A)(ii) for engaging in a money laundering financial transaction with the intent to violate 26 USC §7201 even where the tax year has not yet concluded and the tax return has not yet been filed. However, there must be some proof that the person engaged in the financial transaction was aware the transaction related in some way to an intended violation of 26 USC §7201 or 26 USC §7206.
 - c. Title 18 USC §1956(a)(1)(A)(ii) does not limit the type of tax or the type of document submitted. Also, the tax involved need not be the tax of the person engaging in the financial transaction, i.e., the statute can apply to a person who intends to assist another person in violating the tax laws.
 - d. Absent exceptional circumstances, DOJ, Tax Division will not authorize a 18 USC §1956(a)(1)(A)(ii) charge in tax crimes involving mail, wire, or bank fraud when a tax return or other IRS form or document is the only mailing charged, or when the only wire transmission to the IRS involves a tax return or other IRS form, or the transmission of a refund check to a bank account by an electronic funds transfer, or when the mailing, wire transfer, or representation charged is incidental to the underlying violation of Internal Revenue laws.

9.5.5.2.1.5.6
(11-04-2004)

**Definition of Money
Laundering Transaction**

- (1) By statute, the term **transaction** includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.
- (2) The courts and the government have ruled or taken the following positions relating to the term **transaction**:
- a) An exchange of cash between two drug dealers arguably is a transaction under the general definition, i.e., a **transfer** or other **disposition** (DOJ).
 - b) Mere transportation of funds within the United States or mere possession of supposed drug cash without a subsequent disposition **ARE NOT** transactions (Courts).
 - c) Each transaction involving **dirty money** is intended to be a separate offense, e.g., a drug dealer who divides \$1 million in drug money into smaller lots and deposits it in 10 different banks has committed 10 violations, and two more violations if he/she withdraws some of the money and purchases a car and a boat (Congress).

9.5.5.2.1.5.7
(08-27-2007)

**Definition of Financial
Transaction**

- (1) The term **financial transaction** as defined by 18 USC §1956(c)(4) specifies that a transaction must meet one of four requirements to be a **financial transaction**:

- a. Transactions involving the movement of funds by wire or other means that in any way affects interstate or foreign commerce. The courts have affirmed the following movement of funds to be financial transactions: giving a check in exchange for cash, sending cash through the mail, transfer of a box of currency from one person to another person, various transfers of currency from a defendant's house to vehicles parked outside and the movement of drug money from an undercover agent to another person who intended to carry the money in interstate travel.
- b. Transactions involving the use of a monetary instrument that in any way affects interstate or foreign commerce. This includes a transfer of cash or any other monetary instrument from one person to another without involvement of a financial institution.
- c. Transactions involving the transfer of title to any real property, vehicle, vessel, or aircraft (as of October 28, 1992) that in any way affects foreign or interstate commerce, e.g., a transfer of title of a vehicle from one person to another person.
- d. Transactions involving a financial institution, as defined by 18 USC §1956(c)(6) and 31 USC §5312(a)(2) or 31 CFR 103.11, that is engaged in, or the activities of which affect interstate or foreign commerce. A court found a financial services company which received and invested funds to be a financial institution because it behaved like a bank. Car dealers, pawnbrokers, and precious metal dealers are also considered financial institutions.

- (2) The courts have affirmed Congress' determination that property derived from narcotics trafficking affects interstate commerce.
- (3) The courts have interpreted funds movement broadly, but they have ruled that mere possession of drug money in one's house and mere transportation of funds by car or airplane *are not* financial transactions.

9.5.5.2.1.5.8
(08-27-2007)
Definition of Monetary Instrument

- (1) The term **monetary instrument** is defined as:
 - a. coin or currency of the United States or of any other country
 - b. traveler's checks, personal checks, bank checks, and money orders, or
 - c. investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery

9.5.5.2.1.5.9
(08-27-2007)
Definition of Financial Institution

- (1) The term **financial institution** is defined under 31 USC §5312(a)(2). The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 amended the definition to include credit unions, commodities merchants, non-financial trades and businesses and informal money transfers systems which include underground banking systems, black market peso exchanges and **hawalas**.

Note: Alternate remittance systems represent informal or unregulated means of transferring value between or among multiple locations. Often these systems are comprised of geographic networks and are described by a variety of specific terms depending on the region or community they serve. **Hawala** is the term often used to describe alternative remittance systems or services in the Middle East.

9.5.5.2.1.5.10
(08-27-2007)

Definition of Avoiding a Transaction Reporting Requirement

- (1) Legislative history has held the term **avoid** is synonymous with **evade** as it is used in 18 USC §1956(a)(1)(B)(ii) and 18 USC §1956(a)(2)(B)(ii), i.e., knowing that the transaction is designed in whole or in part to avoid a transaction reporting requirement under state or Federal law.

Note: For example, if A gave his/her cocaine profits to B to launder through a network of smurfs, B could be charged with 18 USC §1956(a)(1)(B)(ii) even if he/she was unaware that the funds actually came from a SUA provided that it could be shown that B knew the funds came from some form of unlawful activity.

Note: A smurf is an individual(s) who makes numerous same-day currency deposits of less than \$10,000, usually at several different banks, to evade the filing of CTRs. The act of conducting such transactions is termed “smurfing”.

9.5.5.2.1.5.11
(08-27-2007)

Definition 18 USC §1956(a)(3), Represented

- (1) The term **represented** in this subsection means any representation made by either a law enforcement officer or by another person at the direction or approval of a Federal official who is authorized to investigate or prosecute 18 USC §1956(a)(3) violations. Explicit representations need not be made, but are preferred.

- (2) Title 18 USC §1956(a)(1) and 18 USC §1956(a)(3) are parallel statutes, i.e., they address the same conduct and punish the same wrong. The requirement of subsection 18 USC §1956(a)(3) that the property be represented as either the proceeds of a SUA or as being used to facilitate or conduct criminal activity replaces the knowledge and proceeds requirements of 18 USC §1956(a)(1).

- (3) It is an offense if an undercover agent explicitly says, **this is drug money**, and a defendant uses (or attempts to use) the money to conduct a financial transaction to promote a future SUA (buying a vessel to ship drugs), or to conceal or disguise the ownership of money (wires to a fictitious corporate account), or to violate a currency reporting requirement (structured check purchases). It is also an offense if an undercover agent says, **this airplane is used to smuggle drugs**, and a defendant then engages in a financial transaction that involves the property with one of the specific intents.

- (4) In contrast, as an example of an implied representation, a jury could infer that a defendant knew certain funds were drug money by a veiled reference from an undercover agent to a co-conspirator that their currency exchange should charge higher commissions due to the dangers in dealing with drug dealers. The courts have held that it is enough for an undercover agent to make a defendant aware of circumstances from which a reasonable person would infer that certain property was criminal proceeds. Also, the government need not recite the alleged source of represented funds during each transaction in a sting operation.

9.5.5.2.2
(08-27-2007)

Title 18 USC §1957 Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

- (1) Title 18 USC §1957 prohibits an actual or an attempted monetary transaction of over \$10,000 in SUA proceeds.

- (2) To prove a violation of 18 USC §1957, the government must prove:
- a. the defendant knowingly
 - b. engaged in, or attempted to engage in

- c. a monetary transaction (i.e., a transaction by, through or to a financial institution)
 - d. in criminally derived property of a value in excess of \$10,000 **and** the property is derived from SUA
- (3) The statute does not require that these funds be used for any additional criminal purpose or that the defendant engage in the transaction with any specific intent. Simply spending the proceeds violates this statute.
 - (4) This statute applies not only of a person who engages in a monetary transaction with a financial institution knowing the cash is criminal proceeds, but also to a financial institution employee who accepts cash knowing it is criminal proceeds. An individual who initiates and then benefits from a transaction that was effected by another individual or entity, can be charged with the direct charge or as an aider and abettor, e.g., a person who uses nominees to purchase real estate.
 - (5) Department of Justice Asset Forfeiture and Money Laundering Section must approve any prosecution of an attorney under 18 USC §1957 for the receipt and deposit of funds allegedly derived from a SUA.
 - (6) Title 18 USC §1957 is the equivalent of a financial transaction offense under §1956(a)(1) except that the specific intent requirements are replaced by the requirement that the (monetary) transaction involve an amount over \$10,000 **and** a financial institution as defined in 18 USC §1956. Title 18 USC §1956(a)(1) requires proof of a particular purpose or knowledge (e.g. intent to promote an SUA), whereas 18 USC §1957 does not.
 - (7) The criminal penalty for a violation of 18 USC §1957 is a fine in accordance with 18 USC §3571 – 18 USC §3574 (or up to twice the amount of the criminally derived property involved in the transaction), up to 10 years imprisonment, or both.
 - (8) Title 18 USC §1957 does not carry corresponding civil penalties.

9.5.5.2.2.1
(08-27-2007)
Definitions of Terms for Use in Title 18 USC §1957 Violations

- (1) The following is intended to assist the special agent in identifying the elements of 18 USC §1957 violations. The statutory language has been interpreted by the government and the courts and may not be applicable in all investigations and in all jurisdictions. Special agents must work closely with the attorney for the government to ensure the local jurisdictional court rulings are applied to the facts and evidence of each investigation.
- (2) The terms **conducts**, **monetary instrument** and **financial institution** have the same meaning under 18 USC §1957 as under 18 USC §1956. See subsections 9.5.5.2.1.5.4, 9.5.5.2.1.5.8 and 9.5.5.2.1.5.9, respectively.

9.5.5.2.2.1.1
(08-27-2007)
Definition of Monetary Transaction

- (1) The term monetary transaction is narrower than the term financial transaction as used in 18 USC §1956. In 18 USC §1957 violations, monetary transactions require that a financial institution and at least \$10,000 be involved in the transaction.
- (2) The terms **monetary transaction** and **financial institution** mean:
 - a. the deposit, withdrawal, transfer, or exchange
 - b. in or affecting interstate or foreign commerce
 - c. of funds or a monetary instrument (as defined in 18 USC §1956(c)(5))

- d. by, through, or to a financial institution (as defined in 18 USC §1956(c)(6))
- e. including any transaction that would be a financial transaction under 18 USC §1956(c)(4)(B)
- f. but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment to the Constitution

9.5.5.2.2.1.2
(08-27-2007)

**Definition of Criminally
Derived Property**

- (1) The term **criminally derived property** means any property constituting, or derived from proceeds obtained from a criminal offense. See subsection 9.5.5.2.1.5.1, Definition of **Proceeds** of Specified Unlawful Activity.
- (2) The government must establish by direct or circumstantial proof that a defendant actually or constructively knew property involved in a financial transaction was the proceeds of some state, Federal, or foreign felonious activity and not the proceeds of a specific SUA.

9.5.5.2.3
(08-27-2007)

**Title 18 USC §1960,
Prohibition of
Unlicensed Money
Transmitting Business**

- (1) Effective October 26, 2001, 18 USC §1960 was revised to relax the scienter requirement and broaden the scope of the statute to a "general intent" crime. It is now an offense for anyone to knowingly conduct any unlicensed money transmitting business, whether or not the defendant knew that the operation was required to be licensed or that operation without a license was a criminal offense. The proceeds of illegal money transmitting businesses are subject to both civil and criminal forfeiture to under 18 USC §981(a)(1)(A) and 18 USC §982(a)(1).
- (2) The criminal penalty for a violation of 18 USC §1960 is a fine in accordance with 18 USC §3571–18 USC §3574, up to five years imprisonment, or both.
- (3) A person who violates this offense knowingly conducts, controls, manages, supervises, directs or owns all or part of an unlicensed money transmitting business by:
 - a. operating without a state license, or
 - b. failing to comply with Federal money services business (MSB) registration requirements, or
 - c. transferring money knowing the funds transmitted were criminally derived or intended to promote or support some unlawful activity
- (4) The term "money transmitting" includes transferring funds on behalf of the public by any and all means including, but not limited to transfers within the country, or to locations abroad by wire, check, draft, facsimile, or courier.
- (5) The term "State" means by any state of the United States, and the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.
- (6) "Money transmitting businesses" and "money services businesses" are terms used by Title 31 and the regulations implementing the registration requirements, respectively. These terms should be understood to encompass the same array of businesses. There are five classes of financial institutions referred to as MSBs:
 - a. currency dealers or exchangers
 - b. check cashers

- c. issuers of travelers checks or money orders
- d. sellers or redeemers of travelers checks or money orders
- e. money transmitters

Note: The US Postal Service (USPS), a bank, or any other person registered with and regulated or examined by the Security and Exchange Commission (SEC) or the Commodity Futures Trading Commission are not considered money services businesses.

- (7) Title 18 USC §1960 (b)(2) defines “money transmitting ” to include “transferring funds on behalf of the public by any and all means including but not limited to transfers within this or to locations abroad by wire, check, draft, facsimile or courier” It is not clear that check cashers and currency exchanges meet this definition for purposes of a prosecution under 18 USC §1960. The Department of Justice (DOJ), Asset Forfeiture and Money Laundering Section advises against prosecution of check cashers and currency exchanges under 18 USC §1960.
- (8) On August 20, 1999, the Department of the Treasury issued a final rule concerning application of the Bank Secrecy Act to MSBs. The rule (i) revises the definition of certain businesses for BSA purposes, and (ii) requires MSBs to register with the Department of the Treasury and maintain a list of its agents as required under 31 USC §5330. Under the final rule, MSBs must register with the Department of the Treasury by filing the form that FinCEN specifies with the IRS Detroit Computing Center (or such other location as the form may specify) and renew their registration every two years. The information required by 31 USC §5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.
- (9) Money services businesses must maintain a list of their agents, available to any appropriate law enforcement agency upon request, and update the list annually. The following information must be included on the list of agents:
 - a. the name, address, and telephone number of the agent
 - b. the type of service or services that the agent provides on behalf of the MSB maintaining the agent list
 - c. a listing of the months during the 12 months immediately preceding the date of the most recent agent list in which the agent’s gross transaction amount exceeds \$100,000 from the sale of products or services offered by the MSB maintaining the agent list
 - d. the name and address of the bank(s) at which the agent maintains transaction account(s) for all or part of the funds received from the sale of products or services offered by the MSB maintaining the agent list
 - e. the year in which the agent first became an agent of the MSB maintaining the agent list
 - f. the number of branches or subagents the agent has
- (10) Agents of MSBs are not required to register or keep a list of their own agents if they are MSBs solely because they serve as agents of other MSBs. Thus, a person that engages in MSB activities both on its own behalf and as an agent for others must register. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be an MSB, is not required to register. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders,

cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

- (11) Any person failing to comply with the registration or agent list requirement may be subject to criminal prosecution and may be assessed a civil penalty of \$5,000 for each violation. Each day during which a violation occurs constitutes a separate violation. In addition, the Secretary of the Treasury may bring a civil action to enjoin the continued violation.
- (12) On October 26, 2001, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 created the requirement that all MSBs report suspicious activities detected as of January 1, 2002.

9.5.5.2.4
(08-27-2007)

**Title 18 USC §1028 and
18 USC §1028A, Identity
Theft**

- (1) On October 1, 1998, the Identity Theft and Assumption Deterrence Act of 1998 went into effect. The Act amended 18 USC §1028 by, among other things, adding Section (a)(7) which establishes an offense for anyone who knowingly, transfers, possesses, or uses without lawful authority another person's means of identification with the intent to commit or aid or abet any unlawful activity that constitutes a violation of Federal law or a felony under any applicable state or local law.
- (2) Title 18 USC §1028, fraud and related activity in connection with identification documents and information, under Sections (a)(1)-(6) contain other provisions making it an offense to:
 - a. Knowingly and without lawful authority produce an identification document authentication feature or a false identification document.
 - b. Knowingly transfer an identification document authentication feature or a false identification document knowing such document was stolen or produced without lawful authority.
 - c. Knowingly possess with intent to use or transfer unlawfully, five or more identification documents authentication features or false identification documents.
 - d. Knowingly possess an identification document authentication feature, or a false authentication feature with the intent to use such document to defraud the United States.
 - e. Knowingly produce, transfer, or possess a document-making implement or authentication feature with the intent that it will be used to produce a false identification document.
 - f. Knowingly possess an identification document or authentication feature that is or appears to be of the United States which is stolen or produced without lawful authority, knowing such document was stolen or produced without lawful authority.
- (3) The term "means of identification" includes any name or number used alone or in conjunction with any other information to identify a specific individual.
- (4) Identity theft violations should only be utilized when it enhances the overall investigative strategy. It is not intended to be a stand-alone violation, but to assist in enhancing the investigation of Questionable Refund Program (QRP) and money laundering schemes. This violation can be charged in conjunction with money laundering violations or separately if there is insufficient evidence to support a money laundering charge. For example, during a money laundering investigation involving health care fraud, evidence of 18 USC §1028 or 18

USC §1028A are developed. Both money laundering and identity fraud charges may be charged. If the money laundering evidence is insufficient, the identity theft charges may still be recommended against the supplier of the fraudulent identities when no financial nexus exists in the underlying fraud scheme.

- (5) Civil and criminal forfeiture provisions may be applicable in money laundering investigations involving 18 USC §1028 and 18 USC §1028A under 18 USC §981(a)(1)(C) and 18 USC §982(a)(2), respectively. However, no forfeiture provisions are applicable if the identity fraud violations are directly linked to the investigation of a substantive tax charge (absent extraordinary and compelling circumstances).
- (6) Special agents should consult with Criminal Tax (CT) Counsel, DOJ, Tax Division and the attorney for the government early in the investigation when contemplating recommendation of these violations. A recommendation of 18 USC §1028 and 18 USC §1028A directly linked to a substantive tax violation will be reviewed by DOJ, Tax Division.
- (7) See 18 USC §1028 and 18 USC §1028A for additional definitions of key terms relative to this statute and applicable fines and terms of imprisonment. The offense penalties vary depending on the intent and associated criminal activity.

9.5.5.3
(08-27-2007)
Title 31 Violations

- (1) Title 31, known as the Bank Secrecy Act (BSA), requires filing reports with the government and recordkeeping by financial institutions or individuals for domestic and foreign transactions involving currency, monetary instruments, and foreign accounts. It also sets forth punishments for the failure to make or falsify reports or records. Offenses investigated by CI are summarized in the following sections. Title 31, Federal Criminal Code, Chapter 53, Money and Finance, contains information regarding the purposes, specific offenses, definitions and penalties for use with this Title.
- (2) Under 18 USC §3282, the statute of limitations for violations of 31 USC §5322, 31 USC §5324, and 31 USC §5332 is five years.
- (3) Title 31 CFR 103.56(b)(8) gives the IRS Commissioner authority to examine all financial institutions for Title 31 compliance that are not currently examined by Federal bank supervisory agencies, except for brokers or dealers in securities. Title 31 CFR 103.56(c)(2) gives the IRS Commissioner the authority to investigate all criminal violations of Title 31 (except with respect to reports of transportation of currency or monetary instruments). Title 31 civil examinations of certain non-bank financial institutions are the responsibility of the IRS Small Business/Self-Employed (SB/SE) operating division.
- (4) In Delegation Order No. 143 (see IRM 1.2.2, Delegations of Authority (Delegation Order 25-5)), as revised, the IRS Commissioner delegated the authority to initiate criminal investigations of:
 - a. financial institutions that are not currently examined by Federal bank supervisory agencies, except for brokers or dealers in securities, to the Director and Deputy Director, Operations Policy and Support, CI:OPS, and the Special Agents in Charge (SAC), CI
 - b. banks, brokers and dealers in securities referenced in 31 CFR 103.18 through CFR 103.19 for possible criminal violations of 31 CFR Part 103 (except 31 CFR 103.23 and CFR 103.48). These must be authorized by the Chief, CI, pursuant to Treasury Order 150-10 and Directive 15-41.

- (5) The SAC may ask for or agree to participate in a grand jury investigation in accordance with the appropriate procedures (see IRM 9.5.2, Grand Jury Investigations). The authority to initiate a Title 31 investigation is not redelegated any lower than the SAC (see IRM 9.4.1, General, Primary and Subject Investigations.)
- (6) The historical emphasis of the IRS in Title 31 money laundering investigations has related to the failure to file or the false filing of Currency Transaction Reports (CTRs) (formerly Form 4789), FinCEN Form 104, i.e., the requirement that a financial institution file a CTR when a person conducts a currency transaction of more than \$10,000 with the financial institution. IRS investigations have resulted in numerous convictions of individuals and financial institutions for the structuring of currency deposits via a network of smurfs (those who make numerous same-day currency deposits of less than \$10,000, usually at several different banks, to evade the filing of CTRs). The smurfing of currency was and often still is a popular method of laundering drug profits.
- (7) The government has been successful in the prosecution of structuring violations under Title 31 by showing that a defendant knew that his/her structured deposits with a financial institution were designed to evade the filing of CTRs. However, in *Ratzlaff v. United States*, 114 S. Ct. 655 (1994), the US Supreme Court ruled that the willfulness requirement of 31 USC §5322, as it pertained to the structuring of currency transactions to evade the filing of CTRs under 31 USC §5324, meant that the government had to show that a defendant knew that the structuring of currency transactions to evade the filing of CTRs was in fact illegal.
- (8) The Money Laundering Suppression Act of 1994, Pub. L. 103–325 (September 23, 1994), included a legislative “fix” to the Supreme Court’s decision in *Ratzlaff*. Title 31 USC §5324 was amended to exclude the willfulness requirement.

9.5.5.3.1
(08-27-2007)

**Title 31 Investigation of
a Financial Institution**

- (1) If an allegation of possible Title 31 violations committed by a financial institution is received, either by referral from the Department of the Treasury, by investigative development, or otherwise, the following procedures must be followed if the field office desires to obtain jurisdiction to conduct an investigation:
 - a. The attorney for the government will be given a written summary of the information developed concerning the potential violation, including the identity of all bank employees suspected of participating in the violation.
 - b. The commitment of the attorney for the government to investigate the alleged violation must be obtained.
 - c. A request for jurisdiction with the concurrence and signature of the Director, Field Operations will be sent to the Chief, CI, and must include the name of the attorney for the government who provided the commitment along with a summary of the facts of the allegation specifying the full name and address of the financial institution and whether the investigation covers a particular branch or the entire financial institution. Also included in the request must be the years under investigation and the request for copies of regulatory agency compliance reports for a specified period of time.

- (2) When authorization is approved, CI:OPS will notify the Assistant Director, Regulatory Policy and Programs Division of Financial Crimes Enforcement Network (FinCEN), and the regulatory agency that governs the financial institution involved.
- (3) The authorization to conduct the investigation will expire in 120 days. If, at the end of 120 days a primary investigation (PI) is not elevated to a subject criminal investigation (SCI), and CI wants to continue the investigation, the authorization must be renewed. If an SCI(s) is numbered, then the authorization will be in effect until the conclusion of the criminal investigation.
- (4) It is not necessary to number an investigation of a bank as a corporate entity in order to obtain jurisdiction. Jurisdiction is for the purpose of conducting a criminal investigation of possible Title 31 violations committed by the financial institution, or by any of its current or former officers. It is not necessary to make an additional request for jurisdiction of additional officers of the same financial institution if they are later identified as possible violators. However, a grand jury expansion request will be prepared and submitted.
- (5) When CI determines that civil penalties are warranted against a financial institution, a detailed report will be submitted to the Chief, CI, for compliance coordination with the Assistant Director, Regulatory Policy and Programs Division at FinCEN. The report will identify the financial institution and each partner, officer, director, or employee against whom the penalty recommendation is made (see IRM 9.5.13, Civil Considerations).

Note: Recommendations for civil penalties can be made at any time, but should not jeopardize an ongoing criminal investigation. All recommendations will be sanitized of grand jury material, and must contain a statement that information contained in the recommendation does not include grand jury material. Tax information can only be released if a related statute call has been made, and should be communicated to FinCEN so that 26 USC §6103 are followed regarding subsequent use (see IRM 9.3.1, Disclosure.)

- (6) Reports for civil penalty recommendations will consist of the following information (IRM 9.5.14, Civil Activity at the Close of the Subject Criminal Investigation, subsection 9.5.14.11):
 - a. A brief summary of the evidence, including evidence of related violations, e.g., narcotics charges in which drug proceeds were laundered.
 - b. For Title 31 investigations resulting in an indictment, a summary of the charges in the indictment and the convicted charges.
 - c. The scope of the Title 31 crime including the amount of money laundered, the total dollar amount of unreported currency transactions in the indictment, the number of CTRs not properly filed, and the number of improperly reported transactions named in the indictment.
 - d. Copies of any public information such as a copy of the indictment, plea agreement, sentencing memorandum, affidavit for search warrants, arrest warrants, press releases and news articles.
- (7) The attorney for the government and the Assistant Director, Regulatory Policy and Programs Division at FinCEN may decide that the assessment of a civil penalty in a Title 31 investigation is appropriate in lieu of prosecution. Field offices will advise the Chief, CI, of the agreement as soon as an agreement is negotiated. If checks are received from a financial institution as payment for the civil penalties prior to assessment, the checks should be mailed to the

Assistant Director, Regulatory Policy and Programs Division at FinCEN, Attn: FinCEN, PO Box 39, Vienna, Va., 22183-0039 with a copy of any court order with respect to the stipulation for settlement. The field should then follow up with a recommendation for civil assessment.

9.5.5.3.2
(02-27-2015)

**Investigation of Title 31
Violations – Non
Financial Institution**

- (1) Under the authorization of the SAC, CI has jurisdiction to investigate allegations of violations of Title 31 USC §5324 structuring transactions to evade reporting requirements and Title 31 USC §5332, Bulk Cash Smuggling.
- (2) Regarding violations of 31 USC §5324, CI will not pursue the seizure and forfeiture of funds associated solely with “legal source” structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved at the Director, Field Operations (Criminal Investigation) level.
- (3) In cases where legal source income is involved in alleged structuring activity, consideration should be given to initiating a Title 26 criminal tax investigation. In certain circumstances, the structuring activity can be treated as an affirmative act of evasion under 26 USC §7201, evidence of willfulness, an overt act of conspiracy under 18 USC §371, or it may support Title 31 violations.
- (4) Title 31 USC §5324(a) prohibits a person from:
 - causing or attempting to cause a domestic financial institution to fail to file a CTR or fail to keep records for purchases of bank checks and drafts, cashier’s checks, money orders, and traveler’s checks over \$3,000
 - causing or attempting to cause a domestic financial institution to fail to file a CTR, or keep records for purchases of bank checks and drafts, cashier’s checks, money orders and traveler’s checks over \$3,000
 - structuring or assisting in structuring, or attempting to structure or assisting in structuring, any transaction with one or more domestic financial institutions
- (5) Title 31 USC §5324(b) prohibits a person from engaging in any of the following activity:
 - failing to file a Form 8300 as required by 31 USC §5331
 - attempting to cause a person to fail to file a Form 8300
 - filing or causing or attempting to cause a person to file a Form 8300 that contains a material omission or misstatement of fact
 - structuring or assisting in structuring, or attempting to structure or assist in structuring, any transaction with one or more non-financial trades or businesses
- (6) Title 31 USC §5324(c) prohibits a person from engaging in any of the following activity:
 - failing to file a CMIR
 - attempting to cause a person to fail to file a CMIR
 - to filing or causing or attempting to cause a person to file a CMIR that contains a material omission or misstatement of fact
 - structuring or assisting in structuring, or attempting to structure or assisting in structuring, any importation or exportation of monetary instruments.

Note: CMIR violations are within the jurisdiction of the Bureau of Immigration and Customs Enforcement (ICE).

- (7) Currency Transaction Reports, CTRs by Casinos, Reports of Foreign Bank and Financial Accounts (FBAR), and Forms 8300 must be filed with the Detroit Computing Center or with the local IRS office. Hence, venue involving Title 26 or Title 31 investigations for falsification or omission of those forms is in the Eastern Judicial District of Michigan, in the judicial district where an IRS post-of-duty is located, or in the judicial district where the document was prepared.
- (8) Title 31 USC §5332, Bulk Cash Smuggling into or out of the United States, was created by the USA Patriot Act, effective October 26, 2001. Criminal Investigation's jurisdiction over this offense is limited to investigations where the underlying conduct falls under CI's jurisdiction in money laundering offenses (18 USC §1956 and 18 USC §1957), Title 26 or Title 31 only. The USA Patriot Act made the act of smuggling in cash or other monetary instruments over \$10,000, a criminal offense and authorized forfeiture of the cash or instruments of the smuggling.
- (9) Failure to file and filing a false report are predicated on the existence of a transaction (or an aggregate of related transactions) which actually exceeds \$10,000 thus triggering the duty to file; whereas **acts of structuring** may never trigger the reporting requirement because the individual transactions involved may never exceed the threshold amount. Transactions comprising an **act of structuring** constitute a single offense.
- (10) Undercover operations involving possible violations of Title 31 may precede or operate concurrently with a grand jury investigation. It is not necessary to request jurisdiction from the Chief, CI, solely for the purpose of conducting the undercover operation. To protect the existence and confidentiality of the undercover operation, Title 31 jurisdiction should not be requested until the field is ready to proceed to the grand jury stage.

9.5.5.3.3
(11-04-2004)
**Reports and
Recordkeeping and
Registration Required
Under Title 31**

- (1) Information in the subsections below discusses Title 31 requirements for specific reports, recordkeeping, and registration.

9.5.5.3.3.1
(08-27-2007)
**Reports Required by the
Bank Secrecy Act - Title
31**

- (1) The following reports are required under Title 31.
 - Currency Transaction Report (CTR), (formerly Form 4789) FinCEN Form 104
 - Currency Transaction Report by Casinos (FinCEN Form 103)
 - Report of Foreign Bank and Financial Accounts (FBAR) (TD Form 90-22.1)
 - Report of International Transportation of Currency or Monetary Instruments (CMIR), (formerly Customs Form 4790), FinCEN Form 105
 - Suspicious Activity Report (SAR) Forms

9.5.5.3.3.1.1
(08-27-2007)

**Currency Transaction
Report (FinCEN Form
104)**

- (1) Title 31 CFR 103.22 requires that each financial institution file a CTR on each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution that involves a transaction in currency of more than \$10,000. Title 31 CFR 103.27 requires that the CTR must be filed by the 15th calendar day after the day of the transaction with the IRS Detroit Computing Center, Attn: CTR, PO Box 33604, Detroit, MI 48232-5604, or with the local IRS office. Casinos must file a report for each currency transaction involving either **cash in** or **cash out** of more than \$10,000. There is an exception for the US Postal Service, who does not have to file CTRs, for payments or transfers made solely in connection with the purchase of postage or philatelic products.
- (2) Banks may exempt certain entities from CTR filings through the filing of a form TDF 90-22.53, Designation of Exempt Person, with the Detroit Computing Center. These designation forms are entered into the Currency Banking Retrieval System (CBRS) and can be queried by those with CBRS access. Banks also maintain a list of these exempt businesses. Further information relating to who qualifies for this designation is contained in Title 31 CFR 103.22.

9.5.5.3.3.1.2
(08-27-2007)

**Currency Transaction
Report by Casinos
(FinCEN Form 103)**

- (1) Title 31 CFR 103.22(b)(2) requires each casino file a report of each transaction in currency, involving either cash in or cash out, of more than \$10,000.
- (2) Title 31 CFR 103.11(n)(5)(i) defines a casino as an organization duly licensed to do business in the United States as a casino or gambling casino with gross annual gaming revenues in excess of \$1 million. This includes the principal headquarters or any branch or other place of business.
- (3) Types of transactions in currency involving **CASH-IN** include but are not limited to (31 CFR 103.22(b)(2)(i)):
 - a. purchases of casino chips, tokens and other gaming instruments
 - b. deposit(s) (front money or safekeeping)
 - c. payments in any form of credit including markers and counter checks
 - d. bets of currency
 - e. currency received by the casino for transmittal of funds through wire transfer for a customer
 - f. purchases of casino checks
 - g. exchanges of currency for currency including foreign currency
 - h. bills inserted into electronic gaming devices
- (4) Types of transactions in currency involving **CASH-OUT** include but are not limited to (31 CFR 103.22(b)(2)(ii)):
 - a. redemption of casino chips, tokens, tickets, and other gaming instruments
 - b. withdrawal(s) of deposit (front money)
 - c. safekeeping withdrawals
 - d. advances on any form of credit, including markers and counter checks
 - e. payments on bets
 - f. payments by a casino to a customer based on receipt of funds through wire transfer
 - g. cashing of checks or other negotiable instruments
 - h. currency exchanges, including foreign currency
 - i. travel and complimentary expenses and gaming incentives
 - j. payment for tournament, contests, and other promotions

- (5) The report must be filed by the 15th day after the transaction date, with the IRS Detroit Computing Center, PO Box 32621, Detroit, MI 48232-5604 Attn: CTRC, or with the local IRS office.
- (6) Casinos with gross annual gaming revenues of less than \$1 million are subject to the reporting requirements of 26 USC §6050I, Report of Cash Payments Over \$10,000 Received in a Trade or Business, Form 8300. Casinos with non-casino businesses, e.g., shops, restaurants, and hotels, are subject to the reporting requirements of 26 USC §6050I, regardless of the amount of annual gaming revenues.
- (7) The Department of the Treasury allows Nevada casinos to file CTRs and related records with the Nevada Gaming Control Board, who in turn forwards the reports to the Detroit Computing Center. Effective July 1, 2007, Nevada casinos with gross annual gaming revenues of \$10 million or more and “table games statistical win” of \$2 million or more became subject to all applicable BSA requirements, including the requirement to file FinCEN Form 103, Currency Transaction Report by Casinos (CTRC). Currency Transaction Reports will no longer be filed with the Nevada Gaming Control Board.

9.5.5.3.3.1.3
(08-27-2007)
**Report of Foreign Bank
and Financial Accounts
(FBAR) (TD Form
90–22.1)**

- (1) Title 31 CFR 103.24 requires that each United States person who has a financial interest in, or signature authority over, any financial accounts in a foreign country including bank, securities or other types of accounts, must report that relationship by filing an FBAR if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year. The deadline to file the FBAR with the Department of the Treasury for each calendar year is on or before June 30th of the following year. The term “United States person” means a citizen or resident of the United States, domestic partnership, domestic corporation, or a domestic estate or trust.
- (2) A United States person is defined as a citizen or resident of the United States, a domestic partnership or corporation, or a domestic estate or trust.
- (3) Persons with 25 or more foreign accounts need only note that fact on TD Form 90–22.1, and will be required to provide detailed information for each account when requested to do so.
- (4) Persons required to file Federal income tax returns must also answer the question on the tax return form as to whether or not he/she has a financial interest in a foreign account.

9.5.5.3.3.1.4
(08-27-2007)
**Report of International
Transportation of
Currency or Monetary
Instruments (CMIR)
FINCEN Form 105
(formerly Customs Form
4790)**

- (1) Title 31 CFR 103.23 requires that each person who physically transports, mails, or ships; causes to be physically transported, mailed, or shipped; attempts to physically transport, mail, or ship; or attempts to cause to be physically transported, mailed or shipped currency or other monetary instruments in an aggregate amount over \$10,000 at one time from the United States to any place outside of the United States or into the United States from any place outside the United States must file a CMIR with ICE.
- (2) Additionally, each person in the United States who receives currency or other monetary instruments in an aggregate amount over \$10,000 at one time, that have been transported, mailed, or shipped to the person from any place outside the United States and a CMIR has not been filed, the person must file a CMIR stating the amount, date of receipt, the form of instrument(s), and the

person from whom received. However, 31 CFR 103.23(c) exempts the following from the reporting requirements:

- a. the Federal Reserve
- b. a bank, foreign bank, broker or dealer in securities, with respect to currency or other monetary instruments mailed or shipped through the USPS or common carrier
- c. a commercial bank or trust company organized under the laws of any state or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry, or profession of the customer concerned
- d. a person who is not a citizen or resident of the United States who mailed or shipped currency or other monetary instruments from abroad to a bank, broker, or dealer in securities through the US Postal Service or by common carrier
- e. a common carrier of passengers where currency or other monetary instruments are the possession of its passengers
- f. a common carrier of goods where shipments of currency or monetary instruments are not declared to be such by the shipper
- g. a traveler's check issuer or its agent with respect to the transportation of traveler's checks prior to their delivery to selling agents for eventual sale to the public
- h. a person with a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated
- i. a person engaged in the business of transporting currency, monetary instruments, and other commercial papers with respect to the transportation of currency or other monetary instruments between established bank offices, brokers, or dealers in securities and foreign persons

- (3) See the IRM 9.4.2, Sources of Information for instructions on requesting a copy of a CMIR.

9.5.5.3.3.1.5
(08-27-2007)

**Suspicious Activity
Report (SAR) Forms**

- (1) Title 31 USC §5318(g)(1), Comptroller of the Currency Regulation 12 CFR 21.11, state or other bank regulatory agencies, and the Right to Financial Privacy Act, 12 USC §3401 et seq., make it mandatory for financial institutions to report suspicious financial transactions.
- (2) There are presently four SAR forms:
 - FinCEN Form 101 (formerly the SAR-F) is filed by members of the Securities and Futures Industry; FinCEN Form 101a is the instruction sheet.
 - FinCEN Form 102 (formerly SAR-C) is filed by Casinos and Card Clubs; FinCEN 102a is the instruction sheet.
 - FinCEN Form 109 is filed by Money Services Businesses (currency exchanges, wire remitters, traveler's checks, etc.). Additional FAQs concerning MSBs can be found at www.msb.gov.
 - TDF90-22.47 is filed by depository institutions. The SAR is the original SAR form completed by depository institutions.

- (3) Depository institutions are required to report suspicious currency transactions on an SAR form, TDF90-22.47. The SAR form replaces both the Form 4789 and the Criminal Referral Form (CRF) for the reporting of suspicious currency transactions and all other potential criminal violations detected by financial institutions. Financial institutions are still required to file a Currency Transaction Report, FinCEN Form 104, if the transaction amount is greater than \$10,000.
- (4) Title 31 §USC 5318(g)(4) directs the Department of the Treasury to select a single designee to receive SAR forms for processing and subsequent referral to law enforcement agencies. Suspicious Activity Reports are available through the CBRS. The local CI field office serves as a liaison with financial institutions to ensure information is received timely.
- (5) A significant number of SAR forms involve potential money laundering and BSA violations. The SAR forms, therefore, represent excellent leads for money laundering and BSA investigations and tax administration issues. See IRM 9.4.13, Financial Investigative Task Force relative to leads developed through the SAR review teams.
- (6) Title 31 USC §5318(g)(2) prohibits financial institutions and their directors, officers, employees, and agents from notifying the subject(s) of a SAR form that the transaction has been recorded/reported. The SAR and the filer of the SAR are treated as confidential informant information. The SAR filing must not be disclosed to the subject of the SAR or provided to the other operating divisions.
- (7) Title 31 USC §5318(g)(3) provides immunity from civil liability (known as **safe harbor**) under Federal or state law (e.g., Right to Financial Privacy Act) for financial institutions, directors, officers, employees, and agents relating to a SAR form.
- (8) Special agents should update CIMIS with BSA forms including CTRs, SARs and other relevant forms in the Violations screen by selecting the appropriate forms from the “Currency Forms” menu.

9.5.5.3.3.2
(08-27-2007)
**Recordkeeping Required
by Title 31**

- (1) The following subsection provides information regarding the records that must be maintained under Title 31.

9.5.5.3.3.2.1
(11-04-2004)
**Records Required by
Persons with Foreign
Financial Accounts**

- (1) Title 31 CFR 103.32 requires that persons subject to filing a FBAR for interests in foreign financial accounts retain the following records for five years:
 - a. the name and account number for each foreign account
 - b. the name and address of the foreign bank or other person with whom the account is maintained
 - c. records of the type of account and the maximum value of the account during the reporting period
- (2) See IRM 9.4.2, Sources of Information for a listing of foreign financial transaction forms, where the forms are filed, and how to request the forms relating to a United States citizen or resident, a domestic partnership, or a domestic estate or trust.

9.5.5.3.3.2.2
(08-27-2007)

**Records to be Retained
by Financial Institutions**

- (1) Title 31 CFR 103.33 requires financial institutions to retain the following records for five years:
 - a. extensions of credit which exceed \$10,000 except those secured by real property
 - b. each advice, request, or instruction received or given for transfers of currency or other monetary instruments, funds, checks, investment securities, or credit of more than \$10,000 to or from any person, account, or place outside the United States
 - c. each advice, request, or instruction to another financial institution or other person within or without the United States for a transfer of funds, currency, other monetary instruments, checks, investment securities, or credit of more than \$10,000 to or from any person, account, or place outside the United States

- (2) Title 31 CFR 103.34 requires that banks retain the following additional records (for five years, per 31 CFR 103.38(d)):
 - a. A taxpayer identification number (TIN) that should be obtained within 30 days after a certificate of deposit is sold or redeemed or a deposit or share account is opened and a list by name, address and account number of customers who do not provide a TIN for availability to the Secretary of the Treasury upon demand. Lists can be requested by memorandum to the Chief, CI.
 - b. Documents that grant signature authority on deposit or share accounts.
 - c. Statements, ledger cards, or other records showing each transaction in a deposit or share account.
 - d. Each check, clean draft, or money order over \$100 where the account volume is over 100 checks a month except checks for dividends, payroll employee benefits, insurance claims, medical benefits, or checks drawn on government agency accounts by brokers or dealers in securities, on fiduciary accounts, on other financial institutions, or pension or annuity checks.
 - e. Debit items over \$100 (other than bank charges or agreed periodic charges) to a deposit or share account not exempted above.
 - f. Transfers of funds, or of currency or other monetary instruments, checks, investment securities, or credit over \$10,000 to a person, account, or place outside the United States.
 - g. Checks or drafts over \$10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a non-bank drawee for payment.
 - h. Checks, drafts, or transfers of credit over \$10,000 received directly from a bank, broker, or dealer in foreign exchange outside the United States.
 - i. Each receipt of currency, other monetary instruments, investment securities or checks and each transfer of funds or credit over \$10,000 received directly from a bank, broker, or dealer in foreign exchange outside the United States.
 - j. Records to trace or supply a description of demand deposits of checks over \$100.
 - k. The name, address, and TIN of the purchaser of a certificate of deposit and the date and description of the payment instrument and method.
 - l. The name, address, and TIN of a person redeeming a certificate of deposit and the description of the certificate and the transaction date.

- m. Deposit slips or credit tickets for transactions over \$100 (showing any currency involved) or the equivalent record for direct deposit or wire transfer deposits.

9.5.5.3.3.2.3

(08-27-2007)

Additional Records to be Retained by Brokers or Dealers in Securities

- (1) Title 31 CFR 103.35 requires that brokers or dealers in securities retain the following additional records (for five years, per 31 CFR 103.38(d)):
 - a. For a person residing or doing business in the United States or a citizen of the United States, a customer's TIN should be obtained within 30 days after a brokerage account is opened; and a list by name, address, and account number of customers who do not provide a TIN, for availability to the Secretary of the Treasury upon demand. Lists can be requested by memorandum to the Chief, CI.
 - b. Documents granting signature or trading authority over each customer's account.
 - c. Each record described in 17 CFR 240.17(a)-3(a) (1)-(3), (5)-(9).
 - d. Each remittance or transfer of funds, currency, checks, other monetary instruments, investment securities, or credit over \$10,000 to a person, account, or place outside the United States.
 - e. Each receipt of currency, other monetary instruments, checks, or investment securities and each transfer of funds or credit over \$10,000 received directly from any person, account, or place outside the United States.

9.5.5.3.3.2.4

(08-27-2007)

Additional Records to be Retained by Casinos

- (1) Title 31 CFR 103.36 requires that each casino retain the following records (for five years, per 31 CFR 103.38(d)):
 - a. For each deposit of funds, account opened, or line of credit, the name, permanent address, and social security number (SSN) of the person involved and a list by name and permanent address of persons who do not provide a SSN, for availability to the Secretary of the Treasury upon request. The lists can be requested by memorandum to the Chief, CI. For nonresident aliens, the person's passport number or some other government document will be used.
 - b. The name, permanent address, and SSN of the person from whom funds were received and the date and amount for each receipt (including funds for safekeeping or front money) for the account (credit or deposit) of any person. For nonresident aliens, the person's passport number or some other government document will be used for identity.
 - c. Debits or credits to a customer's deposit or credit account.
 - d. Statements, ledger cards, or other records of each deposit or credit account for each transaction.
 - e. Credit extensions over \$2,500, along with terms, conditions, and records of repayment, listing the customer's name, permanent address, and SSN, and the transaction date and amount (including repayments). For nonresident aliens, the person's passport number or some other government document will be used for identity.
 - f. Each advice, request, or instruction received or given by the casino for itself or another person for transactions involving a person, account or place outside the United States (to include wire, telephone, or letter communications). For transfers on behalf of a third party, made into or received out of the United States, the record shall include the third party's name, permanent address, SSN, signature, and transaction date and

amount. If the third party is a nonresident alien, the record shall include the person's name, passport number, or description of some other government document.

- g. Records to reconstruct a person's deposit or credit account with the casino or to trace a deposited check to the bank of deposit.
- h. All records, documents, or manuals required to be maintained under state and local laws or regulations.
- i. All records prepared or used to monitor a customer's gaming activity.
- j. For each person that a casino knows who has bought in at, bet, or purchased chips, tokens, or plaques over \$3,000, with one or more currency transactions in a single casino day, the record shall include the name, permanent address, SSN, or TIN of the person, and the currency amount and the casino license number of the casino employee preparing the record.
- k. For each person that a casino knows has purchased or redeemed slot machine tokens of \$3,000 or more, through one or more currency transactions in a single gaming day. The record shall include the name, permanent address, casino account number, SSN, or TIN of the person, the date, time, and currency amount involved, and the casino license number of the employee preparing the record.
- l. A list of each customer who is known by more than one name.
- m. A list of each transaction between the casino and its customers that involve personal checks (excluding those which evidence credit by a casino strictly for gaming, e.g., markers), business checks (including casino checks), official bank checks, cashier's checks, third party checks, traveler's checks, promissory notes or money orders having a face value over \$3,000.

- (2) Title 31 CFR 103.36 refers to 31 CFR 103.28 and requires that, except as otherwise provided, before concluding any transactions with respect to which a report is required, a financial institution shall verify and record the name and address of the individual through examination of a document (other than a bank signature card) that is normally used to cash checks for non-depositors.

9.5.5.3.4 (09-03-2020)

Geographic Targeting Orders

- (1) Pursuant to 31 USC §5326, as implemented by 31 CFR 103.26, the Secretary of the Treasury, upon finding reasonable grounds exist for concluding additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle, may target specified financial institutions in a geographic area to submit reports for currency transactions of \$10,000 or less for up to 60 days (subject to renewal).
- (2) A target request may be made by Federal, state, or local law enforcement agencies or by Department of the Treasury on its own initiative based on discussions within Treasury agencies, other Federal agencies (e.g., DOJ), or by other means.
- (3) Target requests by law enforcement agencies must be in writing, signed by the head of the agency, and submitted to the Assistant Director, Regulatory Policy and Programs Division of FinCEN. Internal Revenue Service requests may be initiated at the field office level by memorandum from the SSA to the SAC, and through the Director, CI:OPS, to the Chief, CI, for submission to the Assistant Director, Regulatory Policy and Programs Division of FinCEN.
- (4) Each target request must include the following information:

- a. a specific proposed area, e.g., the City of Bear, the area between 10th and 20th Streets, and Squirrel and Ostrich Streets, in Fox Ville
 - b. the types of financial institutions targeted, e.g., all banks, only telegraph companies
 - c. the recommended threshold reporting amount, e.g., \$2,500
 - d. the transactions to be reported, e.g., all cash transactions, all purchases of money orders exceeding \$2,500
 - e. a detailed description of the criminal activity and law enforcement need for the additional information
 - f. the name and telephone number of a contact person from the requesting agency
 - g. a **game plan**, i.e., the resources that the requesting agency is willing to dedicate
 - h. the type of assistance needed from other agencies, e.g., a bank examiner
 - i. the recommended time period
- (5) Each request will be reviewed by Regulatory Policy and Programs Division of FinCEN for recommendation, through the Deputy Assistant Secretary (Enforcement), to the Assistant Secretary for terrorist financing and financial crimes to approve (with or without modification) or disapprove the request. The Deputy Assistant Secretary will approve requests upon a determination that there is a high degree of money laundering or other criminal activity occurring at or below \$10,000 at financial institutions in the target area. The Deputy Assistant Secretary's decision will be communicated in writing to the requesting agency.
- (6) If the Deputy Assistant Secretary for terrorist financing and financial crimes concurs with the request, the Regulatory Policy and Programs Division at FinCEN will prepare a targeting order signed by the Assistant Secretary or his/her designee. The Regulatory Policy and Programs Division at FinCEN will issue a tasking memorandum to each needed agency for assistance to carry out the targeting order. For example, FinCEN may be tasked to receive the information, to perform analyses, and to notify designated agencies of the results. The Commissioners of the IRS and Assistant Secretary, ICE, may be tasked to provide agents for field operations, including on-site analysis of the reported information. Tasked agencies will be expected to commit sufficient resources throughout a targeting operation.
- (7) The Regulatory Policy and Programs Division at FinCEN will brief offices with a need to know of the targeting order, e.g., DOJ, the affected US Attorney or State Attorney General, bank examiners, etc. FinCEN will direct service of the targeting order to the Chief Executive Officers of the selected financial institutions in person or by registered mail.
- (8) Currency Transaction Reports for amounts of \$10,000 or less will not be sent to the IRS Detroit Computing Center, but to a centralized location specified in the targeting order. After processing at the centralized location or at a transaction center, an analysis of the reports or a hard copy output will be sent to the tasked agencies for analysis and other law enforcement use.
- (9) Reports normally required to be filed without a Geographic Targeting Order, e.g., CTRs (FinCEN 104), must continue to be filed with the Detroit Computing Center; however, a targeting order may require copies of those forms along with those specifically required by the order.

- (10) Title 31 USC §5326(c) prohibits financial institutions and their officers, employees, and agents from disclosing the existence or terms of targeted currency reporting orders except as prescribed by the Secretary.
- (11) Targeting projects may not deviate from the tasking memorandum and overall plan without the written approval of the Deputy Assistant Secretary for Terrorist Financing and Financial Crimes or his/her designee. Modification requests, including early project termination, must be fully detailed. The Regulatory Policy and Programs Division at FinCEN will be the contact office for all targeting order communications.

9.5.5.3.5
(08-27-2007)

Title 31 Summons

- (1) See IRM 25.5, Summons Handbook for information regarding Title 31 summonses.
- (2) The use of a Title 31 summons in a Title 31 related civil forfeiture action is discussed in the Summons Handbook. Notice to a customer whose bank records are being sought by a Title 31 summons can be delayed up to 90 days upon application to a judge or a magistrate judge through a civil US Attorney. Refer to IRM 9.7, Asset Seizure and Forfeiture for detailed information and procedures concerning asset forfeiture.

9.5.5.3.6
(08-27-2007)

Money Laundering Form 8300, 26 USC §60501 Violations

- (1) Title 26 USC §60501 (effective January 1, 1985) requires any person engaged in a trade or business who in the course of such trade or business receives more than \$10,000 in cash in one transaction or two or more related transactions to make a return at such time as the Secretary by regulation prescribes (see 31 USC §5331, 31 USC §5321, 31 USC §5322 and 31 USC §5317).
- (2) With the enactment of the USA Patriot Act, the Form 8300 reporting requirement is now imposed under two statutory authorities, Title 26 and Title 31. The requirement to file a Form 8300 with both the IRS and FinCEN applies whenever a trade or business receives cash/currency (see subsection 9.5.5.3.6.1) in excess of \$10,000 in a single transaction or two or more related transactions. The difference between the two reporting regimes is minimal and the dual reporting requirement is discharged with the filing of a single form, IRS/FinCEN Form 8300 with the IRS Detroit Computing Center (see subsection 9.5.5.5.4.4 and Disclosure rules under 26 USC §6103 concerning Forms 8300 filed by clerks of the court who receive more than \$10,000 in cash as bail). Thus, a Form 8300 violation can result in two criminal violations. The double jeopardy clause, however, prevents multiple or successive prosecutions for the **same offense**. Criminal Tax Counsel will assist in determining whether to investigate or prosecute Form 8300 violations under Title 26 or Title 31 according to the circumstances of the investigation.
- (3) Factors to consider in choosing to investigate under Title 26 involve the disclosure requirements of 26 USC §6103, the three year statute of limitations under 26 USC §7203 (failure to file/structuring), and six year statute of limitations under 26 USC §7206 (false return). The scienter requirement under Title 26 is willfulness (specific intent) while under Title 31 the requirement is only knowledge (general intent). Additional criminal penalties may also be considered such as:
 - Criminal penalties applicable to aiders and abettors 18 USC §2
 - Criminal penalties applicable to criminal conspiracies 18 USC §371
 - Criminal penalties for money laundering offenses 18 USC §1956(a)(1)(B)(ii)

- Criminal penalties applicable to obstruction of criminal investigations 18 USC §1510

(4) Investigations recommending prosecution under 26 USC §6050I can be directly referred to the attorney for the government unless the prosecution recommendation relates to:

- accountant
- physician
- attorney or their employees
- casino or its employees
- financial institution or its employees
- local, state, federal or foreign public official or political candidate
- members of the judiciary
- religious leaders
- representatives of the electronic or printed news media
- officials of a labor union
- officials of publicly-held corporations and/or their officers.

Note: These cases must be referred to DOJ, Tax Division per Tax Division Directive 87-61.

(5) Under 26 USC §6050I, the statute of limitations for willful failure to file a Form 8300 is three years from the date the Form 8300 should have been filed, i.e., 15 days after the date of a reportable transaction. The statute is increased to six years for the willful making and subscription of a false Form 8300, in violation of 26 USC §7206(1).

9.5.5.3.6.1
(08-27-2007)
**Definitions of Terms
used in 26 USC §6050I
(Defined by IRS
Regulations)**

- (1) While the statutory language under Title 26 and Title 31 reporting regimes have virtually identical reporting requirements, there are some differences in terms of reporting, penalties, statute of limitations, referral paths disclosure limitations and forfeitures. The definitions under Title 31 are found in the Code of Federal Regulations under Section 103.30.
- (2) Although 26 USC §6050I refers to **cash** and 31 USC §5331 refers to **currency** transactions, these terms are identical and include foreign currency and monetary instruments with a face value of not more than \$10,000. They do not include any personal checks drawn on the account of the writer.
- (3) Similarly, the terms **make a return** and **file a report** effectively the same requirement discharged under the dual-reporting requirement of a single form, IRS/FinCEN Form 8300, filed with the Detroit Computing Center.
- (4) Other terms used in 26 USC §6050I are defined:
 - a. **Consumer durable** means an item of tangible personal property of a type suitable for personal consumption or use that can reasonably be expected to be useful for at least a year under ordinary usage and that has a sales price of more than \$10,000.
 - b. **Collectible** includes any work of art, any rug or antique, any metal or gem, and any stamp or coin.
 - c. **Travel and entertainment activity** includes any item of travel, hotel accommodations and admission into an event itself that constitutes the entertainment.
 - d. **Designated reporting transaction** is a retail sale of a consumer durable, collectible and a travel or entertainment activity.

- e. **Person** means an individual, corporation, trust, partnership, association or company.
- f. **Recipient** means the person receiving the cash.
- g. **Transaction** means the sale of goods or services, sale of real property, sale of intangible property, rental of real or personal property, exchange of cash or currency for other cash or currency, establishment, maintenance, or contribution to a custodial account, payment of preexisting debt, conversion of cash to a negotiable instrument, reimbursement of expenses paid or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid a return or a report.
- h. **Exemptions** means transactions occurring outside the United States and any transaction reported by a CTR and/or by a financial institution subject to CTR reporting.
- i. **Notice** applies only under 26 USC §6050I and requires the filer of the IRS Form 8300 to provide notice of the filing of the Form 8300 to the person whose transaction was the subject of the filing. Such notice is required to be given on or before January 31 of the year following the calendar year in which the return was to be filed.

9.5.5.3.6.2
(08-27-2007)
**Form 8300 Filing
Requirements**

- (1) Any person engaged in a trade or business for purposes of the Internal Revenue laws who receives in the course of the trade or business cash/currency in excess of \$10,000 in a single transaction or in two or more related transactions is required to file Form 8300. Trades and businesses include automobile, airplane, mobile home and boat dealers, farm equipment dealers, dealers in precious metals and jewelers, real estate brokers, doctors, lawyers, accountants, pawnbrokers, insurance companies, loan or finance companies, travel agencies and any person who receives cash/currency in excess of \$10,000 for the account of another person, e.g., a person who collects delinquent accounts receivable for a car dealer.

9.5.5.4
(08-27-2007)
**The Money Laundering
Investigation and
Disclosure**

- (1) A money laundering investigation is different from a typical tax investigation. The following sub-sections will discuss some of those differences.

9.5.5.4.1
(08-27-2007)
**Pure Money Laundering
Investigations vs.
Concurrent Tax and
Money Laundering
Investigations**

- (1) In order for a conspiracy under 18 USC §371 or 18 USC §1956(h) to be considered a pure money laundering investigation, the object of the conspiracy must relate to enforcement of 18 USC §1956, 18 USC §1957 or Title 31 rather than Title 26. However, investigations under 18 USC §1956(a)(1)(A)(ii) are, by definition, tax-related.
- (2) Potential violations of Title 26 by persons outside of a money laundering investigation, discovered during a pure money laundering investigation, may be segregated and investigated independently of the money laundering investigation. However, if the Title 26 evidence is so interrelated with the money laundering grand jury investigation that it cannot reasonably be segregated, then follow the procedures in Assisting Grand Juries to Obtain Title 26 Grand Jury Information in IRM 9.5.2, Grand Jury Investigations. This section must also be followed if a concurrent income tax and money laundering grand jury investigation is desired.

9.5.5.4.2
(08-27-2007)
Grand Jury vs. Administrative Investigation

- (1) Money laundering investigations will ordinarily be conducted by the grand jury process. An IRS summons may be used to obtain evidence in a joint Title 26 and 18 USC §1956, 18 USC §1957, or Title 31 administrative investigation. An IRS summons may not be used in pure money laundering investigations (an investigation where a related tax violation is not involved).

Note: If there is an approved grand jury investigation, administrative summonses will not be utilized.

9.5.5.4.3
(08-27-2007)
Database Queries

- (1) Numerous law enforcement databases can be queried for use in money laundering investigations, including Treasury Enforcement Communications System (TECS), CBRS (Currency and Banking Retrieval System), El Paso Intelligence Center (EPIC), and the Fedwire System.

Note: EPIC inquiries are limited to narcotics-related investigations.

9.5.5.4.4
(08-27-2007)
Title 26 USC §6103 Disclosure Provisions for Money Laundering Investigations

- (1) Indications of money laundering violations will be identified from either tax information protected by the disclosure provisions of 26 USC §6103, including returns and return information as defined in 26 USC §6103(b)(1) and (2), or from sources not protected by 26 USC §6103 (see IRM 9.3.1, Disclosure.)
- (2) Returns and return information include tax and information returns and other tax information secured from IRS sources/files or developed by the IRS in determining a person's tax liability. Title 31 reports (CTRs, SAR Forms, FBARs, CMIRs) are generally not returns or return information. However, if a copy of a Title 31 report is used in a tax or tax-related investigation or placed in a tax investigatory file, it will be return information protected by 26 USC §6103 (see IRM 9.3.1, Disclosure).
- (3) Forms 8300 filed prior to January 1, 2002, are considered tax returns protected by 26 USC §6103 (see IRM 9.3.1, Disclosure).

9.5.5.4.5
(11-04-2004)
Pure Money Laundering Investigations Involving Information Not Protected by USC §6103

- (1) Pure Title 18 and Title 31 money laundering investigations are those investigations not involving tax or tax-related violations. Title 31 reports and other information collected by the IRS during the investigation are not protected by 26 USC §6103.
- (2) A money laundering investigation under 18 USC §1956(a)(1)(A)(ii) is always tax-related and is never a pure money laundering investigation.

9.5.5.4.6
(08-27-2007)
Use of Tax Information in Tax or Tax-Related Money Laundering Investigations

- (1) Returns and return information may be accessed to initiate or conduct a money laundering investigation if the investigation is considered tax administration under 26 USC §6103(b)(4) (see IRM 9.3.1, Disclosure, subsection 9.3.1.4). The key test is whether, under the facts and circumstances of the particular investigation, the money laundering provisions are considered related to the administration of the Internal Revenue laws. This is commonly known as the related statute call (see IRM 9.3.1, Disclosure).

- 9.5.5.4.7
(08-27-2007)
Use of Tax Information in Pure Money Laundering Investigations
- (1) If, after evaluation of Title 31 reports and other information collected during the (initial) investigation, a determination is made to conduct a pure money laundering grand jury investigation (e.g., the related statute test is not met), returns and return information may not be disclosed to Treasury (including IRS) and DOJ employees, except through the ex parte court order provisions of 26 USC §6103(i)(1) (see IRM 9.3.1, Disclosure.)
 - (2) Title 26 USC §6103(i)(4) ex parte court orders permit tax information obtained under 26 USC §6103(i)(1) and (2) to be used in civil proceedings such as forfeitures. In addition, 26 USC §6103(i)(4) permits the information to be used for 18 USC §981 forfeitures related to the non-tax violations of 18 USC §1956, 18 USC §1957, Title 31 USC §5313(a), or 31 USC §5324(a)(b).
- 9.5.5.4.8
(08-27-2007)
Use and Disclosure/Dissemination of Title 31 Report Information- Treasury Dissemination and Title 26 Return Information (Form 8300)
- (1) Effective January 1, 2002, Form 8300 is required under both Title 26 and Title 31. Because the IRS enforces both the Internal Revenue laws and the BSA laws, IRS special agents have access to Form 8300 information for investigating potential criminal violations of Title 26 and/or Title 31. Each title has rules governing access and disclosure of information gathered under the respective statutes. The rules under Title 26 strictly limit disclosures, whereas the rules under Title 31 are less restrictive (see IRM 9.3.1, Disclosure.)
 - (2) The IRS maintains Form 8300 information in two databases, i.e., The CBRS and the Information Return Master File (IRMF). Most, but not all, Forms 8300 information filed **after** January 1, 2002 and maintained in the CBRS database is designated as information reported under Title 31 and accessible for Title 31 investigative purposes. Forms 8300 information filed **before** January 1, 2002 and contained in CBRS is considered to have been reported under Title 26 and access and disclosure is governed by 26 USC §6103. All Forms 8300 information maintained and accessed via the IRMF database is considered return information and the access and disclosure of that return information is governed by 26 USC §6103.
 - (3) IRS special agents must be cognizant of the investigative purpose for which the information is being sought to protect against unauthorized disclosures.
 - (4) Generally, disclosure limitations for Forms 8300 vary depending on whether the reporting violation is being investigated under 26 USC §6050I or 31 USC §5331 (see IRM 9.3.1, Disclosure.)
- 9.5.5.4.8.1
(08-27-2007)
Return Information – Form 8300
- (1) If the special agent is investigating the violation under 26 USC §6050I, generally the Form 8300 and underlying files may be disclosed as part of a referral for a grand jury tax investigation or a referral for criminal tax prosecution. Title 26 Form 8300 information may also be disclosed for law enforcement purposes in response to a written request, pursuant to 26 USC §6103 (see IRM 9.3.1, Disclosure.)
 - (2) Under 26 USC §6103(l)(15) special agents may access Title 26 Form 8300 information contained on CBRS without a written request. However, if additional Title 26 information is sought beyond the information on the Form 8300, a related statute call determination will be necessary.
 - (3) Alternatively, special agents investigating a non-tax violation have the option of obtaining the Title 26 Form 8300 information, the form itself, and related files pursuant to ex-parte court order.

- (4) Forms 8300 are treated as **returns** under 26 USC §6103. Filed Forms 8300 that are not required to be filed by law (i.e., regarding a transaction less than \$10,000 or reporting a transaction designated by the filer to be suspicious) are generally ineligible for disclosure under 26 USC §6103(l)(15).

9.5.5.4.8.2
(08-27-2007)
**Bank Secrecy Act
Report Information**

- (1) Under Title 31, FinCEN permits IRS to disclose BSA report information to Federal, state and local agencies for use in criminal, tax and regulatory enforcement matters, including BSA enforcement. This permission allows disclosure to investigators and prosecutors. Such disclosures must contain a warning that such information received will not be further disclosed except for official purposes relating to the investigation or matter for which it was sought. Additionally, FinCEN requires that IRS keep a log of all such disclosures and that the receiving agency sign an Acknowledgement Form. Reference should be made to IRM 11.3.22 for details regarding FinCEN's Re-Dissemination Guidelines.
- (2) For Title 31 information on financial institutions not within the jurisdiction of the IRS where the related statute call test has been met, but prosecution potential is lacking, the SAC will forward a summary of the facts (absent tax information) on Form 5104 to the Chief, CI, who will advise the Assistant Director, Regulatory Policy and Programs Division at FinCEN.

9.5.5.4.8.3
(08-27-2007)
**Use and Disclosure of
Form 8300 Information
Filed Prior to January 1,
2002**

- (1) Federal, state, local, and foreign governmental agencies can obtain Form 8300 information filed prior to January 1, 2002 pursuant to 26 USC §6103(l)(15). The information is subject to the disclosure safeguard provisions of 26 USC §6103(p)(4).
- (2) The Form 8300 information filed prior to January 1, 2002 can be used for civil, criminal and regulatory purposes.

Note: Form 8300 information filed prior to January 1, 2002 disclosed under 26 USC §6103(l)(15) **cannot be used for tax administration purposes** by the recipient agency.

9.5.5.4.8.4
(08-27-2007)
**Authority to Release
Form 8300 Information
Filed Prior to January 1,
2002**

- (1) Internal Revenue Delegation Order 11-2 grants the authority to disclose Form 8300 information filed prior to January 1, 2002 to:
 - a. Chief, Criminal Investigation
 - b. Director, Government Liaison & Disclosure
 - c. Special Agents in Charge (SAC), CI

9.5.5.4.8.5
(08-27-2007)
**Procedure for
Disseminating Form
8300 Information Filed
Prior to 01-01-2002**

- (1) In order for other agencies to receive Forms 8300 information filed prior to January 1, 2002 from the IRS, they must first apply for and receive approval from IRS Disclosure. This application must be made in writing and must include an acceptable Safeguard Procedures Report which addresses the following issues: Responsible Officer, Location of the Data, Need and Use, System of Records, Secure Storage of the Data, Limiting Access to the Data, Disposal, and Computer Security. The application letter and Safeguard Procedures Report should be sent to Disclosure, Office of Safeguards, Room 3619/IR, Washington, DC 20224.

Note: State and local agencies may access Forms 8300 filed after January 1, 2002 from their respective state Gateway Representative or through Memorandum

of Understanding with FinCEN for direct electronic access to webCBRS or from IRS or another approved webCBRS user in accordance with FinCEN's Re-Dissemination Guidelines for BSA information dated December 14, 2006. The CI liaison to FinCEN can identify the appropriate local Gateway representative.

- (2) As of November 1, 2000, the following Federal, state, and local agencies have applied for and received approval from IRS Disclosure to receive Form 8300 information filed prior to January 1, 2002 from the IRS:
 - a. Central Intelligence Agency (CIA)
 - b. US Customs (Office of Investigations)
 - c. US Customs (Internal Affairs)
 - d. Federal Bureau of Investigation (FBI)
 - e. US Attorney's Office
 - f. Criminal Division, Department of Justice
 - g. US Secret Service (USSS)
 - h. US Probation Office, Tulsa, Oklahoma
 - i. National Security Agency (NSA)
State/Local Agencies
 - j. Aurora, Illinois Police Department
 - k. Coral Springs, Florida Police Department
 - l. Louisiana State Police
 - m. Metropolitan Police Department of Nashville, Tennessee and Davidson County
 - n. Mississippi Department of Public Safety
 - o. Office of Statewide Intelligence, Florida Department of Law Enforcement
 - p. Pembroke Pines, Florida Police Department
 - q. Miami Beach Police Department
- (3) Approved agencies must request Form 8300 information filed prior to January 1, 2002 in writing on agency letterhead. Local requests, except from CIA or NSA, will be completed at the field office level.
- (4) Requests submitted by the CIA and NSA or foreign governmental agencies for Form 8300 information filed prior to January 1, 2002 will be provided through the office of the Chief, CI. Forward any requests submitted to the SAC from those agencies to: Chief, CI, Attn; Director, Financial Crimes, (CI:OPS:FC).
- (5) A record of all information provided to requesting agencies must be maintained on a Bank Secrecy/8300 Disclosure log. (See Exhibit 9.5.5-2 Bank Secrecy/8300 Disclosure Log). The information on the log must include:
 - a. the date the request is received
 - b. the date the information is released
 - c. the name of the requesting agency
 - d. the agency official to whom the information is released
 - e. the type of information released
 - f. the special agent assigned
- (6) A copy of the log must be provided to the Chief, CI, Attn: Director, Financial Crimes, CI:OPS:FC the first business day following the close of the calendar quarter.
- (7) The Financial Crimes section will report to Disclosure, Office of Safeguards by the fourth business day of the month.

- (8) When IRS and the attorney for the government are among the participants of a multi-agency task force and there is an investigative desire to obtain Form 8300 information filed prior to January 1, 2002 pursuant to 26 USC §6103(l)(15), the procedure will be for the attorney for the government assigned to the task force to request the information. Safeguards will therefore be centralized with the attorney for the government. The CI participants on the task force will obtain the Form 8300 information filed prior to January 1, 2002 from the attorney for the government and will be able to share the Forms 8300 filed prior to January 1, 2002 and related information with other members of the task force in accordance with Dissemination Policies and Guidelines for Release of Information Reported Under the Provisions of the Bank Secrecy Act, dated December 6, 1988, §IV.C.1. Attached for reference is a copy of the Dissemination Policies and Guidelines. Further, in accordance with the Disclosure Safeguard Provisions of 26 USC §6103(p)(4) and per IRM 9.4.13, Financial Investigative Task Force, the CI task force participant will maintain a dissemination log and submit a copy of the log to their field office's Title 31 coordinator on a quarterly basis. The Title 31 coordinator will then include the information in his/her quarterly report to Headquarters.

9.5.5.5
(08-27-2007)
**Prosecution
Recommendations and
Civil Referrals**

- (1) Prosecution recommendations for pure money laundering offenses will be referred directly from the SAC to the attorney for the government; however, a direct referral cannot be made in an 18 USC §1956 investigation when a financial transaction is intended to engage in conduct constituting a violation of 26 USC §7201, 26 USC §7206, or 18 USC §1956(a)(1)(A)(ii) since these are classified as income tax investigations. Prosecution recommendations for income tax and money laundering violations follow ordinary review channels.
- (2) For a Title 31 violation lacking criminal potential, such as the failure to file a single CTR or early destruction of bank records, a violation summary will be prepared in memorandum form and forwarded to the Chief, CI, who will transmit it through channels to the Assistant Director, Regulatory Policy and Programs Division at FinCEN.
- (3) If money laundering violations within the jurisdiction of the IRS are discovered and CI chooses not to conduct a criminal investigation, a referral may be made to the examination function of the other operating divisions.

9.5.5.6
(11-04-2004)
**Requests for Witnesses
to Testify**

- (1) Witnesses are necessary to introduce documents filed under the Department of the Treasury regulations. Expert witnesses are available to assist in the presentation of money laundering investigations at trial.

9.5.5.6.1
(08-27-2007)
**Witnesses to Testify for
Filing of CTRs, FBARs,
and Forms 8300**

- (1) Requests for witnesses to testify as to the filing of CTRs, CTRs by Casinos, FBARs, and Forms 8300 should be made to the IRS Detroit Computing Center, Attn: CI Liaison, PO Box 32063, Detroit, MI 48232-0063, (313)234-1077 or (313)234-1613.
- (2) All CTRs, CTRs by Casinos, FBARs, and Forms 8300 are processed by the Detroit Computing Center and are indexed on the CBRS and the Treasury Enforcement Communications System (TECS) with the exception that Forms 8300 filed prior to January 1, 2002 are not indexed on TECS. CBRS and TECS should be queried to determine if CTRs, CTRs by Casinos, FBARs and Forms 8300 filed prior to January 1, 2002 were filed for reportable transactions. However, access to these Forms 8300 is bound by 26 USC §6103 rules.

- (3) See IRM 9.4.4, Requests for Information on how to request special computer runs summarizing CTRs by Casinos, copies of CTRs, copies of Forms 8300, copies of CMIRs and copies of special computer runs of FBARs.
- 9.5.5.6.2
(08-27-2007)
**Money Laundering
Expert Witnesses**
- (1) The Director, CI:OPS:FC, oversees a cadre of money laundering expert witnesses consisting of special agents from each of CI's areas of field operations. These expert witnesses are available to assist the field offices in the prosecution of money laundering and Title 31 investigations and to lecture on money laundering and Title 31 issues at Continuing Professional Education (CPE) and similar events, both internal and external.
- (2) Requests for assistance from money laundering expert witnesses will be forwarded by the SAC, located within the judicial district, where the request for assistance originates, to the Director, CI:OPS:FC. The request should include a brief summary of the investigation, tentative trial dates and a point of contact. In order to ensure that expert witness testimony can be arranged, requests should be made as soon as it can be reasonably anticipated that expert witness testimony is required in a particular investigation.
- 9.5.5.7
(08-27-2007)
**Whistle-blower
Protection and Awards
in Money Laundering
Investigations**
- (1) Title 31 USC §5328 provides whistle-blower protection to employees of financial institutions and non-depository financial institutions who report violations of 18 USC §1956, 18 USC §1957, 18 USC §1960, or Title 31 to regulators or law enforcement officials.
- (2) Title 28 USC §524(c)(1)(B) allows for rewards to informants to be made out of the Treasury Executive Officer of Asset Forfeiture (TEOAF) for information pursuant to money laundering violations relating to 18 USC §1956 and 18 USC §1957, 31 USC §5313 and 31 USC §5324, and 26 USC §6050I. Field office requests to seek funds for awards should be sent to the Chief, CI.
- (3) Title 31 USC §5323 provides for the payment of an award to an individual for original information which leads to the recovery of a criminal fine, civil penalty, or forfeiture, which exceeds \$50,000, relating to violations of Title 31. The award is limited to 25 percent of the net amount collected, or \$150,000, whichever is less. A request for award should specify the original information that was provided and its value. The request for award should be forwarded by the SAC through the Director, Field Operations to the Chief, CI, who will forward the request to the Assistant Director, Regulatory Policy and Programs Division at FinCEN.
- 9.5.5.8
(11-04-2004)
**Use of Money
Laundering Posters**
- (1) Publication 1241, Title 31 Poster, Publication 1428, and Forms 8300 Poster, were designed to be voluntarily displayed in the employee areas of financial institutions or by trades or businesses to alert employees and/or customers of the IRS' interest in suspicious currency and/or monetary transactions, and to provide CI telephone numbers to report suspicious currency transactions. The publications should be distributed by special agents during contacts or presentations with financial institutions and trades or businesses.

Exhibit 9.5.5-1 (10-09-1998)
Bank Secrecy/8300 Disclosure Log

OG OF BSA/FORMS 8300 DOCUMENTS/INFORMATION							
DISSEMINATED TO FEDERAL, STATE, LOCAL, AND FOREIGN AGENCIES							
Date Request Received	Date of Release	Requesting Agency	Agency Official	Agency Phone Number	Type of Information	Special Agent Assigned	CI Initiated Disclosure

