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Department of the Treasury
Internal Revenue Service

25.1.3

NOVEMBER 17, 2023

EFFECTIVE DATE

(11-17-2023)

PURPOSE

- (1) This transmits revised IRM 25.1.3, Fraud Handbook, Criminal Referrals.

MATERIAL CHANGES

- (1) IRM 25.1.3.3(4) - Preparation of Form 2797, Referral Report of Potential Criminal Fraud Cases – Added new paragraph to incorporate Interim Guidance Memo SBSE-05-0823-0047, Foreign Account Tax Compliance Act (FATCA) research and use in Field and Specialty Collection programs, issued 8/10/2023.
- (2) Editorial changes to update URLs.

EFFECT ON OTHER DOCUMENTS

IRM 25.1.3 dated June 10, 2021 is superseded. This IRM incorporates Interim Guidance Memo SBSE-05-0823-0047, Foreign Account Tax Compliance Act (FATCA) research and use in Field and Specialty Collection programs, issued 8/10/2023.

AUDIENCE

Criminal Investigation (CI), Large Business & International (LB&I), Small Business/Self-Employed (SB/SE), Tax Exempt/Government Entities (TE/GE), and Wage and Investment (W&I)

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25.1.3
Criminal Referrals

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25.1.3.1
(06-10-2021)
Program Scope and Objectives

- (1) **Mission.** The mission of the Office of Fraud Enforcement (OFE) is to promote compliance by strengthening the IRS' response to fraud and mitigating emerging threats. This includes:
 - Improving fraud detection and development to address areas of high fraud/risk noncompliance.
 - Cultivating internal and external partnerships to identify new treatment streams to enhance enforcement.
 - Pursuing civil fraud penalties and recommending criminal cases that will lead to prosecutions, where appropriate.
- (2) OFE builds strong internal and external partnerships and serves as the primary civil liaison to IRS-Criminal Investigation. By supporting cases throughout the life cycle and through full consideration of available treatments, OFE facilitates optimal disposition of cases with civil or criminal fraud potential.
- (3) **Purpose.** This section discusses the purpose and processing of criminal fraud referrals. An important part of this process is the compliance employee's ability to identify potential criminal fraud.
- (4) **Audience.** This handbook is a comprehensive guide for IRS employees servicerwide in the recognition and development of potential fraud issues; referrals for criminal fraud; duties and responsibilities in joint investigations; civil fraud cases; and other related fraud issues.
- (5) **Policy Owner.** Director, OFE, Small Business Self Employed (SB/SE) Division.
- (6) **Program Owner.** OFE, Policy, SB/SE.
- (7) **Primary Stakeholders.** The primary stakeholders are SB/SE, LB&I, TE/GE and CI.

25.1.3.1.1
(06-10-2021)
Background

- (1) This section discusses the procedures to refer a taxpayer to Criminal Investigations when affirmative acts of fraud/willfulness exist. The fraud enforcement advisor (FEA) is available to assist in determining if firm indications of fraud/willfulness are present, criminal criteria has been met, etc.
- (2) Criminal prosecutions serve to enhance voluntary compliance.
- (3) CI's mission is to serve the American public by investigating potential criminal violations of the Internal Revenue Code (IRC) and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.

25.1.3.1.2
(06-10-2021)
Authority

- (1) The IRS has the authority to conduct examinations under U.S. Code Title 26 - Internal Revenue Code, Subtitle F – Procedure and Administration, Chapter 78 - Discovery of Liability and Enforcement of Title, Subchapter A - Examination and Inspection.

25.1.3.1.3
(06-10-2021)
Roles

- (1) The Director, Office of Fraud Enforcement, is the executive responsible for providing policy and guidance for employees and ensuring consistent application of policies and procedures in this IRM.

- (2) Employees who work potential fraud cases are responsible for following the procedures in this IRM. All examiners and their managers working potential fraud cases should familiarize themselves with the information contained in this IRM.
- (3) The fraud enforcement advisor (FEA) serves as a resource and liaison to civil compliance employees in all operating divisions. The FEA is available to assist in civil fraud investigations and offer advice on matters concerning tax fraud.

25.1.3.1.4
(06-10-2021)
**Program Management
and Review**

- (1) The Office of Fraud Enforcement Policy staff manages the fraud program by reviewing and issuing reports to servicewide customers:
 - Three-year reports prepared using Fraud Information Tracking System (FITS) data
 - Status 17 reports using Audit Information Management System (AIMS) or AIMS Centralized Information System (ACIS) data
- (2) OFE Policy Staff can create reports by area, territory or group. These reports help manage fraud inventory and provide review information for managerial use:
 - Cases on FITS but not on AIMS or ACIS
 - Cases on AIMS or ACIS but not on FITS
 - Cases in fraud development status
 - Cases in criminal fraud status
- (3) Ad-hoc reports are produced as requested by OFE customers.
- (4) Operational Reviews of the FEA group managers are completed by the OFE Program Manager twice a year. These reviews measure program consistency, effectiveness in case actions, and compliance with fraud policy and procedures.
- (5) FEA managers utilize reports generated from FITS to monitor and track FEA inventory assignments.

25.1.3.1.5
(06-10-2021)
Program Controls

- (1) FEA managers verify program and procedural compliance by conducting case consultations, case reviews, performance reviews, and security reviews with all FEAs.
- (2) FEAs are required to monitor accepted criminal referrals each quarter to ensure that CI and compliance are holding productive quarterly meetings as required under IRM 25.1.4.4.3, Required Communications.
- (3) FEAs are required to follow-up on all cases in fraud development status at least every 60 days as required by IRM 25.1.2.2(6)(e) Fraud Development Procedures.

25.1.3.1.6
(06-10-2021)
Acronyms

- (1) The following table defines acronyms commonly used throughout this IRM:

Acronym	Definition
ACS	Automated Collection System
ACIS	AIMS Centralized Information System
ACTC	Additional Child Tax Credit
AIMS	Audit Information Management System
AIS	Automated Insolvency System
AOIC	Automated Offer in Compromise
AOTC	American Opportunity Tax Credit
ASAC	assistant special agent in charge
ASED	Assessment Statute Expiration Date
ATFR	Automated Trust Fund Recovery
AUSA	Assistant U.S. Attorney
BMF	Business Master File
BSA	Bank Secrecy Act
CCFC	Collection Campus Fraud Coordinator
CCP	Centralized Case Processing
CFC	Campus Fraud Coordinator
CFFC	Collection Functional Fraud Coordinator
CI	Criminal Investigation
COIC	Centralized Offer In Compromise
COP	Conditions of Probation
CSCO	Compliance Services Collection Operations
CTC	Child Tax Credit
CTR	Currency Transaction Report
DEL RET	Delinquent Return
DOJ	Department of Justice
ECS	Exam Case Selection
EFC	Examination Fraud Coordinator
EITC	Earned Income Tax Credit
EPR	Examination Planning and Review
ERCS	Examination Returns Control System
FBAR	Foreign Bank and Financial Accounts
FCQ	FinCEN Query
FEA	Fraud Enforcement Advisor

Acronym	Definition
FFC	Functional Fraud Coordinator
FFTF	Fraudulent Failure to File penalty
FinCEN	Financial Crimes Enforcement Network
FITS	Fraud Information Tracking System
FIRM	Fraudulent Intent Referral Memorandum
GM	Group Manager
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRP	Information Return Processing
IRS	Internal Revenue Service
LB&I	Large Business & International
ODC	Other Dependent Credit
OFE	Office of Fraud Enforcement
OIC	Offer in Compromise
OI	other Investigation
PAC	Preparer Action Case
PI	primary investigation
PII	Personally Identifiable Information
PSP	Planning and Special Programs
RA	Revenue Agent
RAR	Revenue Agent's Report
RICS	Return Integrity and Compliance Services
RO	Revenue Officer
SA	Special Agent
SAC	Special Agent in Charge
SAR	Special Agent's Report or Suspicious Activity Report
SSA	Supervisory Special Agent
SB/SE	Small Business/Self Employed
SCI	Subject Criminal Investigation

Acronym	Definition
SOL	Statute of Limitation
SRS	Specialist Referral System
SSA	Supervisory Special Agent
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt/Government Entities
TM	Territory Manager
TP	Taxpayer
TS	Technical Services
W&I	Wage & Investment

25.1.3.1.7
(06-10-2021)
Terms

- (1) Compliance employees must be familiar with the following legal terms to understand the requirements of proof. The following table defines terms commonly used throughout this IRM:

Term	Definition
Burden of Proof	Includes both the burden of producing evidence and persuading a court (judge or jury) by clear and convincing evidence that the facts support the contention of civil fraud. In tax fraud cases, the burden of proof is on the government.
Circumstantial Evidence	Evidence based on inference and not personal observation.
Clear and Convincing Evidence	Evidence showing that the assertion made is highly probable or reasonably certain. This is a greater burden of proof than preponderance of the evidence but less than beyond a reasonable doubt.
Direct Evidence	Evidence in the form of documents or testimony from a witness who actually saw, heard, or touched the subject of questioning. Direct evidence, which is believed, proves existence of fact in issue without inference or presumption.
Evidence	Data presented to a judge or jury to prove the facts in issue. Evidence includes the testimony of witnesses, records, documents, or objects. Evidence is distinguished from proof, in that proof is the result or effect of evidence.

Term	Definition
Fraud	Deception by misrepresentation of material facts, or silence when good faith requires expression, which results in material damage to one who relies on it and has the right to rely on it. Simply stated, it is obtaining something of value from someone else through deceit.
Inference	A logical conclusion from given facts.
Preponderance of Evidence	Evidence that will incline an impartial mind to one side rather than the other so as to remove the cause from the realm of speculation. It does not relate merely to the quantity of evidence. Simply stated, evidence which is more convincing than the evidence offered in opposition.
Presumption (of law)	A rule of law that a judge or jury will draw a particular inference from a particular fact, or from particular evidence, unless and until the truth of such inference is disproved.
Reasonable Doubt	The evidence must be so convincing that a reasonable person would not question the defendant's guilt.
Willful Intent to Defraud	An intentional wrongdoing with the specific purpose of evading a tax believed by the taxpayer to be owing.

25.1.3.1.8
(06-10-2021)

Related Resources

- (1) Procedural guidance on potential fraud development cases can be found throughout IRM 25.1.
- (2) IRM 4.10.6.2, Recognizing Noncompliance.
- (3) IRM 9.5.1.2.1.5, Joint Investigations with Small Business/Self Employed, Large Business and International, Tax Exempt/Government Entities, or Wage & Investment.
- (4) The Fraud Development Knowledge Base is located at: *Fraud Development Knowledge Base - Home (sharepoint.com)*
- (5) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see: <https://www.irs.gov/taxpayer-bill-of-rights>.

25.1.3.2
(06-10-2021)
Overview

- (1) The OFE is a servicewide program which has four groups of fraud enforcement advisors (FEAs). The groups are comprised of revenue agents and revenue officers who are located strategically throughout the country to assist with the development of fraud. A list of the groups, FEA group managers and the FEAs can be found on the Fraud Development Knowledge Base website at *Fraud Development Knowledge Base - Fraud Contacts - GrpByChapter (sharepoint.com)*
- (2) The FEA will be consulted in all cases involving potential criminal fraud, as well as those cases that have potential for a civil fraud penalty. The FEA serves as a resource and liaison to civil compliance employees in all operating divisions. The FEA is available to assist in civil fraud investigations and offer advice on matters concerning tax fraud. Upon initial recognition of indicators of fraud, the employee will discuss the case at the earliest possible opportunity with their manager. If the compliance group manager concurs, the FEA will be contacted immediately; through the Specialist Referral System (SRS), and both the compliance group manager and FEA will provide guidance to the compliance employee on how to proceed. Compliance managers will encourage the early involvement of the FEA in all potential fraud cases.
- (3) A comment regarding consideration of fraud must be documented by all compliance examination field operations employees on cases involving adjustments to taxable income and/or credits resulting in an underpayment of tax due.

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25.1.3.3
(11-17-2023)
**Preparation of Form
2797 - Referral Report of
Potential Criminal Fraud
Cases**

- (1) If first indicators of fraud are suspected and the compliance group manager concurs, the FEA will be contacted immediately through the Specialist Referral System (SRS).
- (2) The SRS is located at: <https://srs.web.irs.gov/default.aspx>.

- (3) If after consultation with the FEA, it is determined that a potential fraud case has firm indications of fraud/willfulness and meets criminal criteria, the compliance employee will **suspend** the examination/collection activity without disclosing to the taxpayer or representative the reason for the suspension. When the taxpayer asks if a fraud referral is being considered or whether CI is involved, the examiner or revenue officer **must not** give a false or deceitful response. Guidance from the courts provides that compliance employees:
- May decline to answer questions about criminal potential
 - May not deceive taxpayers when asked specifically about the character or nature of an investigation
 - Are not required to initiate disclosure about developing indicators of fraud or a potential referral to CI, or
 - May simply advise that when firm indicators of fraud are present, a referral to CI is required
- (4) Approval from Automatic Exchange of Information (AEOI) must be secured prior to submission of any suit recommendation or criminal fraud referral containing any Form 8966, FATCA Report, information. The AEOI office may request consent from the host country to use the Form 8966, FATCA Report, or coordinate with the Office of Associate Chief Counsel (International) in connection with civil litigation or a criminal proceeding. Please see IRM 4.60.1.10.3, Access to AEOI Data, for additional information.
- (5) The compliance employee will complete the current version of Form 2797 (accessed through the Forms Repository or Integrated Collection System (ICS)). Electronic Publishing provides a fillable form that can be downloaded, saved as a PDF file, edited and electronically transmitted via Microsoft Outlook/Secured Messaging. The FEA is available to assist the compliance employee with preparation of Form 2797.
- (6) Preparation of Form 2797
- a. The referral will be a detailed presentation of the facts that establish firm indications of fraud/willfulness, including, but not limited to:

Facts:
A description of the firm indications/willfulness [defined in IRM 25.1.1.4(2), Affirmative Acts (Firm Indications) of Fraud];
Taxpayer's explanation of the firm indications/willfulness;
The estimated criminal tax liability; and
The method of proof used for income verification.

- b. If the fraudulent scheme involves multiple parties, the most culpable individual will be listed in items 1a and 1b. Related individuals or entities (including the person identified in items 1a and 1b) must be listed in item 1c. All known parties involved in the fraudulent scheme (including the one identified in items 1a and 1b) will be listed in item 1c.

Note: Spouses should not be listed together in a single item.

- c. If the referral is a joint referral from multiple sources, the FEA group manager will ensure that each operating division and/or business unit is

properly identified and credited for the referral. TE/GE should be notified of any potential criminal investigation that may include a TE/GE type entity.

- d. No work papers or documents are required with the referral. If attachments are necessary to enhance the referral, they must be embedded in the Form 2797 as a PDF file. The initial evaluative conference, referred to as the 10-day conference, between the referring compliance employee, the FEA and the evaluating special agent (SA) allows the compliance employee the opportunity to explain the case in detail and address any questions regarding the potential criminal violations. CI will be provided access to all work papers and documents needed to effectively evaluate the referral during the initial conference.
- (7) The compliance employee will complete the Form 2797 and enter their name and grade, and enter the date and forward the referral Form 2797 via secured e-mail to the compliance employee's group manager.
 - (8) The compliance employee's group manager will review the referral and if in agreement, will ensure that the proper Area/Territory/Group is entered, approve the referral and forward it via secured e-mail to the FEA for consideration. The compliance employee's group manager will retain a copy of the referral for the case file.
 - (9) The FEA will review the referral and if in agreement, will approve the referral and prepare a one-page narrative (used to describe additional facts and/or the fraud development process), if necessary, embed the narrative in the Form 2797 PDF file, and forward it via secured e-mail to the FEA group manager for consideration.
 - (10) The FEA group manager will review the referral and if in agreement, will approve the referral and enter the FEA Management Control Number and forward it via secure e-mail to the appropriate CI Field Office.

25.1.3.4
(06-10-2021)
Referral Evaluation

- (1) Within 10 workdays of receipt of the referral, the SA assigned to evaluate the referral will identify the subject (individual or entity under criminal investigation consideration) as the primary investigation (PI), assign a PI number to the case and set up the initial conference. At the 10-day evaluative conference, the referring compliance employee, their group manager, the evaluating SA, their supervisory special agent (SSA) and the FEA will meet to discuss the referral and review tax returns, evidence gathered to support the alleged offense, criminal tax computations, etc. Also, the following issues should be discussed at the initial conference:
 - a. Verification of income and/or assets
 - b. Explanations offered by the taxpayer, the taxpayer's representative, and/or the return preparer concerning the alleged offense
 - c. Whether returns were solicited and attempts were made to resolve the civil issues, and prior IRS action(s) involving a similar alleged offense and
 - d. Observations about the age, health (physical and mental), education and occupation of the taxpayer

Note: Additional factors to consider during the evaluation of the referral include additional tax due to fraud, flagrancy, significance, public interest and the deterrent effect.

- (2) Within 30 workdays of receipt of the referral, the same individuals will meet again (disposition conference) to discuss CI's decision to accept or decline the referral. CI is required to provide written feedback to the referring compliance employee, as to their decision (see IRM 25.1.3.5 and IRM 25.1.3.6). Area Counsel will be invited to offer legal advice, if it is deemed necessary. Also, the transfer of original tax returns, the need for a cooperating compliance employee, and civil actions concerning statute and prior/subsequent/related return consideration need to be discussed.
- (3) The FEA will monitor the conference dates and response obligations to ensure all actions occur in a timely manner.
- (4) The decision to accept or decline a referral may be extended by written agreement of the appropriate field territory manager (TM). The agreement should specify the reason(s) for the request (e.g., delay in receiving original tax returns or an opinion from Counsel) and the date the referring office can expect a determination.

25.1.3.5
(06-10-2021)
**Accepted Criminal
Referrals**

- (1) If CI accepts the referral, the PI will be elevated as a subject criminal investigation (SCI). CI will provide feedback by completing the "For Criminal Investigation Use Only" portion of item 1c, item 10 and item 11 of Form 2797 and return it via secure e-mail to the FEA group manager.
- (2) CI is responsible for placing the TC 914 controls in the Master File record. Once the referral is accepted, the CI Special Agent and SSA will discuss the entity and modules associated with the referral with the FEA to ensure the FEA and referring group are aware what Master File records and tax years controls will be placed upon. CI will make the final decision regarding the necessary 914 controls based on the needs of the investigation and the necessity to protect the criminal case.
- (3) The FEA group manager will forward the accepted referral via secure e-mail to the referring FEA. The FEA will send the accepted referral via secure e-mail to the referring compliance employee and their group manager. If the referral was initiated by Examination, the examiner/group manager will update the case to AIMS Status Code 18. If the referral originated from Collection, the revenue officer/group manager will close the case when the TC 914 is posted to the module, if no further action is required (see IRM 25.1.8.10, Collection Case Disposition). If further action is required, the revenue officer should open an Other Investigation (OI). See IRM 25.1.8.10(7).
- (4) The SA will promptly meet with the referring compliance employee and determine whether a detailed memorandum is required concerning contacts with the taxpayer, the taxpayer's representative, or the preparer of the returns (preparer) under criminal investigation. If a memorandum is needed, the following should be included:
 - a. The date of each contact the referring compliance employee had with the taxpayer, the taxpayer's representative, and/or the preparer; and
 - b. A summary of what took place during each contact, any explanations offered concerning the alleged offense, and/or any action that could be construed as solicitation, condonation, or an attempt at civil settlement.
- (5) IRM 25.1.4, Administrative Joint Investigation, provides specific guidance to compliance employees assigned to a joint investigation case as a cooperating compliance employee.

- a. A joint investigation case can originate from one of two sources:

Sources:
A compliance initiated criminal fraud referral (submission of Form 2797), or
A CI initiated criminal investigation

- b. There are two types of joint investigations, administrative or non-Grand Jury (referred by CI as a “Prosecution Recommendation” case) and Grand Jury (referred by CI as a “Further Investigation”) case. Among the procedural distinctions are the roles and requirements that apply to mandatory quarterly (four-way) conferences.

Roles:
Specific guidance for the compliance employee cooperating in administrative joint investigations is found in IRM 25.1.4, Administrative Joint Investigation.
Specific guidance for the compliance employee cooperating in Grand Jury investigations is found in IRM 25.1.5, Grand Jury Investigations.

- (6) All criminal investigations (administrative and Grand Jury) involving cooperating compliance employees (joint investigations) are subject to mandatory quarterly (four-way) conferences. Quarterly conferences are also required for all accepted criminal referrals (administrative and Grand Jury) in which a compliance employee is not asked to participate (non-joint investigations). The mandatory quarterly conferences are designed to inform the referring compliance function of the updated investigation status. A status update for this purpose could include:
- The SA is writing the special agent’s report (SAR).
 - The case is being discontinued.
 - The case has been forwarded to Department of Justice (DOJ) Tax or the Assistant United States Attorneys (AUSAs) office.
 - The case is going to trial. etc.
- (7) The SSA and the manager of the cooperating examiner/officer should exercise sufficient control and follow-up to ensure the conferences are conducted. The SSA should contact the compliance group manager to schedule the required quarterly conference. If the SSA has not contacted the compliance group manager to schedule the mandatory quarterly conference when one is due, the compliance group manager may also contact the SA to schedule the quarterly conference. However, CI has primary responsibility for scheduling the mandatory quarterly conference. Quarterly conferences are not required if the compliance employee has been engaged solely to review and validate the Special Agent’s tax computation.
- a. The purpose of the quarterly conference is to review the status of the investigation and plan actions required of the cooperating compliance employee and the SA. Appropriate follow-up should be done periodically to ensure productive quarterly meetings are being held.

- b. The quarterly conference should include the SSA, SA, the compliance group manager and the cooperating compliance employee. When necessary, the FEA will be invited to attend the quarterly conference. The inclusion of the FEA does not override the compliance group manager's responsibility for case and resource oversight.
- c. Form 6084, Quarterly Joint Workplan and Conference Memorandum, is used to document the conference discussion. The form is completed by the SSA and should include the following information:

Form 6084 information:
Status/progress of the investigation;
Investigative obstacles (technical issues, noteworthy defenses);
Planned activities of both the SA and the cooperating examiner/revenue officer;
Discussions of civil actions (statute extensions, statutory notices of deficiency, prior/subsequent year and related return considerations); and
Coordination of related investigations with other field offices (venue issues, similar investigative agendas/plans).

Note: A copy of the completed form must be issued to all attendees.

- (8) If a taxpayer files a delinquent or amended return during a joint investigation (administrative or Grand Jury), the assigned cooperating compliance employee must discuss such filing with the assigned SA. The assigned SA must provide written guidance to the cooperating compliance employee regarding whether or not any tax shown on such return should be immediately assessed. If the SA determines that such an assessment may jeopardize the criminal case, then the SA should advise the cooperating compliance employee to not make the assessment at that time. At a minimum, however, the cooperating compliance employee must update the statute for assessment on AIMS to reflect receipt of the delinquent return and ensure transaction codes are reflected on Master File to reflect the receipt of an amended and/or delinquent return. See IRM 4.4.9, Delinquent and Substitute for Return Processing, and IRM 4.4.21, Non-Examined Closures and Deleting AIMS Records, for additional guidance on processing amended and/or delinquent returns. When there is no cooperating compliance employee assigned, then the assigned SA must ensure that the transaction codes are reflected on Master File to reflect the receipt of an amended and/or delinquent return, and to ensure the statute is properly reflected.
- (9) The SA must advise civil compliance functions if the case has been referred/accepted by the DOJ for prosecution (referred by CI as a "Prosecution Recommendation" case) or if the case is the subject of a Grand Jury (referred by CI as a "Further Investigation" case). In either case, CI must submit a Notice of Department of Justice Referral memorandum to the appropriate civil compliance functions advising of such. The memorandum will serve as civil compliance function's supporting documentation to submit the case to Technical Services for suspense, or to the appropriate TE/GE suspense unit. Other civil business operating divisions will forward the case to their appropriate suspense unit.

25.1.3.6
(06-10-2021)
Declined Criminal Referrals

- (1) If the referral is declined, CI will complete items 9 through 11 of Form 2797 and return it to the FEA group manager via secure e-mail along with a memorandum explaining the reason(s) for the declination.
- (2) The FEA group manager will forward via secure e-mail the declined referral to the referring FEA. The FEA will send the declined referral via secure e-mail to the referring compliance employee and their group manager. The referring compliance employee will resume the examination/collection activity once notification of the declination is received. The compliance employee and FEA will amend the plan of action (Form 11661, Fraud Development Recommendation-Examination, or Form 11661-A, Fraud Development Recommendation-Collection), which will include a schedule of future discussions, if warranted. If additional (new) firm indications of fraud develop, the case may again be referred to CI for criminal investigation consideration, as outlined in IRM 25.1.3.3.
- (3) If a referral is declined and the FEA, in conjunction with the referring compliance employee and compliance group manager, disagrees with the reasoning behind the declination, it is the FEA's responsibility to elevate the issue to the FEA group manager. If the FEA group manager concurs with the disagreement, they will consult with the appropriate TM/equivalent and request that the special agent in charge (SAC)/assistant special agent in charge (ASAC) reconsider the referral. If an agreement still cannot be reached, the matter will be elevated to the area director/equivalent and the CI Director of Field Operations for resolution.
- (4) The compliance employee should remove the case from fraud development status if no further actions related to criminal or civil fraud development are anticipated. For Collection cases, the TC 971 AC 281 should be reversed and/or the Sub Code 910 should be removed. See IRM 25.1.8.8(4), Aging of Collection Fraud Cases, for more information. Examination cases will be returned to AIMS Status Code 12 or other appropriate status code if civil fraud (Civil Fraud Penalty and/or Fraudulent Failure to File Penalty) is not being pursued. See IRM 25.1.6.2, Procedures; IRM 25.1.7.7, Civil Closure and IRM 25.1.7.7.1, Assessment Procedure for the Fraudulent Failure to File (FFTF) Penalty, for additional information.

25.1.3.7
(06-10-2021)
Return Preparers

- (1) All potential criminal fraud referrals regarding a return preparer should be discussed with the SB/SE return preparer coordinator (RPC) *Exam Procedures Knowledge Base - PSP - Return Preparer Coordinators (RPC's)* and the FEA. For cases involving any Tax Exempt/Government Entities (TE/GE) related entity (Employee Plans, Exempt Organizations, Indian Tribal governments, Federal, State or Local governments, or Tax Exempt Bonds) a discussion with the TE/GE Fraud Specialist and/or Functional Fraud Subject Matter Expert (SME) should take place. For cases involving LB&I preparers/tax shelter promoters, contact the LB&I Senior Program Fraud Analyst for coordination of various resources available.
- (2) Form 2797 will be prepared, as described in IRM 25.1.3.3, when the compliance group manager and FEA agree that a return preparer is involved in criminal fraud. The compliance group manager will retain a copy of Form 2797 for the return preparer case file and the FEA will forward a copy of the Form 2797 via secure e-mail to the SB/SE RPC or the TE/GE RPC if the returns are TE/GE-related. Notification will also be sent to TE/GE via e-mail to **TE/GE-EO-FIU*. See IRM 4.1.10, Planning and Special Programs - Return Preparer

Program Coordinator, for procedures relating to preparer action cases (PACs). If it is determined that the return preparer is not involved in criminal fraud, the Area RPC should be contacted for consideration of a PAC.

- (3) If the return preparer/promoter scheme involves multiple entities/individuals, only one Form 2797 should be prepared. The individual or legal entity that is considered most culpable will be identified in items 1a and 1b and all entities and/or individuals, including the individual or legal entity identified in items 1a and 1b, will be listed in item 1c. A separate Form 2797 is no longer prepared for each type of tax involved or dissimilar fraudulent acts. The Form 2797 should give specific details relating to the apparent fraudulent act(s) including:
 - Names of the taxpayers (i.e. clients of the return preparer/promoter);
 - Taxpayer identification numbers (TINs);
 - Tax form numbers;
 - Amount of the adjustment for each client of the return preparer/promoter; and
 - Resulting deficiencies for each client of the return preparer/promoter.
- (4) The examiner should retain a copy of each taxpayer's report of examination and relevant work papers so that the IRC 6694 civil return preparer penalty can be pursued after disposition of the criminal case.
- (5) See IRM 25.1.2.9, Return Preparer Fraud, for additional guidance.