



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.26.15

JANUARY 13, 2021

EFFECTIVE DATE

(01-13-2021)

PURPOSE

- (1) This transmits revised text for IRM 4.26.15, Bank Secrecy Act, General Program.

MATERIAL CHANGES

- (1) IRM 4.26.15.1 added to conform to the new internal control requirements described in IRM 1.11.2, Internal Controls. The information formerly in this section titled Overview was moved to Program Scope and Objectives.
- (2) IRM 4.26.15.2 name changed to Required Filing Checks General Guidelines to better reflect contents. Content was updated and links added to material in other IRM sections.
- (3) IRM 4.26.15.3 name changed to Contacts for BSA Information to better reflect contents. Also additional resource material added.
- (4) IRM 4.26.15.4 information added on procedures to access FCQ.
- (5) IRM 4.26.15.5 was updated providing more detailed information on required information for information reports.
- (6) IRM 4.26.15.5.2 deleted and information included in 4.26.15.5.
- (7) IRM 4.26.15.6.1 added information from BSA Expanded Package Audit class taught in 2018.
- (8) Removed Exhibit 4.26.15-1, Comparison of Form 8938 and FBAR Requirements, as information can be found on irs.gov. Link provided in IRM 4.26.15.6.3. Added BSA Referral Decision Matrix as an exhibit.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.26.15 dated November 4, 2015.

AUDIENCE

Intended audience is employees of the Small Business/Self Employed (SB/SE) division and can be referenced by all field compliance personnel.

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Small Business/Self Employed

4.26.15

General Program

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4.26.15-1 Bank Secrecy Act Referral Decision Matrix

4.26.15.1
(01-13-2021)
Program Scope and Objectives

- (1) **Purpose.** This IRM describes administrative procedures and audit techniques that should be used by the general program income tax examiner working a case related to BSA.
- (2) **Audience.** This IRM is for general income tax examiners, but may be referenced by Specialty BSA and all other divisions of the IRS.
- (3) **Policy Owner.** Director, Specialty Examination Policy – Small Business/Self Employed.
- (4) **Program Owner.** Director, Examination - Specialty Examination owns Bank Secrecy Act.
- (5) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.
- (6) **Program Goals.** The general program examiner should be aware of the information available on the FinCEN Query System (FCQ), as well as the basic filing requirements of both the Bank Secrecy Act (BSA) and IRC 6050I, Returns Relating to Cash Received in Trade or Business, etc. Examiners must also keep Title 31 (BSA) and Title 26 (IRC) activities separate.

4.26.15.1.1
(01-13-2021)
Authority

- (1) Authority for the IRS to conduct BSA examinations includes the following sources:
 - a. 31 USC 5318(a), General Powers of Secretary, provides the Secretary of the Treasury with authority to administer provisions of the BSA.
 - b. 31 CFR 1010.810(b)(8), Enforcement, gives the Commissioner, IRS, the delegated authority to examine certain financial institutions to determine compliance with BSA requirements.
 - c. A Memorandum of Agreement dated April 8, 2003 delegates examination and penalty authority for Foreign Bank Account Reports (FBARs) from the Financial Crimes Enforcement Network (FinCEN) to the IRS. See IRM 4.26.1-2, FBAR Delegation to IRS.
 - d. A Memorandum of Understanding and Delegation of Authority to Examine Non-Financial Trades and Businesses, dated April 10, 2015, delegates examination authority under Title 31 for Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, from FinCEN to the IRS. See IRM 4.26.1-3, Form 8300 Title 31 Delegation to IRS.
 - e. Related authority: IRC 7601, Canvass of Districts for Taxable Persons and Objects, Authorizes the Secretary of the Treasury to Inquire into Taxpayers' Tax Liability. IRC 7602, Examination of Books and Witnesses, Authorizes the Secretary to Examine Books and Witnesses for Specific Purposes Including Determining and Collecting Federal Tax Liabilities.
- (2) See IRM 4.26.1 Bank Secrecy Act, Introduction and Program Structure.

4.26.15.1.2
(01-13-2021)
Responsibilities

- (1) Director, Examination – Specialty Policy is the executive responsible for BSA Examination policy and procedures.
- (2) Director, Examination – Specialty Examination is the executive responsible for BSA examination operational compliance.

- (3) Chief, BSA Policy is responsible for ensuring general information about basic BSA examiner responsibilities and IRM sections is communicated to and carried out by BSA examiners.

4.26.15.1.3
(01-13-2021)
Acronyms

- (1) The following table contains acronyms, and their definitions, used throughout this IRM.

Acronym	Definition
AML	Anti-Money Laundering
BSA	Bank Secrecy Act
CFR	Code of Federal Regulations
CI	IRS Criminal Investigation
CTR	Currency Transaction Report
ERCS	Examination Returns Control System
FBAR	Report of Foreign Bank and Financial Reports
FCQ	FinCEN Query System
FinCEN	Financial Crimes Enforcement Network
IDRS	Integrated Data Retrieval System
ITM	Integrated Talent Management
LB&I	Large Business & International
MSB	Money Services Business
NBFI	Non-Bank Financial Institution
RSD	Related Statute Determination
SAR	Suspicious Activity Report
SME	Subject Matter Expert
TIN	Taxpayer Identification Number
USC	United States Code

4.26.15.1.4
(01-13-2021)
Related Resources

- (1) The IRS adopted the Taxpayer Bill of Rights in June 2014. 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 Taxpayer Bill of Rights see <http://irweb.irs.gov/AboutIRS/tbor/default.aspx>.
- (2) Helpful information sources include:
- The BSA Policy SharePoint site
 - A list of SB/SE BSA Policy Analysts, their contact information and program assignments, are found on the BSA Policy SharePoint
 - FinCEN - Financial Crimes Enforcement Network

- 31 CFR Chapter X, Financial Crimes Enforcement Network, Department of the Treasury
 - 31 USC 5311, Declaration of Purpose, et seq (Title 31)
 - IRC 6050I, Returns Relating to Cash Received in Trade or Business, etc. (Title 26)
 - IRC 6721, Failure to File Correct Information Returns
 - IRC 6722, Failure to Furnish Correct Payee Statements
- (3) The BSA program is required to follow all servicewide examination procedures and those set forth in the SBSE examining process IRM. However, the following material provides additional information relating to the processing and examination of Bank Secrecy Act program returns:
- IRM 4.26.3 - Examination Case Selection (ECS)
 - IRM 4.26.4 - FinCEN Query (FCQ)
 - IRM 4.26.5 - Bank Secrecy Act History and Law
 - IRM 4.26.6 - Bank Secrecy Act Examiner Responsibilities
 - IRM 4.26.7 - Bank Secrecy Act Penalties
 - IRM 4.26.8 - Special Procedures
 - IRM 4.26.9 - Examination Techniques For Bank Secrecy Act Industries
 - IRM 4.26.10 - Form 8300 History and Law
 - IRM 4.26.11 - BSA Examiner Responsibilities for Form 8300 Examinations
 - IRM 4.26.12 - Examination Techniques for Form 8300 Industries
 - IRM 4.26.13 - Structuring
 - IRM 4.26.14 - Disclosure
 - IRM 4.26.15 - General Program
 - IRM 4.26.16 - Report of Foreign Bank and Financial Accounts (FBAR)
 - IRM 4.26.17 - Report of Foreign Bank and Financial Accounts (FBAR) Procedures

4.26.15.2
(01-13-2021)
**Required Filing Checks
General Guidelines**

- (1) See IRM 4.10.5, Examination of Returns, Required Filing Checks, for additional information.
- (2) Title 31 inquiries must not be made during a Title 26 activity. See IRM 4.10.5.8.2, Currency Transaction Reports (CTRs). BSA reports are not part of the Required Filing Checks for an examiner conducting an income tax examination. Thus, for example, an examiner conducting an income tax examination of a financial institution should not inquire as to the financial institution's Title 31 responsibilities or activities. See IRM 4.26.14, Disclosure.
- (3) The FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), is not a required filing check because it is a Title 31 requirement. See IRM 4.10.5.9, Report of Foreign Bank and Financial Accounts (FBAR).
- (4) Form 8938, Statement of Specified Foreign Financial Assets, is a required filing check. See IRM 4.10.5.7, Information Returns and Forms Involving Foreign Entities. As Form 8938 contains some of the same information as the FBAR, a failure to correctly complete Form 8938 may indicate a possible FBAR violation. See IRM 4.26.15.6.3.
- (5) Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, is part of the Required Filing Checks for an examiner conducting an income tax examination. See IRM 4.10.5.8, Form 8300, Report of Cash

Payments over \$10,000 Received in a Trade or Business, and IRM 4.26.15.6.1.

4.26.15.3
(01-13-2021)
**Contacts for BSA
Information**

- (1) The local BSA group manager can be a resource person for questions about BSA program policies and procedures. A Title 31 matter discovered during an income tax examination cannot be disclosed, even to the local BSA group manager, until a related statute determination has been made. See IRM 4.26.14.2.2, Related Statute Procedures, and IRM 4.26.15.6.2.
- (2) SBSE has Subject Matter Experts (SME) who can be contacted for assistance. Information can be found at <http://mysbse.web.irs.gov/SME/default.aspx>.
- (3) BSA Expanded Package Audit training material can be found at <http://publish.no.irs.gov/cat12.cgi?request=CAT1&catnum=71354>.

4.26.15.4
(01-13-2021)
**FinCEN Query System
(FCQ) Use in Title 26
Examinations**

- (1) FCQ information is useful in identifying cash activity that may not be accurately reported on the income tax return. In addition, it may lead the examiner to discover sources of unreported income, often derived from criminal activity. FCQ information is a “window” into the underground economy, with invaluable information not obtainable elsewhere.
- (2) SB/SE has limited access to the FinCEN Portal to FinCEN Super Users in Exam. Each state has a Subject Matter Expert (SME) to which the agent will submit their request. A list of FinCEN Super Users for Exam can be found at: <https://portal.ds.irsnet.gov/sites/vl019/SitePages/FinCenSuperuserContacts.aspx>. The request is made by completing and submitting Form 10509, FinCEN Query (FCQ) Information Request. This form is used to request general FinCEN data such as CTRs, FBARs, and Form 8300. Suspicious activity reports may be requested using Form 10509-A, FinCEN Query SAR Request. Agents and the group manager must have received SAR training to submit this request. The courses on the Integrated Talent Management (ITM) system, for revenue agents to complete, are ITM Course 41166 and ITM Course 36427. The courses on the Integrated Talent Management (ITM) system, for group managers to complete, are ITM Course 41167 and ITM Course 36428. Form 10509 and Form 10509-A require a manager’s digital signature and both forms must be submitted electronically via email.
- (3) Access and use of FCQ data is subject to managerial review of audit trails to ensure appropriate use of FCQ data in relation to assigned cases.
 - a. Managerial reviews of audit trails will be conducted on an annual basis and may be conducted in conjunction with annual workload reviews.
 - b. A 30-day period will be selected from the prior 12 months of FCQ activity.
 - c. Queries will be compared against open inventory for the same 30-day period or will be validated through other business controls (such as gate-keeper procedures) to ensure queries were related to assigned cases.
 - d. A required second-level review would normally be conducted during an operational review.
- (4) Examiners should refer to IRM 4.26.4, FinCEN Query (FCQ), for detailed information on FCQ.

4.26.15.4.1
(01-13-2021)

**Access to Suspicious
Activity Reports (SARs)
on FCQ for Title 26 Civil
Tax Purposes**

- (1) Access to BSA information through FCQ for tax purposes is governed by the Memorandum of Understanding (MOU) between the Financial Crimes Enforcement Network (FinCEN) and IRS dated September 24, 2010. See IRM 4.26.14-2, Memorandum of Understanding Dated September 24, 2010.
- (2) The MOU allows compliance employees electronic access to SAR information or the ability to receive SAR data when authorized by their operating division and business unit leaders.
- (3) SAR information requests are limited to active examination and collection cases and case-building activities.
- (4) Training on SAR information access and security is mandatory prior to any authorized access. For a full discussion of SAR access and security, see IRM 4.26.14, Disclosure. Also see IRM 4.26.15.5.2.

4.26.15.5
(01-09-2013)

**Examination of
Information Reports
from the BSA Program**

- (1) If, in the course of a BSA examination, the BSA examiner identifies individuals and/or businesses conducting questionable transactions in currency and/or monetary instruments that indicate possible violations, a referral for an examination may be appropriate. No related statute determination is necessary to transmit Title 31 information for Title 26 action.
- (2) The BSA examination program generates leads from sources such as:
 - a. Title 31 BSA and Form 8300 examinations,
 - b. Criminal Investigation referrals, and
 - c. CTR Operations- Detroit.
- (3) These information leads are forwarded to the field for possible income tax examinations on Form 5346, Examination Information Report or Form 3949, Criminal Investigation Information Item.
- (4) An income tax examination based on a referral from a BSA examination is conducted in accordance with established procedures for income tax examinations.
- (5) The BSA examiner must not be assigned to the income tax examination.

4.26.15.5.1
(01-09-2013)

Project Codes

- (1) Income tax examinations resulting from the BSA program are assigned the following project codes:
 - 432 — Leads from the Form 8300 program
 - 441 — Leads from the Title 31 program
- (2) If fraud is discovered as part of an income tax examination and the case is updated to status 17, the project code should be changed to reflect the fraud issue:
 - From 432 to 146 - Form 8300 fraud
 - From 441 to 147 - Title 31 fraud
- (3) The examiner should ensure that multiple years and any related return pickups also reflect the appropriate BSA project codes.

4.26.15.5.2
(01-09-2013)

Examination of CI Referrals

- (1) A referral received by a compliance function from Criminal Investigation (CI) may be derived from information filed by financial institutions on SARs. These reports are confidential and the information must be protected from unauthorized disclosure.
- (2) Because disclosure of SAR information is restricted by 31 USC 5318(g), Reporting of Suspicious Transactions, the examiner must not:
 - a. Disclose that a SAR report has been filed,
 - b. Propose an adjustment based solely on an amount listed on a Criminal Investigation Information Item (Form 3949),
 - c. Disclose a source or possible source of the information,
 - d. Conduct the examination in a way the taxpayer could reasonably conclude any of the above, or
 - e. Issue a summons for specific SAR information.
- (3) If during the course of an examination, a request is received to identify the source of and/or the information that caused the examination to begin, the examiner should not reveal SAR information or the fact that a SAR was filed. The suggested response is "I cannot disclose that information. The authority to withhold that information is in Internal Revenue Code Section 6103(e)(7)."

4.26.15.6
(01-13-2021)

Uncovering BSA Violations in Title 26 cases

- (1) Potential BSA violations may be discovered while conducting an income tax compliance activity.
- (2) Per IRM 4.10.5.8, Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, Form 8300 is part of the Title 26 Required Filing Checks.
- (3) Per IRM 4.10.5.8.2, Currency Transactions Reports (CTRs), Title 31 inquiries should not be made during a Title 26 audit. For example, an examiner conducting an income tax audit of a financial institution should not inquire as to the financial institution's Title 31 responsibilities.
- (4) Per IRM 4.10.5.9, Report of Foreign Bank and Financial Accounts (FBAR), FBAR is not a Title 26, Internal Revenue Code, requirement. However, examiners should verify the responses to the questions about foreign financial accounts and foreign trusts that appear on Form 1040, Schedule B, Part III. Examiners must use FinCEN to verify the filing of an FBAR. If a required FBAR has not been filed, examiners must complete a Form 13535, Report of Foreign Bank and Financial Accounts Related Statute Memorandum, "related statute memorandum" before an FBAR case can be started or before the taxpayer can be asked about FBAR filings.

4.26.15.6.1
(01-13-2021)

Form 8300 Violations Discovered in a Title 26 Case

- (1) Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, is a dual-purpose form. It satisfies filing requirements under both Title 26 under IRC 6050I, Returns Relating to Cash Received in Trade or Business, etc., and Title 31 under 31 USC 5331, Reports Relating to Coins and Currency Received in Nonfinancial Trade or Business.
- (2) Form 8300 is part of the Title 26 Required Filing Checks.

- (3) An Exam Revenue Agent may potentially come across a Form 8300 issue while investigating a tax matter when the business deals with significant cash. The agent would want to be alert to the following situations:
- a. Transactions occurred which involved the receipt of cash in excess of \$10,000.
 - b. There were consecutive or related transactions in excess of \$10,000.
 - c. Forms 8300 were filed on any transactions involving cash in excess of \$10,000 and/or transactions over \$10,000 involving a combination of currency and monetary instruments.
 - d. A single transaction **greater than \$10,000** structured as multiple transactions **each** less than \$10,000.
 - e. Transactions in excess of \$10,000 where cash and non-cash payments appears to be combined to avoid the filing requirements.
 - f. A pattern or series of transactions of less than \$10,000 conducted over a relatively short period of time by or for the same person.
- (4) When Form 8300 violations are discovered or suspected in a Title 26 case, the Title 26 examiner may examine the taxpayer's Form 8300 compliance under Title 26 without violating Title 26 disclosure rules. The agent should discuss the findings with their Group Manager to determine whether to continue to develop the Form 8300 issues that have been identified during the case or whether to make a referral to BSA. See the Bank Secrecy Act Referral Decision Matrix at Exhibit 4.26.15-1.

Note: When examining for compliance with Form 8300, ensure consistent application of IRC 6050I. Penalties can be asserted for late filed Forms 8300 and/or required annual statements. In addition, penalties can be asserted for incomplete or inaccurate Forms 8300 and/or Required Annual Statements.

- (5) If the agent determines, with management concurrence, to continue to develop the Form 8300 issues, the agent will need to set up a separate case file for the Form 8300 examination. This is separate from the income tax examination case file and time will be applied to the Form 8300 case for work completed. The Form 8300 case should be established on ERCS.
- a. Form 8300 cases are set up in ERCS under MFT "PX", "Year", "Name of entity" and "EIN".
 - b. Project code 1527 with the appropriate tracking code should be placed on all established cases.
- (6) Examiners must request to stop Form 8300 correspondence so that BSA Compliance Department, Detroit does not send a penalty letter to a filer that has already been audited by a field examiner. See IRM 4.26.11.12.7, Stopping Correspondence.
- (7) See IRM 4.26.11, BSA Examiner Responsibilities for Form 8300 Examinations, and IRM 4.26.12, Examination Techniques for Form 8300 Industries, for further guidance on setting up, working and closing the Form 8300 case.
- (8) If the agent determines a referral to BSA is the best course of action, then a Form 5346 should be prepared and sent to BSA Exam Case Selection (ECS) for consideration for a Form 8300 compliance exam. The Form 5346 should be as complete and accurate as possible. The agent needs to ensure the correct legal name and Tax Identification Number are provided to BSA ECS for case building purposes. The agent should summarize all Form 8300 issues discov-

ered during the audit in the “Other Information” section of the Form 5346. Form 5346 should be emailed to: **SBSE BSA Info Reports/Referrals*. The agent should notate in the subject line “Form 5346-General Program”.

4.26.15.6.2
(01-09-2013)

BSA Violations (Other Than FBAR) Discovered in a Title 26 Case

- (1) Title 31 is not part of the Title 26 Required Filing Checks.
- (2) Title 31 BSA compliance cannot be examined during a Title 26 examination unless a Related Statute Determination (RSD) has been made. See IRM 4.26.14.2.2, Related Statute Procedures.
- (3) Title 26 tax examiners or revenue officers cannot refer discovered or suspected BSA violations unless an RSD has been made. See IRM 4.26.14.2.2.
- (4) Special considerations apply to FBAR violations.

4.26.15.6.3
(01-13-2021)

FBAR Violations Discovered in a Title 26 Case

- (1) Foreign accounts are commonly discovered during a Title 26 tax case. Examiners can consult FCQ to verify if the taxpayer filed a FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).
- (2) Foreign assets or accounts may also trigger a Form 8938, Statement of Specified Foreign Financial Assets filing requirement. Form 8938, is a Title 26 requirement, not a BSA requirement. A comparison of Form 8938 and FBAR requirements may be found at: <https://www.irs.gov/businesses/comparison-of-form-8938-and-fbar-requirements>.
- (3) BSA does not accept referrals for FBAR examinations. Each operating division is responsible for examining its own FBAR cases. The case examiner who discovers the suspected FBAR violation has the greatest knowledge of the facts of the case and is expected to address the FBAR issue.
- (4) The Title 26 taxpayer cannot be examined for suspected FBAR violations unless an RSD has been made. The taxpayer should not be questioned regarding FBAR compliance until the RSD is made. See IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.
- (5) For assistance in working FBAR cases, see IRM 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR), for FBAR law and IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures, for FBAR procedures.

Exhibit 4.26.15-1 (01-13-2021)**Bank Secrecy Act Referral Decision Matrix**

The following table is the Bank Secrecy Act Referral Decision Matrix.

If, the issue involves	Then Consider
<ul style="list-style-type: none"> The taxpayer failed 10 or fewer Forms 8300. 	<p>Examine for compliance under IRC 6050I (Form 8300), which includes ensuring the required annual statement was provided to the customer/transactor no later than January 31 following the calendar year for which a Form 8300 was required to be filed.</p>
<p>Transaction occurring at the business under exam:</p> <ul style="list-style-type: none"> Multiple occurrences (greater than 10) of failure to file Form 8300 are identified. Identification of fraud and a referral to Criminal Investigation is being considered. Unique situations such as: In-depth exam steps are required for ensuring Form 8300 compliance and the income tax exam is nearing a short statute. Evidence of a prior Form 8300 compliance review and a continued lack of compliance with filing Form 8300 is detected. IDRS research indicates prior Civil Penalty assessments. (Negligence or Intentional Disregard). 	<p>Complete Form 5346, Examination Information Report, and forward to BSA - ECS. ECS coordinators will evaluate the referral and build a case, if warranted, to assign to a BSA field exam group.</p>
<p>Transactions conducted by the business owner and another business entity:</p> <ul style="list-style-type: none"> Large Currency Transactions are being conducted by the taxpayer under exam. Any unique patterns of activity found on FinCEN Query that pertains to any BSA reports (CTRs, Suspicious Activity, and other similar forms). 	<p>Complete Form 5346 and forward to BSA-ECS. ECS coordinators will evaluate the referral and build a case, if warranted, to assign to a BSA field exam group. For additional guidance, refer to IRM 4.26, Bank Secrecy Act (BSA), regarding BSA exam procedures.</p>

