



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.11.6

SEPTEMBER 27, 2018

EFFECTIVE DATE

(09-27-2018)

PURPOSE

- (1) This transmits revised IRM 8.11.6, *Penalties Worked in Appeals, FBAR Penalties*.

MATERIAL CHANGES

- (1) Updated references and made minor editorial changes throughout.
- (2) IRM 8.11.6 is revised to incorporate IG AP-08-0716-004, *Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases*, see IRM 8.11.6.6 (2) and IRM 8.11.6.6 (7).
- (3) IRM 8.11.6 is revised to add new IRM 8.11.6.1, *Program Scope and Objectives*, and its related subsections to comply with the Deputy Commissioners' of Services and Enforcement and Operations Support memo dated September 14, 2016, entitled *Heightened Awareness, Sensitivity, and Understanding of Internal Controls*.
- (4) IRM 8.11.6 is updated to reflect how to obtain a copy of the FBAR(s) filed by the taxpayer, see IRM 8.11.6.2 (4).
- (5) IRM 8.11.6 is updated to reflect ADR options available to taxpayers, see IRM 8.11.6.2 (6).
- (6) IRM 8.11.6 is updated to include information about qualified offers, first time abatements and automatic filing extensions, see IRM 8.11.6.2 (19), IRM 8.11.6.2 (20) , and IRM 8.11.6.2 (21), respectively.
- (7) IRM 8.11.6 is updated to include review and concurrence from the Appeals FBAR Coordinator on proposed settlements, see IRM 8.11.6.6 (8).
- (8) IRM 8.11.6 is updated to add *Department of Justice Restrictions on Post-Assessed FBAR Penalty Cases Where Assessment Exceeds \$100,000*, see IRM 8.11.6.11.
- (9) IRM 8.11.6 is updated to add *Time Limitations on FBAR Cases with DOJ Involvement*, see IRM 8.11.6.12.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.11.6 dated February 2, 2015. This IRM incorporates Interim Guidance Memorandum IG AP-08-0716-004, *Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases*, dated July 6, 2016.

AUDIENCE

Appeals employees

Anita M. Hill
Director, Case and Operations Support

8.11.6
FBAR Penalties

Table of Contents

- 8.11.6.1 Program Scope and Objectives
 - 8.11.6.1.1 Background
 - 8.11.6.1.2 Authority
 - 8.11.6.1.3 Responsibilities
 - 8.11.6.1.4 Terms and Acronyms
 - 8.11.6.1.5 Related Resources
- 8.11.6.2 FBAR Overview
- 8.11.6.3 FBAR Administrative Case Files
- 8.11.6.4 FBAR Statute of Limitations
 - 8.11.6.4.1 FBAR Penalty Statute of Limitations on Assessment (ASED)
 - 8.11.6.4.1.1 FBAR Penalty Statute of Limitations on Collection
- 8.11.6.5 Establishing FBAR Penalty Cases on ACDS
- 8.11.6.6 Appeals Technical Employee (ATE) Procedures for FBAR Penalty Cases
- 8.11.6.7 Payment Procedures for FBAR Case
- 8.11.6.8 Problems Related to FBAR Case Payment Posting
- 8.11.6.9 FBAR Closing Procedures
 - 8.11.6.9.1 FBAR Closing - Premature Referral
 - 8.11.6.9.2 FBAR Closing - Pre-Assessment Case
 - 8.11.6.9.3 FBAR Closing - Post-Assessment Case
- 8.11.6.10 FBAR Administrative File
- 8.11.6.11 Department of Justice (DOJ) Approval of Post-Assessed FBAR Penalty Cases Where Assessment Exceeds \$100,000
- 8.11.6.12 Time Limitations on FBAR Cases with DOJ Involvement

8.11.6.1
(09-27-2018)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides guidance to Appeals Technical Employees (ATEs) working a failure to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR) penalty case file in Appeals.
- (2) **Audience:** Appeals Technical Employees and Appeals Team Managers.
- (3) **Policy Owner:** Chief, Appeals.
- (4) **Program Owner:** Director, International Specialty Operations.
- (5) **Contact Information:** Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.11.6.1.1
(09-27-2018)
Background

- (1) The Financial Crimes Enforcement Network (FinCEN) delegated its enforcement authority to the IRS for penalties imposed under Title 31, Sections 5314 and 5321 for the failure to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR). This delegation was effective on April 8, 2003, by memorandum of agreement between FinCEN and the IRS.

8.11.6.1.2
(09-27-2018)
Authority

- (1) Delegation Order (DO) 25-13 (formerly DO 4-35, Rev. 1) *Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements*, effective April 11, 2012. See IRM 1.2.52.14, **Delegations of Authority for Special Topic Activities**.

8.11.6.1.3
(09-27-2018)
Responsibilities

- (1) Appeals Technical Employees (ATE) consider cases with Title 31 FBAR penalty controversies. Refer to IRM 8.1.3.3, *Appeals Employees Involved in Settling and Processing Appeals Cases*, and IRM 8.1.3.4, *Appeals Officer (AO)*, for additional information on the roles and responsibilities of ATEs.
- (2) Appeals Team Managers (ATMs) approve FBAR settlements on Form 5402, *Appeals Transmittal and Case Memo*.
- (3) Tax Computation Specialists (TCS) do **not** prepare FBAR computations. Refer to IRM 8.1.3.11, *Tax Computation Specialist (TCS)*, for additional information on the roles and responsibilities of TCS.
- (4) Account and Processing Service (APS) employees provide technical assistance and support for controlling and processing FBAR cases for Appeals. Refer to IRM 8.1.3.12, *Account and Processing Support (APS)*, for additional information on the roles and responsibilities of APS employees.
- (5) Appeals FBAR Coordinator provides technical guidance and support for ATEs working FBAR cases, including reviewing and concurring with proposed settlements.

8.11.6.1.4
(09-27-2018)
Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, *Common Terms in Appeals*, for common terms and definitions used in IRM Part 8. Terms listed in this exhibit are not included in the table.

(2) The table below lists commonly used acronyms and their definitions:

Acronym	Definition
ADR	Alternate Dispute Resolution
ASED	Assessment Statute Expiration Date
BSA	Bank Secrecy Act
CSC	Case Summary Card
CSED	Collection Statute Expiration Date
CTR	Currency Transaction Report
DO	Delegation Order
DOJ	Department of Justice
FBAR	Report of Foreign Bank and Financial Accounts
FCQ	FinCen Query System
FinCEN	Financial Crimes Enforcement Network
FTA	First Time Abatement
FTS	Fast Track Settlement
IDRS	Integrated Data Retrieval System
ITS	International Technical Specialist
LB&I	Large Business and International
PAM	Post Appeals Mediation
QO	Qualified Offer
RAP	Rapid Appeals Process
SEPR	Specialized Examination Program and Referrals
SB/SE	Small Business/Self-Employed
TIN	Taxpayer Identification Number
UIL	Uniform Issue List

8.11.6.1.5
(09-27-2018)

Related Resources

- (1) This IRM is the primary source of guidance on this program; however, additional resources are included in IRM 8.11.6.2 (22), *FBAR Overview*.
- (2) Pub. 1, *The Taxpayer Bill of Rights*, applies to Appeals employees' interactions with taxpayers. For additional information about the Taxpayer Bill of Rights, see *Taxpayer Bill of Rights FAQ on the IRS intranet site*.

8.11.6.2
(09-27-2018)
FBAR Overview

- (1) A United States person must file an FBAR (FinCEN Form 114, *Report of Foreign Bank and Financial Accounts*) if that person has a financial interest in or signature authority over any financial account(s) outside of the United States and the aggregate value of the account(s) exceeds \$10,000 at any time during the calendar year. Failure to file this form may result in civil and/or criminal penalties. The civil penalties may be appealed administratively.

Note: Treasury Form TD F 90-22.1 is now obsolete, as it was replaced with FinCEN Form 114 for calendar years 2012 and later.

- (2) FinCEN has introduced new FinCEN Form 114a, *Record of Authorization to Electronically File FBARs*, for filers who submit FBARs jointly with spouses, or wish to submit them via third-party preparers.

Note: FinCEN Form 114a is not filed with FinCEN. All parties must retain the form for five years. It must be provided to IRS or FinCEN upon request.

- (3) Effective July 1, 2013, filers must electronically file the FBAR through FinCEN's Bank Secrecy Act (BSA) E-Filing System.
- (4) Filings can be researched on the FinCEN Query System (FCQ) or on Integrated Data Retrieval System (IDRS) using command code (cc): IRPTRO. IDRS will have an indicator if FBARs were filed. IDRS IRPTRO will have a Document Code (DC) indicator of 13, Form listed as FBAR and the number of pages of the FBAR. Each page provides information including: FBAR filing date, Payee (Taxpayer) name and address, Payer (the financial entity or foreign bank) name and address, financial account number, type of account, joint account and range of max value in the account. Penalty cases, assessments, and payments are recorded on a separate FBAR database maintained by the Small Business/Self-Employed (SB/SE) Specialty Currency Transaction Report (CTR)/Bank Secrecy Act (BSA) unit.

Note: To obtain a copy of the FBAR(s) filed by the taxpayer, prepare Form 10509, *FinCEN Query (FCQ) Request* and submit to your ATM for approval. Once approved, the ATM will send it to the Appeals FinCEN Query Gatekeeper to assign to the Appeals FBAR Coordinator for response. The Form 10509 is used to request general FinCEN data, such as the CTR, Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, and the FBAR.

- (5) Post-assessed FBAR cases in excess of \$100,000 (excluding interest, penalties and administrative costs) cannot be compromised by Appeals without approval of the Department of Justice (DOJ). See 31 USC § 3711(a)(2) and 31 CFR § 902.1(a) and (b). Once assessed, the penalty becomes a claim of the U.S. government.
- (6) Pre-assessed FBAR penalties are eligible for Fast Track Settlement (FTS) only if the **FBAR 30-Day Letter**, Letter 3709, has not been issued to the taxpayer. Refer to IRM 8.26.2, *Fast Track Settlement for Small Business/Self Employed (SB/SE) Taxpayers*.

Exception: If the taxpayer requests FTS after the Letter 3709 has been issued but before Compliance releases jurisdiction of the case, then FTS is available to the taxpayer.

- (7) Once FBAR penalties have been assessed, Alternative Dispute Resolution (ADR) is not available.
- (8) Rapid Appeals Process (RAP) is not available in any FBAR penalty case.
- (9) Post Appeals Mediation (PAM) is not available in any FBAR penalty case.
- (10) Refer to IRM 4.26.16.6.6, *Mitigation*, for mitigation threshold conditions for FBAR penalties.
- (11) There is no joint and severable liability with FBAR penalty cases.
- (12) Interest on FBAR penalties does not accrue until the penalty is assessed, and is payable only if full payment of the FBAR penalties is not made within 30 days of the date of notice, Letter 3708, *Notice and Demand for Payment of FBAR Penalty*, or Letter 3708A, *Notice for Demand and Payment of FBAR Penalty after Appeal Denial*. Letter 3708/3708A is mailed by the CTR/BSA FBAR Coordinator.
- (13) Unagreed FBAR cases are closed immediately to CTR/BSA for assessment. A statutory notice of deficiency is not issued. For post-assessed cases, see IRM 8.11.6.9.3, *FBAR Closing - Post Assessment Case*.
- (14) Title 11 Bankruptcy does not provide relief for FBAR penalty debt.
- (15) FBAR penalties may come to Appeals as stand-alone cases or together with a related income tax or international penalty case.
- (16) FBAR penalties are an Appeals Coordinated Issue and require a referral to International Operations prior to holding the first conference.
- (17) The FBAR penalty case will usually be received in Appeals as a pre-assessed case. However, in certain circumstances, Appeals will also conduct post-assessment hearings to consider FBAR penalty liability and collection. Whether the penalty is pre- or post-assessed when it comes to Appeals, it is considered the same penalty and only one appeal is available.

Note: Post-assessment FBAR penalty cases are priority cases and must be worked expeditiously. See IRM 8.11.6.9.3, *FBAR Closing - Post-Assessment case*.
- (18) The venues for challenging FBAR penalties are the United States District Courts and the Court of Federal Claims, not the United States Tax Court.

Note: Taxpayers seeking to challenge an FBAR penalty after it has been assessed may either (1) pay a portion of or the entire penalty and file a refund suit, or (2) wait until the government files suit in district court to collect the penalty and challenge the assessment.
- (19) A Qualified Offer (QO) under IRC § 7430 is not available to Title 31 FBAR Penalty cases.
- (20) First Time Abatement (FTA) - Effective with the Calendar year 2016 FBAR, FTA is available to the taxpayer who failed to file the FBAR the first time an FBAR was required to be filed by the taxpayer. At the time of publication, procedures have not been established with FTA.

- (21) Automatic Filing Extension - Effective with the calendar year 2016 FBAR, an automatic 6-month extension to file is granted to 10/15/YY. At this time, there is no requirement to file an extension form.
- (22) Refer to additional FBAR resource materials available:
- IRM 4.26.16, *Report of Foreign Bank and Financial Accounts (FBAR)*. It should be used as a reference for background and statute information.
 - IRM 4.26.17, *Report of Foreign Bank and Financial Accounts (FBAR) Procedures*.
 - LB&I website http://lmsb.irs.gov/pa/wii/campus_compliance_unit/FBAR_Home.asp
 - SB/SE website <http://mysbse.web.irs.gov/examination/tip/FBAR/default.aspx>
 - IRS.gov <http://www.irs.gov>
 - FinCEN website <http://bsaefiling.fincen.treas.gov>

8.11.6.3
(09-27-2018)
**FBAR Administrative
Case Files**

- (1) For pre-assessed FBAR cases, Appeals requires 365 days remaining on the assessment statute of limitations at the time the administrative file is received in Appeals. Return cases with less than 365 days remaining on the assessment statute of limitations at the time the case is received by Appeals to the originating function as a premature referral so an assessment statute extension may be secured or the penalty assessed. If the penalty is assessed, the taxpayer will be given post-assessment appeal rights and the 365-day statute requirement is no longer applicable. Refer to IRM 8.11.6.4.1 for information on the assessment statute of limitations for FBAR cases. If an FBAR case is being returned to Examination with new information, there must be at least 210 days remaining on the statute of limitations at the time Examination receives the case. Refer to IRM 8.6.1.6.7, *Jurisdiction Released*.

Caution: If the FBAR penalty is assessed while in Appeals, the ATE will document in the CAR that a “post-assessment” appeal was offered to the taxpayer after the assessment.

Exception: When Examination sends back a previously returned case, there must be 180 days remaining on the statute of limitations when received by Appeals.

Note: The FBAR penalty is assessed separately and **not** jointly. There should be **one** individual under examination per FBAR case file.

- (2) Administrative files are generally forwarded to the Appeals Office by:

Type of FBAR case	Sent by
Post-assessed FBAR penalty Note: Verify penalty assessment by reviewing Form 13448, <i>Penalty Assessment Certification Summary (Title 31 “FBAR”)</i> .	The FBAR Penalty Coordinator at the CTR/BSA.

Type of FBAR case	Sent by
Pre-assessed FBAR penalty	Compliance Technical Services

Note: If you need information on the penalty assessment, you can email “*SBSE BSA Compliance - FBAR Penalty Coordinator” or contact the Appeals FBAR Coordinator. The FBAR Coordinator can be found in the Appeals Issue Locator by searching either Issue: FBAR or UIL: 9999.99-01 (Uniform Issue List) on the Appeals Issue Locator.

(3) The administrative file will contain the following documents:

- Brief summary memorandum explaining the FBAR violation(s), which includes:

Item Number	Description
1.	A discussion of the FBAR violations.
2.	The number of penalty assessments.
3.	The penalty calculation and dollar amounts.
4.	The FBAR case disposition.

- A Form 13535, *Foreign Bank and Financial Accounts Report Related Statute Memorandum*, signed by the designated Territory Manager affirming that the information shows the FBAR violations were committed in furtherance of income tax violations, when appropriate. For exceptions where Form 13535 will not be in the case file, refer to IRM 4.26.17.2.3, *Cases Where No Related Statute Memorandum (RSM) Needed*.
- FBAR issue workpapers.

Note: If it is not clear that the summary memorandum was shared with the taxpayer, follow the appropriate ex parte requirements

- Copy of FBAR 30-Day Letter.

Note: Letter 3709 will be in the case file for both pre- and post-assessed FBAR penalties.

Note: Letter 3708 is issued by CTR/BSA to the taxpayer after the penalty has been assessed. This letter will be in the case file only for post-assessed penalty cases and is only issued if the penalty has not been paid in full at the time of assessment.

- Form 13449, *Agreement to Assessment and Collection of Penalties under 31 U.S.C. 5321(a)(5) and 5321(a)(6)*.
- Taxpayer's protest. The protested years should be the same as the years on the case summary card (CSC).

Caution: The years listed on the CSC must match the years on the Letter 3709, Form 13449, and the years protested by the taxpayer. If they do not, seek guidance from the Appeals FBAR Coordinator.

- FBAR/Title 31 Power of Attorney Form 2848, *Power of Attorney and Declaration of Representative*, or if there is no related statute memorandum, a general power of attorney form which is valid under state law, if applicable.
- IRS Counsel Opinion memo approving assessment of willful FBAR penalties.

Note: Prior to the issuance of Interim Guidance for Report of Foreign Bank and Financial Accounts (FBAR) Penalties, *SBSE-04-0515-0025*, on May 13, 2015, Counsel approval was also required for the assessment of non-willful FBAR penalties.

- Title 31 consent(s), if applicable.

8.11.6.4
(09-27-2018)
**FBAR Statute of
Limitations**

- (1) The statutes of limitations on assessment statute expiration date (ASED) and collection statute expiration date (CSED) of FBAR civil penalties are found in 31 U.S.C. 5321(b)(1) and 5321(b)(2), respectively.
- (2) Appeals controls the statute of limitations in pre-assessment cases with the ASED and in post-assessment cases with the applicable CSED.
- (3) The statute of limitations must be determined on each individual under examination.

Note: Married couples under FBAR examination are treated as individual cases and an extension must be obtained from each individual under examination.

8.11.6.4.1
(09-27-2018)
**FBAR Penalty Statute of
Limitations on
Assessment (ASED)**

- (1) The ASED of FBAR penalties is defined under Title 31, the Bank Secrecy Act.

TYPE OF VIOLATION	ASED
Failure to file FBAR report (either willful or non-willful)	6 years from the due date of the FBAR report. For calendar years 2015 and prior, due date is 6/30/YYYY. For calendar years 2016 and later, due date is 4/15/YYYY.
Failure to maintain required records (either willful or non-willful)	6 years from the date the IRS first asks for the records

- For questions concerning extending the time to assess an FBAR penalty and for a copy of the consent form, contact the Appeals FBAR Coordinator.
- Use the Title 31 consent to extend the assessment statute form.
- An Appeals Officer has the authority to execute a Title 31 FBAR statute extension. See IRM 1.2.52.14, *Delegation Order 25-13 (formerly DO 4-35, Rev. 1)*.

Examples	
Example 1:	In calendar year 2019, a foreign bank account owned by a U.S. person exceeds \$10,000.00. The Report of Foreign Bank and Financial Accounts (FinCEN Form 114) was due April 15, 2020, but the account holder does not file one. The penalty assessment statute of limitations for failing to file an FBAR report expires April 15, 2026.
	Note: This does not include the 6-month automatic extension. At the time of this writing, no procedures have been established with regard to the automatic extension.
Example 2:	Same facts as in Example 1, and in addition, the account holder failed to maintain required records. An examiner requested the records on March 1, 2020. The penalty assessment statute of limitations for failing to maintain required records expires on March 1, 2026.

Note: If both types of violations have occurred, examiners can assert both the failure to file an FBAR report penalty and failure to maintain required records penalty on the same account for the same period. Compliance policy in IRM 4.26.16.6.7, *FBAR Penalties - Examiner Discretion*, allows examiners discretion over whether to assert multiple violations against one FBAR report.

- (2) For procedures on protecting the statute of limitations, refer to IRM 8.21.3.1.3.1, *Protecting Statutes, General Guidelines*.
- (3) For information on preparing consents, refer to IRM 8.21.3.1.3.3, *Consent Processing*, in conjunction with advice from a Counsel FBAR coordinator.
- (4) FBAR penalty cases in Appeals must be assessed with at least 90 days left on the statute to allow processing of the assessment certification Form 13448, *Penalty Assessment Certification Summary* (Title 31 "FBAR").

8.11.6.4.1.1
(09-27-2018)
FBAR Penalty Statute of Limitations on Collection

- (1) On post-assessment FBAR cases only, the CSED will be entered on ACDS (Appeals Centralized Database System) to control the statute of limitations.
- (2) The two-year limitation period for filing an FBAR penalty collection suit cannot be extended. However, the government may obtain payment of the FBAR penalty by offsetting payments without a statute of limitation.

8.11.6.5
(09-27-2018)
Establishing FBAR Penalty Cases on ACDS

- (1) For APS procedures regarding establishing FBAR cases on ACDS, refer to IRM 8.20.5.26, *Foreign Bank Account Report (FBAR) Penalty Case Carding*.

8.11.6.6
(09-27-2018)
**Appeals Technical
Employee (ATE)
Procedures for FBAR
Penalty Cases**

- (1) All FBAR penalty cases are controlled on ACDS.
- (2) Initial review of the case file is required within 45 days from the date of receipt on ACDS.
- (3) Upon review of the case, the ATE will verify the CSC information and make or request changes as required.
- (4) Verify the entity information:
 - a. Taxpayer Name is the U.S. person subject to the FBAR penalty and could include an individual citizen or resident of the United States or a U.S. entity (includes corporations, partnerships, LLCs, estates, trusts, and any other legal entity formed in the U.S.)
 - b. Taxpayer Identification Number (TIN) to ensure correct account is controlled on ACDS
 - c. MFT = 00
 - d. Type code = FBAR
 - e. Feature Code = AI, IC, IT and any others which apply
 - f. Category Code = Other
 - g. UIL Code= 9999.99-01
 - h. AIMS indicator = E (exempt). FBAR cases are not controlled on AIMS (Audit Information Management System)
 - i. POA/Representative information:

Note: Form 2848 was developed to meet requirements relating to tax. It is generally inappropriate for Title 31 BSA examinations, including FBAR examinations. If the Related Statute Memorandum (RSM), Form 13535 has been secured by Exam, the Form 2848 may be used for FBAR purposes. Line 3 on the Form 2848 reflects the description of the matter in the first column, tax form number in the second column, and years and period in the third column. The words, "Foreign Bank and Financial Accounts Report Matters" must be added in the first column, "FinCEN Form 114" added to the second column, and the tax periods at issue covered by the representative's authority in the third column. See IRM 4.26.17.5.2, *FBAR Power of Attorney*, for more information on valid power of attorney and when an RSM has not been secured.

- j. STATDATE (statute date) and STATCODE (statute code) must be validated within 45 days of receipt. See IRM 8.21.3, *Appeals Technical Employees Statute Responsibility*. The appropriate entries on these fields are dependent upon whether the penalty is pre- or post-assessed. See table below for the appropriate entries.

If FBAR Penalty is:	STATDATE (statute date)	STATCODE (statute code)
NOT assessed	6 years from the date of the violation, either the due date of the FBAR report or date on which records requested.	Blank

If FBAR Penalty is:	STATDATE (statute date)	STATCODE (statute code)
	Note: At the time of publication, no relevant procedures have been established with respect to the automatic 6-month extension to file the FBAR.	
Assessed	2 years from the date of assessment	FBAR2

- k. Calendar Years: Verify the protested years match ACDS. If the years don't match, contact the Appeals FBAR Coordinator.

Note: The Appeals FBAR Coordinator will notify Examination of the discrepancy. If necessary, Examination will either send or prepare Form 13536, *FBAR Monitoring Document (FMD)*, to CTR/BSA to have the calendar year corrected by either closing or establishing the year in CTR/BSA. Once the calendar year has either been opened or closed by CTR/BSA, ACDS must be updated accordingly.

- l. Penalty Amount: Verify the penalty amount for each period is accurate.
- m. For pre-assessed penalty cases, update per the amounts on Form 13449.
- n. For post-assessed penalty cases, update per the amounts on Form 13448. Form 13448 is verification from CTR/BSA that the penalty has been assessed.
- (5) Prepare and forward a referral through the ATM to Specialized Examination Program and Referrals (SEPR) on ACDS using Form 13381, *Appeals Technical Guidance / International Referral*, when the case is received by the ATE.
- a. Request the International Technical Specialist (ITS) as a consultant.
- b. A list of Appeals Coordinated issues, the responsible ITS, and their ATM may be found at on the Appeals website.
- (6) Post-assessment FBAR penalty cases are **priority** cases and must be worked expeditiously. Refer to IRM 8.11.6.9.3, *FBAR Closing - Post-Assessment Case* for additional guidance.
- (7) Verify the *Non-docketed Acknowledgement and Conference*, Letter 5157, was generated and issued to the taxpayer with Pub 4227, *Overview of the Appeals Process Brochure*, explaining the Appeals process and taxpayer's rights.

Note: Do not include Pub 4167, *Appeals - Introduction to Alternative Dispute Resolution*, or Notice 1016, *How to Stop Interest on Your Account*, as they are not applicable to FBAR cases.

- (8) ATE will obtain review and concurrence from Appeals FBAR Coordinator on the proposed settlement determination as presented in the ACM prior to making the offer to the taxpayer or representative.
- (9) ATE will mail Letter 5834, *Foreign Bank and Financial Accounts Report (FBAR) Agreement Form Transmittal*, with Form 13449, **Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 531(a)(6)**, for the taxpayer to sign and return.

Note: ATE must prepare a new Form 13449 and not use the Form 13449 prepared by Compliance.

- (10) ATE will have the Appeals Team Manager (ATM) execute the Form 13449 prior to assessment at CTR/BSA.
 - a. For agreed pre-assessed FBAR cases, the ATM will sign the Form 13449 after the taxpayer has signed indicating agreement with the determination. This signed form is sent with closing Letter 5080, *FBAR Penalty Agreed Closing Letter*, to the taxpayer.
 - b. For unagreed pre-assessed FBAR cases, the ATM will sign the Form 13449 prior to requesting the assessment of penalties from CTR/BSA.

Note: Form 13449 is **required** to be signed by the ATM prior to assessment by CTR/BSA to indicate the ATM agrees with the assessment.

8.11.6.7
(09-27-2018)
**Payment Procedures for
FBAR Case**

- (1) If payment is received on an FBAR penalty case:
 - Photocopy the check or money order and attach to the original Form 13449.
 - Complete Form 3210, *Document Transmittal*, describing all documents attached.
 - Forward the original payment with a copy of the Form 13449 and Form 3210, by **UPS Overnight Mail** to the following address:

Internal Revenue Service

SBSE Specialty Operations CTR/BSA

Attn: FBAR Penalty Coordinator

985 Michigan Ave 4th Floor

Detroit, MI 48226

Tel (313)-234-1611

Fax (313) 234-2278

Email *SBSE BSA Compliance-FBAR Penalty Coordinator

- For unagreed cases, send Form 13449 to CTR/BSA to assess the penalties prior to closing the case from Appeals. The manager should sign the Form 13449 indicating agreement with the assessment. CTR/BSA will provide a copy of the Form 13448 for verification of assessment to put in the case file.
- (2) **DO NOT USE** Form 3244, *Payment Posting Voucher*, when processing a payment on an FBAR penalty case. See IRM 8.11.6.8 when this occurs to resolve the problem.
- (3) For taxpayers mailing payments via regular mail:
- Advise the Taxpayer to make the check payable to the United States Treasury and in the memo section write FBAR and the tax period

Provide the following address:

Internal Revenue Service

SBSE Speciality Operations CTR/BSA

PO Box 33115

Detroit, MI 48232-0115

Note: For overnight payments provide the address listed above in (1)

- (4) The information above is also available in IRM 4.26.17.4.5, *Closing the FBAR Case - Payment*.

8.11.6.8
(11-13-2014)

**Problems Related to
FBAR Case Payment
Posting**

- (1) Form 3244 is **not** used to post the payment for FBAR penalty cases.
- (2) If Form 3244 is inadvertently executed, take the following steps:
- The Appeals employee will be responsible for tracing the payment to ensure that it is refunded from the tax module.
 - The Appeals employee will then need to obtain another payment, which will be sent to CTR/BSA for posting to the FBAR database.
 - CTR/BSA will record and process the payment, using, as appropriate:

Type of Document	Title
Form 13448	Penalty Assessment Certification Summary (Title 31 "FBAR") (internal document)
Letter 3708A	Notice for Demand and Payment of FBAR Penalty after Appeal Denial
Notice 1330	Information on Making FBAR Penalty Payment by Check

8.11.6.9
(09-27-2018)
**FBAR Closing
Procedures**

- (1) Refer to IRM 8.20.7.32, *Foreign Bank and Financial Account (FBAR) Penalty Case Closing Procedures*, for APS procedures for closing all types of FBAR cases.
- (2) There are three types of closings for an FBAR penalty case. Determine the type of case and follow the instructions outlined in the following sections:
 - Premature Referral
 - Pre-Assessment
 - Post-Assessment
- (3) Determine the valid ACDS closing code:

Determination Made	CLOSINGCD
Agreed or No Change - valid only for pre-assessment case	03
Partially Sustained - valid only for pre-assessment case	13
Sustained in Full - valid only for post-assessment case	14
Not Sustained - valid only for post-assessment case	15
Partially Sustained - valid only for post-assessment case	16
Premature Referral - valid for either pre-assessment or post-assessment case	20

- (4) Case Activity Record and Automatic Timekeeping System (CARATS) codes - mandatory codes:

CARATS code	CARATS code definition
CR	Case Received
TG-IR	Technical Guidance (TG) Engagement - Referral to TG (initial filing of Form 13381)
TG-RC	TG Engagement - TG Consultant - Review and Concurrence (R&C) requested.

CARATS code	CARATS code definition
CF/xx	Conference type/xx = <ul style="list-style-type: none"> • FF - face-to-face • ML - by mail • NN - not necessary • NR - no response • NS - no show • PC - telephone call • VC - video conference
DM	Determination Made
AC-FR	Final Determination Made

Note: Additional CARATS codes will be entered to properly document case activity. Additional information relating to ACDS can be found in CARATS Operational Definitions located on the Utilities pop-up menu within ACDS.

- (5) All Appeals employees must adhere to the procedures for shipping Personally Identifiable Information (PII). Refer to IRM 8.20.7.6, *Procedures for Shipping Personally Identifiable Information (PII)*.

8.11.6.9.1
(09-27-2018)
**FBAR Closing -
Premature Referral**

- (1) Appeals may have received the income tax case or international penalty case along with the FBAR case or only the FBAR case.
- (2) See the table below for information on handling the case as a premature referral:

If Premature referral - jurisdiction is released on the	Then
Combined FBAR case with related case	<ul style="list-style-type: none"> • close combined cases • return to the originating Compliance office, generally the Technical Services (TS) staff • ATE prepares Form 5402 , <i>Appeals Transmittal and Case Memo</i>, indicating premature referral. • Form 13536, <i>FBAR Monitoring Document (FMD)</i>, should be prepared and sent to CTR/BSA to notify the FBAR Penalty Coordinator jurisdiction is released.
Income tax case only	<ul style="list-style-type: none"> • return to the originating Compliance office • ATE prepares Form 5402.
FBAR case only	<ul style="list-style-type: none"> • return to the originating group • ATE prepares Form 5402, indicating premature referral. • Form 13536 should be prepared and sent to CTR/BSA to notify the FBAR Penalty Coordinator jurisdiction is released.

(3) ACDS field entries for closing the premature referral. Case level entries are:

- Closing Code: 20 - Premature Referral (Jurisdiction Released)

(4) No entries are required at the return level.

(5) The FBAR file is submitted to APS with instructions to send the transmittal Form 3210 to Technical Services or the originating group.

(6) Send a photocopy of Form 5402, *Appeals Transmittal and Case Memo*, Form 13536, and Appeals Case Memorandum (ACM) to CTR/BSA at the following address or email:

Internal Revenue Service

Attn: CTR/BSA FBAR Penalty Coordinator

P.O. Box 33115

Detroit, MI 48232-0115

Email *SBSE BSA Compliance-FBAR Penalty Coordinator

Note: Form 13536, **Foreign Bank and Financial Accounts Report Monitoring Document** (FMD) should be completed by the ATE to indicate the case is being returned to Compliance as a premature referral. The FMD keeps CTR/BSA apprised of the location of the case file.

8.11.6.9.2
(09-27-2018)
**FBAR Closing -
Pre-Assessment Case**

(1) The ATE will prepare the closing letter and Form 5402.

Note: If the ATM mails the closing letter prior to closing, the ATM is required to put a copy of the signed and dated closing letter in the case file.

(2) There are two types of FBAR closing letters. The ATM signature is required prior to mailing the letter to the taxpayer in pre-assessment cases.

- Agreed cases — Letter 5080, **FBAR Penalty Agreed Closing Letter** (no review and concurrence of the letter is required from Appeals FBAR Coordinator).
- Unagreed cases — Letter 5143, *Report of Foreign Bank and Financial Accounts (FBAR) Unagreed Closing Letter*, (review and concurrence required by Appeals FBAR Coordinator prior to issuance).

(3) If the case has both pre- and post-assessed penalties, close the case as if all are post-assessed. Use the post-assessed closing codes on Form 5402.

(4) There are two types of agreed FBAR penalty cases:

- Agreed — Signed waiver Form 13449 and itemized statement/penalty calculation attached to Form 13449 required.
- No-change case — FBAR is not sustained and signed Form 13449 is not required.

(5) An unagreed case is when the FBAR penalty is fully or partially sustained and the taxpayer does not agree. Appeals will prepare a new Form 13449, secure the ATM signature, and send to the CTR/BSA FBAR Penalty Coordinator via email/fax to have the penalty assessed. The CTR/BSA fax number is (313) 234-2278 and email address: *SBSE BSA Compliance-FBAR Penalty Coordinator.

Note: If **no agreement** is secured, then the penalty is **sustained in full**.

(6) ATE will prepare and send Letter 5834 and Form 13449 with penalty calculation to secure taxpayer agreement.

(7) ATE will prepare Form 13449 to obtain ATM signature, then send to CTR/BSA for posting prior to close. CTR/BSA will send to the ATE Form 13448 for verification of assessment to put in case file. Include a copy of the executed (signed by the ATM) Form 13449 with agreed closing letter, Letter 5080, sent to the taxpayer.

Note: An executed Form 13449 is not required to be sent to the taxpayer in an unagreed case when issuing Letter 5143.

- (8) Contact information for the FBAR Penalty Coordinator at CTR/BSA is *SBSE BSA Compliance-FBAR Penalty Coordinator, or fax number (313) 234-2278.
- (9) The ATE will date and mail the letter after it is approved and signed by the ATM electronically, prior to the time the case is closed to APS.

Note: For non-electronically signed cases (e.g. signed in ink by hand) the **ATM** is responsible for mailing

- The table below lists the closure type and letter

Agreement Type	Letter
Unagreed Case	Letter 5143, Report of Foreign Bank and Financial Accounts (FBAR) Unagreed Closing Letter
Agreed Case	Letter 5080, FBAR Penalty Agreed Closing Letter
Full Concession Case	Letter 913, Agreed Cases - Closing Letter

For an unagreed case use Letter 5143, for an agreed case use Letter 5080, and for a full concession case use Letter 913, *Agreed Cases - Closing Letter*.

- (10) Form 5402 Closing entries:

- Closing Codes: see table above in IRM 8.11.6.9, *FBAR Closing Procedures*
- Revised Penalty - Def/OA:

Agreement type	Dollar entry for each period
Agreed with waiver	Enter agreed penalty amount
No-change	Enter zero (0)
Unagreed	Total amount of the penalty imposed

- (11) Closed FBAR cases are sent from Appeals to CTR/BSA. When closing the case to APS, the ATE will prepare and include in the case file, Form 3210, *Document Transmittal*, with instructions to APS to send the administrative case to CTR/BSA at:

Internal Revenue Service

Attn: CTR/BSA FBAR Penalty Coordinator

PO Box 33115

Detroit, MI 48232-0115

8.11.6.9.3
(09-27-2018)

**FBAR Closing -
Post-Assessment Case**

- (1) Post-assessment FBAR cases are priority cases and require expedited handling.
- (2) The ATE will prepare the closing letter and Form 5402.
- (3) The types of closing letters are:
 - Agreed cases — Letter 5080
 - Unagreed cases — Letter 5143
 - Full concession cases — Letter 913
- (4) The ATE will date and mail the closing letter after it is signed by the ATM.
- (5) ACDS field entries for closing post-assessment FBAR cases:
 - Closing Codes:

ACDS Closing Code	Closing Code Definition
14	Fully Sustained
15	Not Sustained
16	Part Sustained

- Revised Penalty amounts:

Type of closing (closing code)	Dollar entry for each period
Fully Sustained(14)	Enter total amount of penalty agreed to
Not Sustained (15)	Enter zero (0)
Part Sustained(16)	Enter revised penalty amount

- (6) Revision to assessed penalties - If there is a revision to the assessed penalties and appropriate authority (see IRM 8.11.6.12) has been received to concede or abate the post-assessed penalties, then the ATE will prepare Form 13449, obtain ATM signature, then send to CTR/BSA to revise the penalties prior to closing the case. CTR/BSA will send to the ATE Form 13448 for verification of concession/abatement to include in the case file. ATE will include a copy of the executed (signed by ATM) Form 13449 with the agreed closing letter, Letter 5080, sent to the taxpayer.

Note: If no settlement agreement is reached, then the assessed penalties are not revised upon closure. The full amount of the penalties are sustained.

Caution: Once an FBAR penalty has been assessed by CTR/BSA at Exam or Appeals's request, the penalty may not be reversed unless it is approved by an ATM or DOJ, if appropriate. See IRM 8.11.6.12 (2).

- (7) If there is no concession of the assessed penalties, do not prepare or send Form 13449 to CTR/BSA.

Note: An executed Form 13449 is not required to be sent to the taxpayer in an unagreed case when issuing Letter 5143.

- (8) The FBAR Coordinator at CTR/BSA may be contacted via email at **SBSE BSA Compliance-FBAR Penalty Coordinator*, or fax at (313) 234-2278. The Appeals FBAR Coordinator can also be contacted for assistance.
- (9) Closed FBAR cases are sent to CTR/BSA after they are closed from Appeals. For post-assessed FBARs referred to DOJ, refer to IRM 8.11.6.12, *Time Limitations on FBAR Cases with DOJ Involvement*. When closing cases to APS, the ATE will prepare and include in the case file, Form 3210, *Document Transmittal*, with instructions to APS to send the administrative case file to CTR/BSA at:

Internal Revenue Service

Attn: CTR/BSA FBAR Penalty Coordinator

PO Box 33115

Detroit, MI 48232-0115

Telephone: (313) 234-1611

8.11.6.10
(09-27-2018)
**FBAR Administrative
File**

- (1) The following documents should be included in the administrative file and uploaded to ACDS by the ATE/ATM:
 - Form 5402
 - Note:** If the case has both pre-assessed and post-assessed penalties, close all penalties together on the same Form 5402. Use the closing code for the post-assessed year on the Form 5402
 - Appeals Case Memorandum (ACM)
 - Schedule of Adjustments (SOA)
 - Letter 5834, *Foreign Banking and Financial Accounts Report Agreement Form Transmittal*
 - Form 13449 prepared by Appeals
 - Form 13448 or other documentation received from CTR/BSA to confirm the penalty posted
 - Copy of any checks received in Appeals, if applicable
 - Appropriate closing letter dated and signed by the ATM

For agreed cases —Letter 5080

For unagreed cases — Letter 5143

For no-change cases —Letter 913

- FBAR Penalty computation spreadsheet/worksheet
- Form 13536, **FBAR Monitoring Document (“FMD”)**, if applicable
- Additional items identified as necessary

8.11.6.11
(09-27-2018)
**Department of Justice
(DOJ) Approval of
Post-Assessed FBAR
Penalty Cases Where
Assessment Exceeds
\$100,000**

- (1) Appeals may not compromise a post-assessed FBAR Penalty in excess of \$100,000 without DOJ approval. See 31 USC § 3711(a)(2) and 31 CFR § 902.1 (a) and (b). Once assessed, the penalty becomes a claim of the U.S. government.
- (2) Post-assessed FBAR penalty cases are cases received by Appeals with the penalties assessed by CTR/BSA. These are priority cases and should be worked within 120 days of receipt.
- (3) CTR/BSA will notify the taxpayer of the assessment with Letter 3708, *Notice of Demand for Payment of FBAR Penalty*. A case can be protested to Appeals before or after receipt of this letter.

Note: A taxpayer is afforded only one administrative appeal on FBAR cases, whether it is pre-assessed (penalties were not assessed prior to coming to Appeals) or post-assessed.

- (4) The U.S. government has 2 years from the date of assessment to file civil suit to collect the FBAR penalty. (31 U.S.C. § 5321(b)(2)).
- (5) Appeals will not accept assessed FBAR cases more than 180 days after the date of assessment.

Note: Appeals may have the FBAR penalty assessed on a case if there is not sufficient time remaining on the assessment statute of limitations. After the assessment is made, the case will be worked as a post-assessed case.

8.11.6.12
(09-27-2018)
**Time Limitations on
FBAR Cases with DOJ
Involvement**

- (1) On post-assessed Appeals FBAR penalty cases over \$100,000, Appeals will, through SB/SE Division Counsel, provide a settlement proposal to DOJ no later than nine months prior to the date required to file a civil collection suit (i.e., the date upon which the collection statute expires). Appeals will send the case to SBSE Division Counsel for referral to DOJ. The AO will work with the FBAR Coordinator to facilitate this process.
 - a. If DOJ has not provided its views regarding the proposed settlement within 60 days of the date the proposal was sent to DOJ, Appeals must follow up with DOJ regarding the status of DOJ's consideration.
 - b. If DOJ has not provided its view regarding the proposed settlement within 60 days of the expiration of the time to file a civil collection suit, Appeals should reject any pending offer, close its file, and refer the matter to IRS Counsel for further processing. The ATE will notify CTR/BSA of the closure with Form 13536 (FMD).
 - c. If DOJ concurs with the Appeals settlement proposal:

Step 1 - DOJ will authorize Appeals to present the settlement offer

Step 2 - If the taxpayer agrees with the settlement offer, then Appeals will request authorization from DOJ to enter into the settlement agreement.

Step 3 - After permission is received, the case will be settled and closed under normal procedures.

Note: To the extent possible, full payment is expected at the time of closure.

- d. If DOJ does **NOT** agree with the Appeals settlement proposal, then Appeals will reject the offer and the case will be closed. Appeals will send the case file to IRS Counsel to refer to DOJ with Form 13536. Appeals will notify CTR/BSA of the closure to DOJ for collection.
- (2) If there is less than nine months remaining to file a civil collection suit, no settlement proposal shall be sent to DOJ for collection. Rather, the case will be closed and Appeals will send the case file to IRS Counsel to refer to DOJ. Appeals will notify CTR/BSA of the closure with Form 13536 .

