



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.11.6

AUGUST 28, 2025

EFFECTIVE DATE

(08-28-2025)

PURPOSE

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

MATERIAL CHANGES

- (1) Made editorial changes throughout this IRM for clarity. Reviewed and revised text to incorporate plain language and correct grammatical errors, as well as to update website addresses, legal references, and IRM citations.
- (2) IRM 8.11.6, **FBAR Penalties**: Revised to partially incorporate AP-08-0923-0010, **FBAR Case Procedures Due to the Bittner v. United States Supreme Court Decision**, as follows:
 - a. Revised the descriptions for the files found in an FBAR administrative case file. See IRM 8.11.6.3, *FBAR Administrative Case Files*.
 - b. Updated the sources for cases forwarded to Appeals. See IRM 8.11.6.5, *Establishing FBAR Penalty Cases on ACDS*.
 - c. Updated the payment procedures for FBAR cases section. See IRM 8.11.6.7, *Payment Procedures for FBAR Case*.
 - d. Updated the problems related to FBAR case payment posting section. See IRM 8.11.6.8, *Problems Related to FBAR Case Payment Processing*.
 - e. Updated the FBAR closing - pre-assessment case section. See IRM 8.11.6.9.2, *FBAR Closing - Pre-Assessment Case*.
 - f. Updated the FBAR closing - post-assessment case section. See IRM 8.11.6.9.3, *FBAR Closing - Post-Assessment Case*.
- (3) IRM 8.11.6.1.1, *Background*:
 - a. Paragraph (1) - Added paragraph to include background of the FBAR reporting and recordkeeping requirements.
 - b. Paragraph (2) - Added paragraph to include the FBAR requirements and authority.
 - c. Paragraph (4) - Added paragraph to include the mission statement of the IRS Independent Office of Appeals.
- (4) IRM 8.11.6.1.3, *Responsibilities*: Revised to include that in rare circumstances, an FBAR case will be assigned to an Appeals Team Case Leader (ATCL).
- (5) IRM 8.11.6.1.5, *Related Resources*: Added reference to IRM 25.30.2, *Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service*.
- (6) IRM 8.11.6.2, *FBAR Overview*:
 - a. Paragraph (1) - Updated note to change calendar year to 2013 and include FinCEN Form 114 as the only acceptable form to file FBAR.
 - b. Paragraph (3) - Updated to clarify filers must file FBAR electronically unless an exemption from e-filing is granted.
 - c. Paragraph (16) - Updated note to include the objective of closing cases within 120 days of receipt.
 - d. Paragraph (19) - Updated to include the FBAR must be filed by the extended due date to qualify for FTA.

- (7) IRM 8.11.6.3, *FBAR Administrative Case Files*:
 - a. Paragraph (1) - Moved note from original paragraph (1).
 - b. Paragraph (4) - Moved caution and exception under the original paragraph (1) and the note from paragraph (2) and added note to include the Appeals Issue Locator website.
- (8) IRM 8.11.6.4.1, *FBAR Penalty Statute of Limitations on Assessment*: Updated to transmit revised title. Moved bullets, examples, note, and paragraphs (2)-(4) to IRM 8.11.6.4.2.
- (9) IRM 8.11.6.4.2, *Consent to Extend the Time to Assess Civil Penalties for FBAR Violations*: New section.
 - a. Paragraph (1) - Added paragraph to include ATEs should only use the consent form created specifically to extend the assessment statute of limitations for FBAR cases.
 - b. Paragraph (2) - Added paragraph to include ATMs, ATCLs and ATEs have authority to execute a Title 31 FBAR statute extension.
 - c. Paragraph (3) - Added paragraph to include bullets and note from 8.11.6.4.1(1).
 - d. Paragraphs (4)-(6) - Added paragraph to include paragraphs (2)-(4) from 8.11.6.4.1.
- (10) IRM 8.11.6.4.3, *Post-Assessment FBAR Civil Action Statute of Limitations*: New section moved from IRM 8.11.6.4.1.1.
- (11) IRM 8.11.6.6, *Appeals Technical Employee (ATE) Procedures for FBAR Penalty Cases*:
 - a. Paragraph (4) - Revised to incorporate IG AP-08-0924-0019, *Updated interim guidance on Appeals Reporting Data Needs (ARDN)*. Added second note to separate the last sentence from the first note and clarify the use of Form 2848 is appropriate for FBAR examinations.
 - b. Paragraph (6) - Updated to include the objective of closing cases within 120 days of receipt.
 - c. Paragraph (8) - Updated to include all FBAR penalty cases are Appeals Coordinated Issues and some cases will require review and concurrence.
- (12) IRM 8.11.6.9.1, *FBAR Closing - Premature Referral*:
 - a. Paragraph (1) - Revised to clarify procedures followed may vary based on the case received by Appeals.
 - b. Paragraph (2) - Added to include Appeals statute acceptance criteria.
- (13) IRM 8.11.6.9.2, *FBAR Closing - Pre-Assessment Case*:
 - a. Paragraph (2) - Added reference to closing letter for full concession cases.
 - b. Paragraph (9) - Updated to include when the closing letter should be issued for unagreed cases.
 - c. Paragraph (11) - Updated to clarify it is the responsibility of the ATE to mail cases to CTR/BSA.
- (14) IRM 8.11.6.9.3, *FBAR Closing - Post-Assessment Case*:
 - a. Paragraph (1) - Revised to include the objective of closing cases within 120 days of receipt.
 - b. Paragraph (9) - Updated to clarify it is the responsibility of the ATE to mail cases to CTR/BSA.
- (15) IRM 8.11.6.12, *Time Limitations on FBAR Cases with DOJ Involvement*:
 - a. Paragraph (1) - Revised to include the objective of closing cases within 120 days of receipt, changed the timeframe in subsection (b) from 60 days to 6 months and removed steps 1-3 as the information has been condensed into subsection (d).

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 8.11.6 dated September 27, 2018. This IRM is revised to incorporate Interim Guidance Memorandum AP-08-0924-0019, **Updated interim guidance on Appeals Reporting Data Needs (ARDN)**, dated September 23, 2024 and to partially incorporate Interim Guidance Memorandum AP-08-0923-0010, **FBAR Case Procedures Due to the Bittner v. United States Supreme Court Decision**, dated September 26, 2023.

AUDIENCE

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8.11.6
FBAR Penalties

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8.11.6.1
(08-28-2025)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides guidance to Appeals Technical Employees (ATEs) assigned a FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*, violation penalty case file in the Independent Office of Appeals (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
(08-28-2025)
Background

- (1) The requirement to report and keep records of foreign bank and financial accounts was added in 1970 as part of the **Currency and Foreign Transactions Reporting Act of 1970**, which is known as the **Bank Secrecy Act** or **BSA**. Codified at 31 USC 5311-5332.
- (2) The FBAR is required by the BSA. The authority for the reporting and record-keeping requirements for foreign bank and financial accounts are in 31 USC 5314 of the United States Code and the related regulations under 31 CFR 1010.306, **Filing of Reports**; 31 CFR 1010.350, **Reporting of Foreign Financial Accounts**; and 31 CFR 1010.420, **Records to be Made and Retained by Persons Having Financial Interests in Foreign Financial Accounts**.
- (3) The Financial Crimes Enforcement Network (FinCEN) enforcement authority was redelegated to the IRS for penalties imposed under 31 USC 5314 and 5321 for the failure to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*. This redelegation was effective on April 8, 2003, by memorandum of agreement between FinCEN and the IRS.
- (4) IRC 7803(e)(3) provides that the function of Appeals is to resolve Federal tax controversies without litigation on a basis that is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the Federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS. Appeals considers FBAR penalty appeals in a manner consistent with the purpose prescribed in IRC 7803(e)(3).

8.11.6.1.2
(08-28-2025)
Authority

- (1) Delegation Order (DO) 25-13 (Rev. 1), *Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements*, effective March 8, 2022. See IRM 1.2.2.15.13, **Delegation Order 25-13 (Rev. 1), Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements**.

8.11.6.1.3
(08-28-2025)
Responsibilities

- (1) Appeals Technical Employees (ATE) consider cases with Title 31 FBAR penalty controversies. Refer to IRM 8.1.3.4, *Appeals Employees Involved in Settling and Processing Appeals Cases*, and IRM 8.1.3.5, *Appeals Officer (AO)*, for additional information on the roles and responsibilities of ATEs. In rare circumstances, an FBAR case will be assigned to an Appeals Team Case Leader (ATCL). Refer to IRM 8.1.3.6, **Appeals Team Case Leader (ATCL)**, for additional information on the roles and responsibilities of ATCLs.

- (2) Appeals Team Managers (ATMs) approve most of the FBAR settlements, documented on Form 5402, *Appeals Transmittal and Case Memo*.
- (3) Tax Computation Specialists (TCS) do **not** prepare FBAR computations. Refer to IRM 8.1.3.10 , *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 8.1.3.11, *Account and Processing Support (APS)*, for additional information on the roles and responsibilities of APS employees.
- (5) Appeals FBAR Coordinators provide technical guidance and support for ATEs working FBAR cases, including reviewing and concurring with proposed settlements.

8.11.6.1.4 (08-28-2025)

Terms and Acronyms

- (1) See IRM Exhibit 8.1.1-1, *Common Terms Used 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:

<u>Acronym</u>	<u>Definition</u>
ADR	Alternative Dispute Resolution
ASED	Assessment Statute Expiration Date
BSA	Bank Secrecy Act
CSC	Case Summary Card
CASED	Civil Action 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
LB&I	Large Business and International
PAM	Post Appeals Mediation
QO	Qualified Offer
RAP	Rapid Appeals Process
SEPR	Specialized Examination Program and Referrals

<u>Acronym</u>	<u>Definition</u>
SB/SE	Small Business/Self-Employed
TIN	Taxpayer Identification Number

8.11.6.1.5
(08-28-2025)
Related Resources

- (1) This IRM is the primary source of guidance on this program; however, IRM 8.11.6.2 (21) contains additional FBAR resources.
- (2) Publication 1, **Your Rights as a Taxpayer**, applies to Appeals employees' interactions with filers.
- (3) In accordance with IRM 25.30.2.3, *Statement of Commitment*, Appeals will work collaboratively with the Taxpayer Advocate Service to enhance the filer experience. For more information, see IRM 25.30.2, *Service Level Agreement between the IRS Independent Office of Appeals and the Taxpayer Advocate Service*.

8.11.6.2
(08-28-2025)
FBAR Overview

- (1) A United States person must file an FBAR (FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*) if that person has a financial interest in, or signature, or other 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. It was replaced with FinCEN Form 114 for calendar years 2013 and later, and is the only acceptable form to file an FBAR.
- (2) FinCEN has introduced 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, unless an exemption from e-filing is granted.
- (4) Filings can be researched on the FinCEN Query System (FCQ). Penalty cases, assessments, and payments are recorded on a separate FBAR database maintained by the Small Business/Self-Employed (SB/SE) Specialty Examination, Bank Secrecy Act Examination, Currency Transaction Report (CTR) Operations unit.

Note: To obtain a copy of the FBAR(s) filed by the filer, 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 filer. Refer to IRM 8.26.2, *Fast Track Settlement for Small Business/Self Employed (SB/SE) Taxpayers*.

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

- (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 Exhibit 4.26.16-2, *FBAR Penalty Mitigation Guidelines for Violations Occurring After October 22, 2004*, for mitigation threshold criteria and application for FBAR penalties.
- (11) There is no joint and several liability with FBAR penalty cases.
- (12) Interest on FBAR penalties does not accrue until the penalties are assessed and is charged only if full payment of the FBAR penalties is not made within 30 days of the date that notice of the amount due is first mailed to the debtor (Letter 3708, *Notice and Demand for Payment of FBAR Penalty*, or Letter 3708-A, *Notice for Demand and Payment of FBAR Penalty after Appeal Denial*). Letter 3708/3708-A 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.
- (14) FBAR penalties may come to Appeals as stand-alone cases or together with a related income tax or international penalty case.
- (15) FBAR penalties are an Appeals Coordinated Issue and require a referral to International Operations prior to holding the first conference.
- (16) 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: All post-assessment FBAR penalty cases are priority cases and must be worked expeditiously with the objective of closing within 120 days of receipt. See IRM 8.11.6.9.3.

- (17) The venues available for challenging FBAR penalties are the United States District Courts and the Court of Federal Claims, not the United States Tax Court.

Note: Filers seeking to challenge an FBAR penalty after it has been assessed may either (1) pay the 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.

- (18) Qualified Offer (QO) procedures under IRC 7430 are not available for Title 31 FBAR Penalty cases.
- (19) First Time Abatement (FTA) - Effective with the Calendar year 2016 FBAR. FTA is available to the filer who failed to file the FBAR the first time an FBAR was required to be filed. The FBAR must be filed by the extended due date to be eligible for relief under this provision.
- (20) Automatic Filing Extension - Effective with the calendar year 2016 FBAR. An automatic 6-month extension to file is granted to 10/15/YY. There is no requirement to file an extension form.
- (21) Refer to additional FBAR resource materials:
 - 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*
 - *FinCEN Website*

8.11.6.3
(08-28-2025)
**FBAR Administrative
Case Files**

- (1) The FBAR penalty is assessed or proposed on only one filer, even when a filer has elected married filing jointly status on their individual tax return or jointly owned foreign account. There should be one U.S. person under examination per FBAR case file.
- (2) 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; this will allow Examination to secure an assessment statute extension or cause the penalty to be assessed.
- (3) If a pre-assessed 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 8.6.1.7.7 , *Jurisdiction Released*.
- (4) For post-assessed FBAR cases, Appeals will not accept an assessed FBAR case if more than 180 days have elapsed since the date of assessment, except in certain circumstances approved by Appeals management. Filers may be provided post-assessment appeal rights only when they have not already been provided a pre-assessment appeal. Generally, jurisdiction will not be released back to the originating function when new information is received for a post-assessed FBAR case.

Note: If information on the penalty assessment is needed, the ATE may contact the assigned Appeals FBAR Coordinator for assistance. Prior to assignment, the FBAR Coordinators can be found in the *Appeals Issue Locator* by searching for “FBAR” or “Report of Foreign Bank and Financial Accounts”.

- (5) The administrative file will contain the following documents:

- The Examiner's Form 886-A, *Explanation of Items*, or the Examiner's explanation if not included in Form 886-A, which provides a summary explaining the FBAR violation(s), including:
 - A discussion of the FBAR violations.
 - The number of penalty assertions.
 - The penalty calculation and dollar amounts.
 - The FBAR case disposition.

Note: If it is not clear that the summary memorandum was shared with the filer, follow the appropriate ex parte procedures in IRM 8.1.10, *Ex Parte Communications*.
- Letter 3709, *FBAR 30-Day Letter*.

Note: If information is needed to determine if the penalty has been assessed, contact the assigned Appeals FBAR Coordinator.
- Form 13449, *Agreement to Assessment and Collection of Penalties under 31 USC 5321(a)(5) and 5321(a)(6)*.
- Filer'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 filer. If they do not, seek guidance from the Appeals FBAR Coordinator.
- Form 13536, **Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD)**. Used to start an FBAR examination that did not originate from a U.S. Code Title 26, **Internal Revenue Code**, examination, and for the exam group to update the FBAR database. Also used to provide updates to CTR/BSA including to close the case from Exam.
- Form 13535, **Report of Foreign Bank and Financial Accounts Related Statute Memorandum**, signed by the designated official documenting a good faith determination, based on the facts and circumstances, that the potential FBAR violation was in furtherance of a potential Title 26 violation. Required if the FBAR examination originates from a Title 26 examination or Title 26 data is accessed.

Caution: When a Form 13535 is not found in the file the ATE should immediately seek guidance from an FBAR Coordinator. No further work on the case should be conducted until the guidance is provided.
- The file may also contain:
 - Form 13448, *Penalty Assessment Certification Summary (Title 31 "FBAR")*. If a post-assessed penalty case, this form includes the date that the IRS designated official stamps this assessment certification form, certifying the penalty assessment occurred on that date.
 - Letter 3708, *Notice and Demand for Payment of FBAR Penalty*, is issued by CTR/BSA to the filer after the penalty has been assessed. Therefore, it will only be available for post-assessed penalty cases and is issued only if the penalty has not been paid in full at the time of as-

assessment. If Letter 3708 should be in the case file but is not, it must be requested by the Appeals Team Managers. To request a copy of Letter 3708 issued by CTR/BSA:

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- Use e-mail subject line “Demand Letter Request”, and
- In the encrypted e-mail message include the filer’s full name, TIN and year(s) for which the letter is requested.
- Form 2848, *Power of Attorney and Declaration of Representative*, or a general power of attorney form which is valid under state law, if applicable. The authorization must specify that it applies to FBAR, Title 31 FBAR Penalties, or otherwise comply with the requirements found in IRM 4.26.17.3.2 , **Power of Attorney in FBAR Examinations**.
- IRS Counsel memorandum approving the assertion of willful FBAR penalties (required only for willful penalties). Memorandum may contain privileged communications and should not be disclosed or shared with the filer or representative without prior discussion with ATM and authorization from Counsel.
- FBAR consent to extend the statute of limitations, if applicable.

Caution: A consent to extend the statute of limitations for the Title 26 examination does not extend the statute of limitations on the FBAR examination.

8.11.6.4
(08-28-2025)
FBAR Statute of Limitations

- (1) The assessment statute expiration date (ASED) and civil action statute expiration date (CASED) for FBAR civil penalties are found in 31 USC 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 CASED.
- (3) The statute of limitations must be determined for each individual under examination.

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

8.11.6.4.1
(08-28-2025)
FBAR Penalty Statute of Limitations on Assessment

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

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

TYPE OF VIOLATION	ASED
Failure to maintain required records (either willful or non-willful)	6 years from the date the IRS first asks for the records via summons (see IRM 4.26.17.3.1.1(8), FBAR Statute of Limitations on Assessments).

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 expires April 15, 2026.

Note: The 6-month automatic extension does not change the ASED from April 15, 2026.

Example 2: Same facts as in Example 1, and in addition, the account holder failed to maintain required records. After initially requesting the records required by the regulations in an Information Document Request, the examiner requested the records in a summons 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 may assert both the failure to file an FBAR penalty and failure to maintain required records penalty on the same account for the same period. Compliance policy in IRM 4.26.16.5.2.1, *FBAR Penalties - Examiner Discretion*, allows examiners discretion over the total amount of all penalties to be asserted for all violations. See also IRM 4.26.16.5.2, *FBAR Penalty Structure*.

8.11.6.4.2
(08-28-2025)
**Consent to Extend the
Time to Assess Civil
Penalties for FBAR
Violations**

- (1) Only use the consent form created specifically to extend the assessment statute of limitations for FBAR cases. See IRM Exhibit 4.26.17-6, *Consent to Extend the Time to Assess Civil Penalties for FBAR Violations*. This Form is available from the assigned Appeals FBAR Coordinator.

Note: A consent to extend the statute of limitations for the Title 26 examination does not extend the statute of limitations for the FBAR examination.

- (2) Appeals Team Managers, Appeals Team Case Leaders, and Appeals Officers have the authority to execute a Title 31 FBAR statute extension. See IRM 1.2.2.15.13, *Delegation Order 25-13 (Rev. 1), Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements*.
- (3) For questions concerning extending the time to assess an FBAR penalty, contact the Appeals FBAR Coordinator.
- (4) For procedures on protecting statutes, refer to IRM 8.21.3.2.3.1, *Protecting Statutes, General Guidelines*.
- (5) For information on preparing consents, refer to IRM 8.21.3.2.3.3, *Consent Processing*. Guidance is also available from the assigned FBAR Coordinator. See also IRM 4.26.17.3.1.3, *Extending the FBAR Statute of Limitations*.

- (6) FBAR penalty cases in Appeals must be assessed with at least 180 days left on the statute to allow normal processing of the assessment certification Form 13448, *Penalty Assessment Certification Summary (Title 31 "FBAR")*, and closure.
- 8.11.6.4.3
(08-28-2025)
Post-Assessment FBAR Civil Action Statute of Limitations
- (1) On post-assessment FBAR cases only, the CASED will be entered on ACDS (Appeals Centralized Database System) to control the statute of limitations.
- (2) The CASED is the statute of limitations for initiating litigation to collect the assessed civil penalties. It is two years from the later of:
- The date of assessment, or
 - The date any judgement becomes final in any criminal action under 31 USC 5322, *Criminal Penalties*.
- (3) However, there is no statute of limitations on collecting the FBAR penalty through other means.
- 8.11.6.5
(08-28-2025)
Establishing FBAR Penalty Cases on ACDS
- (1) For APS procedures regarding establishing FBAR cases on ACDS, refer to IRM 8.20.5.27, *Foreign Bank Account Report (FBAR) Penalty Case Carding*.
- (2) Administrative files may be forwarded to the Appeals Account and Processing Support (APS) Carding Team by either the frontline Exam Group, Exam Technical Services, or in some circumstances, the FBAR Penalty Coordinator at CTR/BSA.
- 8.11.6.6
(08-28-2025)
Appeals Technical Employee (ATE) Procedures for FBAR Penalty Cases
- (1) All FBAR penalty cases are controlled on ACDS. FBAR information is not maintained in IDRS.
- (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 filer information:
- Filer 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.)
 - Taxpayer Identification Number (TIN) to ensure correct account is controlled on ACDS
 - MFT = 00
 - Type code = FBAR
 - Feature Code = AI, IC, IT and any others which apply
 - Category Code = Other
 - AIMS indicator = E (exempt). FBAR cases are not controlled on AIMS (Audit Information Management System)
 - POA/Representative information:

Note 1: Form 2848, *Power of Attorney and Declaration of Representative*, may be used for Title 31 BSA examinations, including FBAR examinations. Line 3 on the Form 2848 reflects the description of the matter in the first column, tax form number

8.11 Penalties Worked in Appeals

in the second column, and years and period in the third column. The words, "FBAR Examination" or "Matters Related to FBAR" must be added in the first column, "FinCEN Form 114" added to the second column, and the filing periods at issue covered by the representative's authority in the third column.

Note 2: See IRM 4.26.17.3.2, *Power of Attorney in FBAR Examinations*, for more information on a valid power of attorney.

- i. STATDATE (statute date) and STATCODE (statute code) must be validated within 45 days of receipt. See IRM 8.21.3.2.1(3), **New Receipts and Transfers**. 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 or date on which records requested)	Leave Blank
Assessed	2 years from the date of assessment	FBAR2

- j. 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, *Foreign Bank and Financial Accounts Report (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.

- k. Penalty Amount: Verify the penalty amount for each period is accurate.
 - l. For pre-assessed penalty cases, update per the amounts on Form 13449, **Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)**.
 - m. For post-assessed penalty cases, update per the amounts on Form 13448, **Penalty Assessment Certification Summary (Title 31 "FBAR")**. 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 (a/k/a Appeals FBAR Coordinator) as a consultant.
 - b. A list of Appeals Coordinated issues, the responsible coordinators, and their ATM can be found on the *Appeals Issue Locator* website.
- (6) All post-assessment FBAR penalty cases are **priority** cases and must be worked expeditiously with the objective of closing within 120 days of receipt.

Refer to IRM 8.11.6.9.3 for additional guidance.

- (7) Prepare the Letter 5157, *Non-docketed Acknowledgement and Conference*, and issue a copy to the filer with Publication 4227, *Overview of the Appeals Process Brochure*, explaining the Appeals process and filer's rights.

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

- (8) All FBAR penalty cases are Appeals Coordinated Issues, and some cases will require review and concurrence. The ATE will submit a referral using Form 13381 during the preliminary review of the case. Review and concurrence should be received from the assigned Appeals FBAR Coordinator for the proposed settlement determination prior to making the offer to the filer or representative.

- (9) ATE will mail Letter 5834, *Foreign Bank and Financial Accounts Report (FBAR) Agreement Form Transmittal*, with Form 13449, for the filer to sign and return.

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

- (10) ATE will submit a request to have their 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 filer has signed indicating agreement with the determination. This signed form is sent with closing Letter 5080, *FBAR Penalty Agreed Closing Letter*, to the filer.
 - 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
(08-28-2025)
**Payment Procedures for
FBAR Case**

- (1) Encourage FBAR filers to mail payments after receiving correspondence from CTR/BSA, e.g., in response to Letter 3708/3708-A. Those letters include payment instructions. For any FBAR payment-related questions, contact the assigned Appeals FBAR Coordinator.
- (2) See IRM 4.26.17.4.4, *Closing the FBAR Case - Payment and Collection*.

8.11.6.8
(08-28-2025)
**Problems Related to
FBAR Case Payment
Posting**

- (1) If FBAR payments have been misposted, such as to a Title 26 module, follow the instructions for misposted FBAR payments found in IRM 4.26.17.4.4.1, **Instructions for Misposted FBAR Payments**.
- (2) If an ATE discovers a misposted FBAR payment, they must discuss the payment issue with the assigned FBAR Coordinator to ensure a payment posting correction is done correctly, as well as informing their ATM of the situation. The ATE is responsible for ensuring the payment is correctly posted and also that the filer receives credit for the payment in the FBAR Database.

8.11.6.9
(08-28-2025)
**FBAR Closing
Procedures**

- (1) Refer to IRM 8.20.7.36, *Foreign Bank and Financial Account (FBAR) Penalty Case Closing Procedure*, 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) - typical 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 8.20.7.9, *Procedures for Shipping Personally Identifiable Information (PII)*.

8.11.6.9.1
(08-28-2025)
**FBAR Closing -
Premature Referral**

- (1) When Appeals receives an FBAR case that is a premature referral, the procedures that must be followed vary based on whether Appeals received only the FBAR case or the FBAR case along with an income tax case and/or an international penalty case.
- (2) Appeals will usually not accept assessed FBAR cases more than 180 days after the date of assessment. Pre-assessed FBAR cases should not be accepted if there are less than 365 days remaining on the assessment statute. See IRM 8.20.5.3.1.2, **Verifying Administrative File Contents**.
- (3) See the table below for information on handling the case as a premature referral:

Type of Case	Actions Required if Referral is Premature
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>Foreign Bank and Financial Accounts Report (FBAR) Monitoring Document (FMD)</i>, should be prepared and sent to CTR/BSA to notify them that the 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 them that the jurisdiction is released

- (4) When closing a premature referral in ACDS, case-level field entries are: Closing Code 20 - Premature Referral (Jurisdiction Released). No entries are required at the return level.
- (5) The FBAR file is submitted to APS with instructions to send the transmittal Form 3210, **Document Transmittal**, to Technical Services or the originating group.
- (6) Send an electronic copy of Form 5402, *Appeals Transmittal and Case Memo*, Form 13536, and Appeals Case Memorandum (ACM) to CTR/BSA at the following e-mail:

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Note: Form 13536, *Foreign Bank and Financial Accounts Report (FBAR) 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
(08-28-2025)
**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 several types of FBAR closing letters. The ATM signature is required prior to mailing the letter to the filer in pre-assessment cases.
- Agreed cases — Letter 5080, *FBAR Penalty Agreed Closing Letter*
 - Full concession cases — Letter 913, *Agreed Cases - Closing*
 - Unagreed cases — Letter 5143, *Report of Foreign Bank and Financial Accounts (FBAR) Unagreed Closing*
- (3) If the case has both pre- and post-assessed penalties, prioritize the case as a post-assessed case. 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 filer does not agree. Appeals will prepare a new Form 13449, secure the ATM signature, and send to CTR/BSA via e-mail to have the penalty assessed. The CTR/BSA e-mail address is:

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Note: If no filer signature on an agreement is secured, the penalty is sustained in full. The filer should be notified the penalty will be assessed using Letter 5834 or equivalent language.

- (6) ATE will prepare and send Letter 5834 and Form 13449 with penalty calculation to secure filer agreement.
- (7) ATE will send the prepared Form 13449 to obtain ATM signature, then send to CTR/BSA for assessment 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 Form 13449 (signed by the ATM) with agreed closing letter, Letter 5080, sent to the filer.

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

- (8) Contact information for CTR/BSA is via e-mail at:

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- (9) The ATE will date and mail the closing letter after it is approved and signed by the ATM. For an unagreed case use Letter 5143, for an agreed case use Letter 5080, and for a full concession case use Letter 913. The closing letter should be mailed prior to the time the case is submitted for closure to APS.

- (10) Form 5402 Closing:
- Codes are found in the table in IRM 8.11.6.9

- (11) Closed FBAR case files are sent from Appeals to CTR/BSA directly, without being routed through APS. Mailing the files is the responsibility of the ATE and should be done without delay when the case is closed by the ATM. When closing the case to APS, the ATE will follow electronic case closing procedures. Send the case file to CTR/BSA and include in the case file, Form 3210, *Document Transmittal*. Follow IRM 1.22.5.10, **Acceptable Mail/Shipping Services**, to determine the appropriate shipping method.

If shipping via USPS:

Internal Revenue Service
Attention: CTR/BSA FBAR Coordinator
P.O. Box 33115
Detroit, MI 48232-0115

If shipping via a small package carrier, such as UPS:

Internal Revenue Service
Attention: CTR/BSA FBAR Coordinator
985 Michigan Ave, 8th Floor
Detroit, MI 48226

8.11.6.9.3 (08-28-2025)

FBAR Closing - Post-Assessment Case

- (1) Post-assessment FBAR cases are priority cases and require expedited handling with the objective of closing within 120 days of receipt.
- (2) The ATE will prepare the closing letter and Form 5402.
- (3) The types of closing letters are:
- Agreed cases — Letter 5080, **FBAR Penalty Agreed Closing Letter**
 - Unagreed cases — Letter 5143, **Report of Foreign Bank and Financial Accounts (FBAR Unagreed Closing)**
 - Full concession cases — Letter 913, **Agreed Cases - Closing**
- (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) 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, the ATE will prepare Form 13449, obtain ATM signature, and 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 the revised amount 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 filer.

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

Caution: Once an FBAR penalty has been assessed by CTR/BSA at Exam or Appeals' request, the penalty may not be reversed unless it is approved by an ATM and in some cases also DOJ. See IRM 8.11.6.12.

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

Note: A signed Form 13449 is not required to be sent to the filer in an unagreed case when issuing Letter 5143.

- (8) CTR/BSA may be contacted via e-mail at

ordinator can also be contacted for assistance.

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- (9) Closed FBAR case files are sent from Appeals to CTR/BSA directly without being routed through APS. Alternatively, IRS Counsel may request the files be shipped to a different location for review. Mailing the files is the responsibility of the ATE and should be done without delay when the case is closed by the ATM. Separately, the ATE will submit to APS an electronic request for case closure. When closing the case to APS, the ATE will follow electronic case closing procedures.

When sending the case file include Form 3210, **Document Transmittal**. When closing cases to APS, the ATE will prepare and include in the case file, Form 3210. Follow IRM 1.22.5.10, **Acceptable Mail/Shipping Services**, to determine the appropriate shipping method.

If shipping via USPS:

Internal Revenue Service
Attention: CTR/BSA FBAR Coordinator
P.O. Box 33115
Detroit, MI 48232-0115

If shipping via a small package carrier, such as UPS:

Internal Revenue Service
 Attention: CTR/BSA FBAR Coordinator
 985 Michigan Ave, 8th Floor
 Detroit, MI 48226

8.11.6.10
 (08-28-2025)

**FBAR Administrative
 File**

- (1) The following documents should be included in the administrative file and uploaded to ACDS by the ATE/ATM:
 - Form 5402, **Appeals Transmittal and Case Memo**
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 Bank and Financial Accounts Report Agreement Form Transmittal*
 - Form 13449, **Agreement to Assessment and Collection of Penalties Under 31 U.S.C. 5321(a)(5) and 5321(a)(6)**, prepared by Appeals
 - Form 13448, **Penalty Assessment Certification Summary (Title 31 "FBAR")**, or other documentation received from CTR/BSA to confirm the penalty has been assessed
 - Copy of any checks received in Appeals, if applicable
 - Appropriate closing letter dated and signed by the ATM
 - FBAR penalty computation spreadsheet/worksheet
 - Form 13536, *FBAR Monitoring Document (FMD)*, if applicable
 - Additional items identified as necessary

8.11.6.11
 (08-28-2025)

**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 where the FBAR penalties have already been assessed by CTR/BSA. These are priority cases and should be worked with the objective of closing within 120 days of receipt.
- (3) CTR/BSA will notify the filer of the assessment with Letter 3708, *Notice and Demand for Payment of FBAR Penalty*. A case can be protested to Appeals before or after receipt of this letter.

Note: A filer 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 must file a collection suit within a 2-year period beginning on the later of the date the penalty was assessed or the date any judgement becomes final in a criminal action under 31 USC 5332 in connection with the same transaction with respect to which the penalty was assessed. (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 when there is not sufficient time remaining on the assessment statute of limitations. On rare occasions, the case may remain in Appeals and worked as a post-assessed case with Appeals management approval.

8.11.6.12
(08-28-2025)
**Time Limitations on
FBAR Cases with DOJ
Involvement**

- (1) On post-assessed Appeals FBAR penalty cases over \$100,000, Appeals will, through Litigation and Advisory Division Counsel Headquarters, provide a settlement proposal to DOJ. This request must be submitted no later than nine months prior to the CASED. Appeals will send the case to Litigation and Advisory Division Counsel Headquarters for referral to DOJ. The AO will work with the FBAR Coordinator to facilitate this process.
- If DOJ has not provided its views regarding the proposed settlement within 60 days of the date the proposal was sent to DOJ, Appeals will follow up with DOJ regarding the status of DOJ's consideration.
 - If DOJ has not provided its view regarding the proposed settlement within 6 months of the expiration of the time to file a civil collection suit, Appeals may reject any pending offer and close its file to CTR Operations for referral to IRS Counsel.
 - If DOJ concurs with the Appeals settlement proposal, DOJ will provide instructions to the IRS with respect to entering into the settlement agreement. After DOJ has approved the settlement in writing, the case will be settled and closed under normal procedures. See IRM 8.11.6.9.3.
- Note:** To the extent possible, full payment is expected at the time of closure.
- If DOJ does **NOT** agree with the Appeals settlement proposal, Appeals will reject the offer and the case will be closed. Appeals will notify CTR/BSA of the closure to DOJ for collection using normal closing procedures found in IRM 8.11.6.9.3.
- (2) If there is less than nine months remaining to file a civil collection suit, no settlement proposal shall be sent to DOJ for consideration. Rather, the case will be closed and Appeals will send the case file to CTR/BSA to refer to DOJ.

