



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.26.8

FEBRUARY 14, 2019

EFFECTIVE DATE

(02-14-2019)

PURPOSE

- (1) This transmits revised text for IRM 4.26.8, Bank Secrecy Act, Special Procedures.

MATERIAL CHANGES

- (1) IRM 4.26.8.1 added to comply with IRM 1.11.2.2.5 , Address Management and Internal Controls. All sections have been renumbered due to this addition.
- (2) IRM 4.26.8.3 updated Power of Attorney procedures, including instructions for using Form 2848 in Title 31 examinations.
- (3) IRM 4.26.8.4 updated summons procedures, including the use of the electronic summons, FinCEN Form 113, BSA Summons. TD F 90-22.31, Department of the Treasury Summons, is now obsolete.
- (4) IRM 4.26.8.5 updated procedures for Form 5104 referral processing.
- (5) IRM 4.25.8.6.5 added procedures to make parallel civil and criminal referrals under Title 31.
- (6) IRM 4.26.8.7 added procedures to work a non-financial trade or business under Title 31 and assess penalties on Form 8300 requirements under Title 26.
- (7) IRM 4.26.8.8 added procedures to work a non-financial trade or business with a BSA Anti-money laundering program requirement under Title 31.
- (8) IRM 4.26.8.9 added procedures to work a non-financial trade or business under Title 31, including procedures on how to open a Title 26 file to assert penalties.
- (9) IRM 4.26.8.10 added procedures to work a non-financial trade or business under Title 31 that was originally sent to the field under Title 26.
- (10) IRM 4.26.8.11 added procedures for BSA examiners to file Suspicious Activity Reports when required to report activity beneficial to law enforcement.
- (11) IRM 4.26.8.11.1 added procedures on how to complete a Suspicious Activity Report filed by IRS.
- (12) Exhibit 4.26.8-1 was deleted. Updated information within IRM 4.26.8 for issuing the Letter 1112, Title 31 Violation Notification Letter, and 4.26.8.6 for any information that was not already contained within these sections.
- (13) Exhibit 4.26.8-3 was deleted.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.26.8 dated June 1,2006.

AUDIENCE

Intended audience is employees of the Bank Secrecy Act Program in the Small Business/Self Employed (SB/SE) division, and can be referenced by all field compliance personnel, especially in Examination and Collection who may be working an Report of Foreign Bank and Financial Accounts (FBAR) case.

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Small Business/Self-Employed

4.26.8

Special Procedures

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4.26.8.1
(02-14-2019)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides guidance on special procedures which are unique to Bank Secrecy Act (BSA) examinations, including the issuance of a BSA summons, processing a Power of Attorney, and making a referral to the Financial Crimes Enforcement Network (FinCEN) for potential civil monetary penalties.
- (2) **Audience.** This IRM is for BSA managers, examiners and technical support personnel. The BSA summons procedures are the same for any IRS function trying to secure records to determine compliance with the Foreign Bank Account Report (FBAR) requirements.
- (3) **Policy Owner.** Director, SB/SE Specialty Examination Policy.
- (4) **Program Owner.** Director, SB/SE Specialty Examination.
- (5) **Primary Stakeholders.** SB/SE Specialty Examination BSA; SB/SE Headquarters Exam, Specialty Exam Policy BSA; Exam Quality and Technical Support, Field and Specialty Exam Quality; Chief Counsel, Division Counsel SB/SE.
- (6) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.
- (7) **Program Goals.** The mission of the BSA Program is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity by providing the financial community top quality service to help them understand their obligations under the BSA and to ensure BSA compliance with integrity and fairness to all.

4.26.8.1.1
(02-14-2019)
Authority

- (1) The Department of the Treasury has primary responsibility for implementing and enforcing the BSA. The Secretary of the Treasury delegated the authority to administer the BSA to the Director, FinCEN. 31 CFR 1010.810(b)(8) delegates the responsibility to examine and assure compliance with the requirements of 31 CFR Chapter X, Financial Crimes Enforcement Network, Department of the Treasury, for certain entities to the IRS.
- (2) 31 CFR 1010.810(b)(8) delegates authority to the Commissioner of Internal Revenue to examine all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety.
- (3) FinCEN's delegation of authority to conduct Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, examinations under Title 31 enables the IRS to share the results of such examination with FinCEN and other federal and state governmental agencies, without Title 26 disclosure issues. IRS retains penalty authority for all Form 8300 filing requirements. A Form 8300 filing requirement under a Title 31 Geographical Targeting Order would be addressed only under Title 31. Starting a nonfinancial trade or business examination under Title 31 and then converting the case to a Title 26 to assess penalties requires special procedures which are discussed in this chapter.

- (4) 31 USC 5318(b), Limitations on Summons Power, limits the Secretary of the Treasury to act against a domestic financial institution or nonfinancial trade or business or to issue a summons for the purpose of determining compliance with the BSA.

4.26.8.1.2
(02-14-2019)

Roles and Responsibilities

- (1) Director, Examination – Specialty Policy is the executive responsible for BSA Examination policy and procedures.
- (2) Director, Examination – Specialty Examination is the executive responsible for BSA examination operational compliance.
- (3) Chief, BSA is responsible for ensuring general information about basic BSA examiner responsibilities and IRM sections is communicated to and carried out by BSA examiners.

4.26.8.1.3
(02-14-2019)

Program Management and Review

- (1) Reports to monitor the current year's work plan, as well as specific programs, are generated from the Title 31 Non-Bank Financial Institution database. These reports provide Headquarters and Field Examination with timely and reliable information. There are a variety of reports designed to meet the needs of the group or function. Reports used to monitor examination processes include:
- Direct examination time.
 - New examination starts.
 - Examination closures.
 - Average hours expended per case.
 - No issue percentage.
 - Closed case cycle time by workstream.
 - Open case cycle time by workstream.
 - Referrals to Examination.
 - Referrals to Employment Tax.
 - Referrals to CI.
 - Number of surveyed cases.
 - Workplan accomplishments.
- (2) Periodic program reviews are conducted to:
- Assess the effectiveness of specific programs within Examination or across the organization.
 - Determine if procedures are being followed.
 - Validate policies and procedures.
 - Identify and share best/proven practices.

4.26.8.1.4
(02-14-2019)

Acronyms

- (1) The following table is a list of acronyms, and their definitions, used in this IRM

Acronym	Definition
AML	Anti-Money Laundering
BSA	Bank Secrecy Act
CAF	Centralized Authorization File
CFR	Code of Federal Regulations
CI	IRS Criminal Investigation

Acronym	Definition
CTR	Currency Transaction Report
DOJ	Department of Justice
ECS	Exam Case Selection
ERCS	Examination Return Control System
FBAR	Report of Foreign Bank and Financial Accounts
FIRM	Fraudulent Intent Referral Memorandum
FinCEN	Financial Crimes Enforcement Network
FTA	Fraud Technical Advisor
IDRS	Integrated Data Retrieval System
LB&I	Large Business & International
MSB	Money Services Business
POA	Power of Attorney
RFPA	Right to Financial Privacy Act
SAR	Suspicious Activity Reports
SBSE	Small Business Self Employed
TEGE	Tax Exempt & Governmental Entities
USC	United States Code

4.26.8.1.5
(02-14-2019)

Terms

- (1) The following table lists terms, and their definitions:

Term	Definition
AML Program	A written, risk-based plan, reasonably designed to prevent the business from being used to facilitate money laundering and the financing of terrorism.
SB/SE BSA Liaison to FinCEN	Employee within BSA Policy designated as the communication hub between the IRS and FinCEN.

4.26.8.1.6
(02-14-2019)

Related Resources

- (1) The following is a list of resources related to the information found in this IRM.

Resource	Title
https://www.fincen.gov/	FinCEN website
https://organization.ds.irsnet.gov/sites/SbseSpec/BSA/SitePages/Home.aspx	BSA Exam SharePoint
https://organization.ds.irsnet.gov/sites/SbseFraudBSA/BkSecAct/SitePages/Home.aspx	BSA Policy SharePoint

4.26.8.2
(02-14-2019)
Overview

- (1) 31 USC, Subchapter II, Records and Reports on Monetary Instruments Transactions, 31 USC 5311 through 31 USC 5332 (except for 31 USC 5315), referred to as the Bank Secrecy Act (BSA), and the related regulations at 31 CFR Chapter X, Financial Crimes Enforcement Network, Department of the Treasury, are an entirely different group of laws from Title 26, known as the Internal Revenue Code. Some procedures used in a BSA examination are substantially different from those used in an income tax examination.
- (2) When IRS guidance states **taxpayer**, within the context of a BSA examination, financial institutions and nonfinancial trades or businesses have the same rights when dealing with the IRS, including the right to representation.
- (3) A financial institution may request representation using Form 2848, Power of Attorney and Declaration of Representative; however, there is a significant difference in how the POA is processed in comparison to an examination conducted under Title 26.
- (4) Guidelines have been established for referrals to both IRS Criminal Investigation (CI) and the Financial Crimes Enforcement Network (FinCEN).
- (5) Procedures for securing delinquent BSA forms vary depending on whether there is a referral to CI or FinCEN, or there is no referral.

4.26.8.3
(02-14-2019)
Power of Attorney

- (1) A financial institution or a nonfinancial trade or business examined under Title 31, may authorize a recognized representative to represent them during the examination.
- (2) A properly completed Form 2848, Power of Attorney and Declaration of Representative, or a POA that meets certain conditions may be accepted.

4.26.8.3.1
(02-14-2019)
Form 2848 Received in a Title 31 Examination

- (1) A financial institution or nonfinancial trade or business may use Form 2848, Power of Attorney and Declaration of Representative, to authorize their representative to represent them before the IRS in an examination conducted under Title 31. The representative must be eligible to practice before the IRS (see listed categories on Part II of Form 2848).
- (2) A Form 2848 used in a Title 31 examination should be completed as follows:
 - a. Part 1, item 1, Taxpayer Information—Provide the name and address of the subject of the Title 31 examination requesting the representation.
 - b. Part 1, item 2, Representative Information—Provide the required information of the recognized representative(s). A recognized representative is

an individual authorized to represent persons before the IRS under Treasury Department Circular No. 230, Regulations Governing Practice before the Internal Revenue Service, (31 CFR Part 10, Practice before the Internal Revenue Service).

- c. Part 1, item 3, Acts Authorized, in the column "Description of Matter" enter "Title 31 BSA Examination" if the examination is on a financial institution, enter "Title 31 Form 8300 Examination with AML Program requirements" if the examination is on a nonfinancial trade or business that has an anti-money laundering program requirement, or enter "Title 31 Form 8300 Examination" if the examination is on a nonfinancial trade or business and they have no anti-money laundering program requirement.
 - d. Part 1, item 3, Tax Form Number, for an examination on a financial institution enter "Not applicable" and for a Form 8300, Report of Cash Payments over \$10,000 Received in a Trade or Business, examination enter "Form 8300".
 - e. Part 1, item 3, Year(s) or Period, if the exam period is a full calendar year, enter the year as YYYY, for example, 2018. If the exam period covers multiple years or a series of inclusive periods, including quarterly periods, list the beginning period and the ending period (use "through", "thru" or a hyphen); for example, "2017 thru 2018" or "2nd 2017 - 3rd 2018".
 - f. Part 1, line 4, the subject of the examination must check the "Specific Uses not Recorded on Centralized Authorization File (CAF)" box. The IRS's CAF unit will only process a Form 2848 for tax related matters. The representative must mail or fax the Form 2848 or POA to the IRS office handling the examination or bring the original to the first meeting.
 - g. Part 1, item 5 – Follow the instructions on the form and complete, as appropriate.
 - h. Part 1, item 7 – The subject of the examination must sign and date.
- (3) Part II, Declaration of Representative. The representative must complete and sign. The instructions may be used for assistance.
 - (4) A properly completed Form 2848 meets the requirements in the Statement of Procedural Rules found at 26 CFR 601.503(a), Requirements.
 - (5) When a related statute determination has been made linking a tax examination with a BSA examination, a Form 2848 should be used. Form 2848 Part 1, Item 3, Description of Matter, should reflect either income tax in the first column or Form 1040, U.S. Individual Income Tax Return, in the second column. When a related statute determination has been made linking a tax examination with an examination for FBAR compliance, examiners should refer to IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.

4.26.8.3.2
(02-14-2019)
**Power of Attorney Valid
under State Law**

- (1) A general Power of Attorney (POA), valid under state law, may be accepted for any financial institution or nonfinancial trade or business examined under Title 31. The POA must meet the requirements in the Statement of Procedural Rules found at 26 CFR 601.503, Requirements of power of attorney, signatures, fiduciaries and Commissioner's authority to substitute other requirements. Examiners must review the POA to ensure these requirements are met.
- (2) The first requirement is that the POA must be valid under state law.

- (3) The document must contain the essential elements required for representation before the IRS. The essential elements are set out in 26 CFR 601.503(a), Requirements. The elements to check for in the general power of attorney include:
 - a. Name and mailing address of the taxpayer.
 - b. Social Security Number or Employer Identification Number of the taxpayer.
 - c. Employee plan number (if applicable).
 - d. Name and mailing address of the recognized representative(s).
 - e. Description of the matter(s) for which representation is authorized which, if applicable, must include the type of tax involved; the Federal tax form number; the specific year(s)/period(s) involved; and in estate matters, decedent's date of death.
 - f. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s).
- (4) IRS will not accept a POA which fails to include the information required in (a) through (e) above as per 26 CFR 601.503(b)(3), Special provision. The representative may cure any defect by executing a Form 2848, Power of Attorney and Declaration of Representative, (on behalf of the financial institution or non-financial trade or business) which includes the missing information.

4.26.8.3.3
(02-14-2019)
**Direct Contact
Procedures**

- (1) The direct contact provisions of IRC 7521(b)(2), Right of consultation, and IRC 7521(c), Representatives holding power of attorney, require IRS employees to:
 - a. Stop an interview whenever a financial institution or a nonfinancial trade or business requests to consult with a representative.
 - b. Obtain their immediate supervisor's approval to contact the financial institution or the nonfinancial trade or business instead of the representative if the representative is responsible for unreasonably delaying the completion of an examination or investigation.
- (2) Group managers must ensure employees are properly following the direct contact provisions. Case and workload reviews must address direct contact issues. See IRM 5.1.23.5, Bypassing of Taxpayer's Representative, for a more detailed discussion of bypass criteria and procedures.

4.26.8.3.4
(02-14-2019)
**Processing Power of
Attorney**

- (1) A Form 2848, Power of Attorney and Declaration of Representative, or other POA is processed based on the type of examination.
 - a. A Form 2848 or other POA must be date stamped when received.
 - b. A Form 2848 or other POA received during a Title 26 examination is submitted to the CAF. The examiners must process the form following the "Where to File Chart" in the instructions. If the document is faxed, the original must be retained in the case file. If the original document is mailed to the CAF, a copy must be retained in the case file.
 - c. A Form 2848 or other POA received during a Title 31 examination, regardless of whether it is a financial institution or a nonfinancial trade or business, is not faxed or mailed to the CAF. IRS examiners must ensure the representative checked the box on line 4, "Specific Uses Not Recorded on Centralized Authorized File" of the Form 2848. The original Form 2848 is retained in the case file. For a POA, other than Form 2848, the original form must be retained in the case file.

4.26.8.4

(02-14-2019)

**FinCEN Form 113, BSA
Summons**

- (1) Every effort must be made to obtain needed information voluntarily from the financial institution or nonfinancial trade or business being examined. IRS examiners should determine if a summons is the appropriate course of action when requested information cannot be obtained voluntarily.
- (2) FinCEN Form 113, Bank Secrecy Act Summons, is the only approved summons to request BSA related records. Instructions for completing the document are attached to the summons form. FinCEN Form 113 may be obtained from:
 - a. The BSA Policy SharePoint site (BSA employees only).
 - b. IRS forms repository by visiting <http://publish.no.irs.gov/catlg.html> and under "View by Catalog Number", enter catalog number "62945S" and hit submit.
- (3) IRS Form 2039, Summons, cannot be used in a Title 31 examination. Form 2039 is used to summon a taxpayer to appear before an officer of the IRS to produce requested records and/or to give testimony relating specifically to ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, collecting any such liability, or inquiring into any offense connected with the administration or enforcement of the internal revenue laws.
- (4) FinCEN Form 113 is used for civil summons purposes only. 31 CFR 1010.912, Persons who may issue summons, provides that the Chief, CI, or a delegate thereof can only issue a BSA summons for perfecting civil seizures and forfeitures related to violations of the BSA reporting requirements.
- (5) A BSA Title 31 summons may not be issued after an IRS related criminal referral has been made to the U.S. Attorney's office or to the Department of Justice (DOJ) Tax Division. A criminal referral in this context means an IRS initiated request, attorney for the government grand jury request, or IRS prosecution recommendation. A BSA summons may be issued after declination by DOJ or final adjudication of a related Title 31 criminal investigation.
- (6) The Secretary of the Treasury or his delegate is authorized to issue the summons for any investigation for civil enforcement of violations of the BSA, or any regulation issued pursuant to the BSA at 31 USC 5318(a)(4), Summon a financial institution or nonfinancial trade or business, and 31 CFR 1010.911 , General. Further delegations of that authority are set forth in IRM 1.2.52.14 , Delegation Order 25-13 (formerly DO 4-35, Rev. 1.). Summons procedures are found in 31 CFR 1010.911 through 31 CFR 1010.917 .
- (7) 31 CFR 1010.912, Persons who may issue summons, and Delegation Order 25-13, subparagraph (9), identify the persons having authority to issue a BSA summons. Authorized persons include:
 - a. Director, FinCEN
 - b. IRS Commissioner and Deputy Commissioner or a delegate of either official
 - c. Chief Criminal Investigation or a delegate for the purposes of perfecting seizures and forfeitures related to civil enforcement of a BSA requirement

- d. Executives of Customs and Border Protection for enforcement with the requirement to report the transportation of currency or monetary instruments under 31 CFR 1010.340, Reports of transportation of currency or monetary instruments
- (8) The IRS Commissioner and Deputy Commissioner's authority to issue a summons is further delegated to:
 - a. Division Commissioner, SBSE
 - b. Director, BSA (Currently Chief, Bank Secrecy Act Examination)
 - c. Area Directors
 - d. Directors and Chief, BSA Policy and Operations (SBSE)
 - e. Directors, Field Operations (LB&I)
 - f. Directors (TEGE)
 - g. Field Operations Managers and Compliance and Program Managers (TEGE)
 - h. Territory Managers (SBSE) & (LB&I)
 - i. Area Managers (TEGE)
 - j. Chief, Criminal Investigation

Note: Neither group managers nor examiners are authorized to **issue** a Title 31 BSA summons.

- (9) Delegation Order No. 25-13, IRM 1.2.52.14(9), Delegated to:, and IRM 1.2.52(12), Delegate to:, contain lists of persons authorized to **serve** a BSA summons, receive summoned records, and take summoned testimony. Those authorized to issue a summons are also authorized to serve a summons. In addition, the following IRS personnel may serve a BSA Summons:
 - a. Revenue Agents
 - b. Estate Tax Attorneys
 - c. Tax Compliance Officers
 - d. Tax Auditors
 - e. Revenue Officers
- (10) A BSA Summons may be issued, to those listed below, to produce books, papers, records and other data and to give testimony to:
 - a. A financial institution or a nonfinancial trade or business being examined under Title 31.
 - b. An officer or employee of a financial institution or a nonfinancial trade or business being examined under Title 31, including a former officer or employee.
 - c. Any person having possession, custody, or care of any records and reports required under the BSA.
- (11) Expenses paid for complying with a BSA summons are limited. Persons summoned to appear shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The government is not liable for any expenses incurred regarding the production of documents. The instructions to Part B of the BSA summons make clear the limitations. **The summons server must explain this to the person being summoned.**

- (12) A BSA Summons, which is subject to the Right to Financial Privacy Act of 1978 (RFPA), 12 USC sections 3401–3422, 12 USC 3405, Administrative subpoena and summons, requires that the governmental agency or department show that:
- There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.
 - A copy of the summons, together with a notice, was served on the customer, or mailed to his last known address, on or before the date the summons was served on the financial institution. The notice accompanying the summons must describe the nature of the Service's law enforcement inquiry and comply with the other content requirements set forth in 12 USC 3405(2), Administrative subpoena and summons, concerning the procedure the customer must follow to contest the summons in court.
 - Ten full days have expired from the date on which the customer was served in person with the copy of the summons and other notice documents, or 14 days have expired from the date the documents were mailed to the customer. In either case, the customer did not move to quash (challenge) the summons pursuant to 12 USC 3410, Customer challenges.

Note: The RFPA only applies to a financial institution's records for customers who are individuals or are partnerships of five or fewer individuals, so financial records of customers who are corporations, limited liability companies, partnerships with non-individual members, or partnerships with six or more partners are not covered by the RFPA. See 12 USC 3401(4), Person, and 12 USC 3401(5), Customer.

- (13) 12 USC 3409, Delayed notice, provides that the customer notice may be delayed up to 90 days upon the granting of a delay order by a judge or magistrate under certain conditions, such as when notice would seriously jeopardize an investigation. When the period of delay expires, the notice served on the customer must include a statement explaining that notice was withheld pursuant to a court order and the reason for the delay. See 12 USC 3409(b)(3), Grant of delay order; Duration and specifications; Extensions; Copy of request and notice to customer. See IRM 4.26.8.4.3.2 for additional information regarding delayed customer notices.

4.26.8.4.1
(02-14-2019)

Completion of Summons

- (1) The examiner must prepare the summons by providing all information required on the form. To be enforceable, a summons must be prepared in sufficient detail to meet legal requirements. The summons shall provide:
- Name, title, department or agency, address, and telephone number of the person before whom the appearance shall take place or to whom the records shall be produced.
 - Address, date, and time to which the person summoned must appear or where such person summoned must produce the records. The date and time must be reasonable. The address for complying with the summons must not exceed 500 miles from where the financial institution operates or conducts business in the United States. See 31 USC 5318(c)(1), Production at designated site.
 - If customer notice is required prior to obtaining the records, the date for appearance and or production of records must be a minimum of 15 days after the service of the summons. See IRM 4.26.8, Special Procedures.

- d. Detailed description of the books, papers, records, or other data required to be produced.
- e. Name, title, department or agency, address, and telephone number of the person issuing the summons.
- f. Signature of the person issuing the summons.

4.26.8.4.1.1
(02-14-2019)

**Attachments to the
Summons**

- (1) The BSA summons package contains four items.
- (2) Transmittal Memo – The Transmittal Memo is typed using IRS Memo stationery. Items within the memo include:
 - a. MEMORANDUM FOR – insert the name and title of the SBSE Liaison to FinCEN or local District Counsel who will review the summons package.
 - b. FROM - Insert the name and title of the group manager requesting the issuance of the summons.
 - c. SUBJECT - Insert "Title 31 Summons – (insert name and dba of entity)".
 - d. Body of the memo contains a statement that IRS is requesting the issuance of the summons; the name, address and telephone of the person/entity being summoned; a brief narrative explaining the history of the case and the required attachments to the summons; a statement as to whether the party being summoned will comply or intends not to comply; and the name, address and contact information from the examiner requesting the records.
- (3) Summons Memorandum Narrative – see IRM 4.26.8.4.1.2.
- (4) Attachment I, List of items requested – Include the following TO: [Full legal name and address as listed in Item 1 of Summons], RE: [Full legal name and address of the financial institution(s) under examination. If there is an agency relationship, include the agent license. List each location separately], and ITEMS REQUESTED [Include relevant transaction dates, account number and description of items requested.]
- (5) Attachment II, Definitions, How records are to be provided, and Statement on reimbursement of expenses. Include the following statements:
 - a. DEFINITIONS: The term "record" shall mean the original and any non-identical copy of written, typed, printed, recorded, transcribed, punched, taped, filmed, or graphic matter, or sound production, however produced or reproduced, of any kind, in the possession, custody, or control of the summoned parties, regardless of where located, and includes, but is not limited to contracts, agreement, orders, diaries, correspondence, communications, memoranda, messages, reports, studies, drawings, papers, agenda, bulletins, notices, announcements, vouchers, brochures, schedules, computer printouts, statements, price lists, journals, ledgers, films, film clips, telegrams, teletypes, and magnetic or recorded tapes. In all cases where any original is not in the possession, custody or control of the summons party/parties, the term "records" shall include any copy of the original and any nonidentical copy thereof.
 - b. IDENTIFYING AND GROUPING RECORDS: In order to facilitate the handling of records submitted pursuant to this summons, to preserve their identity, and to ensure their accurate and expeditious return, the following procedures should be observed for all such records: The records should be numbered consecutively, be grouped according to the

individual paragraph of this summons to which they are responsive, and, within each such group arranged in chronological order, if possible. Multi-paged records should remain intact.

- c. **IMPORTANT – REIMBURSEMENT OF EXPENSES:** See 31 USC 5318(c)(2), Fees and travel expenses. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. See 31 USC 5318(c)(3), No liability for expenses. The United States shall not be liable for any expense, other than an expense described in paragraph (2) (above), incurred in connection with the production of books, papers, records, or other data under this section.

4.26.8.4.1.2
(02-14-2019)
**Summons Package
Memoranda**

- (1) The Summons Memorandum Narrative provides a brief history of the case relevant to the summons including:
- Entity's legal name and EIN/SSN
 - BSA financial services provided
 - Business location
 - Statement as to how the financial services are used by customers
 - Period of the examination
 - Entity's registration status if the entity is a money services business
 - The entity's compliance efforts regarding suspicious activities
 - Whether SARs have been filed
 - Whether the entity has an individualized anti-money laundering program
 - Statement as to how the records will help determine BSA compliance
 - Description of the potential BSA violations
 - Statement explaining why the summons is being sought and whether the party being summoned is expected to comply with the summons

4.26.8.4.2
(02-14-2019)
**Review of BSA
Summons Prior to
Issuance**

- (1) The BSA summons package must be reviewed prior to being issued.
- (2) All summons packages, except the FBAR, are reviewed and approved by the SB/SE BSA Liaison to FinCEN prior to issuance.
- (3) FBAR summonses are reviewed and approved by SB/SE Division's local Counsel prior to issuance. (See IRM 4.26.17.5.3.1 , FBAR Title 31 Summons Approval).

4.26.8.4.2.1
(02-14-2019)
**Summons Review and
Issuance in BSA Cases**

- (1) The summons package requires a transmittal memorandum. The transmittal memorandum is addressed from the examiner through the group manager and the SB/SE BSA Liaison to FinCEN to the BSA territory manager.
- (2) The summons package, which includes a copy of the first page of the summons, plus all attachments, is emailed to their group manager who completes a cursory review. Group managers must confirm that the scope of the records being summoned is reasonable and needed to ensure compliance with the BSA.
- (3) The group manager emails the approved summons package to the BSA Liaison to FinCEN. The current BSA FinCEN Liaison's contact information can be found on the BSA SharePoint.

- (4) The BSA Liaison to FinCEN will review the summons package. The Liaison confirms that the scope of the records being summoned is reasonable and needed to ensure compliance with the BSA. The Liaison will prepare a memorandum approving the issuance of the summons and sends the summons package to the territory manager for signature and routing to the group manager for service. The Liaison will return the summons to the group with suggestions for improvement if there are issues, such as with the scope of the records being requested.
- (5) The summons can only be served after the approval memorandum has been received from the BSA Liaison to FinCEN and the territory manager has signed the summons.

4.26.8.4.2.2
(02-14-2019)

**Summons Review and
Issuance in FBAR Cases**

- (1) The FBAR summons package is sent to local SBSE Division's local Counsel for review prior to the territory manager's signature and service.
- (2) See IRM 4.26.17.5.3, FBAR Title 31 Summons, for FBAR summons procedures.

4.26.8.4.3
(02-14-2019)

Service of a Summons

- (1) Any delegate of the Secretary authorized to issue a BSA summons, or any other person authorized by law to serve summonses or other process, is authorized to serve a BSA summons. See 31 CFR 1010.914 , Service of Summons, Delegation Order No. 25-13, IRM 1.2.52.14(9) , Delegated to:, and IRM 1.2.52.14(12) , Delegated to:, for a list the IRS officers and employees authorized to serve BSA summonses. The person summoned is given Part A of a BSA summons.
- (2) Service of a BSA summons may be made upon any:
 - a. Person, by registered mail, return receipt requested, directed to the person summoned.
 - b. Natural person by personal delivery.
 - c. Other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.
- (3) Instructions for the handling of the pages and parts of the BSA Summons are as follows:
 - a. Page 1, Original to be kept by issuing agency
 - b. Page 2, Certificate of Service of Summons
 - c. Page 3, Part A To be given to person summoned
 - d. Page 5, To accompany Part C or Part E
 - e. Customer Notice
 - f. Customer's Motion to challenge Government's Access to Financial Records in The United States District Court
 - g. Customer's Sworn Statement for Filing a Challenge in the United States District Court
 - h. Part D, Certificate of Compliance with the right to Financial Privacy Act of 1978
 - i. Part E, Post Notice Following Court Ordered Delay
 - j. Part F, Notice That no Legal Proceedings are Contemplated
 - k. Part G, Certification for Transferring Records Obtained Pursuant to the Right to Financial Privacy Act of 1978
 - l. Part H, Notice of Transfer of Financial Records to Another Department or Agency

- (4) Certificate of Service. The summons must contain a certificate of service to be signed by the server of the summons. It must be completed immediately after the service. The certificate of service provides proof of the actual service of the summons. The certificate of service signed by the person serving the summons is evidence of the facts it states during a hearing of an application for enforcement of the summons.

4.26.8.4.3.1
(02-14-2019)
**Customer Notice
Requirements**

- (1) Notice to a customer whose records are being sought via a BSA summons applies only to records of customers of any office of the following institutions located in any state or territory of the United States, District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands:

- Bank
- Building and Loan Association
- Consumer Finance Institution
- Credit Card Issuer
- Credit Union
- Homestead Association (including cooperative banks)
- Loan or Trust Company
- Savings and Loan

Note: Casinos, card clubs, money transmitters, check cashers, dealers in foreign exchange, issuers or sellers of money orders or traveler's checks, and providers or sellers of prepaid access, all of which are examined by the IRS BSA function, are not covered by the RFPA unless these functions are performed by the types of financial institutions described above. Further, customer notice is only required with respect to a "customer" defined by the RFPA, 12 USC 3401(4), Person, & 12 USC 3401(5), Customer. "Customers" under the RFPA are only individuals or partnerships of five or fewer individuals. Corporations, limited liability companies, partnerships with non-individual partners, or partnerships with six or more partners are not customers protected by the RFPA, so they are not entitled to notice of a BSA summons for their financial records.

- (2) If customer notice is required, the notice must be given in person or by registered mail to the customer's last known address, on or before the date of service of the summons (except if a delay of notice order was granted).
- (3) The Certificate of Notice must be completed immediately after the notice is sent. It provides proof of the actual sending of the notice.

4.26.8.4.3.2
(06-01-2006)
Delay Customer Notice

- (1) If the customer whose records are being sought is expected to act to jeopardize the investigation, Title 12 USC 3409, Delayed notice, provides that the required customer notice can be delayed for up to 90 days upon the granting of a delay order by a judge or magistrate judge. The application for a delay order is made through an Assistant U.S. Attorney.
- (2) The customer must be notified of the summons upon expiration of the period stated in the delay order by being given, in person or by registered mail, a completed Part E along with Part B of the summons. Parts C, C-1, C-2, and C-3 are not given to the customer. The time and place of examination must still be adhered to in obtaining the records.

- 4.26.8.4.3.3
(06-01-2006)
Certificate of Compliance with the Right to Financial Privacy Act 1978
- (1) If customer notice is required prior to obtaining records, a completed Part D of the summons must be given to the financial institution prior to receiving the financial records.
- 4.26.8.4.3.4
(02-14-2019)
Date When Records Can be Obtained After Issuance of Summons
- (1) If customer notice is required prior to obtaining records, the **date** for producing the records cannot be before the expiration of the time allowed for the customer to file a motion to challenge the summons. The customer has ten days from the date of personal service of a **Notice Copy** of the summons or 14 days from the date of mailing the **Notice Copy** of the summons to file a timely motion to quash (challenge) in the U.S. district court and to serve copies of the motion and the customer's sworn statement on the Government.
- (2) Records may be obtained from the financial institution upon expiration of the applicable time frame, if the customer has not filed a motion with the court and served the issuing agency.
- (3) If records are received prior to the expiration of the time to file a motion to quash, the examiner must not open the package containing the records until the entire time has expired. This must be noted in the examiner's activity record.
- 4.26.8.4.3.5
(06-01-2006)
Notice That No Legal Proceedings are Contemplated
- (1) If a customer notice is required prior to obtaining records, the completed Part F of the summons must be given promptly to the customer if a determination is made that no legal proceeding against the customer is contemplated.
- 4.26.8.4.3.6
(06-01-2006)
Notice of Transfer of Financial Records to Another Department or Agency and Certification for Transferring Records
- (1) If customer notice is required and the records obtained are transferred to another department or agency pursuant to 12 USC 3412(a), Transfer of Financial Records to Other Agencies or Departments; Certification, a notice of transfer must be given to the customer by completing Part H of the summons and handing or mailing it (registered) to the customer.
- (2) A certificate of the transfer is made by completing Part G and keeping it with the original summons.
- 4.26.8.4.4
(06-01-2006)
Examination of Books and Witnesses
- (1) Any person authorized to issue a Bank Secrecy Act summons, or any officer or employee of the Treasury Department who is designated by that person, may receive evidence and examine witnesses pursuant to the summons. See 31 CFR 1010.915(a) , Examination of witnesses and records.
- (2) Any person authorized by law may administer any required oaths and affirmations. Testimony of any person may be taken under oath and shall be written down or transcribed if under oath. A transcript copy shall be given to a witness upon request, unless for good cause the person issuing the summons determines, under Title 5 USC 555, Ancillary matters, that a copy should not be provided, in which case the witness may only inspect the official transcript. See 31 CFR 1010.915(b) , Examination of witnesses and records.

4.26.8.4.5

(02-14-2019)

Summons Enforcement

- (1) 31 CFR 1010.916, Enforcement of summons, allows any person authorized to issue a summons to request the appropriate U.S. Attorney's office to enforce the summons in case of refusal to comply with a BSA summons. The request is made from the examiner through their group manager to the territory manager, who will notify the BSA Policy Program Manager. The territory manager indicates approval of the enforcement request by signing it. After approval by the territory manager, the examiner will forward the request through SB/SE Division Counsel to the U.S. Attorney, who may bring an action to compel compliance in any U.S. court within the jurisdiction in which:
 - a. The investigation that gave rise to the summons is or has been carried on;
 - b. The person summoned is a resident; or
 - c. The person summoned carries on business or may be found.
- (2) When a referral is made for enforcement of a BSA summons, prompt notification must be made through the BSA Liaison to FinCEN's Associate Director, Office of Regulatory Policy and Programs Division.
- (3) Prepare requests for enforcement of a BSA summons using a memorandum report format, to include the following information:
 - Name and full address of the person being summoned
 - Summary of the pertinent facts in the investigation
 - Exactly what the Service employee is seeking to obtain
 - Relevancy of the records sought, including the relevancy of records pertaining to third parties
 - Need or importance of such evidence to the success or completion of the investigation
 - Statement of whether service of the summons has been made on a responsible corporate officer, and if not why
 - Circumstances surrounding contacts with the person summoned, explaining the defense(s) claimed for refusing to comply with the summons, and the circumstances under which the person summoned
 - Transcript (if recorded) or memorandum of interview of the questions asked to the person summoned and the person's responses
 - Description of any problems involving the imminent expiration of the statutes of limitation
 - Statement as to any known criminal investigations by other federal agencies of the individual, and, in the case of a corporation, its officers or employees
 - Statement as to any other known requests for summons or subpoena enforcement against the person or related parties
- (4) The territory manager signs the memorandum and the request is routed back to the examiner who transmits the original and one copy of the summons through SB/SE Division Counsel to the U.S. Attorney's office in which the venue lies.
- (5) The court may issue an order requiring the person summoned to appear before the Secretary or delegate to produce documentation or to give testimony explaining how the documentation was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may result in a contempt charge. All processes in any case under this section may be served in any judicial district in which such person is found.

4.26.8.4.6
(02-14-2019)

**Disclosure of Summons,
Testimony, or Records**

- (1) Under 31 CFR 1010.915(c) , Disclosure of summons, testimony, or records, delegates of the Secretary or other officer or employee of the Treasury Department may not:
 - a. Make public the name of any person to whom a summons has been issued under this chapter or release any information to the public concerning that person or the issuance of a summons prior to the time and date set for the appearance or production of records or
 - b. Disclose any testimony taken or material summoned (including the name of the witness) to anyone other than an officer or employee of the Treasury Department or of any component thereof.
- (2) Exceptions to the disclosure prohibitions of 31 CFR 1010.915 :
 - a. Nothing precludes a delegate of the Secretary, or other officer or employee of the Treasury Department, from disclosing testimony taken, or material presented to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.
 - b. The Secretary or his delegate may authorize disclosure in writing.
 - c. Disclosure may otherwise be required by law.
- (3) Disclosures must be approved by FinCEN, except as provided above. A written request for disclosure must be submitted to the Chief, BSA Examination who will forward the request to FinCEN through the BSA Liaison to FinCEN.

4.26.8.5
(02-14-2019)

**Form 5104, Report of
Apparent Violation of
Financial Recordkeeping
and Reporting
Regulations**

- (1) The BSA, in general, requires financial institutions to maintain records and to file reports that are useful in criminal, tax, or regulatory investigations, such as money laundering cases. Failure to develop and implement an AML program, file BSA reports, or maintain records, may result in criminal and/or civil penalties, depending on the nature of the violation. Criminal investigations are the responsibility of IRS Criminal Investigation.

Note: If it is discovered that a bank or other financial institution not covered under IRS examination authority may have violated the BSA, a memorandum to FinCEN should be prepared outlining the circumstances. The memorandum is to be routed through the territory manager and forwarded to the BSA Liaison to FinCEN.

- (2) Civil penalties are assessed by FinCEN except for FBAR penalties for which assessment authority has been delegated to the IRS. After receiving a referral, FinCEN's role includes evaluating the circumstances of the alleged violation(s) and determining whether some type of civil action, including seeking the imposition of a civil monetary penalty, should be taken against the person or financial institution. Generally, FinCEN disposes of many of its civil penalty cases with one of three courses of action:
 - a. Close the case without contacting the subject of the referral,
 - b. Issue a letter of warning or caution to the subject institution or individual, or
 - c. Assess a civil monetary penalty.
- (3) The dollar amount of the civil penalty, is determined by considering several factors. These include the severity, volume, willfulness, and longevity of the

BSA violations; the subject's overall BSA compliance program; self-discovery and acknowledgment of the BSA violations to Treasury versus external discovery and notification, among other considerations.

- (4) Examiners do not inform the financial institution that a referral to FinCEN has been made. Examiners just need to remind the financial institutions that FinCEN is made aware of all violations.
- (5) First time violations may be appropriate for referral depending upon their nature, severity, number and circumstance. One-time, non-technical BSA violations that demonstrate willful or reckless disregard for the BSA requirements or create a risk for potential money laundering or the financing of terrorism may warrant a referral. Normally, isolated first incidences of noncompliance should not be referred. If an entity is cited subsequently for the same types of violations, the examiner should closely scrutinize the continued lack of compliance in determining whether a referral is appropriate.
- (6) Any violation committed in furtherance of a criminal activity warrants referral regardless of the number, severity, or the fact that it was a first-time violation. This includes evidence that the violation has or may have facilitated or concealed illegal activity by the financial institution, its employees, customers or others.
- (7) Technical, minor, infrequent, isolated, and non-substantive violations are generally not referred to FinCEN.
- (8) A referral to FinCEN may be completed, notwithstanding the fact that the case has been referred to CI with respect to the same violation. Parallel referrals may be desirable to protect the statute of limitations or for other reasons. See IRM 4.26.8.6.5.
- (9) To improve the quality of FinCEN referrals and assure a uniform application of law, FinCEN and IRS prepared referral guidelines, IRS Standards for Title 31 Referrals to FinCEN. The requirements of the guidelines have been fully immersed into this IRM section.
- (10) The complete Form 5104, Report of Apparent Violation of Financial Record-keeping and Reporting Regulations, package should be in an electronic format. Referrals are sent electronically to FinCEN through their FinCEN Portal. If documents cannot be converted into an "electronic" format, a statement describing the document, its location, and who is in custody of the document must be included in the narrative.

4.26.8.5.1
(02-14-2019)
**Guidelines for Referrals
to FinCEN**

- (1) The decision to refer a case to FinCEN will depend upon the facts and circumstances of each case. The general standard for a FinCEN referral is **significant** BSA violation(s) or AML program deficiencies. This, along with indications of willful blindness or recklessness, may warrant a referral to FinCEN.
- (2) Willfulness blindness is established when an individual **takes deliberate actions to avoid confirming a high probability of wrongdoing and [when he] can almost be said to have actually known the critical facts**. Willful blindness can also be made when a person made **a conscious effort to avoid learning about the reporting and recordkeeping requirements**. The failure to learn of the BSA requirements, coupled with other factors, such as the efforts taken to conceal the existence of the transactions, may lead to a conclusion that the violation(s) was due to willful blindness.

- (3) The reckless standard is met **if the entity clearly ought to have known that currency transactions were not being reported or records were not being made and the entity was in a position to find out for certain very easily.**
- (4) In many situations there will not be direct evidence to establish willful blindness or recklessness; therefore, examiners will often need to establish these through circumstantial evidence.
- (5) An examiner should consider the following factors in determining whether willful blindness or recklessness exists and whether violations should be formally referred to FinCEN:
 - a. Systemic AML program deficiencies such as a pattern of reckless disregard towards, or continued breakdown in, compliance with the AML program requirements of the BSA.
 - b. Systemic reporting violations such as, repeated failures to file CTRs or SARs, repeated failures to file timely, and repeated filing of incomplete or inaccurate CTRs or SARs. For example, testing of CTRs filed reveal error rates that exceed a certain percentage indicating a systemic breakdown.
 - c. Systemic failures to verify the identity of the transactors.
 - d. Systemic recordkeeping violations, such as repeated failures to verify and create a record at specific dollar thresholds.
 - e. Consistent failures to respond to regulatory actions. For example, multiple BSA examinations where the entity was cited for AML program deficiencies and they failed or refused to update their program.
 - f. Failure to register as a MSB for an extended period.
 - g. Flagrant indifference by the entity or aiding a customer in structuring a transaction to avoid a reporting requirement or suspected money laundering activity by a customer or the entity.
- (6) Additional violations which may warrant a referral:
 - a. Evidence that suggests the violation was flagrant, demonstrated bad faith, or was committed with disregard for the law or the consequences to the institution
 - b. Frequency or reoccurrence of violations
 - c. Continuation of violations after the institution became aware of them and made no efforts to correct the deficiencies which led to the violations
 - d. Failure to cooperate with the IRS to correct the violation
 - e. Evidence of concealment of the violation
 - f. Evidence that financial institution insiders were participants in the currency transaction, or that their associates directly or indirectly benefited because of the violation
 - g. The practice of preparing but not filing CTRs or SARs
 - h. False recordkeeping entries
 - i. Officers and employees of the financial institution making false statements, refusing to cooperate, and/or withholding records from the examiner
 - j. A significant number of reportable transactions that were not reported as a pattern or practice at a certain location or as a pattern or practice for one or more specific customers or accounts
 - k. Failure to maintain a centralized exempt customer list by a credit union/bank under IRS jurisdiction that exempts certain customer accounts from Title 31 reporting requirements

- l. Inclusion of ineligible entities on the exemption list by credit union/bank under IRS jurisdiction in situations that would otherwise require that filings be made
- m. Lack of adequate internal controls or audit coverage or inaccuracies in the financial institution's training materials regarding Title 31, in combination with violations of Title 31 reporting and recordkeeping requirements

4.26.8.5.1.1
(02-14-2019)
Willfulness Guidelines

- (1) Negligence is usually defined as the failure to use the care that a reasonable person would use in the same or similar circumstances. There are two principal areas where a reasonable person would exercise care for financial reporting and recordkeeping. A reasonable business person would normally:
 - a. Exercise care to learn about legal requirements in their area of business.
 - b. Exercise care to see that their business had sufficient internal controls to meet those requirements.
- (2) The government need only show that the financial institution or individual acted with either recklessness or willful blindness in a civil enforcement action under 31 USC 5321(a)(1), Civil penalties. The government need not show that the entity or individual had knowledge that the conduct violated the BSA or acted with an improper motive or bad purpose.
- (3) The first step to establish "recklessness" or "willful blindness" is establishing that the entity or individuals had knowledge of the law or took deliberate actions to avoid confirming their requirements under the BSA. Evidence of an intentional act or a conscious effort to avoid learning of their legal duty along with knowledge that the transactions occurred is an excellent indicator of willfulness. Knowledge of the law may be established in several ways:
 - a. Notification by the IRS, including receipt of Letter 1052, Bank Secrecy Act Requirements Notification Letter, prior BSA examinations, and educational visits
 - b. Prior BSA filing history
 - c. Actions by the entity, including development of an AML program, previously filed reports, registration with FinCEN
 - d. Work history of owners, officers, and employees
 - e. Education provided by the principal(s) to their agents and the frequency of training
 - f. Education or training by their business community
- (4) The second step to establish recklessness or willful blindness is evaluating indicators of willfulness. Factors to consider when evaluating indicators of willfulness are:
 - a. Failure to report a transaction which is logged or identified on a report.
 - b. Failure to keep records.
 - c. Altering records.
 - d. Misleading the examiner. For example, a casino that states they do not accept "wires in" and bank statements identify large wires in from established patrons.
 - e. Failure to report on specific customers. For example, an entity files CTRs on all customers except one, or an employee is identified on an incident report aiding a customer to structure a transaction and compliance ignores the report due to a personal relationship.

- f. Failure of the entity's owners to make a conscious effort to determine what the law requires when starting a new business.

4.26.8.5.2
(02-14-2019)

**Preparing the 5104
Narrative**

- (1) The Form 5104 , Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, narrative contains the following sections:
 - a. Title page.
 - b. Report Index.
 - c. Name, Doing Business As, Taxpayer Identification Number, Address, and Telephone Number of the entity.
 - d. List of personnel responsible for BSA compliance.
 - e. Financial services offered.
 - f. IRS personnel.
 - g. Executive Summary.
 - h. History.
 - i. Scope and depth of the civil examination.
 - j. Description of the entity's AML program, emphasis on key procedures which relate to each violation cited.
 - k. Results of the BSA Examination. The exact nature of the program deficiency(s) (internal controls, training, audit, designated personnel), along with the BSA reporting and or recordkeeping violations that resulted from AML program deficiencies. This will allow both the IRS and FinCEN to identify the root cause of the problem and facilitate corrective action. In egregious cases, this will also enable FinCEN to establish civil willfulness and proceed against an institution in an enforcement action for program-related and/or reporting violations, as appropriate for each reporting and record-keeping violation.
 - l. Financial institution's response to the examiner's findings.
 - m. Compliance Ratio - for each requirement of the BSA. This includes each reporting and recordkeeping requirement along with accuracy and timeliness for each of these.

Example: Statements to be included: The compliance ratio for CTRs is computed at 16% (7 filed CTRs divided by 42 required CTRs). 35 single transaction plus 7 aggregated transactions, total 42 required filings. The compliance ratio for accurately filed returns is computed at 28%. (2 accurately filed CTRs divided by 7 CTRs filed). The compliance ratio for recordkeeping on sales of money orders is 82%. (46 records made divided by 56 transactions.)

- n. Collection Potential - A brief statement which reflects their economic position and consequently their ability to pay a potential civil monetary penalty.
- o. Mitigating Factors – Information or evidence presented to the IRS regarding the violations or the circumstances behind the violations that show “reasonable cause” for their failure to comply or that FinCEN should be made aware of when considering a civil monetary penalty. A mitigating factor is any fact or circumstance that lessens the severity or culpability of the violations or the financial institution's ability to comply with the law.
- p. Aggravating Factors – Offers evidence of facts that merit a harsher closing other than solely the issuance of a Letter 1112, Title 31 Violation Notification Letter. The examiner does not recommend the type of enforcement action.

- (2) In drafting the FinCEN referral narrative, it is important that the proper font, sentence and paragraph spacing, punctuation, grammar, and proper spacing for numbered and bulleted lists are followed. The narrative must follow the Federal Plain Language Guidelines. Specifically, the following must be adhered to:
 - a. Include only relevant information.
 - b. Include all critical information.
 - c. Use “AML program” instead of “compliance program”.
 - d. Use “BSA examination” instead of “BSA compliance examination”.
 - e. The preferable font is Arial with font size of 11 or 12.
 - f. Use six-point spacing between items in numbered or bulleted lists.
 - g. Use single blank line spacing between paragraphs.
 - h. Spell out the name of the month, unless within a table and space is a consideration.
 - i. Do not use contractions such as “don’t”, “can’t”, or others. Spell out the words “do not”, “cannot”.
 - j. Do not use ampersands (&) unless they are part of an entity’s name.
 - k. When referring to multiple forms, do not use an apostrophe. For example, use “CTRs”, not “CTR’s”.
 - l. Ensure the page numbers match to corresponding pages in the narrative on the Index; especially after edits and corrections are made.
 - m. Ensure that spell check is used.
 - n. Use a header. The information within the header is limited to the entity’s legal name and any “Doing Business As”. Check the box for “different first page” so the header does not appear on the first page.
 - o. Ensure that the pages are numbered at the bottom of each page.

4.26.8.5.3
(02-14-2019)
**Preparation of Form
5104**

- (1) The Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, can be downloaded at <http://publish.no.irs.gov/catlg.htm>.
- (2) Items to consider in completing Form 5104 include:
 - a. Name of Referred Entity – Enter the legal name of the entity.
 - b. Doing Business As – Enter the name under which the entity is operating.
 - c. The Referred Entity is Subject to IRS Jurisdiction as a: - Check all BSA financial services offered.
 - d. Date Entity was First Notified that it was a Financial Institution Covered under 31 CFR Chapter X , Financial Crimes Enforcement Network, Department of the Treasury, - The most common notification date is the date the Letter 1052 , Bank Secrecy Act Requirements Notification Letter, was first issued. The Letter 1052 may be in a previous BSA Exam case file.
 - e. Date Closed – Refers to the date the previous BSA examination was closed, not the date of the current examination.
 - f. Signatures – Electronic signatures required.

4.26.8.5.4
(02-14-2019)
**Form 5104 Package
Review Process**

- (1) BSA Examination will designate a field staff person to be the BSA Field FinCEN Liaison. This liaison will be responsible for submission of the Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, package to FinCEN. The Liaison’s responsibilities / role is primarily administrative in nature. Examples of duties include:

- Electronically forwarding the Form 5104 Package to FinCEN,
 - Coordinating examiner responses to FinCEN on questions related to the referral, and
 - Creating and updating a log of all Form 5104 packages submitted to and closed by FinCEN.
- (2) The examiner will discuss the findings with their group manager to ensure concurrence with the examiner's recommendation that the violations and AML program deficiencies support a potential referral to FinCEN using Form 5104. It is the examiner's responsibility to develop the examination and to prepare a professional, complete and technically accurate Form 5104 Package.
- (3) The group manager will email their respective BSA Policy Technical Advisor/Program Analyst, with a "cc" to the BSA Policy Program Manager to request a "pre-recommendation" conference to discuss the facts, law, and supposition for making recommendations. The advisor/analyst may provide recommended exam steps if additional issue development is agreed upon.
- (4) The examiner will follow the procedures in IRM 4.26.8.7 if there are indications of "willful blindness" or "recklessness" present and a FTA assistance is requested.
- (5) The BSA Policy Technical Advisor/Program Analyst will assist with:
1. Answering technical questions or questions related to the BSA which the examiner is unable to answer after conducting reasonable research of the BSA regulations and other guidance issued by FinCEN.
 2. Answering questions related to exam steps or procedures while conducting the examination after ascertaining no appropriate guidance could be found in the IRM, Interim Guidance Memos or pertinent job aides.
 3. Contacting IRS District Counsel and/or FinCEN's Liaison to IRS to facilitate any legal interpretation of the BSA.
- (6) The Form 5104 package is completed when apparent violations warrant a referral to FinCEN for potential civil enforcement. The examiner will use the FinCEN Referral Process Training material and the Sample Form 5104 when preparing and assembling the Form 5104 Package. Both documents are available on the BSA SharePoint.
- (7) The examiner will forward the completed Form 5104 Package and FinCEN Referral Lead Sheet, (#410-1.1), to their group manager. If edits are recommended, the group manager will return the case to the examiner.

Note: The group manager and examiner should discuss the need for additional BSA Technical Advisor/Analyst assistance on regulatory or procedural issues. If guidance is requested, the examiner will prepare the request to the BSA Policy Program Manager through the Group Manager.

- (8) After the group manager reviews the final Form 5104 Package and concludes the referral is acceptable, the group manager will sign the Form 5104 and forward the Form 5104 Package to their territory manager.
- (9) The territory manager will review the Form 5104 Package and will return the Form 5104 Package to the group manager if edits are recommended. The territory manager may seek BSA Policy Technical Advisor/Analyst assistance with questions while reviewing the package.

- (10) The territory manager will forward the Form 5104 Package to the BSA Policy Program Manager who will assign it to a technical advisor/analyst. The technical advisor/analyst is responsible for performing a “material quality” review. The technical advisor/analyst is to ensure the Form 5104 Package does not contain any **material** misrepresentation of facts or improper legal conclusions.
 - a. Material misinterpretation of fact = factual statements that are not supportive of the conclusion reached.
 - b. Material misrepresentation of the law = a determined incorrect legal supposition that is not based on interpretation or opinion.
- (11) BSA Policy will return the Form 5104 Package to the territory manager, along with any recommendations, within 10 business days of receipt.
- (12) The territory manager will meet with the group manager to discuss BSA Policy recommendations. If necessary, the Form 5104 Package will be returned to the examiner for editing.
- (13) The group manager will forward the final Form 5104 Package to their territory manager for submission to the BSA Field FinCEN Liaison. The BSA Field FinCEN Liaison will forward the final Form 5104 Package to FinCEN electronically and retain a record of the submission.

4.26.8.5.4.1
(02-14-2019)

**Form 5104 Package
Review Process – Policy**

- (1) BSA Policy Technical Advisor/Program Analyst will review the referral for accuracy and ensure the referral is complete, technically accurate, and professional.
- (2) BSA Policy’s review of the prepared Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, will not include accessing any systems to confirm examiner’s results, for example FinCEN Query.
- (3) BSA Policy will review SAR violations to ensure violations are not cited strictly on dollar amount and that the violation is based on an underlying pattern of suspicious activity. Where no underlying pattern of suspicious activity is identified, the reviewer/analyst will look for documentation to show “why” the activity meets the requirement to be reported.
- (4) BSA Policy will review the Form 5104 package to ensure the written referral does not contain any material misrepresentation of facts or law and the referral contains:
 - Discussion on the history of filing
 - Discussion on prior examinations and the results
 - Description of the full scope and depth of the examination
 - Explanation of the records reviewed in determining compliance
 - Discussion on the daily monitoring processes or controls on cash
 - Analysis of the adequacy of the independent review and the financial institution’s response to the independent review findings
 - Discussion for each financial service offered, including a brief explanation of the exam steps conducted and conclusion
 - Detailed schedules for all violations, schedules are complete, information to identify the violations is sufficient, and are easy to understand
 - Evidence which supports the violations cited
 - Documentation of the AML program analysis supports the referral

- Explanation of the adequacy of a secured or revised AML program and its implementation

4.26.8.5.5
(06-01-2006)

**Contact with the
Financial Institution**

- (1) Examiners do not inform the financial institution that a referral has been made to FinCEN.
- (2) No oral or written communication should be given to the financial institution respecting whether the violations appear to have been willful.
- (3) The examiner should not contact the financial institution concerning the examination unless requested to do so by FinCEN after the referral has been submitted.

4.26.8.5.6
(02-14-2019)

Contact with FinCEN

- (1) FinCEN may contact the examiner for additional information or documentation on referrals; however, the examiner should not contact FinCEN.
- (2) If the financial institution contacts the examiner after FinCEN has contacted them regarding the referral, the examiner is to call the BSA Field FinCEN Liaison who will notify FinCEN that the entity has contacted the examiner. The examiner's contact with the entity is limited to advising them to contact FinCEN directly.

4.26.8.6
(02-14-2019)

**Coordination with a
Fraud Technical Advisor**

- (1) If the examiner considers that the case warrants referral for possible criminal investigation, the examiner, with the approval of the group manager, will involve a Fraud Technical Advisor (FTA) as soon as possible. If the examiner is considering only a civil referral to FinCEN, the involvement of the FTA is at the discretion of the examiner and the group manager.
- (2) If the decision to involve the FTA is made, the examiner will initiate completion of the Form 13639, Fraudulent Intent Referral Memorandum (FIRM). Form 13639 documents the involvement of the FTA, the plan for further developing the case with respect to the willfulness issue, and the referral recommendations of the FTA.
- (3) The examiner documents affirmative acts that may indicate willfulness in part 3 of Form 13639. The FTA documents the referral recommendations by checking one of the boxes in part 7 of Form 13639 and listing the reason(s) for certain recommendations in the Explanation section of Form 13639 .
- (4) See IRM 25.1.12.3, Development of Willfulness, for additional guidance.

4.26.8.6.1
(02-14-2019)

Showing of Willfulness

- (1) If it has not been adequately established that the violations were willful:
 - a. The FTA will so indicate in part 7 of Form 13639 , Fraudulent Intent Referral Memorandum (FIRM). In the Explanation part of Form 13639 , the FTA will provide a written explanation of the reason that further development of willfulness is not appropriate and include any recommendations with respect to civil penalties.
 - b. The examiner will then proceed with the BSA case under civil procedures, including issuance of Letter 1112, Title 31 Violation Notification Letter and preparation of Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, and referral of the BSA case to FinCEN for civil penalty consideration.

- (2) If the FTA considers that additional examination is warranted:
 - a. The FTA will prepare a plan of action for establishing whether the violations were willful in the Explanation section of Form 13639 and return a copy of Form 13639 to the examiner through the examiner's group manager.
 - b. The examiner and the FTA will work together following the examination plan.
 - c. If firm indications of willfulness are discovered after further examination, the examiner will immediately contact the FTA for guidance. Contact with CI should be coordinated through the FTA.
- (3) After the additional examination steps outlined in the FTA's plan of action, the examiner, group manager and FTA will discuss the results and reach a conclusion regarding a criminal referral. The FTA may memorialize this conclusion on the initial Form 13639 or a second follow-up FIRM may be completed and stapled to the initial FIRM.
- (4) The FTA will indicate in Part 6 of the FIRM (original or follow-up) the final referral recommendation (either that criminal investigation is recommended, or criminal investigation is not appropriate). The FTA will provide in the Explanation section the reason(s) why criminal referral is not appropriate or, if criminal referral is recommended, the FTA will detail in the Explanation section the firm indications (as may be evidenced by affirmative acts) of willfulness.

4.26.8.6.2
(02-14-2019)

**Where a Referral to
Criminal Investigation is
Not Recommended**

- (1) The examiner may prepare a BSA - Prime Lead Memorandum when they determine that a referral to Criminal Investigation (CI) is not appropriate because the facts do not show violations which meet criminal/local criminal criteria requirements; however, the examiner believes CI may be interested in the facts. A fillable copy of the Prime Lead Memorandum is available on the BSA SharePoint.
 - a. The examiner prepares the BSA - Prime Lead Memorandum. Box 8 requires a list of all attachments. It is crucial that copies of all supporting evidence (cashed checks [front and back], money orders, wire transmission receipts, or a spreadsheet of all wires, and other similar records) are included with the memorandum. All supporting evidence must be scanned and included as an attachment to the memorandum.
 - b. The examiner emails the BSA – Prime Lead Memorandum and the file with all attachments to their manager for approval.
 - c. The group manager must approve the memorandum prior to emailing it to the appropriate FTA group manager. A copy is forwarded to the territory manager.
 - d. The FTA group manager will transmit the memorandum to the Special Agent in Charge at the appropriate CI Field Office. In addition, the FTA group manager will transmit a copy of the memorandum to Exam Case Selection (ECS) via the **SBSE BSA CI Notification* mailbox.
 - e. ECS will assign a source code reflecting BSA as the source of the information.
- (2) The FTA may suggest a BSA Prime Lead Memorandum to CI when they determine that a referral for criminal investigation is not appropriate. The examiner will complete the Prime Lead Memorandum as set out above.

4.26.8.6.3
(02-14-2019)

**Referral Procedures
Where a Referral to
Criminal Investigation is
Recommended**

- (3) The examiner will issue the Letter 1112, Title 31 Violation Notification Letter, and follow the guidance on making a Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, referral to FinCEN, if appropriate.
- (1) If firm indications (as may be evidenced by affirmative acts) of willful BSA violations exist and criminal criteria (criteria used by CI for case acceptance) are met, the FTA will:
 - a. Recommend preparation of Form 2797, Referral Report of Potential Fraud Cases, in Part 8 or the FIRM,
 - b. Indicate in the Explanation Section of the FIRM the firm indications (as may be indicated by affirmative acts) of willfulness that exist and that criminal criteria are met, and
 - c. Return a copy of the FIRM to the examiner through the examiner's group manager.
- (2) The examiner will suspend all civil examination activity in most cases; however, the examiner and group manager should consider the Parallel Civil and Criminal Referral procedures found in IRM 4.26.8.6.5 if the statute of limitations is of concern, another regulatory authority has made a referral to FinCEN, or any unusual factors are known.
- (3) The examiner's manager will record the suspense on the BSA database by entering the date that the Form 2797 was sent to CI in the appropriate field.
- (4) The responsibility for protecting the statute of limitation rests with the examiner and the group manager.
- (5) The determination to allow the BSA statute of limitations to expire will be made at a decision meeting attended by CI, the FTA, the examiner and the examiner's manager.

4.26.8.6.4
(02-14-2019)

**Preparing and
Processing Form 2797**

- (1) When preparing Form 2797, Referral Report of Potential Fraud Cases, the examiner will use the most current version of Form 2797. If a related tax examination is ongoing and the tax case is also being referred for criminal investigation consideration, a joint referral will be prepared. Both the tax and BSA violation issues may be placed on one Form 2797. The examiner will follow the instructions attached to the form and insert BSA Violation in Item 2 (f).
- (2) Forward the completed Form 2797 to the group manager, via secured messaging, for consideration. A copy of the form will be retained in the case file.
- (3) The group manager will review the referral and approve it by entering their name and the date. The form will then be forwarded to the FTA, via secured messaging, for consideration.
- (4) The FTA will review the referral and approve it by entering their name and the date. The FTA will also prepare a one-page narrative (used to describe additional facts and/or the willfulness development process). The form and narrative will then be forwarded to the FTA manager, via secured messaging, for consideration.

- (5) The FTA manager will review the referral and approve it by entering their name and the date. The form and narrative are forwarded to the appropriate CI field office for consideration. The Fraud Policy Analyst will send a copy of the Form 2797 package to the BSA Liaison to FinCEN. Contact information is available on the BSA Policy SharePoint.
- (6) Procedures thereafter are governed by the instructions for the Form 2797. A disposition conference will be held within thirty (30) workdays of receipt of the referral by the CI field office to discuss CI's decision to accept or decline the referral. If the referral is declined, CI will provide a statement indicating the reason(s) for the declination.

4.26.8.6.5
(02-14-2019)
**Parallel Civil & Criminal
Referrals**

- (1) Prior to the disposition conference, it may be helpful for the participants to contact the SB/SE BSA Liaison to FinCEN and/or CI's Liaison to FinCEN for assistance in determining whether parallel civil and criminal action may be appropriate.
- (2) The disposition conference should include a discussion regarding the possibility of parallel civil and criminal actions. A civil monetary penalty may be imposed notwithstanding the fact that a criminal penalty is imposed with respect to the same violation. Parallel referrals may be desirable to protect the statute of limitations, where a referral to FinCEN has been made by another regulatory authority or for other reasons.
- (3) If it is determined to have parallel civil and criminal actions, the fact should be noted in the Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, Referral Package.
- (4) The Letter 1112, Title 31 Violation Notification Letter, will not be issued due to the criminal referral. The History section of the Form 5104 narrative must include the following statement, "A parallel criminal referral has been made to IRS Criminal Investigation, no Letter 1112 was issued to the entity".
- (5) The CI Liaison to FinCEN will review the package for compatibility with CI needs before the civil referral package is considered by FinCEN. FinCEN will not receive the file for civil penalty action until this review is completed.
- (6) If FinCEN reaches out asking for the status of the referral, the examiner should advise them to contact the CI Liaison to FinCEN.

4.26.8.7
(02-14-2019)
**Trade or Business
Examined under Title 31**

- (1) IRC 6050I, Returns relating to cash received in trade or business, and the implementing regulations at 26 CFR 1.6050I-1, Returns relating to cash in excess of \$10,000 received in a trade or business, require any person who is engaged in a trade or business and who, in the course of that trade or business receives more than \$10,000 in coins or currency in one transaction (or two or more related transactions) to file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, for that transaction. Since 2001, 31 USC 5331, Reports relating to coins and currency received in nonfinancial trade or business, and the implementing regulations at 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business, also requires the Form 8300 under the same circumstances. Under this dual reporting regime, only one Form 8300 is required to be filed for a transaction subject to both IRC 6050I and 31 USC 5331.

- (2) FinCEN delegated to the IRS the authority under 31 USC 5318(a)(3), Compliance, exemptions, and summons authority, and 31 USC 5318(b), Limitations on summons power, to examine nonfinancial trades or businesses for compliance with the Form 8300 requirements of the BSA and to investigate possible civil violations of these requirements. This enables the IRS to share the results of Title 31 examinations with FinCEN and other federal and state governmental agencies, for purposes consistent with the BSA, without disclosure issues.
- (3) There is no prohibition against using information acquired in a Title 31 examination in a Title 26 examination; however, information acquired in a Form 8300 examination conducted under Title 26 is return information protected from disclosure under IRC 6103.
- (4) Information acquired in a Title 31 Form 8300 examination is not protected by IRC 6103.
- (5) The examiner must notify the entity up-front that it is subject to both Title 31 and Title 26 and the examination results may be used to determine compliance under both sections of the law.
- (6) 31 USC 5331 does not require the person filing Form 8300 to furnish a statement concerning Form 8300 to all persons whose name is required to be on Form 8300. There is no authority under Title 31 to require that customer notification be furnished. This is only a Title 26 requirement; consequently, examiners are prohibited from examining the issue during the BSA examination.
- (7) Form 8300 penalties asserted under IRC 6721 and IRC 6722 are assessed and collected by the IRS. Form 8300 penalties asserted under 31 USC 5321, Civil penalties, are assessed by FinCEN and collected through the court system.
- (8) Form 8300 penalties for causing or attempting to cause a business to fail to file a return or to file a return with a material omission or misstatement or structure asserted under IRC 6050I(f)(2) are the same as those under IRC 6721 or IRC 6722. Structuring penalties under Title 31, found in 31 USC 5321(4), Structured transaction violation, are different.
- (9) The current Form 8300 Lead Sheet was designed to be used to determine compliance with Form 8300 requirements under either section of the law. The examination steps needed to determine an entity's compliance with the Form 8300 requirements remain the same no matter under which section of the law the examination is conducted.

Note: There is no examination step that requires an examiner to review tax return information or IDRS to determine Form 8300 compliance. It is only at the conclusion of the Form 8300 examination, when processing the penalty case file, that access to ERCS and IDRS is required.

4.26.8.8
(02-14-2019)
**Trade or Business
Examined with AML
Program Requirements**

- (1) Nonfinancial trades or business with an AML program requirement under Title 31 and a Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, requirement should be started under Title 31. This allows the examination to cover the determination of whether their AML program is adequate and to examine compliance with the Form 8300 filing requirements, which is a dual-purpose report under both 26 CFR 1.6050I-1, Returns relating

to cash in excess of \$10,000 received in a trade or business, and 31 CFR 1027.330, Reports relating to currency in excess of \$10,000 received in a trade or business. For example:

- IRS is conducting a Title 31 examination of an insurance company that is required to have an AML program under 31 CFR 1025.210, Anti-money laundering programs for insurance companies. The examiner identifies any delinquent Form 8300 because of an inadequate AML program or a failure to implement the AML program. The failure to timely file a complete and correct Form 8300 is a violation of 31 CFR 1025.330. It is also a violation of 26 CFR 1.6050I-1.
- IRS is conducting a Title 31 examination of a dealer in precious metals that is required to have an AML program under 31 CFR 1027.210, Anti-money laundering programs for dealers in precious metals, precious stones, or jewels. The examiner identified a delinquent Form 8300 for the purchase of a gemstone with greater than \$10,000 in cash. The failure to file a Form 8300 is a violation of 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business, and also a violation of 26 CFR 6050I-1.

4.26.8.9
(02-14-2019)
**Nonfinancial Trade or
Business Examination
Initiated Under Title 31**

- (1) The examiner is to advise the entity that the Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, is a dual-purpose form required under both Title 31 and the Title 26. Advise the entity that information acquired during the examination may be used to determine compliance with the related rules under both titles. The examiner will fully document this advice on Form 9984, Examining Officer's Activity Record, as follows: I advised XXX that the Form 8300 is a dual-purpose form required under both Title 31 and Title 26. I further advised that information acquired during this examination may be used to determine compliance with the related statutes under both titles.
- (2) The examiner will determine the entity's compliance with identifying and reporting nonfinancial trade or business transactions using the Form 8300 Lead Sheet. Do not examine for the Form 8300 customer notification requirement as there is no such requirement under the BSA requirements, notification is solely a Title 26 issue.
- (3) The examiner will complete the Title 31 case file, including all workpapers, lead sheets, and documentation to substantiate the Title 31 AML program requirements, if applicable, and Form 8300 reporting violations. Only one Title 31 case file needs to be completed.
- (4) The examiner will close the Title 31 case file as follows:
 - a. If there are no Title 31 violations, issue Letter 4029, Bank Secrecy Act No Change Letter. Letter 4029, can only be issued if there are no Form 8300 reporting issues. Write in the financial services column that "Form 8300 customer notification is not covered by this letter" so as not to mislead the entity.
 - b. If violations are identified then issue a Letter 1112, Title 31 Violation Notification Letter. Failure to file a Form 8300 under 31 CFR 1010.330, Reports relating to currency in excess of \$10,000 received in a trade or business, will be cited on the Form 13726, Summary of Examination Findings and Recommendations. The Form 13726 should contain a

- statement in the financial services column that says "Form 8300 customer notification is not required under the Bank Secrecy Act".
- c. If a referral is made to FinCEN, follow the regular referral procedures and include the Title 31 Form 8300 issues (if applicable). The Form 5104, Report of Apparent Violation of Financial Recordkeeping Reporting Regulations, referral should contain the following language, "A referral for a Form 8300 examination under Title 26 has been made for possible related issues. A Form 8300 examination is a necessary part of a Title 31 examination to determine compliance with both 31 CFR 1010.330 and 26 CFR 1.60501-1, Returns relating to cash received in trade or business. (Entity name) was advised that the Form 8300 examination information could be used in a IRC 6050I case on (date shown on Form 9984). The customer notification requirements of IRC 6050I, Returns relating to cash received in trade or business, could not be examined during the Title 31 examination. To consider the Form 8300 reporting issues and the customer notification issues, a referral is being made within IRS BSA to conduct a Title 26 Form 8300 examination."
 - d. The examiner will record on Form 9984, Examining Officer's Activity Record, that a referral of the Title 31 case is being made for a Title 26 Form 8300 examination and includes possible Title 31 Form 8300 violations (if applicable).
- (5) The examiner will close the Title 31 case following normal procedures. All examination time up to this point is charged to the Title 31 program.
 - (6) The examiner will complete a Form 5346, Examination Information Report, on the entity for referral to ECS for the establishment of a case to determine compliance with the notification requirements and assess penalties. The examiner will electronically scan delinquent or inaccurate Forms 8300 and documentation to substantiate the violations. The Form 5346, along with the file containing the scanned documents, is emailed to their group manager. The group manager will review the information report and email the documents to the **SBSE BSA Info Reports/Referrals* mailbox. The "Subject" line on the email must state, "Establish Form 8300 Penalty Case from Title 31 Control #xxxxx".

4.26.8.10
(02-14-2019)
SARs Filed by IRS BSA

- (1) There are situations that may necessitate the filing of a SAR by an examiner.
 - a. The financial institution disagrees with the examiner's determination that a transaction, or pattern of transactions, constitutes suspicious activity under the BSA and the entity refuses to complete or file delinquent SARs.
 - b. The financial institution agrees with the examiner's determination that a SAR is required; however, refuses to file the SAR.
 - c. The financial institution, or someone involved with the entity, is suspected of money laundering. In cases where illegal activity is suspected on the owner or someone involved with the entity, it may be appropriate to file a SAR on the entity. The suspected suspicious activity must be discussed with the group manager prior to completing a SAR.
 - d. The examiner has information that is not privy to the financial institution under examination and the information would warrant the filing of a SAR. For example, the examiner identifies unusual activity on a customer and the same activity was identified at another MSB earlier in the week. The examiner would complete a SAR based on the transactions conducted at both locations.

- e. If the delinquent SAR has possible terrorist financing, the examiner will immediately call FinCEN's Financial Institutions Hotline at 1-866-556-3974.
- (2) SARs filed by examiners must:
 - a. Be material to law enforcement or tax enforcement.
 - b. Reflect an underlying pattern of suspicious activity.
 - c. Identify the subject of the transactions.
- (3) SAR information provides a valuable tool to FinCEN, law enforcement, regulatory authorities, and intelligence agencies. **The examiners must adhere to the SAR instructions when completing the report.** It is critical that the information provided in a SAR filing be as accurate and complete as possible.
- (4) **BSA examiners will not file the SAR.** The examiner will complete a **draft** SAR and forward the report via email to the appropriate BSA Policy Technical Advisor/Program Analyst. BSA Policy will review the **draft** SAR and ensure that it meets FinCEN's guidance. BSA Policy will forward the **draft** SAR to Detroit's CTR Operations for filing on FinCEN's e-file system.
- (5) A copy of the IRS filed SAR, along with the source documents, will be retained in the case file. The SARs and documentation are secured inside a **To be opened by addressee only** envelope protected by TD F 15-05.11, Sensitive but Unclassified (SBU) Cover Sheet.
- (6) IRS must maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing as required by the BSA. Detroit's CTR Operations will maintain both an electronic and paper copy of the accepted report.

4.26.8.10.1
(02-14-2019)
Completing the SAR

- (1) While all items should be completed fully and accurately, items marked with an asterisk (*) **must** be completed according to the following provision:
 - a. If the information for an item marked with an asterisk (*) is not known or not applicable, check the box **unknown**.
 - b. To indicate **Total amount** as unknown, check the box provided.
 - c. Non-asterisk fields should be left blank if the information is unknown or not applicable.
- (2) IRS completed SARs field information includes:
 - a. Type of Financial Institution - Select "Other" in the first box and enter "IRS Filing" in the second box
 - b. Primary federal regulator- Select "Internal Revenue Service (IRS)"
 - c. Filer name- Enter "Internal Revenue Service (IRS)"
 - d. TIN - Enter - "521782822"
 - e. TIN type - Select "EIN"
 - f. Address - Enter "985 Michigan Avenue, CTR Operations Division, 4th Floor"
 - g. City - Enter "Detroit"
 - h. State - Select "MI"
 - i. Zip Code - Enter "48226"
 - j. Country - select "US"
 - k. Filing institution contact office – Leave blank, Detroit will enter the contact information

I. Filing institution contact phone number – Leave blank, Detroit will enter the contact phone number

- (3) The examiners must complete the SAR narrative section following FinCEN's guidance, Guidance on Preparing a Complete & Sufficient Suspicious Activity Report Narrative, which can be found on their website. The SAR narrative is **critical**. The care with which it is completed may determine if the described activity and its possible criminal nature are clearly understood by investigators. Provide a clear, complete, and chronological description of the activity, including what is unusual, irregular, or suspicious about the transaction(s). The description should cover the material indicated in Parts I, II and III, but the examiner needs to describe any other information that they believe is necessary to better enable investigators to understand the suspicious activity being reported.

Note: The examiner must identify in the narrative if the financial institution under examination reported the SAR activity, include the BSA ID numbers of the filed documents and any SARs filed by other financial institutions on the subjects.

- (4) The examiner must include a statement at the beginning of the narrative as to why the IRS is filing the SAR.

Example: The SAR is being filed by the IRS Examiner because of suspicious activity discovered during a BSA examination. It was proposed to and discussed with the financial institution; however, the financial institution has refused to file a SAR on this pattern of transactions. The suspicious activity is as follows:

Example: The SAR is being filed by the IRS Examiner because of suspicious activity discovered during a BSA examination. A BSA examination of (financial institution's name) identified (subject's name) conducting transactions through this financial institution. Including a brief statement as to why this subject is being reported, such as:
(Subject's name) is the subject of SARs filed by other institutions, or
(Subject's name) was identified in a BSA examination of (financial institution's name) conducting the same type of transactions.