



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.26.14

JULY 24, 2012

## EFFECTIVE DATE

(07-24-2012)

## PURPOSE

- (1) This transmits revised text for IRM 4.26.14, Bank Secrecy Act, Disclosure.

## MATERIAL CHANGES

- (1) Text was revised to reflect new case law and administrative guidance.
- (2) This revision updates titles and terms, and cross references to other IRMs.
- (3) New subsection 4.26.14.3.4 was added to discuss SAR access for Title 26 civil tax purposes, including mandatory training before access and the required minimum managerial audit trail reviews.
- (4) Exhibits were updated to reflect recent agreements with the Financial Crimes Enforcement Network (FinCEN).
- (5) Citations from 31 CFR Part 103 were renumbered to 31 CFR Chapter X, effective March 1, 2011.
- (6) This revision incorporates interim guidance published as Interim Guidance Memo SBSE-04-0311-030 and subsequently reissued as Interim Guidance Memo SBSE-04-0312-028.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 4.26.14 dated June 1, 2006. It incorporates interim guidance issued on March 29, 2011 as IG memo SBSE-04-0311-030, *Use of Suspicious Activity Reports for Title 26 Civil Tax Purposes*, which was extended to May 31, 2012 by IG memo SBSE-04-0312-028 of the same title, issued March 15, 2012.

## 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.

William P. Marshall  
Director, Fraud/BSA  
Small Business/Self Employed



4.26.14  
Disclosure

## Table of Contents

- 4.26.14.1 Overview of Access, Security, and Disclosure
  - 4.26.14.1.1 UNAX
  - 4.26.14.1.2 Other Access Rules
- 4.26.14.2 Access to Title 26 Returns and Return Information
  - 4.26.14.2.1 Related Statute Exception
  - 4.26.14.2.2 Related Statute Procedures
  - 4.26.14.2.3 Related Statute Determination Factors
  - 4.26.14.2.4 Effect of Related Statute Determination
- 4.26.14.3 Access to Title 31 Reports
  - 4.26.14.3.1 Access For BSA Compliance Purposes
  - 4.26.14.3.2 Access (Other than SARs) for Tax Purposes
  - 4.26.14.3.3 Access to SARs for Tax Purposes
- 4.26.14.4 Disclosure of Tax Information
- 4.26.14.5 Disclosure of BSA information
  - 4.26.14.5.1 Disclosure of BSA Information to Governmental Entities
  - 4.26.14.5.2 Disclosure of BSA information to Non-Governmental Entities
  - 4.26.14.5.3 Procedures for Disclosure of BSA information (Other than SARs)
- 4.26.14.6 SAR Disclosure
  - 4.26.14.6.1 SAR Disclosure by Financial Institutions or Their Employees
  - 4.26.14.6.2 SAR Disclosure by Government Officers or Employees
  - 4.26.14.6.3 SAR Disclosure in Tax Cases
  - 4.26.14.6.4 SAR Unauthorized Disclosure Procedures
- 4.26.14.7 Form 8300 Disclosure Rules
- 4.26.14.8 Penalties for Unauthorized Access and Disclosure
  - 4.26.14.8.1 Penalties for Unauthorized Access and Disclosure under IRC
  - 4.26.14.8.2 Penalties for Unauthorized Access and Disclosure under BSA

### Exhibits

- 4.26.14-1 Letter Agreement titled Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes
- 4.26.14-2 Memorandum of Understanding Dated September 24, 2010
- 4.26.14-3 Re-Dissemination Guidelines for Bank Secrecy Act Information



4.26.14.1  
(07-24-2012)  
**Overview of Access,  
Security, and Disclosure**

- (1) Access involves obtaining returns or return information. Returns and return information must be stored in a secure location. Disclosure involves disclosing or re-disseminating information already possessed.
- (2) Access to Title 26 returns and information such as tax and information returns is governed by IRC 6103. IRS controls access.
- (3) Access to Title 31 reports and Bank Secrecy Act (BSA) information is controlled by the Financial Crimes Enforcement Network (FinCEN). The Title 31 reports and their information are currently available electronically through the Web Currency and Banking Retrieval System (WebCBRS). WebCBRS is maintained by the Internal Revenue Service but FinCEN owns the information on BSA reports and controls access. Title 31 BSA reports are confidential and may not be accessed or disclosed except as authorized by FinCEN. A list of BSA forms is available on [www.fincen.gov](http://www.fincen.gov) and on the home page of WebCBRS. FinCEN is in the process of setting up its own system for the receipt of electronically filed BSA reports. This information will be transferred to WebCBRS so that examiners may continue to use WebCBRS with confidence.

**Note:** The Form 8300 serves a dual purpose. The form is used to meet both a Title 31 and a Title 26 reporting requirement.

- (4) Accessed information must be protected to prevent unauthorized disclosures.
- (5) Disclosure occurs both when an examiner accesses data and “discloses” it to himself and when the examiner disseminates information already held to another. Such disclosure is unauthorized if made for a purpose that was not authorized in the original access to the information.
- (6) It is possible to disclose to oneself. For example, if an examiner obtains return information in a Title 26 Form 8300 case that indicates that there is a Title 31 violation, e.g., a CTR violation, and the examiner then uses the Title 26 information to begin a Title 31 case without first making a related statute determination, the examiner may have made an unauthorized disclosure to himself. Access under Title 26 was authorized, but a related statute determination would be needed to use the information for Title 31 compliance purposes. See the discussion below on related statute determinations.
- (7) The rules governing access to and disclosure of returns and return information under the Internal Revenue Code (IRC) (Title 26) are different from the rules governing access and disclosure of information collected under the Bank Secrecy Act (BSA) (Title 31).
- (8) In addition to the disclosure rules under Title 26 and Title 31, IRS examiners must always limit access to information in accordance with the Taxpayer Browsing Protection Act of 1997. See the discussion of UNAX below.

4.26.14.1.1  
(07-24-2012)  
**UNAX**

- (1) Unauthorized Access (UNAX) of taxpayer accounts is forbidden. The purpose of the UNAX Program is to provide awareness to all IRS employees to ensure that employees do not improperly access information. More information on UNAX is available on the Privacy, Information Protection and Data Security (PIPDS) web site at <http://pipds.web.irs.gov/unax>. Additional information can also be found in IRM 10.5.1, Privacy, Information Protection and Data Security Policy and Guidance.

- (2) IRS examiners should access only that information that is necessary and relevant to the case (i.e., information that they have a need to know), whether accessing the Integrated Data Retrieval System (IDRS) or WebCBRS or any other system of records. The same prohibition on browsing applies to both tax and BSA data.
- (3) IRS employees are never authorized to access their own records or records of other persons with whom they have personal ties. These may include:
  - a. Spouse and ex-spouses; children; parents; anyone living in their household; other close relatives;
  - b. Friends or neighbors with whom they have close relationships;
  - c. An individual or organization for which they or their spouse is an officer, trustee, general partner, agent, attorney, consultant, contractor, employee, or member; and
  - d. Any other individual or organization with which they may have a personal or outside business relationship that could raise questions about their impartiality in handling the tax matter.
- (4) In addition, IRS employees may not access information about celebrities when the information is not needed to carry out the official duties of the employees.
- (5) When employees are working authorized assigned cases or making personal or telephonic contacts, they can access other IRS employees' tax records. However, when the employee working the authorized case knows the other IRS employee, the case must be referred to management for reassignment.
- (6) IRS employees with UNAX questions should request that their manager verify and authorize access to an account. UNAX questions are directed via e-mail to \*UNAX.
- (7) UNAX violations including unauthorized access to Title 31 data must be reported immediately by contacting the Treasury Inspector General for Tax Administration (TIGTA) Hotline at 800-366-4484. View the map on their web site at <http://www.treasury.gov/tigta/> to find the local office.
- (8) UNAX violations can lead to penalties and/or dismissal.
- (9) Criminal UNAX violations result from intentional unauthorized inspection of returns and return information. 26 USC 7213A. The violation is punishable by a fine not to exceed \$1,000 or imprisonment of not more than 1 year, or both, together with the costs of prosecution. Federal employees will be dismissed.

#### 4.26.14.1.2 (07-24-2012)

#### Other Access Rules

- (1) In addition to the general "need to know" rules of UNAX, there may be specific limitations of access.
- (2) Limitations of access are found in laws restricting disclosure, which mean in effect that persons who would like access to certain information cannot get access because the holders of the information cannot disclose it to them. An example of this is found in the restriction of the use of tax return information for nontax purposes. An examiner cannot use information obtained during a tax case in a BSA case unless a related statute determination has been made. See the related statute discussion below.
- (3) Other limitations of access may be administrative. For example, some employees are only authorized to receive and use Suspicious Activity Report

(SAR) information on an open, assigned case, but may not obtain it electronically. Such employees must request the information from “gatekeepers” who will access the SAR information from WebCBRS and then provide it to them. SAR information is typically requested when:

- a. WebCBRS indicates possibility of SARs.

**Note:** IDRS command code IRPTR does not reflect SAR indicators.

- b. Taxpayer banking information is unknown.
- c. Taxpayer is suspected of hiding income or assets.
- d. Potential fraud indicators suggest the taxpayer is operating in cash to avoid reporting income or to evade collection.

4.26.14.2  
(07-24-2012)  
**Access to Title 26  
Returns and Return  
Information**

- (1) Title 26 returns and return information are owned by IRS. Tax returns and tax return information are confidential. Access to Title 26 returns and return information is governed by the Internal Revenue Code.
- (2) Returns and return information are confidential and may not be disclosed except as authorized by IRC 6103. In other words, access to returns and return information is limited by the provisions of IRC 6103.
  - a. The term “return” means any tax or information return required under Title 26. Form 8300 is both an information return covered by IRC 6103(b)(1) and a BSA report.
  - b. “Return information” means a taxpayer’s identity; the nature, source, or amount of his...receipts...; and [related background information] but such term does not include data in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. IRC 6103(b)(2).
  - c. The term “taxpayer return information” means return information that is filed with, or furnished to the Secretary by or on behalf of the taxpayer to whom such return information relates. IRC 6103(b)(3).
- (3) IRC 6103 allows for certain exceptions to the prohibition on disclosure of returns and return information.
- (4) Returns and return information are, without written request, open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes. IRC 6103(h)(1).
- (5) Access to Title 26 returns and related return information is available to IRS employees who need this information for their tax administration work through the various databases maintained by IRS, such as the Integrated Data Retrieval System (IDRS).
  - a. A tax administration purpose under IRC 6103(h)(1) is the basis for access to returns and return information by revenue agents; for example, those conducting Form 8300 examinations under Title 26.
  - b. IDRS contains return information and generally may not be accessed for BSA (Title 31) purposes. BSA examiners must not access IDRS while pre-planning or conducting BSA activities. Once a BSA examination is closed from the examiner’s group, IDRS may be used to evaluate and develop income tax leads related to tax administration that were generated by the BSA activity.

- c. The return and return information may be disclosed to the taxpayer and persons appointed by the taxpayer.

**Note:** Such disclosures should not be done if a determination has been made that the disclosure would seriously impair tax administration. IRC 6103(e)(7). Contact the Office of Disclosure when considering such a determination.

- d. IRC 6103 allows for numerous other exceptions to the general prohibition on disclosure. See IRM 11.3.1, Introduction to Disclosure.
- (6) Generally, BSA examiners will not have access to return information when conducting a BSA examination.
- a. IDRS cannot be consulted during a Title 31 examination; and
  - b. Title 31 examiners should not request to inspect income tax returns or other Title 26 return information during the Title 31 examination.
- (7) If a Form 8300 examination is conducted under the authority provided in Title 26 at section 6050I, the examiner may access IDRS and other sources of return information because the access is considered to be for purposes of tax administration. IRC 6103(h)(1).
- a. Tax administration means the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a state) and tax conventions to which the United States is a party, and the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions. IRC 6103(b)(4).
  - b. Depending on the facts of a particular case, the Bank Secrecy Act may be considered a related statute for purposes of access to returns and return information when the BSA activity was done in furtherance of, or as a part of, a pattern designed to violate Title 26 laws. See the discussion on the related statute exception, below.
- (8) Instructions and guidelines relating to disclosure of information from tax returns and other IRS documents, including disclosure under the Freedom of Information Act (FOIA), 5 USC 552, and the Privacy Act, 5 USC 552a, are published in IRM 11.3.22, Disclosure to Federal Officers and Employees for Tax Administration Purposes. Refer also to IRM 9.5.5.4, Money Laundering and Currency Crimes, The Money Laundering Investigation and Disclosure, for more information relating to the use of returns and return information in criminal money laundering investigations.
- (9) Questions about disclosure should be directed to an IRS Disclosure Officer. A listing of disclosure officers can be found on the Disclosure home page located in Privacy, Governmental Liaison and Disclosure (PGLD) on the IRS intranet. Much of this information is for IRS employees only.
- (10) Under the IRC, anyone making an unauthorized disclosure may be subject to civil and criminal sanctions.



4.26.14.2.1  
(07-24-2012)  
**Related Statute  
Exception**

- (1) IRC 6103(h)(1) provides that returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes. IRC 6103(b)(4) provides that the term “tax administration” means the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a state) and tax conventions to which the United States is a party.
- (2) The BSA (codified, in part, in Title 31) is not “per se” (automatically) related to the Internal Revenue Code. This is because BSA reports are required not only for tax compliance purposes but for other governmental purposes that are consistent with the purpose of the BSA, such as for law enforcement and counterterrorism purposes. A related statute determination is based on an analysis of the facts and circumstances of the particular case.
- (3) For a related statute determination, IRM 11.3.22.22.1 provides that the test is whether, under the particular facts and circumstances of the case, the BSA provisions are considered related to the administration of the internal revenue laws.
- (4) If the related statute test is not met, returns and return information may not be accessed or disclosed for examination of non-tax matters.

4.26.14.2.2  
(07-24-2012)  
**Related Statute  
Procedures**

- (1) If information is uncovered in a Title 26 examination that indicates that there has been a Title 31 violation, there must be a related statute determination before the Title 26 return or return information can be used in the Title 31 examination or in written referrals to Criminal Investigation or FinCEN.
- (2) If, in an ongoing Title 31 examination, Title 26 return information is needed, a related statute determination must be made before using return information in the Title 31 examination.
- (3) A determination must be made in writing with regard to the related statute test prior to the access or disclosure of returns or return information. The examiner documents the reasons supporting the related statute determination in a written memorandum, known as the related statute memorandum. The determination is made by a Territory Manager, not the examiner.
- (4) A special related statute memorandum has been developed for Report of Foreign Bank and Financial Accounts (FBAR) cases. It is Form 15535, Foreign Bank and Financial Accounts Report Related Statute Memorandum, Catalog # 38150X. See IRM 4.26.16. However, other types of related BSA cases do not require a specific format for the required related statute memorandum.
- (5) A good faith judgment that the BSA violation was in furtherance of the Title 26 violation should be demonstrated by tangible objective factors and supported by adequate documentation. The reasons supporting the determination are noted on the related statute memorandum.
- (6) Once the related statute memorandum has been signed by the Territory Manager, the Title 26 information may be accessed and used in the BSA examination. The original memorandum and determination should be included in the Title 31 file and a copy should be included in the Title 26 file.

4.26.14.2.3  
(07-24-2012)

**Related Statute  
Determination Factors**

- (1) IRC sections 6103(b)(4) and (h)(1) together permit disclosure of Title 26 information to IRS employees for examination purposes when there is a good faith determination that a Title 31 violation was committed in furtherance of a Title 26 violation or was part of a pattern to violate the provisions of Title 26. Once a related statute call has been made, IRC sections 6103(b)(4) and (h)(1) allow IRS employees, whose official duties require access to tax returns and tax return information, to use it in an examination under Title 31.
- (2) A money laundering or Bank Secrecy Act provision will be deemed a “related statute” if the money laundering or Bank Secrecy Act violation:
  - a. Was committed in furtherance of a violation of the internal revenue laws, or
  - b. Is part of a pattern of violations of the internal revenue laws.
- (3) It is not necessary to establish with certainty that there was a Title 26 violation to meet the related statute test, but the determination must be a good faith determination.
  - a. Large amounts of currency being deposited and concealed from the IRS is an indication that taxable income has been earned that has not been reported on an income tax return. IRM 11.3.22.22.1.
  - b. Taxpayers who have a financial account in a foreign country may be required, under the BSA, to file a Report of Foreign Bank and Financial Accounts (FBAR) disclosing the existence of the foreign account. When a taxpayer fails to comply with the Title 31 FBAR filing requirement and also fails to report interest income from the foreign financial account in violation of Title 26, the failure to comply with the FBAR requirement, may indicate the non-compliance was done in furtherance of a tax violation under Title 26, making the Title 26 information available for use in the Title 31 case under the related statute test.
- (4) To make a related statute determination, the Territory Manager must make a good faith determination that the Title 31 violation was in furtherance of a Title 26 violation. If it is subsequently determined that there was no Title 26 violation, this does not prevent the Title 31 examination from going forward.

4.26.14.2.4  
(07-24-2012)

**Effect of Related Statute  
Determination**

- (1) The related statute determination allows IRS personnel to use returns or return information derived from a tax case for examination of activities in a Title 31 case for which the IRS has responsibility.
- (2) The determination that the statutes are related makes the Title 31 case a matter of tax administration for purposes of IRC 6103. The information gathered in the Title 31 investigation from this point forward is subject to the disclosure rules under IRC 6103.
- (3) The information can be disclosed within Treasury for purposes of tax administration. The Title 31 case can be disclosed to FinCEN, a Treasury bureau, for penalty assessment and/or collection purposes. IRC 6103(h)(1). It can also be disclosed to the Department of Justice for enforcement purposes under the rules of IRC 6103(h)(2).

4.26.14.3  
(07-24-2012)  
**Access to Title 31  
Reports**

- (1) BSA reports are required because of their “usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism,” as stated in Declaration of Purpose, 31 USC 5311.
- (2) The reports are transcribed to the Web Currency and Banking Retrieval System (WebCBRS) that is access protected for law enforcement use. WebCBRS is maintained by the IRS Enterprise Computing Center-Detroit (ECC-DET) but IRS does not “own” the information reported on BSA forms.
- (3) FinCEN has been delegated responsibility for, and ownership of, the BSA report information on WebCBRS. FinCEN has re-delegated BSA examination authority to other government agencies including IRS. As noted above, Form 8300 is a dual purpose form that contains information required to be reported by both Title 31 and Title 26. FinCEN has access to the information reported on a Form 8300 under Title 31 but the form is also an information return under Title 26 at section 6050I and is subject to section 6103 restrictions on disclosure. IRC 6103(l)(15) provides an exception that permits the disclosure of Form 8300 information for Title 31 purposes.
- (4) FinCEN and IRS executed a Letter Agreement titled ***Electronic Access by the IRS SB/SE to BSA Information for Title 31 Purposes*** on May 20, 2004, Exhibit 4.26.14-1, and a Memorandum of Understanding September 24, 2010, regarding broader electronic access to Title 31 Reports, Exhibit 4.26.14-2.

4.26.14.3.1  
(07-24-2012)  
**Access For BSA  
Compliance Purposes**

- (1) When IRS employees are engaged in BSA compliance activities they are not acting under Title 26. Because their actions are taken under Title 31 and the BSA, FinCEN controls access.
- (2) IRS SB/SE electronic access to Title 31 reports for BSA compliance purposes is governed by a letter agreement, *Electronic Access by the IRS SB/SE to BSA Information for Title 31 Purposes*, between IRS SB/SE and FinCEN dated May 20, 2004. Exhibit 4.26.14-1.
- (3) The letter agreement states that BSA examiners may access WebCBRS for Title 31 compliance purposes.
- (4) In a BSA examination, BSA examiners can also access Forms 8300 for transactions occurring on or after January 1, 2002, except for forms filed by court clerks.
- (5) IRS SB/SE BSA personnel may directly access SAR information on WebCBRS for BSA compliance purposes.
- (6) There are extra constraints on the access of Suspicious Activity Report (SAR) information because of their confidential nature. For BSA examinations, SAR access by BSA employees is limited under the letter agreement to SARs filed by the entity under examination or being considered for examination, and SARs filed by other financial institutions reporting on the entity under examination, or SARs relating to any transaction or transactions conducted through such entity.
- (7) Care must be taken to avoid using Title 31 examinations as a pretext for conducting Title 26 information gathering activities. The decision in *United States v. Deak-Perera*, 566 F. Supp. 1398 (D.D.C. 1983), served as a warning that

the courts will not tolerate the gathering of information based on false or misleading representations on the part of the examiner.

- (8) The following procedures should be followed to avoid any appearance of mixing Title 31 and Title 26 activities:
  - a. The scope of any Title 31 examination should be based on objective factors and not expanded to obtain additional information for any other purpose; and
  - b. The information obtained within the scope of the Title 31 activity, which appears to have Title 26 implications, should be reported on Form 5346, Examination Information Report, and forwarded to the BSA Workload Selection Coordinator in WISDM.

4.26.14.3.2  
(07-24-2012)  
**Access (Other than SARs) for Tax Purposes**

- (1) One of the purposes of the Bank Secrecy Act, as set out in 31 USC 5311, is to provide reports and records considered to be of high utility in tax matters. As “tax” is one of the uses envisioned for BSA information, IRS employees have access to most Title 31 reports on WebCBRS for tax matters and may use the information accessed from WebCBRS in Title 26 proceedings.
- (2) Because of SARs’ confidential nature, FinCEN made a separate determination on SAR access. See discussion, Access to SARs for Tax Purposes, below.

4.26.14.3.3  
(07-24-2012)  
**Access to SARs for Tax Purposes**

- (1) SAR information may be helpful in examination and collection activities when:
  - a. The Web Currency and Banking Retrieval System (WebCBRS) reflects a Currency Transaction Report (CTR);
  - b. Routine means of locating banking information is exhausted;
  - c. Potential fraud indicators are present; or
  - d. It appears the taxpayer may be engaging in an unusually large number of cash transactions or cash transactions of unusually large amounts to avoid proper reporting of income or to evade collection.
- (2) IRS employees may want to use SAR information to:
  - a. Summon new bank accounts;
  - b. Attempt to locate taxpayer at new location; or
  - c. Levy newly-identified sources.
- (3) Access to BSA information through WebCBRS for tax purposes is governed by the Memorandum of Understanding between FinCEN and IRS dated September 24, 2010. Exhibit 4.26.14-2.
- (4) The MOU covers electronic access to all BSA report information including SAR information, with the exception of Forms 8300. Access to Form 8300 is permitted outside the MOU because of its dual nature as both a Title 26 and a Title 31 form.
- (5) Authorized agency personnel may access the Title 31 report information including SAR information. Training on appropriate safeguards and use must be completed prior to access. Queries to obtain the reports should be as focused as possible on the particular subject. An audit trail of all accesses will be maintained.
- (6) Interim guidance was issued by the SB/SE Commissioner on March 29, 2011 and reissued on March 15, 2012. The guidance:

- a. Allows Compliance employees electronic access to SAR information or the ability to receive SAR data when authorized by their operating division and business unit leaders.
  - b. Limits SAR information requests to active examination and collection cases. Electronic access to SAR information is authorized only when made in connection with specific and assigned tax administration matters. The SAR information may be accessed for case-building activities when the case subject is assigned to a Compliance case-building group, function, or project.
- (7) Each operating division or business unit authorized to receive SAR information will issue a policy directive detailing policies and procedures for SAR access for its employees.
- (8) Training on SAR information access and security is mandatory prior to any authorized access.
- (9) Once SAR information is secured for Title 26 compliance purposes, dissemination of that SAR information is subject to both Title 31 and Title 26 disclosure restrictions. The SARs and SAR information must be protected in the same manner as information received from a confidential informant.
- (10) Access and use of WebCBRS data is subject to minimum managerial review of audit trails to ensure appropriate use of WebCBRS data in relation to assigned cases.
  - a. Reviews will be conducted on an annual basis and may be conducted in conjunction with annual workload reviews.
  - b. A 30-day period will be selected from the prior 12 months of WebCBRS activity.
  - c. Queries will be compared against open inventory for the same 30-day period or will be validated through other business controls to ensure queries were related to assigned cases.

4.26.14.4  
(07-24-2012)  
**Disclosure of Tax  
Information**

- (1) Tax returns and return Information are protected from access and disclosure by Title 26. IRC 6103 prohibits the disclosure of tax returns and return information, as those terms are defined at IRC 6103(b). For example, the examiner must not disclose any return information to a whistle-blower (informant) about the alleged tax violator (e.g., whether or not the alleged tax violator filed a tax return). Taxpayers look to the Service to maintain their returns and associated account information in a secure and confidential manner. Moreover, the Service is required by statute to do so. Such information may not be shared with anyone unless authorized by IRC 6103.
- (2) Disclosure to the taxpayer is authorized by IRC 6103(e) and to the taxpayer's designee by IRC 6103(c) unless a determination has been made that such disclosure would seriously impair Federal tax administration under IRC 6103(e)(7). Unless such information meets one of the exemptions to disclosure found in the Freedom of Information Act (FOIA), 5 USC 552, return information may be disclosed to the taxpayer, or his designee, under FOIA. BSA information is specifically exempt from disclosure under the FOIA. 5 USC 552(b)(3), in conjunction with 31 USC 5319.
  - a. For example, in a Title 26 Form 8300 case, a taxpayer may be able to obtain the examiner's work papers under FOIA. However in a Title 31 Form 8300 case, the taxpayer may be more limited in obtaining informa-

tion under FOIA as BSA reports and records of BSA reports are specifically exempt from FOIA under 31 USC 5319.

- b. In a memorandum dated August 24, 2011 on FOIA obligations, the Deputy Commissioners for Operations Support and for Services and Enforcement stated that under the Open Government Initiative and IRC 6103(e), persons having a material interest in the information, such as the taxpayer, have a right to receive copies of their files to the extent that it will not impair enforcement. Absent an impairment determination, examiners can and should make copies of files available to taxpayers or their authorized representatives upon request. This protects taxpayers' rights and also reduces the need for processing requests under FOIA provisions. The Disclosure staff is available for advice as to what should be redacted.
- (3) IRS employees often operate under the exception found in IRC 6103(h), which allows for disclosure to Federal officers and employees for purposes of tax administration. Specifically, IRC 6103(h)(1) states that returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.
    - a. This exception allows for the disclosure of returns and return information within IRS for normal audit purposes.
    - b. It is also the basis for the related statute exception.
  - (4) The related statute exception, as noted in subsection 4.26.14.2.2, provides authority for an examiner having taxpayer-specific information to disclose that tax information in a BSA case when the BSA activity was in furtherance of or as part of a pattern of violations related to tax administration.
  - (5) For a more comprehensive discussion of disclosure, including exceptions under IRC 6103, see IRM 11.3, Disclosure of Official Information, and IRM 37, Chief Counsel Directives Manual – Disclosure.
  - (6) When Title 26 information is used in a BSA case, it is both return information and BSA information and is protected from further disclosure, not only by IRC 6103, but also by the disclosure prohibitions of the BSA and the Re-Dissemination Guidelines issued by FinCEN.
  - (7) Section 5319 of the BSA prohibits the disclosure of BSA reports and records of reports under FOIA or similar “open government” state and local laws. For this reason, return information used in a Title 31 case after a related statute determination has been made cannot be disclosed to the taxpayer or anyone else under FOIA.
- (1) Disclosure of BSA information, including SAR information, is governed by the *Revised Re-Dissemination Guidelines for Bank Secrecy Act Information* (11-28-2007). Exhibit 4.26.14-3.
  - (2) It is also return information governed by IRC 6103 when the information is gathered and being used for tax administration purposes.

4.26.14.5  
(07-24-2012)  
**Disclosure of BSA  
information**



4.26.14.5.1  
(07-24-2012)  
**Disclosure of BSA  
Information to  
Governmental Entities**

- (1) The BSA, at 31 USC 5319, provides that BSA reports and information are to be made available to governmental entities and certain self-regulatory organizations upon request of the head of the agency or organization.
  - a. The dissemination must be for the purposes of the BSA described at 31 USC 5311 as criminal, tax, or regulatory investigations or proceedings, or the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.
  - b. The head of the agency must make the request in writing, stating the particular information desired and the criminal tax or regulatory purpose for which the information is sought and the official need for the information. 31 CFR 1010.950(b).
  - c. The Secretary may in his discretion disclose information reported under the BSA for any reason consistent with the purposes of the BSA. 31 CFR 1010.950(a).
- (2) 31 CFR 1010.950 (formerly 31 CFR 103.53) provides additional guidance on disclosures of BSA information to governmental entities. These rules expand upon the types of requests that will be honored from agency heads and adds Congress and its subcommittees to the list of governmental entities to whom BSA information may be disclosed. State and local agencies may be required to pay fees. 31 CFR 1010.950(f).
- (3) The regulations are supplemented by Treasury Delegation Order 15-41, dated December 8, 1992, 57 F.R. 58038, which delegates to the Commissioner of Internal Revenue certain other authorities including the authority to disseminate copies of the reports required under the BSA regulations, subject to guidelines and procedures. FinCEN has the authority to set out those guidelines and has done so in the Revised Re-Dissemination Guidelines. Exhibit 4.26.14-3.

4.26.14.5.2  
(07-24-2012)  
**Disclosure of BSA  
information to  
Non-Governmental  
Entities**

- (1) Disclosure of BSA information to non-governmental entities is very limited. Disclosure of BSA reports and records is governed by statute, regulation, administrative delegations of authority, and administrative guidelines as well as case law. See 31 USC 5319 and 31 CFR 1010.950.
- (2) The BSA, at 31 USC 5319, provides that BSA reports and information are to be made available to governmental entities for purposes consistent with the BSA. This section specifically provides that BSA reports and records of reports are exempt from disclosure to non-governmental entities even under the Freedom of Information Act (FOIA), 5 USC 552.
- (3) Section 5319 was amended in December 2011 to expand the prohibition of disclosure so that BSA reports and information also may not be disclosed under any state, local, tribal, or territorial "freedom of information," "open government," or similar law.
- (4) 31 CFR 1010.960 (formerly 31 CFR 103.54) reiterates the FOIA exemption established by 31 USC 5319, providing that all BSA reports and records are specifically exempt from disclosure under the FOIA. As a result, WebCBRS report information may not be disclosed by an examiner to non-governmental entities, even to the subject of the report.
- (5) Very few cases have considered 31 USC 5319. The small collection is set forth in *Berger v. I.R.S.*, 496-97, D.N.J. 2007, *aff'd* on other grounds, 288 Fed. Appx. 829, 2008 WL 3286782, cert. denied 2009 WL 1650205, June 15, 2009. Documents, including some WebCBRS reports and related information, were

sought from IRS under FOIA. Plaintiff argued that 31 USC 5319 was not an absolute prohibition against disclosure of BSA reports, basing this argument on an early version of this IRM that, according to Plaintiffs, provided that with regard to the contents of a WebCBRS report, “the examiner may disclose to the examined entity that a currency report was or was not filed and the contents of the report if any.” The court specifically stated that “[E]ven if the [IRM] provision Plaintiffs quote was in effect at that time, this Court finds that WebCBRS reports qualify as reports exempt from disclosure under FOIA and [section] 5319.” The reasoning of the court was that the statute clearly did not allow for discretion on the part of IRS. The lesson for IRS examiners is that the courts will consider that there is **absolutely no discretion permissible on the part of the IRS examiner**. BSA reports and information that would indicate that a BSA report had been filed are not to be disclosed by examiners in response to a FOIA request.

- (6) A copy of a report, however, can be provided to the filer of the report. Thus, while a CTR could not be disclosed to the subject of the CTR, it could be disclosed to the filer. Similarly, an FBAR could be disclosed to the filer of the FBAR, who is also, of course, the subject of the FBAR.

4.26.14.5.3  
(07-24-2012)  
**Procedures for  
Disclosure of BSA  
information (Other than  
SARs)**

- (1) BSA reports are exempt from disclosure to the public under the Freedom of Information Act (FOIA), but may be shared between agencies under conditions prescribed in 31 USC 5319, 31 CFR 1010.950, and FinCEN’s Re-Dissemination Guidelines found in Exhibit 4.26.14-3.
- (2) Disclosure by IRS SB/SE is governed by two documents. One is a letter agreement specific to SB/SE and one is a FinCEN guidance memorandum issued subsequently to all governmental agencies allowed to access BSA information.
- (3) The letter agreement between FinCEN’s Director and the IRS SB/SE Commissioner, entitled *Electronic Access by the IRS SB/SE to BSA Information for Title 31 Purposes* (May 20, 2004), restricts the further dissemination of BSA information obtained under the agreement. Exhibit 4.26.14-1. The letter agreement is binding and requires SB/SE to refrain from dissemination of BSA information to any person without the written permission of FinCEN in each case.
- (4) Disclosure is permissible under IRC 6103(h)(1) within IRS for:
  - a. SB/SE tax examinations,
  - b. Criminal investigations, or
  - c. BSA examinations.
- (5) On November 28, 2007, FinCEN issued *Re-Dissemination Guidelines for Bank Secrecy Act Information*. Exhibit 4.26.14-3. These guidelines apply to the re-dissemination of BSA information in the possession of a Federal, State, or local government agency. BSA information is defined to include a report (and any information in such a report that might reveal its existence) that is filed under the BSA. These guidelines apply to the IRS.
- (6) For purposes of the Re-Dissemination Guidelines, the words “disseminate” and its derivatives do not include the notification of a BSA report’s existence or any other release of a BSA report between agencies that have been granted direct electronic access to BSA information. Consequently, such disclosures are not subject to FinCEN’s approval.



- a. This means that IRS examiners do not need to follow the re-dissemination procedures outlined in the guidelines for disclosures to agencies having direct electronic access to the reports.
  - b. This rule has one exception. The disclosing Federal, state, or local government agency shall ensure that each BSA report or item of BSA information shared contains the warning statement set forth in Appendix II to the guidelines. Exhibit 4.26.14-3.
- (7) FinCEN's BSA Re-Dissemination Guidelines require certain procedures.
- a. Appendix I of the Guidelines provides an acknowledgement form that the disclosing agency must receive from the receiving agency. The disclosing agency must provide a copy to FinCEN before providing BSA information to the receiving agency.
  - b. The BSA information disseminated must be accompanied by a warning statement Appendix II of the Guidelines. It warns against further re-dissemination.
  - c. The disseminating agency must keep records of all disseminations.
- (8) The guidelines prohibit any re-dissemination of BSA information not covered in the guidelines without first making a request in writing to FinCEN and obtaining FinCEN's approval. There is a provision for emergency requests.
- (9) The guidelines further state that final authority governing interpretation of the guidelines or dissemination of a BSA report or BSA information rests with FinCEN.

4.26.14.6  
(07-24-2012)  
**SAR Disclosure**

- (1) The BSA prohibits anyone with knowledge that a Suspicious Activity Report (SAR) has been made from notifying any person involved in the transaction that the transaction has been reported. 31 USC 5318(g)(2)(A).
- (2) The prohibition applies to the financial institution and its employees and officers. The rule regarding persons to whom the prohibition applies was expanded in December 2011 to include former employees or contractors with the financial institution. The rule currently applies to:
- a. The financial institution,
  - b. Any director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), and
  - c. Any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person.
- (3) The prohibition against disclosing to any person involved in the transaction that the transaction has been reported, also applies to any governmental employee who has any knowledge that such report was made. The type of employee to whom the prohibition applies was expanded in December 2011 to include former officers, employees or contractors.
- a. The covered employees include any current or former officer, or employee of, or contractor for, the Federal government or any state, local, tribal, or territorial government within the United States.
  - b. It is, however, permissible to disclose when necessary to fulfill the official duties of such officer or employee.
  - c. 31 USC 5321(a)(1) imposes a civil monetary penalty of not more than the greater of the amount involved in the transaction (not to exceed \$100,000) or \$25,000 against any person willfully violating the BSA, including willfully disclosing the existence of a SAR.

4.26.14.6.1  
(07-24-2012)

**SAR Disclosure by  
Financial Institutions or  
Their Employees**

- (1) Each type of “financial institution” is defined in 31 USC sections 5312(a)(2) and (c)(1) and the underlying regulations. For suspicious transaction reporting requirements, each type of financial institution should refer to its specific portion of the regulations at 31 CFR Chapter X. Within each portion of these regulations, the prohibition against disclosure of the SAR or information that one had been prepared or filed is similarly applied to employees as well as the financial institution.
  - a. For example, a bank would refer to 31 CFR Part 1020, Subpart C, “Reports Required to be Made by Banks”. Section 1020.320 specifies bank reporting of suspicious transactions.
  - b. Casinos and Card Clubs refer to 31 CFR 1021.320.
  - c. Money Services Businesses refer to 31 CFR 1022.320.
- (2) In the context of litigation, FinCEN advises that a financial institution and its employees neither admit nor deny the existence of a SAR and not respond to any discovery request or subpoena for SAR information. See 31 CFR 1020.320(e) for banks; section 1021.320(e) for casinos; and section 1022.320(d) for money services businesses.
- (3) Both criminal and civil penalties have been applied to employees for violations of the prohibition against disclosure. 31 USC 5321.
  - a. A January 2011 press release from the FBI on the criminal conviction of a bank employee for unauthorized disclosure of a SAR to the subject of the SAR also noted that he appeared to be the first bank official in the nation to be convicted of criminal charges for revealing the filing and content of a SAR.
  - b. In December 2011, FinCEN issued an administrative assessment of a civil penalty of \$25,000 against the bank employee based on the facts established in the criminal trial.
- (4) A major exception occurs when SAR information is sought by FinCEN, an appropriate regulator, or a law enforcement agency. This exception is set out in the regulations for banks at 31 CFR 1020.320(d), casinos at section 1021.320(d), and money services businesses at section 1022.320(d).
- (5) FinCEN guidance also allows a financial institution to disclose SAR information to its controlling company or head office.
- (6) FinCEN and the federal banking agencies take the position that banks’ internal controls for the filing of SARs should minimize the risks of disclosure.

4.26.14.6.2  
(07-24-2012)

**SAR Disclosure by  
Government Officers or  
Employees**

- (1) There are other considerations regarding disclosure by government employees in addition to the disclosure rule of 5318(g)(2)(A)(ii). No current or former officer or employee of the Federal Government or of any state, local, tribal, or territorial government within the United States, who has any knowledge that such report was made, may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.
- (2) The Revised Re-Dissemination Guidelines reiterate the importance of safeguarding SARs. BSA information includes the information in a SAR, as well as discussions between officials of a financial institution and law enforcement concerning a SAR, if the disclosure of such information or discussions would reveal the existence of a SAR.

- (3) An IRS employee who is requested to provide SAR information in response to a Freedom of Information Act (FOIA) request or a summons, should be aware of the following:
  - a. BSA reports are exempt from FOIA requests, or similar requests under state and local open government rules. 31 USC 5319. This applies to SARs as well as other BSA reports.
  - b. SARs are generally protected from disclosure even in response to a court summons. See Whitney National Bank v. Karam 306 F.Supp.2d 678, S.D.Tex., February 20, 2004 (NO. CIV.A. H-02-2250). Exhibit 4.26.14-1, paragraph 8 of Letter Agreement.
- (4) The information contained in a SAR and even the existence of a SAR generally cannot be disclosed to parties involved in the transaction. See 31 USC 5318(g)(2)(ii).
- (5) As with the precautions required for informant information, the identity of persons who furnish information regarding suspicious activity must be protected. All employees must, therefore, handle such information in strict confidence. (See IRM 25.2, Information and Informants Rewards).
  - a. Seeking information underlying the filing of a SAR by contacting or issuing a summons to the individual or business entity that filed the SAR requires consultation with the SAR Coordinator and BSA FinCEN Liaison.
  - b. To avoid an indication that a SAR was filed, Compliance employees should not limit their summons requests to transactions mentioned specifically in a SAR. A summons should only be issued when there is no third-party notification requirement.
- (6) BSA information, when included in a Title 26 compliance case file, is subject to the section 6103 restrictions on disclosure of return information. Title 31 data obtained during the course of a tax examination or collection activity is "return information" for IRC 6103(b)(2) purposes.
- (7) Furthermore, when the SAR information is used in a Title 26 case it retains its character as information from a BSA report. If a FOIA request is made in the Title 26 case:
  - a. The existence of a SAR and/or SAR information is not to be disclosed. 31 USC 5319.
  - b. Disclosure guidance on SARs is posted at: <http://mysbse.web.irs.gov/CLD/Disclosure/Office/Guidance/Dispatch/7503.aspx>.
  - c. The examiner should contact the local Disclosure Officer for assistance.
- (8) The examiner should follow security procedures for safeguarding SAR information, including:
  - a. Attach Document TD F 15-05.11, Sensitive but Unclassified (SBU) Cover Sheet, catalog 56033J, to the outside of the file.
  - b. Keep all SARs and SAR information inside a sealed confidential envelope labeled "SAR Information."
  - c. The activity record or case history should not reveal that SARs and/or SAR information exists – substitute "confidential informant" when referring to a SAR.
  - d. If work papers or case histories need to detail information regarding SARs, the work papers or history documents should also be placed in the confidential envelope.

- e. The operating divisions may add additional safeguards to this general list, including disposal or retention of SAR information when cases are closed.

- (9) SAR information may only be disseminated to the extent permitted under section 6103 of Title 26 and Appendix III, SAR Disclosure Guidance, of FinCEN's Re-Dissemination Guidelines. The examiner must consult with management officials, the SAR Coordinator, and the BSA FinCEN Liaison when considering information-sharing and prior to taking any action.

4.26.14.6.3  
(07-24-2012)

#### **SAR Disclosure in Tax Cases**

- (1) If SAR information is sought in a tax case, both the protections of 31 USC 5319 and those of IRC 6103 apply.
- (2) The information contained in the SAR and the existence of the SAR itself cannot be disclosed.
- (3) Under both Title 26 and Title 31, there are criminal and civil penalties for unauthorized disclosure of SAR information.
- (4) In using SAR information, the examiner must be careful not to create an impression that a SAR may have been filed.
  - a. Users should first attempt to acquire additional information through a general Information Document Request (IDR) – because being specific might indicate that a SAR had been filed.
  - b. Seeking information underlying the filing of the SAR by contacting or issuing a summons to the person that filed the SAR requires consultation with the SAR coordinator and BSA FinCEN Liaison.
  - c. Examples of information underlying the filing of the SAR include a photocopy of the identification provided when the transaction occurred or the business' video surveillance tapes.
- (5) SARs and SAR information must be treated the same way as information from a confidential informant.
- (6) Employees should neither lie to the taxpayer nor admit the existence of a SAR when dealing with a taxpayer. If asked by the taxpayer for the source of their information, the employee may reply: "I cannot disclose that information. The authority to withhold that information is in Internal Revenue Code Section 6103(e)(7)."

4.26.14.6.4  
(07-24-2012)

#### **SAR Unauthorized Disclosure Procedures**

- (1) Potential unauthorized disclosures or loss of SAR data must be reported.
  - a. For guidance on whether an action is reportable, the SAR Coordinator should be contacted.
  - b. Within one hour of learning of a potential or actual loss or unauthorized disclosure of SAR data, the user must report the circumstances surrounding the incident to Computer Security Incident Report Center (CSIRC).
  - c. Within five workdays of the incident, a copy of the CSIRC report reflecting the control number assigned must be provided to the Chief, BSA Policy and Operations, or designee, through SAR Coordinator and management channels. The CSIRC report number must be included in this report.
  - d. The Chief, BSA Policy and Operations, is the IRS official responsible for informing FinCEN of potential or actual unauthorized disclosure or any potential or actual loss of SARs or SAR information by the agency. IRS is obligated to report potential unauthorized disclosures or loss of SAR data to FinCEN within 30 days.

- (2) Suspected browsing of SAR data is subject to unauthorized access (UNAX) rules and is reported to TIGTA. IRM 4.26.14.1.1.

4.26.14.7  
(07-24-2012)  
**Form 8300 Disclosure  
Rules**

- (1) Form 8300, Report of Cash Payments over \$10,000 Received in a Trade or Business, was required only by 26 USC 6050I until the USA PATRIOT Act also required it under 31 USC 5331, effective January 1, 2002. Then, Form 8300 became a dual purpose form required under nearly the same circumstances by both code titles. Material differences between the two code provisions include the following:
  - a. From 2002 until 2012, clerks of court were only required to file Form 8300 under IRC 6050I(g) but not under 31 USC 5331. At the time of this writing in early 2012, the filing requirement for clerks of court is delayed until FinCEN has deployed its new BSA System of Record.
  - b. IRC 6050I(e) requires the filer to furnish an annual statement to the person required to be named in the Form 8300. See IRM 4.26.10. This provision has not been carried over to 31 USC 5331.
  - c. Penalties are different under the two code provisions.
- (2) Because the Form 8300 is required by two different titles, Title 26 and Title 31 of the USC, the access and disclosure rules are different under each title. The rules change depending on the date of the transaction and the method of access.
- (3) Prior to January 1, 2002, there was no filing requirement under Title 31. Any Form 8300 filed for a transaction that occurred before January 1, 2002, as required by IRC 6050I, is considered a tax return form and disclosure of information gathered via Form 8300, prior to January 1, 2002, is tax return information subject to IRC 6103 rules regarding disclosure.
- (4) A Form 8300 required to be filed for a transaction occurring after December 31, 2001, other than a Form 8300 required to be filed by a court clerk, meets a dual filing requirement under both IRC 6050I and 31 USC 5331. For Forms 8300 filed for a transaction occurring after December 31, 2001, there are different disclosure rules covering the release of the Form 8300 information, depending on whether the release is made under Title 26 or Title 31.
- (5) Information pertaining to Forms 8300 accessed from the IRS Master File, including Information Return Master File (IRMF), is subject to the provisions of 26 USC 6103(I)(15) and may be disclosed upon written request to officers and employees of any Federal agency, any agency of a state or local government, or any agency of the government of a foreign country.
  - a. Filed Forms 8300 that are not required to be filed by law (i.e., regarding a transaction less than \$10,000 or reporting a transaction designated by the filer to be suspicious) are generally ineligible for disclosure under 26 USC 6103(I)(15). See IRM 9.5.5.4.8.1.
  - b. IRC 6103(I)(15) does not pertain to disclosures for the purpose of tax administration. Disclosure for purposes of tax administration is made under provisions of IRC 6103, including the related statute provisions. See the discussions of disclosures under IRC 6103 and the related statute determination in this section.
  - c. Disclosure for purposes of referral for grand jury investigation and for criminal tax prosecution, or under an ex-parte court order are also permitted under IRC 6103.

- (6) Forms 8300 and Form 8300 report information filed with the Enterprise Computing Center - Detroit for transactions made on or after January 1, 2002, excluding those reports that were made by clerks of court, and accessed from the Web Currency and Banking Retrieval System (WebCBRS) in a Title 31 case, is Title 31 information subject to BSA disclosure restrictions.
  - a. As a Title 31 form, it is exempt from release under the Freedom of Information Act (FOIA), 31 USC 5319. From December 2011 going forward, the prohibition on disclosure of all BSA information under the FOIA is extended to state open information laws as well.
  - b. FinCEN has issued Re-Dissemination Guidelines for the disclosure of all BSA forms. When the Form 8300 is considered as a Title 31 form, it is subject to FinCEN's Re-Dissemination Guidelines. Exhibit 4.26.14-3. Because of this, the IRS examiner may not share WebCBRS printouts with the subject in a case conducted under Title 31.
- (7) Although Form 8300 is required under both the IRC and the BSA, IRS Form 8300 examination activities are usually conducted under Title 26. There is no prohibition against using IDRS when the Form 8300 examination is conducted under Title 26 because the examination is considered to be for tax administration purposes. If, however, the examination is only for compliance with the BSA, IDRS cannot be accessed. See the discussion on the related statute determination in this section.

4.26.14.8  
(07-24-2012)  
**Penalties for  
Unauthorized Access  
and Disclosure**

- (1) Penalties for unauthorized access and disclosure may be asserted under Title 26 or Title 31.
- (2) These penalties differ between the titles.
- (3) In both titles, the degree of intent affects whether or not the penalties are civil or criminal.

4.26.14.8.1  
(07-24-2012)  
**Penalties for  
Unauthorized Access  
and Disclosure under  
IRC**

- (1) Penalties for unauthorized access and disclosure in violation of IRC 6103 are set forth in IRC 7431 (civil) and IRC 7213 and 7213A (criminal). See a discussion of these penalties in IRM 11.3.1, Introduction to Disclosure.
- (2) IRC 7431 provides that disclosure rules are enforced by the injured taxpayer who can bring an action for civil damages.
  - a. If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information of a taxpayer in violation of any provision of IRC 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.
  - b. If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information of a taxpayer in violation of any provision of section 6103 or in violation of section 6104(c), such taxpayer may bring a civil action for damages against such person in a district court of the United States.
  - c. Damages may amount to the greater of \$1,000 for each disclosure or the sum of the actual damages plus appropriate punitive damages plus the costs of the action plus in some cases reasonable attorney's fees.



- (3) The criminal penalties for disclosure of a return or return information under IRC 6103 are set out in IRC 7213. They include:
  - a. A fine not exceeding \$5,000 or
  - b. Imprisonment of not more than 5 years, or both, together with the costs of prosecution, and
  - c. Dismissal from office for federal employees.

4.26.14.8.2  
(07-24-2012)  
**Penalties for  
Unauthorized Access  
and Disclosure under  
BSA**

- (1) Penalties for disclosure of BSA information are found in 31 USC 5321, Civil Penalties.
  - a. Subsection (6)(A) imposes a penalty of not more than \$500 for a negligent violation.
  - b. Subsection (6)(B) imposes an additional penalty of not more than \$50,000 if a pattern of negligent violations can be shown.
  - c. 31 USC 5321(a)(1) provides civil penalties for willful violations of the BSA or related regulations of not more than the greater of the amount (not to exceed \$100,000) involved in the transaction (if any) or \$25,000.
  - d. 31 USC 5321(d) provides that a civil money penalty may be imposed under subsection (a) for any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed for the same violation.
- (2) Criminal penalties for willful unauthorized access and disclosure in violation of the BSA are found in 31 USC 5322, Criminal Penalties.
  - a. Subsection 5322(a) provides a penalty of a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both, for criminally willful violations.
  - b. Subsection 5322(b) provides a higher penalty if the criminally willful violation occurred while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period. The person violating the BSA in this manner shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

**This Page Intentionally Left Blank**



Exhibit 4.26.14-1 (06-01-2006)

Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes*DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK

Dale Hart  
Commissioner  
Small Business/Self-Employed Division  
Internal Revenue Service  
U.S. Department of the Treasury  
5000 Ellin Road  
Lanham, MD 20706

Electronic Access by the IRS SB/SE  
to BSA Information for Title 31 Purposes

Dear Commissioner Hart:

The Secretary of the Treasury collects financial information pursuant to the reporting authority contained in the Bank Secrecy Act, (the "BSA"), 31 U.S.C. 5311 *et seq.* All BSA information is administered by the Financial Crimes Enforcement Network ("FinCEN"), a bureau within Treasury to which the Secretary has delegated the administration of the BSA. The Small Business/Self-Employed Division of the Internal Revenue Service (the "IRS SB/SE"), as another Treasury component, may receive and use BSA information maintained by FinCEN, so long as such use complies with one or more of the express purposes listed in 31 U.S.C. 5311. The IRS SB/SE is the delegate of FinCEN with respect to the examination of certain financial institutions for compliance with BSA reporting and recordkeeping requirements, and is therefore authorized to receive and use BSA information with respect to its BSA compliance function. This letter agreement states the terms and conditions applicable to the IRS SB/SE's use of BSA information for Title 31 purposes. This letter agreement does not apply to the authorized use of BSA information by the Commissioner of Internal Revenue for Title 26 compliance purposes.

**Exhibit 4.26.14-1 (Cont. 1) (06-01-2006)****Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes***

1. ~~Purpose; Legal Authority; Definitions.~~

(a) The purpose of this letter agreement is to increase the efficiency of the assistance that FinCEN currently provides to the IRS SB/SE, and to ensure that FinCEN provides the IRS SB/SE with the information necessary to permit the IRS SB/SE to carry out its BSA compliance responsibilities. This letter agreement establishes the terms and conditions under which FinCEN will provide the IRS SB/SE with direct electronic access to BSA information for Title 31 purposes.

(b) The IRS SB/SE is the delegate of FinCEN with respect to the examination of certain financial institutions for compliance with BSA reporting and recordkeeping requirements. Section 5311 of Title 31, United States Code, authorizes the use of BSA information in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. The use of BSA information for the purpose of conducting BSA examinations clearly falls within the regulatory purpose cited in section 5311. Nothing in this agreement should be read to diminish any authority previously provided to the Commissioner of Internal Revenue, including, but not limited to, any authority under Treasury Directive 15-41 or 31 C.F.R. Part 103.

(c) For purposes of this agreement, the following definitions shall apply:

(1) "BSA information" means a report (and any information in such a report that might reveal its existence) that is administered by FinCEN pursuant to the BSA and its implementing regulations, including, but not limited to, currency transaction reports (CTRs and CTR-Cs), as required under 31 U.S.C. 5313; currency and monetary instrument reports (CMIRs), as required under 31 U.S.C. 5316; foreign bank account reports (FBARs), as required under 31 U.S.C. 5314;

**Exhibit 4.26.14-1 (Cont. 2) (06-01-2006)****Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes***

suspicious activity reports (SARs) (including, but not limited to, SARs filed by banks, money services, businesses (MSBs), broker-dealers in securities, and casinos), as required under 31 U.S.C. 5318(g); registration forms completed by money services businesses (MSB registration forms), as required under 31 U.S.C. 5330; and forms completed by banks to exempt certain transactions from CTR reporting (DEP forms), as provided for by regulations implementing 31 U.S.C. 5313. BSA information does not include any information obtained under the authority of Title 26 of the United States Code.

(2) "Federal bank regulator" means one of the federal bank supervisory agencies, specifically the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration.

2. Scope of Permissible Queries.

Subject to the terms hereof, authorized personnel of the IRS SB/SE ("Authorized IRS SB/SE Personnel") may make direct electronic queries to retrieve BSA information held in the relevant data files housed at the Detroit Computing Center (the "DCC") of the Internal Revenue Service. Direct queries by Authorized IRS SB/SE Personnel must be related to the examination of, or the determination of whether or not to conduct an examination of, a financial institution for BSA compliance purposes. In the case of SARs, all inquiries by the IRS SB/SE shall be limited to SARs filed by the entity under examination or being considered for examination, and SARs filed by other financial institutions reporting on the entity under examination or being considered for examination, or SARs relating to any transaction or transactions conducted through such entity. Queries must be made for the use of the IRS SB/SE and may not be made for the use, or on

**Exhibit 4.26.14-1 (Cont. 3) (06-01-2006)****Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes***

behalf, of any other component of the Internal Revenue Service, any other agency, or for any other purpose. Before making particular queries, Authorized IRS SB/SE Personnel shall collect and use as much identifying information as is reasonably available to them for use in defining the subjects about whom retrieval of information is sought. Queries shall be framed using such identifying information in order to eliminate insofar as possible the retrieval of information relating to any person other than the person that is the intended subject of the retrieval request. Each query of BSA information shall be deemed to constitute a continuing representation and warranty by the IRS SB/SE that the request for retrieval or use complies with, and any use of retrieved or analyzed information will comply with, the terms of this agreement.

**3. Further Use and Dissemination of BSA Information.**

(a) Except as otherwise provided, no BSA information (including, without limitation, the fact that the relevant data files did not contain a record relating to a person) (i) may be used by the IRS SB/SE for any purpose other than that for which it was requested, or (ii) may be disseminated by the IRS SB/SE to any other person without the written permission of FinCEN in each case. The provisions of this section apply both to case-related BSA information and to statistical or other information generated by any data file containing BSA information. The provisions do not apply to any information obtained under the authority provided by Title 26 of the United States Code.

(b) Notwithstanding paragraph 3(a) of this letter agreement, BSA information obtained pursuant to this letter agreement may be shared with another component of the Internal Revenue Service so long as such sharing falls within the permissible scope of BSA queries set forth in paragraph 2 of this letter agreement or falls within the jurisdiction of the receiving IRS

## Exhibit 4.26.14-1 (Cont. 4) (06-01-2006)

Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes*

component to investigate a violation of a BSA requirement.

4. Information about IRS SB/SE Queries; Confidentiality.

(a) Information about IRS SB/SE queries will be made a part of the internal data bases administered by FinCEN.

(b) Except as provided elsewhere in this agreement, FinCEN agrees to treat as confidential all non-public information provided to it by the IRS SB/SE pursuant to this agreement and the attached Security Plan, and shall establish such safeguards as are necessary and appropriate to protect the confidentiality of any such information provided.

5. Reports; Audit Trail; Compliance Audits.

(a) Upon FinCEN's request, relevant officials of the IRS SB/SE will supply FinCEN with a report or reports of the status or results of cases in which inquiries are made hereunder, as well as such other statistical information about the IRS SB/SE's use of BSA information hereunder as FinCEN may reasonably require. Each such report shall include a description of the status of the investigation or prosecution involved and the contribution, if any, that BSA information made to the framing or success of the matter.

(b) The IRS SB/SE shall ensure that an audit trail is maintained with respect to its compliance with this letter agreement. Such audit trail shall include a written record of the purpose for which any inquiry was conducted, provided that a file relating to the subject of the query will satisfy the requirement to prepare such a written record. All records maintained in compliance with this paragraph shall be kept for a reasonable period of time and shall be made available to FinCEN upon request for purposes of auditing compliance with the terms of this agreement.

**Exhibit 4.26.14-1 (Cont. 5) (06-01-2006)****Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes***

(c) To ensure the IRS SB/SE's compliance with the terms of this agreement, FinCEN may conduct both onsite and electronic audits of the IRS SB/SE's electronic retrieval of information hereunder. FinCEN will provide adequate advance notice to IRS SB/SE before conducting any such onsite or electronic audit. Such onsite or electronic audits will be conducted at a time and place, and under conditions, that are mutually convenient to both parties.

6. Security.

(a) The IRS SB/SE agrees to follow the steps outlined in the Security Plan attached to this letter agreement. The IRS SB/SE will supply FinCEN with the names of all Authorized IRS SB/SE Personnel, together with such identifying information for such individuals as FinCEN and the DCC shall require, for the purposes of controlling and auditing access to BSA information and observance of the terms of this agreement. All Authorized IRS SB/SE Personnel shall have been the subject of a satisfactory background investigation completed in accordance with IRS SB/SE policies.

(b) The IRS SB/SE shall notify FinCEN of the routine removal of access privileges of employees hereunder. The IRS SB/SE shall notify FinCEN immediately if the former imposes sanctions upon, or revokes the access of, any employee hereunder or discovers any unauthorized use of SAR information by an IRS SB/SE employee.

7. Training. FinCEN and DCC will train, as resources permit, Authorized IRS SB/SE Personnel in the use of the data files containing BSA information. The expenses of such training will be borne by the IRS SB/SE.

8. Ownership of Records. Information obtained from any data file pursuant to this letter agreement in the custody of the IRS SB/SE will be deemed to constitute a record of FinCEN,

## Exhibit 4.26.14-1 (Cont. 6) (06-01-2006)

Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes*

(and, with respect to information obtained from a SAR filed by a depository institution or other banking organization, the filing institution's primary federal bank regulator), and FinCEN and the primary federal bank regulator will be deemed to have retained control of such information for purposes of the application of the provisions of the Freedom of Information Act, 5 U.S.C. section 552, the Privacy Act, 5 U.S.C. 552a, and any requests or demands for information made by any judicial or administrative process to the IRS SB/SE. The IRS SB/SE will notify FinCEN's Office of Chief Counsel, and with respect to a bank SAR, the IRS will also notify the filing institution's primary federal bank regulator if the IRS SB/SE is served with a subpoena or other request for SAR information obtained by the IRS SB/SE hereunder. FinCEN and IRS SB/SE agree to put forth their best efforts to timely coordinate a response in order for IRS SB/SE to fulfill its legal obligations with respect to a subpoena or other request for SAR information.

9. Costs. Access to BSA information hereunder will be provided free of charge (other than for telephone charges, which must be paid by the IRS SB/SE), without prejudice to FinCEN's ability at a later date to condition future access to such information on payment by the IRS SB/SE of a fee that reflects equitable cost-sharing arrangements between the FinCEN and the IRS SB/SE. Any such fee, reflecting equitable cost sharing arrangements, will result from further negotiations between the IRS SB/SE and FinCEN, and will be effected by a separate written agreement.

10. Effective Date; Termination. This letter agreement shall become effective as of the first Monday immediately following the date on which it is signed on behalf of the IRS SB/SE and may be terminated by either party upon 30 days' written notice to the other, provided that FinCEN and the DCC without notice may suspend temporarily the IRS SB/SE's access to data

**Exhibit 4.26.14-1 (Cont. 7) (06-01-2006)****Letter Agreement titled *Electronic Access by the IRM SB/SE to BSA Information for Title 31 Purposes***

files containing BSA information if such suspension is required, in the judgment of FinCEN and the DCC, for reasons of security or for failure to observe the terms of this agreement.


Kindly acknowledge the agreement of the IRS SB/SE to the terms stated above, and your authorization to make such agreement on its behalf, by signing the enclosed copy of this letter agreement in the space indicated below and returning it to FinCEN, whereupon this letter shall become an agreement between FinCEN and the IRS SB/SE.

Sincerely,

  
William J. Fox  
Director

Attachment

INTERNAL REVENUE SERVICE  
SMALL BUSINESS/SELF EMPLOYED DIVISION

  
By: Dale Hart  
Commissioner  
Small Business/Self-Employed Division  
Internal Revenue Service

Date: 5/20/04



**Exhibit 4.26.14-2 (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

Memorandum of Understanding  
between the  
Financial Crimes Enforcement Network  
and the  
Internal Revenue Service

This Memorandum of Understanding (the "MOU") is between the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the U.S. Department of the Treasury, and the Internal Revenue Service (the "Agency"), another Treasury bureau. This MOU states the terms under which FinCEN will provide the Agency with access to information collected pursuant to the reporting authority contained in the Bank Secrecy Act (the "BSA"), 31 U.S.C. § 5311 et seq. for purposes of administering and enforcing the provisions of Title 26 of the United States Code and, with respect to the Agency's Criminal Investigation Division, additionally for the purposes of investigating and enforcing relevant criminal provisions within their jurisdiction. Nothing in this MOU shall be read to affect any authority given to the Internal Revenue Service under Treasury Directive 15-41 or 31 CFR Part 103, as amended, including without limitation any authority given to the Agency's Small Business/Self-Employed Division under 31 CFR Part 103, as amended, to access and use information collected under the BSA to examine certain entities for compliance with statutory and regulatory requirements. In addition, to the extent that FinCEN and the Agency have entered into previous agreements, including but not limited to information sharing agreements, this MOU does not supersede and does not alter such other agreements. This MOU also does not impact or in any way limit the Agency's ability to obtain and use original or hard-copy reports filed under the BSA consistent with the Agency's authority and the purposes underlying the collection of BSA reports.

**Exhibit 4.26.14-2 (Cont. 1) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

1. BSA Information. This MOU concerns access to "BSA Information," which consists of the following information when the Agency obtains that information from the Currency and Banking Retrieval System or any successor to that system ("CBRS"), whether by examination of screen displays, download to an Agency computer, bulk transfer, or otherwise:

(a) Information contained in reports filed with FinCEN pursuant to its authority under the BSA, including the following categories of reports, any successors to such categories of reports, and such other categories of reports as FinCEN may make available in the future:

i) currency transaction reports filed by financial institutions other than casinos

("CTRs");

ii) currency transaction reports filed by casinos ("CTR-Cs");

iii) currency and monetary instrument reports ("CMIRs");

iv) foreign bank account reports ("FBARs");

v) suspicious activity reports by depository institutions ("SAR-DIs"), including: (a)

SAR-DIs filed by depository institutions and other entities directly supervised by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift

Supervision, and the National Credit Union Administration, which are filed pursuant to both FinCEN rules and concurrent rules issued by the primary federal regulator of the depository institution or other entity filing the report; (b) SAR-DIs filed by

depository institutions lacking primary federal regulators; and (c) other SAR-DIs filed

by FinCEN itself and other regulators in the exercise of their discretion; vi)

suspicious activity reports filed by participants in the securities, futures, and

insurance industries ("SAR-SFs");

**Exhibit 4.26.14-2 (Cont. 2) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

vii) suspicious activity reports filed by casinos and card clubs ("SAR-Cs");

viii) suspicious activity reports filed by money services businesses ("SAR-MSBs"); ix)

registration forms filed by money services businesses ("MSB Registration Forms");

and x) forms completed by banks to exempt certain transactions from CTR reporting

("DEP Forms"); and

(b) information concerning whether any particular person or transaction is named or referred to in any report covered by Section I (a), and if so, information concerning the specific form or type of form in which such person or transaction is named or referred to. Whether the results of a query are a null set or identify specific individuals as being named in one or more reports in CBRS, the query results constitute BSA Information subject to this MOU.

(c) Because of the dual reporting requirements under both Titles 26 and Title 31, BSA Information does not include, for purposes of this MOU, information contained in, or with respect to, reports of currency transactions conducted by nonfinancial trades or businesses ("Forms 8300").

2. Provision of BSA Information - General. Subject to the terms hereof, FinCEN authorizes electronic access by the Agency to BSA Information via two distinct methods: (1) through electronic queries to retrieve BSA Information from CBRS; and (2) through a bulk transfer of BSA Information. Regardless of the method of accessing BSA Information, all queries of BSA Information and use of BSA Information must be solely consistent with the Agency's legal authority and as required and appropriate for the exercise of the Agency's authority.

**Exhibit 4.26.14-2 (Cont. 3) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

3. (a) Electronic Access to BSA Information. Purpose. Authorized personnel of the

Agency ("Authorized Agency Personnel") acting on behalf of the Agency may make electronic queries to retrieve BSA Information. For purposes of this MOU, Authorized Agency Personnel are also deemed to be acting on behalf of the Agency when assisting or otherwise working with another governmental agency with respect to an investigation or other proceeding relating to the Agency's authority. Such assistance or work includes, but is not limited to, assistance to another governmental agency when the Agency is participating in a multi-agency task force. The agency may not make queries on behalf of any other person (including any other federal, state, local, or foreign agency) to retrieve BSA Information except as indicated above.

(b) Search Limitations.

i) In general, Authorized Agency Personnel shall make best efforts to limit the BSA Information they obtain through a query to that BSA Information which is useful in connection with the specific matter prompting the query. Best efforts in this context include, but are not limited to, the use of as much information as is reasonably available to Authorized Agency Personnel in framing and narrowing any query.

ii) In addition to the limitations contained elsewhere in this Section 3(b), Authorized Agency Personnel, when making queries concerning specific persons or entities (each "Subject"), shall use available identifying information in order to eliminate insofar as practical the retrieval of information not relating to the Subject.

iii) The Agency will make best efforts to obtain only that BSA Information which is of value in connection with the specific matter prompting the query through which the BSA Information was obtained. The Agency will promptly destroy all documents or summaries that it has obtained or generated which contain BSA Information that is

**Exhibit 4.26.14-2 (Cont. 4) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

(A) known to have been obtained in error, or (B) duplicative of BSA Information already obtained by the Agency and reasonably accessible to the Agency

(c) FinCEN Search Targeting Resources. FinCEN will use its best efforts to make available to the Agency, from time to time, either on FinCEN's own initiative or in response to requests from the Agency, analytical tools and BSA Information reviews (collectively "Analytical Materials") intended to help Authorized Agency Personnel use CBRS efficiently, maximize the value of BSA Information they obtain through queries, and minimize obtaining BSA Information of little or no value in connection with the specific matters prompting queries. The Agency will ensure that Authorized Agency Personnel (i) are promptly made aware of the Agency's receipt of Analytical Materials and (ii) use Analytical Materials to the fullest extent possible in making queries and evaluating BSA Information.

(d) Discretionary Conditions of Access. In addition to the terms, conditions and limitations stated elsewhere in this MOU, FinCEN may, after consultation with IRS, impose one or more conditions of access to CBRS, including but not limited to, possible requirements that Authorized Agency Personnel enter into individual user agreements acknowledging the terms and conditions under which they can obtain access to CBRS. FinCEN will not impose any condition of access to BSA Information by the Agency that is inconsistent with section 6103 of Title 26 or any other legal requirement.

(e) Continuing Representation and Warranty. Each query under this MOU shall be deemed to constitute a continuing representation and warranty by the Agency that the request for retrieval or use complies with, and any use of retrieved or analyzed information will comply with, the terms of this MOU.

**Exhibit 4.26.14-2 (Cont. 5) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

(f) Disclaimer of Liability. FinCEN will make all reasonable efforts to make BSA

Information available to the Agency upon the Agency's request, consistent with the terms of this MOU. However, FinCEN expressly disclaims any liability for any consequence of the non--availability of BSA Information through CBRS.

4. Bulk Transfer of BSA Information. In addition to the electronic access through CBRS, FinCEN shall arrange for the bulk transfer to the Agency of BSA Information, on a periodic basis and through a technical process that ensures secure and appropriate data transfer. Prior to transferring such BSA Information, FinCEN shall consult with the Agency on the appropriate timing and method of transfer. The assistance provided pursuant to this Section shall be subject, in all cases, to resource constraints imposed upon FinCEN that would prohibit the providing of such assistance, and the terms of applicable law to which FinCEN is subject.

5. Re-dissemination of BSA Information. No BSA Information may be disseminated to any person outside the Agency except consistent with the provisions of the Re-Dissemination Guidelines for Bank Secrecy Act Information attached to this MOU at Tab A (the "Guidelines") as such Guidelines may be revised by FinCEN from time to time, as otherwise provided by FinCEN in writing, as otherwise permitted under any prior agreements between the Agency and FinCEN, or as otherwise provided or required by law. In general, the Agency may disseminate BSA Information to a State, local or foreign authority with responsibility for the administration and enforcement of the tax laws of the respective jurisdiction to the extent permitted under section 6103 of Title 26. Unless prohibited from doing so under section 6103 of Title 26 or any other law, and to the extent circumstances permit, the Agency shall notify FinCEN before disseminating BSA Information to an agency or other person not explicitly described in the Guidelines. The Agency is not required to notify FinCEN with respect to the

**Exhibit 4.26.14-2 (Cont. 6) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

dissemination of return information that may include BSA Information if the return information is disclosed in accordance with an exception under section 6103 that may permit or require such disclosure.

6. Information about Inquiries of the Agency. FinCEN may maintain as part of its internal databases information concerning queries made by Authorized Agency Personnel through CBRS, including without limitation, a record of the information in the relevant data files searched, retrieved, or both, by such Authorized Agency Personnel. Information about inquiries of the Agency made for Title 26 purposes is return information as that term is defined in section 6103 of Title 26 and is therefore subject to the confidentiality provisions of section 6103. FinCEN shall establish safeguards that are necessary and appropriate to protect the confidentiality of such information, such as those described in Sections 4, 5, and 8 of Internal Revenue Service Publication 1075 (as revised) or an equivalent Internal Revenue Service publication.

8. Networking. FinCEN seeks to facilitate networking among agencies that may be investigating the same matters. Networking generally involves notifying two or more agencies when they have queried on the same Subject. Because of the confidentiality provisions of section 6103 of Title 26, which treat queries related to Title 26 enforcement as tax return information, and the potential that sharing any Agency query with another agency may lead to an unauthorized disclosure, FinCEN will not notify another agency that it and the Agency have queried the same Subject.

9. Audit Trail and Reports.

(a) The Agency shall ensure that an audit trail is maintained with respect to its use of BSA Information under this MOU, whether such information is obtained from CBRS or from the

**Exhibit 4.26.14-2 (Cont. 7) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

bulk transfer of BSA Information that FinCEN has provided to the Agency. FinCEN recognizes that the confidentiality provisions of section 6103 of Title 26, which treat queries related to Title 26 enforcement as tax return information, prevent FinCEN itself from inspecting most of this audit trail. Therefore, such an audit trail shall allow the appropriate auditing component for the Agency to verify that BSA Information has been used appropriately. In addition, the Agency shall request that an audit of its use of BSA Information, be conducted no less than once each year, and shall provide FinCEN written confirmation of any such audit.

(b) The Agency shall, upon written request, and to the extent resources permit, provide to FinCEN a list of the Agency's operating divisions and significant offices in which, and any major data processing systems through which, Authorized Agency Personnel have access to BSA Information. The list of divisions, offices and systems with access to BSA Information attached to this MOU at Tab B ("Access List") shall contain the following: (i) name of the office or division, (ii) purpose or function of office or division use of the BSA Information, (iii) name of systems accessing BSA Information, and (iv) internal (IRS) or external (FinCEN) method of audit.

(c) Upon written request, and to the extent resources permit, the Agency will provide FinCEN with available audit reports on compliance with this MOU of the Agency's operating divisions, significant offices or systems accessing BSA Information for purposes other than Title 26 enforcement to the extent such information can be provided without violating section 6103 of Title 26 or any other legal restriction.

(d) The Agency also may, on its own or at the request of FinCEN, make reports available to FinCEN to assist FinCEN in understanding and analyzing the value of BSA



**Exhibit 4.26.14-2 (Cont. 8) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

Information, to the extent such information can be provided without violating section 6103 of Title 26 or any other legal restriction.

10. Security.

(a) The Agency agrees to maintain adequate security procedures for the safeguarding of BSA Information to help ensure that access to BSA information is controlled and monitored for compliance with the terms of this MOU. All Authorized Agency Personnel shall have been the subject of a satisfactory background investigation completed in accordance with the Agency's policies. The Agency will ensure that Authorized Agency Personnel have received training concerning the use of BSA Information, the data files containing BSA Information, and compliance with the terms of this MOU. Any BSA Information obtained for Title 26 compliance purposes would be return information and, as such, would be protected by the same stringent security procedures and practices that are in place for the protection of return information. The Agency certifies that existing security practices and procedures with respect to safeguarding BSA Information obtained under the terms of this MOU is at least as stringent as those outlined in FinCEN's model Security Plan, a copy of which is attached to this MOU at Tab C ("Model Security Plan"), and that any future changes to security practices and procedures with respect to safeguarding BSA Information will not result in practices or procedures that are less stringent than those called for in order to adequately protect return information. The Agency agrees to provide additional certification that existing security practices and procedures with respect to safeguarding BSA Information obtained under the terms of this MOU is at least as stringent as those outlined in FinCEN's Model Security Plan, upon written request from FinCEN, if FinCEN makes significant modifications to the Model Security Plan in the future.

**Exhibit 4.26.14-2 (Cont. 9) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

(b) The Agency shall notify FinCEN when it revokes access privileges under this

MOU of Authorized Agency Personnel, including but not limited to (i) revocations of access privileges associated with routine personnel actions such as retirement or other changes in employment status, and (ii) revocation of access privileges associated with non-routine disciplinary action, to the extent such notification is not prohibited by section 6103 of Title 26 or any other legal provision. The Agency also shall notify FinCEN as soon as practical if the Agency discovers any unauthorized use of, or access to, BSA Information, to the extent such notification is not prohibited by section 6103 of Title 26 or any other legal provision.

11. Training. FinCEN will train, as resources permit, Authorized Agency Personnel in the use of BSA Information, the data files containing BSA Information, and compliance with the terms of this MOU.

12. Control of Records: Open Information and Privacy Laws. Information obtained from any data file pursuant to this MOU in the custody of the Agency will be deemed to constitute a record under the control of FinCEN for purposes of (i) the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, (ii) the Privacy Act, 5 U.S.C. § 552a, (iii) any other laws, regulations and policies applicable to the sources, use, disclosure or dissemination of BSA Information in the custody of the Agency (collectively, "Other Open Information and Privacy Laws"), and (iv) any requests or demands for BSA Information made to the Agency, whether or not such requests or demands are made consistent with FOIA, the Privacy Act, or Other Open Information and Privacy Laws. The Agency represents that it does not know of any Other Open Information and Privacy Laws in force on the date of this MOU that grant any right of access to BSA Information in the custody of the Agency on the part of any person that is greater than the rights granted to such persons under FOIA, the Privacy Act, section 6103, or this MOU. The

**Exhibit 4.26.14-2 (Cont. 10) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

Agency will inform FinCEN as soon as practical after the Agency becomes aware of any new or existing Other Open Information and Privacy Laws that will grant any such greater right of access. To the extent such information can be provided without violating section 6103 of Title 26 or any other legal restriction, the Agency will notify FinCEN's Office of Chief Counsel if the Agency is served with a subpoena or other request for BSA Information obtained by the Agency hereunder.

13. Costs. The Agency is responsible for costs to the Agency that may arise in connection with its compliance with this MOV, its use of BSA Information consistent with this MOV, and its receipt of training as contemplated by this MOV, including but not limited to travel expenses of Authorized Agency Personnel for the purpose of receiving training. FinCEN imposes no charges for access of Authorized Agency Personnel to BSA Information hereunder and no charges with respect to the travel expenses of FinCEN personnel for the purposes of exercising FinCEN's inspection rights or providing training as contemplated by this MOV. Notwithstanding anything to the contrary in this MOV, FinCEN retains the right to condition access to BSA Information after some future date on payment by the Agency of a fee that reflects equitable cost-sharing arrangements between FinCEN and the Agency. FinCEN will provide the Agency with written notice, at least 60 days in advance, before requiring that the Agency pay a fee as a condition for access to BSA Information.

14. Authority to Sign; Effective Date; Termination. The persons identified below as signing on behalf of FinCEN and the Agency have the authority to commit FinCEN and the Agency to the undertakings contained in this MOU for the period during which this MOU is effective. This MOU shall become effective as of the first Monday immediately following the date on which it is signed on behalf of FinCEN (the "Effective Date"). This MOU may be

**Exhibit 4.26.14-2 (Cont. 11) (07-24-2012)****Memorandum of Understanding Dated September 24, 2010**

terminated by either party upon written notice to the other, effective 30 days from the date that notice of termination is sent (the "Termination Date"). The Agency's access rights to BSA Information under this MOU will terminate on the Termination Date. FinCEN reserves the right to suspend the Agency's access to data files containing BSA Information, after providing written notice **to** the Agency 60 days **in** advance, if such suspension is necessary for reasons of security or for failure to observe the terms of this MOU. Any such suspension does not constitute notice of termination of this MOU.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**Exhibit 4.26.14-2 (Cont. 12) (07-24-2012)**

**Memorandum of Understanding Dated September 24, 2010**

Accepted and agreed to:

FINANCIAL CRIMES ENFORCEMENT NETWORK

By: */s/ James H. Freis, Jr.*

James H. Freis, Jr.  
Director, Financial Crimes Enforcement Network  
Date: September 24, 2010

INTERNAL REVENUE SERVICE

By: */s/ Christopher Wagner*

Christopher Wagoner,

Commissioner, Small Business/Self-Employed Division

Date: 9/16/2010

Tab A:  
Attachments: Tab A Re-dissemination Guidelines

Tab B: List of IRS Divisions, Offices and Systems with access to BSA Information

Tab C: Model Security Plan

**Exhibit 4.26.14-3 (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**DEPARTMENT OF THE TREASURY  
FINANCIAL CRIMES ENFORCEMENT NETWORK

November 28, 2007

MEMORANDUM FOR      LAW ENFORCEMENT LIAISONS  
                                 LAW ENFORCEMENT CUSTOMERS OF FINCEN  
                                 GATEWAY USERS  
                                 FEDERAL BANK SUPERVISORY AGENCIES AND  
                                 OTHER FEDERAL FUNCTIONAL REGULATORS  
                                 **STATE BANK SUPERVISORY AGENCIES WITH**  
                                 **CBRS ACCESS**

FROM:                  James H. Freis, Jr.: /s/ *James H. Freis, JR*

*Revised Re-dissemination Guidelines for BSA Information*

Attached please find a copy of the revised *Re-dissemination Guidelines for Bank Secrecy Act Information* (the "revised Guidelines"), along with the accompanying appendices, just issued by the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Department of the Treasury. The revised Guidelines establish a framework for the re-dissemination of reports collected under the Bank Secrecy Act ("BSA"), codified at 31 U.S.C. 5311 et seq. The revised Guidelines supersede the prior guidelines issued in December 2006.

The revised Guidelines are identical to the prior guidelines issued in December 2006, except for two minor technical changes made to Appendices I and II.

If you have any questions, please call FinCEN's Office of Chief Counsel at (703) 905-3590.

[www.fincen.gov](http://www.fincen.gov)

**Exhibit 4.26.14-3 (Cont. 1) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

November 28, 2007

**RE-DISSEMINATION GUIDELINES FOR BANK SECRECY ACT INFORMATION****I. Purpose**

The purpose of this document is to establish guidelines for the re-dissemination of information required to be reported to the Department of the Treasury under the authority of the Bank Secrecy Act (BSA), codified at 31 U.S.C. 5311 et seq.<sup>1</sup> These guidelines apply to the re-dissemination of BSA information in the possession of a Federal, State, or local government agency. Because BSA information generally consists of personal and/or sensitive financial data, the dissemination of such information is subject to strict control.

**II. Background**

Both by operation of Federal law and Treasury delegation, the Financial Crimes Enforcement Network (FinCEN), a Treasury bureau, is responsible for administering the BSA. Pursuant to section 361 of the USA Patriot Act, Pub. L. 107-56, codified at 31 U.S.C. 310, FinCEN has been vested with the authority to "[m]aintain a government-wide data access service, with access, in accordance with applicable legal requirements, to . . . [i]nformation collected [under the authority of the BSA]." 31 U.S.C. 310(b)(2)(B). FinCEN also has been granted the authority to "disseminate the available data in accordance with applicable legal requirements" and to "[a]dminister the requirements of [the BSA], to the extent delegated such authority." 31 U.S.C. 310(b)(2)(C) and (I). In 2002, the Secretary of the Treasury signed Treasury Order 180-01, updating the mission, duties, and powers of FinCEN. This Treasury Order has expressly delegated to FinCEN the authority to "take all necessary and appropriate actions to implement and administer the provisions of [the BSA and its implementing regulations.]"

In its role as the administrator of the BSA, FinCEN is the central point of dissemination of BSA information. Having a central point of dissemination is the most effective way to ensure that such disclosures are made consistently and in accordance with applicable legal requirements, such as those contained in the BSA and the Privacy Act. An improper disclosure of BSA information could undermine the integrity of the BSA reporting system as a whole, could raise questions about the continued operation of the system, and ultimately could lead to all users of BSA information being deprived of such information.

Before FinCEN's creation in 1990, and the subsequent delegation to it of the responsibility to administer the BSA, the Assistant Secretary (Enforcement) for Treasury had delegated limited concurrent authority to the Internal Revenue Service and the U.S. Customs Service regarding the dissemination of certain BSA information. That limited authority was

<sup>1</sup> The purpose of the BSA is to "require certain reports or records where they have a high degree of usefulness to government agencies in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." 31 U.S.C. 5311.

**Exhibit 4.26.14-3 (Cont. 2) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

delegated pursuant to guidelines written by the Assistant Secretary in 1989 and 1988. The guidelines contained in this document supersede those prior guidelines, and the Re-dissemination Guidelines for Bank Secrecy Act Information, dated June 25, 2004, and apply to any re-dissemination of BSA information by a Federal, state, or local government agency except as otherwise provided in writing by FinCEN.

**III. Definitions**

For purposes of these guidelines, the following definitions shall apply:

A. "BSA information" means a report (and any information in such a report that might reveal its existence) that is filed with FinCEN pursuant to the BSA and its implementing regulations, including, but not limited to, currency transaction reports (CTRs and CTR-Cs), currency and monetary instrument reports (CMIRs), foreign bank account reports (FBARs), suspicious activity reports (SARs) (including, but not limited to, SARs filed by banks, money services businesses (MSBs), broker-dealers in securities, casinos, futures commission merchants, introducing brokers in commodities, insurance companies, and mutual funds), reports of currency transactions conducted by nonfinancial trades or businesses (Form 8300s), registration forms completed by money services businesses (MSB registration forms), and forms completed by banks to exempt certain transactions from CTR reporting (DEP forms). BSA information also includes data collected pursuant to a geographic targeting order (GTO) issued under the authority contained in 31 U.S.C. 5326 and/or 31 CFR 103.26, and data collected pursuant to a special measure issued under the authority of 31 U.S.C. 5318A. For purposes of these guidelines, BSA information includes the information in a SAR, as well as discussions between officials of a financial institution and law enforcement concerning a SAR, if the disclosure of such information or discussions would reveal the existence of a SAR. BSA information does not include financial institution records and other underlying facts and documents on which a SAR is based, unless the disclosure of such information would reveal the existence of a SAR. Any person who is unsure whether the existence of a SAR would be revealed in the course of disclosing information should contact FinCEN for guidance prior to disclosure.

B. "CBP" means U.S. Customs and Border Protection, a Federal law enforcement bureau of the U.S. Department of Homeland Security.

C. "Disseminate," "Dissemination," "Re-disseminate," and "Re-dissemination" mean the disclosure, release or transmission of a BSA report or BSA information by oral, written, or any other means of communication to any person. For purposes of these guidelines, these terms do not include the notification of a BSA report's existence or any other release of a BSA report between agencies that have been granted direct electronic access to BSA information. Consequently, such disclosures are not subject to FinCEN's approval. However, consistent with these guidelines, the disclosing Federal, State, or local government agency shall ensure that each BSA report or item of BSA information shared contains the warning statement set forth in Appendix II to these guidelines.



**Exhibit 4.26.14-3 (Cont. 3) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

D. "Federal bank supervisory agencies" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

E. "Federal prosecutor" means a unit of the Federal government that is charged with prosecuting civil or criminal violations of a statute, rule, or order.

F. "Federal, State, or local government agency" means a unit of a Federal, State, or local government.

G. "ICE" means U.S. Immigration and Customs Enforcement, a Federal law enforcement bureau of the U.S. Department of Homeland Security.

H. "Law enforcement investigation" means an investigation of an actual or potential violation of law, regulation or rule that is subject to a criminal and/or civil penalty.

I. "Person" means an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

#### IV. General Rule

Subject to the following conditions, a Federal, State, or local government agency may disclose BSA information to another Federal, State, or local government agency in support of a financial institution examination, law enforcement investigation, or prosecution, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, without first obtaining the approval of FinCEN.

Conditions:

- The disclosing Federal, State, or local government agency shall obtain at the time of disclosure the written acknowledgment of the receiving agency, reflecting its understanding that the further dissemination of such information is prohibited without the prior approval of FinCEN. A sample acknowledgment form for this purpose is attached to these guidelines as Appendix I. Copies of the acknowledgment form shall be maintained by both the disclosing and receiving agency. The disclosing agency shall ensure that the completed acknowledgment form is mailed or faxed to FinCEN using the relevant address in section VI. This acknowledgment condition shall not apply when sourcing BSA information in a report that is distributed widely to a number of different domestic agencies, such that obtaining acknowledgments would be impractical.

**Exhibit 4.26.14-3 (Cont. 4) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

- The disclosing Federal, State, or local government agency shall ensure that each BSA Report or item of BSA information shared prominently contains the warning statement set forth in Appendix II to these guidelines pertaining to the use and further re-dissemination of BSA information, particularly when BSA information is sourced in a report that is distributed widely to a number of different domestic agencies.
- The disclosing Federal, State, or local government agency shall keep a record of each disclosure of BSA information. Records kept in the ordinary course of a financial institution examination (e.g., examination work papers), law enforcement investigation, prosecution or intelligence analysis may be relied upon to comply with this requirement. In any event, such records must be maintained such that they can be provided to FinCEN within a reasonable period of time upon its request.

**V. Other Authorized Disseminations of BSA Information**

Concurrent authority also exists to re-disseminate BSA information without first obtaining the approval of FinCEN in the following situations:

**A. Disclosure of BSA Information by Federal Prosecutors in the Course of Judicial Proceedings**

In limited circumstances, a Federal prosecutor may disclose BSA information in the course of a judicial proceeding without first obtaining the approval of FinCEN<sup>2</sup>. A Federal prosecutor should carefully consider the propriety of any such disclosure, particularly with respect to SARs or information that would reveal the existence of SARs. See 31 U.S.C. 5318(g)(2) (stating that a government official may disclose a SAR to the subject of the report only when "necessary to fulfill the official duties of such officer or employee."). Because financial institutions file SARs with the expectation that they will be accorded sensitive treatment, unnecessary disclosure of SARs could frustrate that expectation and have a chilling effect on both the quantity and quality of future SAR filings. Disclosure of a SAR or the information in a SAR that might reveal its existence, should be distinguished from disclosure of the records constituting the transactions discussed in a SAR, such as a wire transfer record, which can be treated as ordinary evidence. Because the underlying documents prove the transaction, and the SAR does not, it should rarely be necessary to use a SAR in the prosecution's case. Attorneys in the Fraud Section of the Criminal Division of the U.S. Department of Justice (DOJ), (202-514-0890), and Asset Forfeiture and Money Laundering Section of DOJ, (202-616-0593), are available for consultation on SAR disclosure issues. Because disclosure of a SAR may affect other investigations or cases and because FinCEN is

<sup>2</sup> Specific guidance relating to the disclosure of SARs by Federal prosecutors is attached to these re-dissemination guidelines as Appendix III, and was previously made available to Federal prosecutors by the Executive Office of United States Attorneys. Any law enforcement official who wishes to introduce a SAR in the course of a judicial proceeding must consult the guidelines attached herein as Appendix III for examples of the extremely limited circumstances under which such disclosure may be

**Exhibit 4.26.14-3 (Cont. 5) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

charged with responsibility for enforcing the SAR laws and regulations, FinCEN's Office of Chief Counsel, (703-905-3590), should be given advance notice if a prosecutor decides to disclose a SAR.

**B. Disclosure of SARs by the Federal Bank Supervisory Agencies**

The Federal bank supervisory agencies each have concurrent authority to re-disseminate a SAR (including any information in a SAR that might reveal its existence) that is filed with FinCEN by a bank or a banking organization, under rules issued under the authority of Title 31 of the United States Code and the SAR rules issued by each of the Federal bank supervisory agencies.

**C. Disclosure of CMIRs by CBP and ICE**

Subject to the following conditions, and to the extent that CBP and ICE are jointly or independently responsible for enforcing the CMIR requirement and for maintaining the form used to comply with that requirement, CBP and ICE have concurrent authority to re-disseminate a CMIR (including any information in a CMIR that might reveal its existence).

**Conditions**

- CBP and ICE shall keep a record of each disclosure made. The record shall include the name of the receiving agency, the date received, and the purpose underlying each disclosure. CBP and ICE shall furnish such records to FinCEN upon request, in the form requested.
- CBP and ICE shall ensure that each CMIR report or item of CMIR information shared contains the warning statement set forth in Appendix II to these guidelines pertaining to the use and further dissemination of BSA reports or information.

In addition, these guidelines do not apply to the initial dissemination of BSA information through the Treasury Enforcement Communications System (TECS).

**VI. All Other Disseminations of BSA Information**

Except as provided in sections IV and V of these guidelines, a Federal, State, or local government agency may not re-disseminate BSA information to another government agency or to any other person without first obtaining the approval of FinCEN. To obtain the approval of FinCEN, an agency must do the following:

- A Federal, State, or local government agency shall submit a written request (by regular mail, facsimile, or electronic mail) to FinCEN. The request must clearly describe the kinds of BSA information sought to be disclosed, the identity of the agency or person to receive such information, and the purpose for the dissemination.

**Exhibit 4.26.14-3 (Cont. 6) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

The request also must provide a point-of-contact at the agency seeking to disseminate BSA information, in the event FinCEN has questions about the request.

- Written requests may be sent to FinCEN through the following methods:

Regular Mail

Office of Liaison Services --Dissemination  
FinCEN  
P.O. Box 39  
Vienna, VA 22183

Facsimile

Office of Liaison Services --Dissemination  
FinCEN  
(703) 905-3755

E-mail

BSADissemination@fincen.gov

- In extremely rare cases involving the need to obtain expedited approval, FinCEN will consider oral requests for dissemination. Such requests must be made by calling FinCEN at (866) 272-1310, option 2. The requestor should be prepared to explain fully the emergency nature of the request, and the reasons why submitting a written request would be impractical.

A Federal, State or local government agency in possession of BSA information that receives requests for such information in third-party litigation, through the process described in their *Touhy* regulations, or otherwise, should contact FinCEN's Office of Chief Counsel at (703) 9053590 before acting on the request. In the case of a SAR filed by a bank, the agency receiving the request also should contact the filing bank's primary federal regulator.

## VII. Miscellaneous Provisions

### A. Unauthorized Disclosure

A government official may disclose a SAR to the subject of the report only when "necessary to fulfill the official duties of such officer or employee." 31 U.S.C. 5318(g)(2). The unauthorized disclosure of a SAR, or any other BSA report, will be referred to the appropriate officials for inquiry and disposition.

**Exhibit 4.26.14-3 (Cont. 7) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information****B. Third Parties**

This document confers no rights on and provides no defense to any person, including criminal defendants, in litigation or in other proceedings with the United States.

**C. Interpretation**

Final authority governing interpretation of these guidelines or the dissemination of a BSA report or BSA information rests with FinCEN.

**D. Questions**

Any questions concerning these guidelines should be directed to FinCEN's Office of Chief Counsel at (703) 905-3590.

**Exhibit 4.26.14-3 (Cont. 8) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

## APPENDIX I

SAMPLE ACKNOWLEDGMENT FORM TO BE USED BY A FEDERAL, STATE,  
OR LOCAL AGENCY FOR DISCLOSURE OF BSA REPORT INFORMATION TO  
OTHER AGENCIES

I understand that any Bank Secrecy Act report information provided to me by the [insert name of disclosing agency here] is being made available to me to support a financial institution examination, law enforcement investigation or prosecution, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. I agree not to use this information for other purposes, nor to disclose this information outside of my agency without prior approval from the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury. FinCEN may be contacted at (703) 905-3528.

Signature and Title of Receiving  
Official

Name of Receiving Agency

Signature and Title of Disclosing  
Official

Name of Disclosing Agency

**Exhibit 4.26.14-3 (Cont. 9) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

## APPENDIX II

WARNING STATEMENT TO BE AFFIXED TO BSA REPORT  
INFORMATION DISCLOSED TO OTHER AGENCIES

The enclosed information was collected and disseminated under provisions of the Bank Secrecy Act (the BSA) and U.S. Department of the Treasury regulations implementing the BSA. See 31 U.S.C. 5311, et seq.; 31 CFR Part 103. The information is sensitive in nature and is to be treated accordingly. The information may be used only for a purpose related to a criminal, tax, or regulatory investigation or proceeding, or in the conduct of intelligence or counterintelligence activities to protect against international terrorism. See 31 U.S.C. 5311. The information cannot be further released, disseminated, disclosed, or transmitted without prior approval of the Director of the Financial Crimes Enforcement Network or his authorized delegate. Suspicious activity reports filed under the BSA must be treated with particular care given that they contain unsubstantiated allegations of possible criminal activity, akin to confidential informant tips. Such reports, or the fact they have been filed, may not be disclosed by a government employee to any person involved in the transaction, "other than as necessary to fulfill the official duties of such officer or employee." 31 U.S.C. 5318 (g)(2)(ii). Unauthorized release of information collected under the BSA may result in criminal or civil sanctions.

**Exhibit 4.26.14-3 (Cont. 10) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

## APPENDIX III

## SAR DISCLOSURE GUIDANCE

. Disclosure of a SAR should be distinguished from disclosure of the records constituting the transactions discussed in a SAR, such as a wire transfer record, which can be treated  
Disclosure of a SAR should be distinguished from disclosure of the records constituting the transactions discussed in a SAR, such as a wire transfer record, which can be treated

*Suspicious Activity Reports (SARs) provide valuable information that can accelerate the investigation and development of cases for prosecution and provide significant leads for investigations and intelligence. The routine or unnecessary disclosure of SARs or even of their existence undermines the confidentiality surrounding their filing.*

Certain financial institutions operating in the United States are required to file reports of known or suspected criminal conduct that takes place at or was perpetrated against the financial institutions. These reports, known as Suspicious Activity Reports<sup>3</sup> or SARs, are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the United States Department of the Treasury. SARs are made available to the law enforcement community for use in investigations, prosecutions and related law enforcement activities.

The SAR system was designed to assist the law enforcement community by requiring financial institutions to report transactions that are indicative of possible criminal activity. The required threshold for filing is easily triggered, simply by suspicion, not proof, of criminal activity. The information contained in SARs constitutes raw allegations of the most sensitive kind, precisely because the reported suspicions are unsubstantiated and unproved.

Because financial institutions file SARs with the expectation that they will be accorded sensitive treatment, unnecessary disclosure of SARs could frustrate that expectation and have a chilling effect on both the quantity and the quality of future SAR filings. Moreover, SARs may contain information concerning the methods by which an institution learned of or uncovered suspicious activity, possibly allowing other potential wrongdoers to take action to avoid those methods of detection. Law enforcement agencies and prosecutors should consider SARs similar to confidential source information that, when further investigated, may produce evidence of criminal activity.

Consistent with the treatment accorded confidential source information, the existence of SARs relating to conduct being investigated, as well as the content of SARs, should not normally be disclosed to persons outside the law enforcement community.

<sup>3</sup> SARs are filed under the authority of the Bank Secrecy Act, 31 U.S.C. 5311 et seq., and, in the case of banks, under federal bank supervisory agency general rule-making authority contained in Title 12 of the United States Code. SAR filers include banks, money services businesses, broker-dealers, and casinos. The Bank Secrecy Act also requires filing of currency transaction reports (CTRs), currency and monetary instruments reports (CMIRs), and foreign bank account reports (FBARs).



**Exhibit 4.26.14-3 (Cont. 11) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

Disclosure of a SAR should be distinguished from disclosure of the records constituting the transactions discussed in a SAR, such as a wire transfer record, which can be treated as an ordinary piece of evidence. Because the underlying documents prove the transaction, and the SAR does not, it should rarely be necessary to use a SAR in the prosecution's case.

*Special Note --Disclosure of SARs and SAR Information to Subjects*

*Given the nature of the information contained in SARs and the purposes for which such information is collected, there are strict statutory restrictions governing disclosures of SARs, or the fact that SARs have been filed<sup>4</sup> when these disclosures are made to persons involved in the reported transactions. These provisions recognize that there will be instances in which the disclosure of SARs or their contents is unavoidable due to constitutional or statutory discovery obligations placed on prosecutors. Under 31 U.S. C. 5318(g)(2), no government official may disclose a SAR to a person involved in the transaction" other than as necessary to fulfill the official duties of such officer or employee." For example, it may be necessary for a prosecutor to disclose a SAR in situations in which the SAR:*

- contains exculpatory or potential impeachment information that a prosecutor is constitutionally obligated to disclose; or*
- is a document or contains information required to be disclosed under Fed. R. Crim. P. 16 or the Jencks Act, 18 U.S. C. 3500.*

<sup>4</sup> As amended by the USA PATRIOT ACT (Pub. L. 107-56), 31U.S.c. 5318(g) states in relevant part:

(2) NOTIFICATION PROHIBITED -

(A) IN GENERAL -If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency

(i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

**Exhibit 4.26.14-3 (Cont. 12) (07-24-2012)****Re-Dissemination Guidelines for Bank Secrecy Act Information**

In these and other instances in which a prosecutor believes that disclosure of a SAR to the defense may be compelled by constitutional, statutory or regulatory authority, the prosecutor should consult with supervisory personnel in the office to consider whether the SAR or the material included within the report must be disclosed to the defense, or whether it may be withheld, redacted, limited by protective order or otherwise protected from disclosure. Attorneys in the Criminal Division's Fraud Section, John Arterberry, Barry Goldman and Jack Patrick (202-514-0890), and Asset Forfeiture and Money Laundering Section, Lester Joseph (202-616-0593), are available for consultation on SAR disclosure issues. Because disclosure of a SAR may affect other investigations or cases and because FinCEN is charged with responsibility for enforcing the SAR laws and regulations, FinCEN's Office of Chief Counsel, 703-905-3590, should be given notice if an office decides to disclose a SAR.