



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.1.12

JUNE 11, 2021

EFFECTIVE DATE

(06-11-2021)

PURPOSE

- (1) This transmits revised IRM 25.1.12, Fraud Handbook, Bank Secrecy Act (BSA) Willfulness Referral Procedures.

MATERIAL CHANGES

- (1) IRM 25.1.12.1- Internal control information has been added. Subsections added under Program Scope and Objectives include Background; Authority; Roles; Program Management and Review; Program Controls; Acronyms; Terms; and Related Resources. Also rearranged existing IRM content to place information involving internal controls under this subsection.
- (2) IRM 25.1.12.1(1) - The mission statement of the Office of Fraud Enforcement (OFE) was added.
- (3) IRM 25.1.12.1(5) - Clarified the program owner.
- (4) IRM 25.1.12.3(2) - Information was added to clarify that the Director, OFE, is the executive responsible for providing fraud policy and guidance for civil compliance employees and ensuring consistent application of policies and procedures in this IRM.
- (5) IRM 25.1.12.3(3) - Information added that the Fraud Enforcement Advisor (FEA) serves as a resource and liaison to compliance employees in all operating divisions. The Taxpayer Bill of Rights (TBOR) information was moved to IRM 25.1.12.7(1).
- (6) IRM 25.1.12.1.4(3) - This section was added to Program Management and Review.
- (7) IRM 25.1.12.1.4(4) - Section was added to clarify the OFE Policy staff can create reports by area, territory or group and create ad-hoc reports for OFE customers.
- (8) IRM 25.1.12.1.5(3) - Guidance added that FEA managers can utilize reports generated from the Fraud Information Tracking System (FITS) to monitor and track FEA inventory assignment.
- (9) IRM 25.1.12.1.6 - Additional acronyms were added.
- (10) IRM 25.1.12.7 - Related Resources subsection added under Program Scope and Objectives. Also rearranged existing IRM content to place information involving internal controls under this subsection.
- (11) IRM 25.1.12.2(1) - The BSA examiner will now contact the fraud enforcement advisor by submitting a consultation request through the Specialist Referral System (SRS). The web address of the SRS was added.
- (12) IRM 25.1.12.2(7) - Details were added to clarify the process for civil enforcement referrals on Form 5104.
- (13) IRM 25.1.12.3(1)(c) - Sentence was added to clarify the BSA group manager moves the case to status 17 on the BSA database after the FEA signs Form 13639.
- (14) IRM 25.1.12.3(2) - Section was added to provide guidance on how to complete Form 13639 and to indicate if firm indicators of willfulness is present and a criminal referral completed.
- (15) IRM 25.1.12.3(2)(b) - Added information on actions of the FEA.

- (16) IRM 25.1.12.3(2)(c) - Sentence was added to clarify that the FEA will provide a detailed narrative of the firm indications of willfulness or why a criminal referral is not appropriate.
- (17) IRM 25.1.12.4(3)(a) - Emphasis was added to include that the examiner must not request returns prior to consulting with the BSA group manager and FEA.
- (18) IRM 25.1.12.5(d) - Deleted the sentence that the compliance group manager will record the suspense on the BSA database.
- (19) IRM 25.1.12.9 - The title for this section has changed to BSA Leads to CI - Prime Lead Memo. The changes to the Prime Lead Memorandum to CI process are detailed in this section.
- (20) IRM 25.1.12.9 - Prime Lead Memo procedures were changed to incorporate Interim Guidance Memo SBSE-04-0719-0025 dated July 26, 2019.
- (21) IRM 25.1.12.9(2)(e) - A scenario was added that should be considered for a BSA Prime Lead Memorandum.
- (22) IRM 25.1.12.9(8) - CI source code selected will be "SB/SE BSA Prime Lead" in CIMIS, if CI initiates a criminal investigation from any information in the Prime Lead Memo (PLM). Any spin-off investigations are to be coded similarly.
- (23) IRM 25.1.12.10(3) - Additional supporting evidence of customer cards, sales orders, identifications, were added.
- (24) IRM 25.1.12.10(4) - Form 5346, will be forwarded, along with the scanned supporting documents, to the BSA group manager for approval.
- (25) IRM 25.1.12.10(5) - The BSA group manager will email the forms for consideration of a income or employment tax exam to the BSA coordinator at a new address.
- (26) Exhibit 25.1.12-2 - This exhibit was deleted. The Form 15221 is a published document and is available on the IRS Catalog.
- (27) Editorial changes were made throughout the IRM; website links and program names were updated. All references to Fraud Technical Advisor (FTA) were replaced with Fraud Enforcement Advisor (FEA).

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 25.1.12 dated July 28, 2017. This IRM incorporates applicable content from Interim Guidance Memorandum (IGM) SBSE-25-1120-0094, FinCEN Query Access, dated November 5, 2020, and IGM SBSE-04-0720-0061, Interim Guidance for the Prime Lead Memorandum (Form 15221), dated July 24, 2020.

AUDIENCE

Criminal Investigation (CI) and Small Business/Self-Employed (SB/SE) - BSA and Fraud

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25.1.12

Bank Secrecy Act (BSA) Willfulness Referral Procedures

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25.1.12.1
(06-11-2021)
Program Scope and Objectives

- (1) The mission of the Office of Fraud Enforcement (OFE) is to promote compliance by strengthening the IRS' response to fraud and by mitigating emerging threats. This includes:
 - Improving fraud detection and development to address areas of high fraud/risk noncompliance.
 - Cultivating internal and external partnerships to identify new treatment streams to enhance enforcement.
 - Pursuing civil fraud penalties and recommending criminal cases that will lead to prosecutions, where appropriate.
- (2) **Purpose:** This section of the Fraud Handbook provides guidance and procedures for Bank Secrecy Act (BSA) Title 31 cases, Form 8300, (Report of Cash Payments Over \$10,000 Received in a Trade or Business), and addressing Reports of Foreign Bank and Financial Accounts (FBAR) violations.
- (3) **Audience:** BSA compliance employees, Small Business/Self-Employed (SB/SE) compliance employees, Office of Fraud Enforcement employees and Criminal Investigation (CI) employees.
- (4) **Policy Owner:** Director, Office of Fraud Enforcement, SB/SE.
- (5) **Program Owner:** Office of Fraud Enforcement, Policy, SB/SE.
- (6) **Primary Stakeholders:** Criminal Investigation and SB/SE.

25.1.12.1.1
(06-11-2021)
Background

- (1) BSA civil enforcement Title 31 cases are referred to the Financial Crimes Enforcement Network (FinCEN) via Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, for consideration of appropriate enforcement action.
- (2) Form 8300 and FBAR civil penalties are assessed by IRS under a Title 26 penalty examination.
- (3) Form 2797, Referral Report of Potential Criminal Fraud Cases, is used to refer a BSA Title 31 case, Form 8300 and FBAR criminal violations to CI for consideration.
- (4) Revenue agent FEAs will assist in the development of indicators of willfulness or intent, the determination of affirmative acts of willfulness or intent, and the preparation of Form 2797 (if needed). Also, the FEAs may assist BSA in the development of Form 5104, Report of Apparent Violation of Financial Recordkeeping and Reporting Regulations, for a civil enforcement referral to FinCEN.

25.1.12.1.2
(06-11-2021)
Authority

- (1) The Memorandum of Understanding and Delegation of Authority to Examine Non-Financial Trades and Businesses, dated April 10, 2015, delegates examination authority under Title 31 for Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, from FinCEN to the IRS.
- (2) 31 USC 5318(a), General Powers of Secretary, provides the Secretary of the Treasury with authority to administer provisions of the BSA.

- (3) 31 CFR 1010.810(b)(8), Enforcement, gives the Commissioner, IRS, the delegated authority to examine certain financial institutions to determine compliance with BSA requirements.
- (4) A Memorandum of Agreement dated April 8, 2003 delegates examination and penalty authority for Foreign Bank Account Reports (FBARs) from the Financial Crimes Enforcement Network (FinCEN) to the IRS.
- (5) Related authority: IRC 7601, Canvass of districts for taxable persons and objects, authorizes the Secretary of the Treasury to inquire into taxpayers' tax liability. IRC 7602, Examination of books and witnesses, authorizes the Secretary to examine books and witnesses for specific purposes including determining and collecting federal tax liabilities.
- (6) By law, the IRS has the authority to conduct examinations under Title 26, Internal Revenue Code Subtitle F – Procedure and Administration, Chapter 78, Discovery of Liability and Enforcement of Title, Subchapter A, Examination and Inspection.
- (7) IRC § 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights.
- (8) IRC § 6330, Notice and opportunity for a hearing before levy.
- (9) IRC § 7602, Examination of books and witnesses.

25.1.12.1.3
(06-11-2021)
Roles

- (1) BSA examiners are responsible for identifying indications and/or affirmative acts of intentional or willful BSA Title 31, Form 8300, or FBAR violations and discussing such with his/her group manager.
- (2) The Director, Office of Fraud Enforcement, is the executive responsible for providing fraud policy and guidance for civil compliance employees and ensuring consistent application of policies and procedures in this IRM.
- (3) The Fraud Enforcement Advisor (FEA) serves as a resource and liaison to compliance employees in all operating divisions. The FEA is available to assist in fraud investigations and offer advice on matters concerning tax fraud.

25.1.12.1.4
(06-11-2021)
Program Management and Review

- (1) **Program Reports:** On a monthly basis, an Office of Fraud Enforcement analyst will generate and distribute to appropriate BSA management the BSA fraud program results from data extracted from the Fraud Information Tracking System (FITS).
- (2) **Program Effectiveness:** Program goals are measured by the type of cases placed into fraud development, civil penalties assessed, type of cases referred to CI, type of cases accepted by CI and type of cases declined by CI.
- (3) Operational reviews of the FEA group managers are completed by the OFE program manager twice a year. These reviews measure program consistency, effectiveness in case actions, and compliance with fraud policy and procedures.
- (4) OFE Policy staff can create reports by area, territory or group. Ad-hoc reports are produced as requested by OFE customers.

25.1.12.1.5
(06-11-2021)

Program Controls

- (1) FEAs are required to follow-up with BSA examiners on cases placed into fraud development every 60 calendar days.
- (2) FEAs are required to monitor accepted criminal referrals each quarter to ensure that CI and compliance are holding productive quarterly meetings as required under IRM 25.1.4.4.3, Required Communications.
- (3) FEA managers utilize reports generated from the FITS to monitor and track FEA inventory assignments.

25.1.12.1.6
(06-11-2021)

Acronyms

- (1) The table lists commonly used acronyms and their definitions.

Acronym	Definition
BSA	Bank Secrecy Act
CI	Criminal Investigation
CTR	Currency Transaction Report
ECC	Enterprise Computing Center
ECS	Exam Case Selection
FBAR	Report of Foreign Bank and Financial Accounts
FCQ	FinCEN Query
FDS	fraud data specialist
FEA	fraud enforcement advisor
FinCEN	Financial Crimes Enforcement Network
FIRM	Fraudulent Intent Referral Memorandum
FITS	Fraud Information Tracking System
IDRS	Information Data Retrieval System
IRC	Internal Revenue Code
OFE	Office of Fraud Enforcement
PLM	Prime Lead Memorandum
SAC	Special Agent in Charge
SAR	Suspicious Activity Report
SRS	Specialist Referral System
TBOR	Taxpayer Bill of Rights

25.1.12.1.7
(06-11-2021)

Related Resources

- (1) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see: <https://www.irs.gov/taxpayer-bill-of-rights>.
- (2) IRM 4.26.7.5, Criminal Penalties for Violation of Bank Secrecy Act.
- (3) IRM 4.26.7.1.1, Penalty Authority, for BSA penalty authority.

25.1.12.2
(06-11-2021)

General Procedures for Referral of Violations

- (1) If indications and/or affirmative acts of intentional or willful BSA Title 31, Form 8300, or FBAR violations are discovered, the examiner will discuss the potential violations with the compliance group manager. The examiner, with the approval of the compliance group manager, will contact the fraud enforcement advisor (FEA) for guidance by submitting a request through the Specialist Referral System (SRS). For subsequent case meetings with the FEA, the examiner will not need to submit a request using the SRS, as long as the same case is being discussed. If the examiner is considering only a civil referral to FinCEN, the involvement of the FEA is at the discretion of the examiner and compliance group manager. The web address of the SRS is: <https://srs.web.irs.gov/default.aspx>.
- (2) BSA examiners should talk to their manager when they encounter any of the following common indicators of fraud specific to BSA examinations: (These are not all inclusive.)
 - a. A money service business had violations during a previous visit and now has current violations;
 - b. A money service business files most CTRs but does not file on certain customers;
 - c. A money service business does not file any required forms, but admits they know the requirements to file;
 - d. A money service business has unusual patterns of incoming or outgoing funds for itself or a customer;
 - e. A money service business files incomplete and/or false CTRs or other required documentation, and
 - f. The cash flow analysis does not reconcile, and the owner has no explanation.
- (3) It is important to remember that these are potential indicators of intent and will not automatically lead to fraud.
- (4) The FEA will assist by recommending an action plan and provide suggestions for interviews which will further develop the case to determine if there are firm indications of fraud.
- (5) If the decision to involve the FEA is made, the examiner will complete Form 13639, Fraudulent Intent Referral Memorandum (FIRM). Form 13639 documents the involvement of the FEA, the plan for developing the case with respect to the willfulness issue, and the referral recommendations of the FEA.
- (6) The examiner documents indications and/or affirmative acts of willfulness in item 4 of Form 13639. The FEA documents the referral recommendations by checking one of the boxes in item 7 of Form 13639 and lists the reason(s) for recommendations made in the Explanation section of the Form 13639.

- (7) Civil enforcement referrals on Form 5104 are reviewed by the BSA Group Manager and if approved are submitted to the Territory Manager (TM). See IRM 4.26.8.5.4 for detailed instructions on how to prepare Form 5104.

25.1.12.3
(06-11-2021)
**Development of
Willfulness**

- (1) If further examination is warranted to determine if a violation was willful:
- The FEA will prepare a plan of action in the Explanation section of Form 13639 and return a copy of Form 13639 to the examiner through the BSA group manager.
- Note:** The Form 13639 must be sent via secured email because of the personally identifiable information (taxpayer information) being sent.
- The examiner and the FEA will collaborate to carry out the examination plan of action.
 - The BSA group manager will move the case to status 17 on the BSA database by entering the date Form 13639 was signed by the FEA.
 - If affirmative acts (firm indications) of willfulness are discovered after further examination, the examiner will immediately contact the FEA for guidance. Under no circumstances should the examiner contact CI.
- (2) Upon completing the plan of action for further examination to determine whether a violation was willful, the examiner, BSA group manager and FEA will discuss the results and reach a decision regarding a criminal referral.
- The FEA will memorialize that decision on the Form 13639.
 - The FEA will indicate in item 7 of Form 13639 (original or follow-up) the final referral recommendation; either firm indications of willfulness and criminal criteria are present and preparation of Form 2797 is recommended; or criminal investigation is not appropriate.
 - The FEA will provide, in the Explanation section, a detailed narrative of the firm indications of willfulness if a criminal referral is recommended, or the reason(s) why a criminal referral is not appropriate.
- (3) If further development is **not** warranted to determine whether a violation was willful, the FEA will indicate so in item 7a of Form 13639.
- The FEA will provide a written explanation of the reason(s) why and include any recommendations with respect to civil penalties in the Explanation section of the form.
 - The FEA notifies the examiner and BSA group manager by electronically forwarding Form 13639 via secure email.
 - When notification is received, the examiner should then consider a Prime Lead Memo to CI, see IRM 25.1.12.9 or a Lead to Exam, Form 5346, Examination Information Report, see IRM 25.1.12.10, when appropriate and then may proceed with the routine case procedures.
- (4) The FEA will assist the examiner in considering if a Prime Lead Memo to CI or a Form 5346 to Exam is warranted, and if appropriate, will assist with the preparation of such.

25.1.12.4
(06-11-2021)

**Referral
Recommendations -
Criminal Referral is Not
Recommended**

- (1) BSA Title 31 Case Procedures:
 - a. If the examiner has uncovered the fact that a BSA form has not been filed as required, the examiner should request that the person electronically file the delinquent or amended BSA form with FinCEN and provide the examiner a copy of the electronic filing verification generated by the FinCEN BSA E-filing System. The filing can also be verified within 48 hours of filing on the FinCEN Portal.
- (2) FBAR Procedures:
 - a. If the examiner has uncovered the fact that an FBAR form has not been filed as required, the examiner should request that the person electronically file the delinquent or amended FBAR with FinCEN and provide the examiner with a copy of the electronic filing verification generated by the FinCEN BSA E-filing System. The filing can also be verified within 48 hours of filing on the FinCEN Portal.
 - b. If civil penalties are considered, see IRM 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR), and IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.
- (3) Form 8300 Procedures:
 - a. With BSA group manager concurrence, the examiner should secure delinquent Form 8300 returns. However, if the examiner is considering whether the violation was due to intentional disregard or is considering referring the case to CI, delinquent Form 8300 returns **must** not be requested before consulting with the BSA group manager and FEA. (see IRM 4.26.11.9.8.3, Delinquent Form 8300 Procedures).
 - b. If civil penalties are considered, see IRM 20.1.7, Penalty Handbook, Information Return Penalties, IRM 4.26.7.3, Civil Penalties, IRM 4.26.11.10.3.1, Penalties Asserted on IRC Section 6050I Violations, and IRM 4.26.11.10.3.1, Penalty Case File.
- (4) See IRM 25.1.12.9, BSA Leads to CI, for procedures to follow when evidence of the violations does not meet the criminal/local criteria requirements for a referral by the examiner to CI.

25.1.12.5
(06-11-2021)

**Referral
Recommendations -
Criminal Referral is
Recommended**

- (1) If firm indications of willful BSA, FBAR, or Form 8300 violations exist and criminal criteria (criteria used by CI for case acceptance) are met:
 - a. The FEA will:
 - i. Recommend preparation of Form 2797 by the examiner by annotating item 7 of Form 13639;
 - ii. Upon receipt of Form 2797, signed by the BSA group manager, indicate in the Explanation section of Form 13639 the firm indications of willfulness that exist and that criminal criteria is met; and
 - iii. Return a copy of Form 13639, via secure email, to the examiner through the BSA group manager.
 - b. The examiner will suspend all civil examination activity and retain the civil file for subsequent action, upon notice from the FEA.

- c. The sole responsibility for protecting the statute rests with the examiner and BSA group manager. A meeting of the examiner, BSA group manager and CI will be held to determine whether the statute of limitations should be allowed to expire.

- (2) See IRM 4.26.17.5.3, FBAR Title 31 Criminal Referrals, for additional procedures pertaining to FBAR cases.

25.1.12.6
(06-11-2021)
**Preparation and
Processing of Form
2797**

- (1) The following procedures apply only to Title 31 cases. See IRM 4.26.8.6.4, Preparing and Processing Form 2797, for additional guidance when preparing Form 2797 for a BSA violation. Most Form 8300 examinations are conducted under Title 26. See IRM 4.26.11, BSA Examiner Responsibilities for Form 8300/6050I Examinations, for additional guidance. The preparation and processing of Form 2797 for Title 26 examinations is prescribed in IRM 25.1.3.3, Preparation of Form 2797.
- (2) The examiner is required to use the current version of Form 2797 located on the IRS Catalog. The web address of the IRS Catalog is <http://publish.no.irs.gov/catlg.html>
- (3) When preparing Form 2797 for a BSA violation, the examiner will follow the general instructions associated with the form (Page 4) and the following specific instructions:
 - Name and Address of Filer, TIN, and Personal Data (Item 1, Page 1) - Information must come from a Title 31 source (compliance examination, FinCEN Query (FCQ), etc.). Internal IRS data sources, such as Information Data Retrieval System (IDRS), must not be used to ascertain this information, **unless** a related statute determination was made. For BSA forms, see IRM 4.26.14.2.3, Related Statute Determination Factors.

Note: “Filer” refers to the person required to file a report regardless of whether the report was filed.

- Basis for the Suspected Fraud (Item 2, Page 1) - Checkbox 2i, *Other* should be marked and the text box used to identify the Title 31 issue (for example, structuring, FBAR or Currency Transaction Report (CTR) reporting violation). Checkboxes 2j and 2k may also apply. Checkboxes 2a through 2h, do **not** pertain to Title 31.
- Administrative Information - (Items 4 -- 6, Page 2):

Item 4b - CI Source Code selected will be “SB/SE-Other BSA”.

Item 6 - Source of Initiator. Enter the 12-digit AIMS Assignee Code. The Codes are located on the SB/SE - AIMS website under PBC 217 for BSA. A link to the site can also be found in the Form 2797 instructions for Item 6. Also, enter the Area (always “BSA”), Territory name (for example: “Central”), and group number in the boxes provided.

- Description of Affirmative Acts (Narrative, Page 3) - Description should not include any Title 26 related information, including assumptions, **unless** a related statute determination was made.
- Describe Summonses Served (if any) - Title 26 summonses must **not** be mentioned, **unless** a related statute determination was made.

- List all Investigative Sources Checked (IDRS, FCQ, Credit Bureau, Accurint, Public Records, etc.) - IDRS must not be accessed or mentioned, and information from the other sources (FCQ, Credit Bureau, etc.) should not be listed in this section if that information is taken from a Title 26 case file, **except when** a related statute determination was made.
 - Defense Given by Filer or Representative - Explanation provided only with respect to the Title 31 examination.
 - Comment on prior/subsequent year returns, if this is a single year referral - Comment should be **limited to Title 31 Reports**.
 - Description of Records - **Limit description** to records identifying only Title 31 transactions (for example, cash receipts/cash disbursements journal, cashed checks), **unless** a related statute determination was made.
 - Describe Basis or Method Used for the Computation of the Fraud Adjustments - Description should be **limited** to the Title 31 penalty adjustments.
 - Non-Taxable Sources of Income and Cash on Hand - Include **only if** relevant to the Title 31 penalty adjustments. Do **not** include any information taken from a Title 26 case file, **unless** a related statute determination was made.
- (4) See IRM 25.1.3.3, Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases, for detailed instructions concerning the processing of Form 2797.

25.1.12.7
(06-11-2021)

**Joint Title 26 - Title 31
Criminal Referral
Disclosure Concern**

- (1) The procedures prescribed below do not apply to Form 8300 examinations conducted under Title 26.
- (2) A memorandum of understanding (MOU) between IRS and FinCEN provides:
- “Matters Referred to IRS CI – If a matter involving a BSA violation is to be referred to CI, **the IRS will provide FinCEN with a copy of the portion of the referral package to CI that is related to BSA violations or deficiencies** at the same time the IRS provides the referral package to CI. Until CI either rejects the referral or clears the BSA matter for civil enforcement consideration, FinCEN agrees not to share the referral package and the information contained therein with a third party or to otherwise take any action with respect to such information without first obtaining written approval from CI.”

In order to meet this requirement, the Office of Fraud Enforcement (OFE) SB/SE BSA Liaison will electronically transmit via Secure Messaging, a copy of the Form 2797 to the BSA senior program analyst having the responsibility for reviewing the Form 2797 for potential disclosure violations. The BSA program analyst will ensure the Form 2797 does not contain any “tax return information” prior to forwarding to FinCEN.

- (3) **If return information is included in the referral**, access to and use of IRC 6103 protected information, such as IDRS data, for non-tax purposes is prohibited. Its use may constitute a violation of IRC 7213 and/or IRC 7213A (unauthorized disclosure and/or unauthorized access). See IRM 4.26.14, Disclosure, for further information on disclosure restrictions and BSA, except when a related statute determination has been made. Information obtained from Title 26 examinations cannot be included in Title 31 criminal referrals (Form 2797), if a related statute determination has **not** been made. A disclosure violation

may also occur **even when a related statute determination has been made**, if the person to whom the disclosure is made does not have a “need to know” the tax information included in the referral. Thus, Title 31 criminal referrals will not include Title 26 return information except when a related statute determination is made. A copy of the related statute determination memorandum must be attached to the Form 2797.

25.1.12.8
(06-11-2021)
Parallel Civil and Criminal Leads

- (1) Prior to the disposition conference, it may be helpful for the BSA group manager to contact the SB/SE BSA Liaison (hereafter referred to as BSA Liaison) and/or the CI FinCEN liaison for assistance in determining whether parallel civil and criminal action may be appropriate.
- (2) During the disposition conference, if the case is accepted for criminal investigation, CI, the FEA and BSA participants should discuss the possibility of parallel civil and criminal actions. See Policy Statement 4-26 (formerly P-4-84), *Criminal and Civil Aspects in Enforcement*, under IRM 1.2.1.5.11. A civil penalty may be imposed, notwithstanding the fact that a criminal penalty is imposed with respect to the same violation. Parallel referrals may be desirable when protecting the statute of limitations or for other reasons.
- (3) If a case warrants parallel civil and criminal actions, it should be noted on the Form 5104 referral. Once a related statute determination has been made, the entire case becomes a Title 26 case, thereby allowing return information to be used.
- (4) Before the civil referral is considered by FinCEN, the CI FinCEN liaison will review the referral for compatibility with CI's needs. FinCEN will **not** receive the referral for civil enforcement action until this review is completed.

25.1.12.9
(06-11-2021)
BSA Leads to CI - Prime Lead Memo

- (1) When the BSA examiner identifies indicators of fraud during an examination a discussion must be held with their manager. If the BSA manager concurs, the FEA will be contacted by submitting a request through the Specialist Referral System (SRS). The FEA, the BSA examiner and the BSA manager will meet to discuss the case. The FEA determines if the evidence supports local criminal criteria requirements. If criminal criteria is not met but BSA and the FEA believe the information should be shared with CI, the following actions will be taken:
 1. BSA examiner will complete Form 13639, Fraudulent Intent Referral Memorandum (FIRM) and secure email to the BSA manager for approval.
 2. BSA manager will review and approve Form 13639 and update the case to status 17 in the Title 31 database.
 3. BSA examiner will complete Form 15221, Bank Secrecy Act Prime Lead Memorandum (PLM) with the assistance of the FEA.
 4. BSA examiner will secure email the completed PLM to the BSA manager for approval along with the previously approved Form 13639.
 5. BSA manager will review, sign and secure email the PLM and previously approved Form 13639 to the FEA for signature.
 6. FEA reviews for accuracy and quality and secure emails the PLM and Form 13639 to the FEA manager.
 7. FEA manager will review, approve and secure email the PLM to the Special Agent in Charge at the appropriate field office and secure email the PLM to the Office of Fraud Enforcement's fraud data specialist (FDS).

8. FDS will record the PLM and number of individuals/entities included with the PLM on a spreadsheet within the OFE.

Note: See Form 15221, Bank Secrecy Act Prime Lead (BSA) - Prime Lead Memorandum.

- (2) A BSA Prime Lead Memorandum should be considered, but not limited to, the following scenarios:
 - a. When there are potential indications of money laundering, but it cannot be tied to an illegal act;
 - b. When transactions may indicate terrorist financing activities based on amounts, individuals, and countries involved;
 - c. When the BSA examiner identifies customer transactions that are suspicious, but cannot be fully developed through the BSA examination;
 - d. When a return preparer is identified cashing client refund checks; or
 - e. When indicators of fraud do not meet the Law Enforcement Manual criteria or local prosecutorial priorities.
- (3) Form 15221, Bank Secrecy Act Prime Lead Memorandum, provides a brief synopsis of activity occurring, as well as areas of noncompliance, is completed by the BSA examiner with the assistance of the FEA. All the necessary information should be attached along with a copy of all supporting documentation, including electronic copies of all supporting evidence; cash checks (front and back), money orders, wire transmission receipts, a spreadsheet of wires and/or other similar records. If the documents are not available electronically or readily convertible to electronic, they should be made available once a Special Agent requests access to them from the BSA examiner.
- (4) BSA notifies CI the case will be maintained in the group for 30 days. CI has 30 days to review the PLM and supporting documents and establish a meeting with the FEA and BSA examiner to discuss the PLM and decide whether the information is viable and can be used. (CI does not have to accept or decline the PLM but can hold it for future usage as the information in the PLM is so current and it may not be usable until the following tax year.) After 30 days, the case will be closed to Enterprise Computing Center (ECC).
- (5) The CI Supervisory Special Agent can request an extension to the 30 days in writing to the BSA territory manager. Together, they will decide if an extension is warranted and if so, will determine an acceptable extension date. The FEA manager will be copied when an extension is submitted to the BSA territory manager.
- (6) If CI initiates a criminal investigation from any information in the PLM, CI will assign a source code in the Criminal Investigation Management Information System (CIMIS) of "SBSE BSA Prime Lead". Any spin-off investigations are to be coded similarly.
- (7) Quarterly, CI will provide the OFE FDS with a report regarding the number of Prime Leads. The OFE will provide a quarterly report to BSA Case Selection of received PLMs and investigations initiated from them.
- (1) Evidence of customers engaging in substantial check cashing, money order purchase/redemption, wire transmission, structuring, etc. should be captured on Form 5346, Examination Information Report.

25.1.12.10
(06-11-2021)
BSA Leads to Exam

- (2) A BSA lead to Exam should be considered, but not limited to, the following scenarios:
 - a. When the transactions indicate there could be unreported income or employment tax issues;
 - b. When cashing checks from businesses where this would not be a normal practice, such as doctors or attorneys;
 - c. When cashing checks from businesses that have high labor expenses, such as in construction or landscaping;
 - d. When there are numerous wire transfers out of the country that are below reporting requirements; or
 - e. When there are structured transactions through wires or money orders that are below reporting requirements.
- (3) It is crucial that copies of supporting evidence (cashed checks - front and back, money orders, wire transmission receipts, customer cards, sales orders, identifications, etc.) are included.
- (4) The examiner will prepare the Form 5346, retain a copy of each form for the case file, and forward via secured email the completed Form 5346 with attachments (scanned supporting documents) to the BSA group manager for approval.
- (5) Upon approval, the BSA group manager will email the forms for consideration of a income or employment tax exam to the BSA coordinator at: *sbse bsa info report/referrals@irs.gov.

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Exhibit 25.1.12-1 (12-31-2013)**IRS Standards for Title 31 Referrals to FinCEN**

To provide consistency in referrals to FinCEN, the following guidelines are provided to assist in taking appropriate actions.

For purposes of referring matters to FinCEN a "significant BSA violation or deficiency" includes:

- A systemic or pervasive BSA compliance program deficiency;
- Systemic or pervasive BSA reporting or recordkeeping violations;
- A situation where an organization fails to respond to regulatory actions concerning BSA compliance program deficiencies; or
- Systemic or pervasive recordkeeping or reporting deficiency, even when such deficiency or violation is dissimilar to those previously identified in Letter 1112 or other IRS/FinCEN correspondence.

A significant BSA violation or deficiency can also include a non-technical, one-time BSA violation, which evidences willful or reckless disregard for the requirements of the BSA; or that creates a substantial risk of money laundering or the financing of terrorism within the institution.

Conversely, technical, minor, infrequent, isolated, and non-substantive violations will generally not be referred to FinCEN.

First-time violations may be appropriate for referral depending on their nature (e.g. severity, number, and circumstance, etc.). Normally, isolated first incidences of noncompliance should not be referred. If an entity is cited subsequently for the same types of violations, the examiner should closely scrutinize the continued lack of compliance in determining whether a referral is appropriate.

Any violation committed in furtherance of a criminal activity warrants referral regardless of the number, severity, or that it was a first violation.

If during a BSA examination, it is discovered that a bank or other financial institution, not covered under IRS BSA examination authority, may have violated the BSA, a memorandum to FinCEN should be prepared outlining the circumstances. The memorandum must be routed through the territory manager and forwarded to the BSA Liaison for forwarding to FinCEN's Office of Compliance and Enforcement.

General Civil Penalty Referral Guidelines

Many BSA civil penalties require that a violation be "willful" for penalty consideration. Willfulness requires an intentional violation of a known legal duty. In many situations, there will be no direct evidence to establish willfulness; therefore, examiners will often need to establish willfulness through circumstantial evidence. An examiner should consider the following factors in determining whether willfulness is supported and whether violations should be referred formally to FinCEN:

- Pattern of reckless disregard towards, or systemic breakdown in, compliance with the anti-money laundering program requirements of the BSA;
- Evidence that the violation has, or may have, facilitated or concealed illegal activity by the institution, its employees, its customers, and/or others;
- Evidence that suggests the violation was flagrant, demonstrated bad faith, or was committed with intentional disregard for the law or the consequences to the institution;
- Frequency or reoccurrence of violations;
- Institution continues to commit violations after becoming aware of them and/or made no efforts to correct the deficiencies, which led to the violations;
- Failure to cooperate with the Service to correct the violation;
- Evidence of concealment of the violation;

Exhibit 25.1.12-1 (Cont. 1) (12-31-2013)**IRS Standards for Title 31 Referrals to FinCEN**

- Evidence that financial institution insiders were participants in the currency transaction, or that their associates, directly or indirectly, benefited as a result of the violation;
- History of prior violations and/or poor compliance;
- Previous written criticism of the institution for similar violations;
- Absence of/severe inadequacies in/or failure to adhere to the requirements of internal control policies and procedures of the compliance program;
- Issuance of a previous warning letter or other previous written notification of a violation to the financial institution;
- The practice of preparing but not filing CTRs or Suspicious Activity Reports (SARs);
- Repeated late filings of CTRs or SARs;
- Filing CTRs with incomplete or false information;
- Filing SARs with incomplete or false information;
- Failures to verify identification;
- Failure to keep records;
- False recordkeeping entries; and/or
- Officers and employees of the financial institution making false statements, refusing to cooperate, and/or withholding records from the examiner.

The above list is not all inclusive.

Examples of situations that might also warrant a referral:

- Failure to file FinCEN Form 112, Currency Transaction Report, or FinCEN Form 111 , Suspicious Activity Report;
- A significant number of reportable transactions that were not reported as a pattern or practice at a certain location, or as a pattern or practice for one or more specific customers or accounts;
- A significant number of technical violations i.e., incomplete or inaccurate FinCEN Form 103 , Currency Transaction Report by Casinos, or FinCEN Form 104, Currency Transaction Report. For example, a referral may be warranted if a sampling of CTRs filed reveals error rates that exceed a certain percentage or a systemic breakdown;
- Failure by a credit union/bank under IRS jurisdiction to maintain a centralized exempt customer list that exempts certain customer accounts from Title 31 reporting requirements;
- Inclusion of ineligible entities on the exemption list by credit union/bank under IRS jurisdiction;
- Lack of adequate internal controls or audit coverage, or inaccuracies in the financial institution's training materials regarding Title 31, in combination with violations of Title 31 reporting and record-keeping requirements; and
- Continued violation of the financial recordkeeping and reporting regulations of Title 31 despite prior notification of violations.

Systemic or Pervasive Violations Customarily Warranting Civil Referral

- Pattern of reckless disregard towards, or systemic breakdown in, compliance with the anti-money laundering program requirements of the BSA;
- Repeated failures to file required CTRs or SARs;
- Repeated failures to verify the identification of the transactor;
- Repeated filing of incomplete CTRs lacking key information;
- Flagrant indifference to or aiding in structured transactions to avoid reporting requirements by the financial institution; and/or
- Suspected money laundering activity.