



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR SMALL BUSINESS/SELF EMPLOYED (SB/SE) BANK  
SECURITY ACT (BSA) EMPLOYEES

FROM: Daniel R. Lauer, Director, Examination Headquarters  
SUBJECT: Interim Guidance for FinCEN Form 113, Title 31 Summons

Digitally signed  
by Daniel R.  
Lauer  
Date: 2024.10.18  
12:47:32 -0400

This memorandum issues guidance on revised procedures to complete a Title 31 Summons, FinCEN Form 113, until IRM 4.26.8, Special Procedures, is revised and published. Please ensure that this information is distributed to all affected employees within your organization.

**Purpose:** To update the process to review, approve, issue, and enforce a Title 31 Summons, FinCEN Form 113.

**Background/Source(s) of Authority:** The revision changes the approval process for the issuance and enforcement of a Title 31 Summons for BSA Exam employees. BSA Exam, rather than BSA Policy, will be responsible for the review and approval of Title 31 Summons prior to issuance and, when applicable, a request for enforcement.

**Effective Date:** This guidance is effective immediately and will be incorporated into IRM 4.26.8 by a date not to exceed one year from the date of this memo.

**Contact:** Acting BSA Policy Program Manager, Jesse Walker, or BSA Policy Analyst, Donna Dohrman for questions regarding this memorandum.

**Attachment 1** – Updated FinCEN Form 113, Title 31 Summons Procedures

**Distribution:** IRS.gov (<https://www.irs.gov>)

## **Attachment 1 – Updated FinCEN Form 113, Title 31 Summons Procedures**

The following changes are effective immediately for IRM 4.26.8, Special Procedures.

### **4.26.8.4**

#### **FinCEN Form 113, Title 31 Summons**

- (1) Every effort must be made to obtain needed information voluntarily from the financial institution or nonfinancial trade or business being examined. IRS examiners should determine if a summons is the appropriate course of action when requested information cannot be obtained voluntarily.
- (2) FinCEN Form 113, Bank Secrecy Act Summons, (Title 31 Summons) is the approved summons to request BSA related records.
- (3) IRS Form 2039, Summons, cannot be used in a Title 31 examination. Form 2039 is used to summon a taxpayer to appear before an officer of the IRS to produce requested records and/or to give testimony relating specifically to ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, collecting any such liability, or inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

**Exception:** IRM 4.26.17.3.4.3 (4), Summonses, allows a Title 26 summons, Form 2039, Summons, to be used to secure FBAR information if there is an approved related statute memorandum and the information requested can be used in a Title 26 examination.

- (4) A Title 31 Summons is used for civil summons purposes only. IRS Chief Criminal Investigation or a delegate can issue a Title 31 Summons for perfecting civil seizures and forfeitures related to civil enforcement of the BSA. 31 CFR 1010.912, Persons who may issue summons.
- (5) A Title 31 Summons may not be issued after an IRS related criminal referral has been made to the U.S. Attorney's office or to the Department of Justice (DOJ) Tax Division. A criminal referral in this context means an IRS initiated request, attorney for the government grand jury request, or IRS prosecution recommendation. A Title 31 Summons may be issued after declination by DOJ or final adjudication of a related Title 31 criminal investigation.

- (6) BSA employees can obtain the Title 31 Summons from the BSA Policy SharePoint (Title 31 - Summons Forms, Attachments and Guidance - All Documents (sharepoint.com)). Non-BSA Employees will need to obtain the Title 31 Summons from their local Counsel.
- (7) A Territory Manager, and any person in the chain of command above the Territory Manager, is delegated the authority to issue a summons for purposes of civil enforcement of the BSA. 31 CFR 1010.912, Persons who may issue summons, Delegation Order 25-5, Authority to Perform Certain Functions to Enforce 31 CFR 103 (Bank Secrecy Act Regulations) and 25-13, Enforcement of Report of Foreign Bank and Financial Accounts (FBAR) Requirements.
- (8) Those authorized to issue a summons are also authorized to serve a summons. Any employee of SBSE, LB&I, W&I, or TEGE may serve a summons whether issued personally or by another official. See IRM 1.2.2.15.1, Delegation Order 25-1 (Rev. 1), Summonses, Oaths, Certifications, and Related Functions.
- (9) A Title 31 Summons may be issued, to those listed below, to produce books, papers, records, and other data and to give testimony:
- a. A financial institution or a nonfinancial trade or business being examined under Title 31.
  - b. An officer or employee of a financial institution or a nonfinancial trade or business being examined under Title 31, including a former officer or employee.
  - c. Any person having possession, custody, or care of any records and reports required under the BSA (third-party summons).
- (10) Expenses paid for complying with a Title 31 Summons are limited. Persons summoned to appear shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The government is not liable for any expenses incurred regarding the production of documents. See 31 USC section 5318(c)(2) & (3). The Summons (FinCEN Form 113) includes the language of section 5318 and that information is attached to the Title 31 Summons, Part B, when served. **The summons server must explain this to the person being summoned.**
- (11) A Title 31 Summons is subject to the Right to Financial Privacy Act of 1978 (RFPA), 12 USC sections 3401–3422. 12 USC 3405, Administrative Subpoena and Summons, requires the governmental agency or department show:
- a. There is reason to believe the records sought are relevant to a legitimate law enforcement inquiry.
  - b. A copy of the summons, together with a notice, was served on the customer, or mailed to his last known address, on or before the date the summons was served on the financial institution. The notice accompanying the summons must describe the nature of the Service’s law enforcement inquiry and comply with the other content requirements set forth in 12 USC 3405(2), Administrative

subpoena and summons, concerning the procedure the customer must follow to contest the summons in court.

- c. Ten full days have expired from the date on which the customer was served in person with the copy of the summons and other notice documents, or 14 days have expired from the date the documents were mailed to the customer. In either case, the customer did not move to quash (challenge) the summons pursuant to 12 USC 3410, Customer challenges.

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

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

#### **4.26.8.4.1**

##### **Completion of Summons**

- (1) The examiner must prepare the summons by providing all information required on the form. To be enforceable, a summons must be prepared in sufficient detail to meet legal requirements. The summons shall provide:
  - a. Name, title, department or agency, address, and telephone number of the person before whom the appearance shall take place or to whom the records shall be produced.
  - b. Address, date, and time to which the person summoned must appear or where such person summoned must produce the records. The date and time must be reasonable. The address for complying with the summons must not exceed 500 miles from where the financial institution operates or conducts business in the United States. See 31 USC 5318(c)(1), Production at designated site.
  - c. The date for appearance and or production of records must be a minimum of 15 days after the service of the summons if customer notice is required prior to obtaining the records. See IRM 4.26.8.4.3.4, Date When Records Can be Obtained After Issuance of Summons.
  - d. Detailed description of the books, papers, records, or other data required to be produced.

- e. Name, title, department or agency, address, and telephone number of the person issuing the summons.
- f. Signature of the person issuing the summons. **Note:** FinCEN Counsel approved the signing of Title 31 Summons electronically.

#### 4.26.8.4.1.1

#### **Attachments to the Summons**

The Title 31 Summons package contains:

- (1) Attachment I, List of items requested – Include the following TO: [Full legal name and address as listed in Item 1 of Summons], RE: [Full legal name and address of the financial institution(s) under examination. If there is an agency relationship, include the agent license. List each location separately], and ITEMS REQUESTED [Include relevant transaction dates, account number and description of items requested.]
- (2) Attachment II, Definitions, How records are to be provided, and Statement on reimbursement of expenses. Include the following statements:
  - a. **DEFINITIONS:** The term "record" shall mean the original and any nonidentical copy of written, typed, printed, recorded, transcribed, punched, taped, filmed, or graphic matter, or sound production, however produced or reproduced, of any kind, in the possession, custody, or control of the summoned parties, regardless of where located, and includes, but is not limited to contracts, agreement, orders, diaries, correspondence, communications, memoranda, messages, reports, studies, drawings, papers, agenda, bulletins, notices, announcements, vouchers, brochures, schedules, computer printouts, statements, price lists, journals, ledgers, films, film clips, telegrams, teletypes, and magnetic or recorded tapes. In all cases where any original is not in the possession, custody or control of the summons party/parties, the term "records" shall include any copy of the original and any nonidentical copy thereof.
  - b. **IDENTIFYING AND GROUPING RECORDS:** In order to facilitate the handling of records submitted pursuant to this summons, to preserve their identity, and to ensure their accurate and expeditions return, the following procedures should be observed for all such records: The records should be numbered consecutively, be grouped according to the individual paragraph of this summons to which they are responsive, and, within each such group arranged in chronological order, if possible. Multi-paged records should remain intact.
  - c. **IMPORTANT – REIMBURSEMENT OF EXPENSES:** See 31 USC 5318(c)(2), Fees and travel expenses. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. See 31 USC 5318(c)(3), No liability for expenses. The United States shall not be liable for any expense, other than an

expense described in paragraph (2) (above), incurred in connection with the production of books, papers, records, or other data under this section.

#### **4.26.8.4.2**

##### **Review of Title 31 Summons Prior to Issuance**

- (1) The Title 31 Summons package must be reviewed prior to being issued.
- (2) All summons packages, except the FBAR, are reviewed and approved by the group manager and territory manager prior to issuance. SB/SE Division Counsel is available to review and make recommendations when requested by BSA Exam.
- (3) FBAR summonses are reviewed and approved by SB/SE Division's local Counsel prior to issuance. See IRM 4.26.17.5.2.3, Requesting BSA Summons Enforcement in FBAR Examinations.

#### **4.26.8.4.2.1**

##### **Summons Review and Issuance in BSA Cases**

- (1) The summons package plus all attachments, is emailed to their group manager who completes a cursory review. Group managers must confirm that the scope of the records being summoned is reasonable and needed to ensure compliance with the BSA.
- (2) The group manager emails the approved summons package to the territory manager.
- (3) The territory manager will review the summons package. The territory manager must confirm that the scope of the records being summoned is reasonable and needed to ensure compliance with the BSA. The territory manager signs the Title 31 Summons and routes the package to the group manager for service. The territory manager returns the summons to the group with suggestions for improvement if there are issues, such as with the scope of the records being requested.
- (4) The summons can only be served after the territory manager has signed the summons.

#### **4.26.8.4.2.2**

##### **Summons Review and Issuance in FBAR Cases**

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

#### 4.26.8.4.3

#### Service of a Summons

- (1) Service of a Title 31 Summons may be made upon any:
- a. Person, by registered mail, return receipt requested, directed to the person summoned.
  - b. Natural person by personal delivery.
  - c. Other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.
- (2) Instructions for the handling of the pages and parts of the United States Department of Treasury Title 31 Summons are as follows:

Page number and title	Instructions
Summons, Page 1	This is the <b>original</b> and kept by the issuing agency.
Certificate of Service of Summons, Page 2	Retained with the original Summons.
Summons, Part A, page 3,	Given to person summoned.
Provisions of Title 31 United States Code (The Regulations Relating to this Summons are at 31 CFR Chapter X), Page 4	Attached to Part A and given to person summoned.
Summons, Part B, Page 5, referred to as the Notice Copy	Given to the customer if notice is required. Accompanied by Part C or Part E.
Provisions of Title 31 United States Code (The Regulations Relating to this Summons are at 31 CFR Chapter X)	Attach to Summons, Part B.
Customer Notice, Part C	To be given to the person summoned.
Directions for Completing and Filing the Attached Motion and Sworn Statement, Part C-1	Attach to Part C.
Customer's Motion to challenge Government's Access to Financial Records in The United States District Court, Part C-2	Attach to Part C.
Customer's Sworn Statement for Filing a Challenge in the United States District Court, Part C-3	Attach to Part C
Certificate of Compliance with the right to Financial Privacy Act of 1978, Part D	Given to the financial institutions prior to receiving financial records if notice is required.

Post Notice Following Court Ordered Delay, Part E	Issued to the person summoned when appropriate.
Notice That no Legal Proceedings are Contemplated, Part F	Issued to the person summoned when appropriate.
Certification for Transferring Records Obtained Pursuant to the Right to Financial Privacy Act of 1978, Part G	Issued to the person summoned when appropriate.
Notice of Transfer of Financial Records to Another Department or Agency, Part H	Issued to the person summoned when appropriate.

(3) Certificate of Service, Page 2. The summons must contain a certificate of service to be signed by the server of the summons. It must be completed immediately after the service. The certificate of service provides proof of the actual service of the summons. The certificate of service signed by the person serving the summons is evidence of the facts it states during a hearing of an application for enforcement of the summons.

#### 4.26.8.4.3.1

#### Customer Notice Requirements

(1) Notice to a customer whose records are being sought via a Title 31 Summons issued to a third-party applies only to records of customers of any office of the following institutions located in any state or territory of the United States, District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands:

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

**Note:** Casinos, card clubs, money transmitters, check cashers, dealers in foreign exchange, issuers or sellers of money orders or traveler's checks, and providers or sellers of prepaid access, all of which are examined by the IRS BSA function, are not covered by the RFPA unless these functions are performed by the types of financial institutions described above. Further, customer notice is only required with respect to a "customer" defined by the RFPA, 12 USC 3401(4), Person, & 12 USC 3401(5), Customer. "Customers" under the RFPA are only individuals or partnerships of five or fewer individuals. Corporations, limited liability companies, partnerships with non-individual partners, or partnerships with six or more partners are not customers protected by the RFPA, so they are not entitled to notice of a Title 31 Summons for their financial records.



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

#### **4.26.8.4.3.2**

##### **Delay Customer Notice**

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

#### **4.26.8.4.3.3**

##### **Certificate of Compliance with the Right to Financial Privacy Act 1978**

- (1) If customer notice is required, a completed Part D of the summons must be given to the financial institution prior to receiving the financial records.

#### **4.26.8.4.3.4**

##### **Date When Records Can be Obtained After Issuance of Summons**

- (1) If customer notice is required, the **date** for producing the records cannot be before the expiration of the time allowed for the customer to file a motion to challenge the summons. The customer has ten days from the date of personal service of a **Notice Copy** of the summons or 14 days from the date of mailing the **Notice Copy** of the summons to file a timely motion to quash (challenge) in the U.S. district court and to serve copies of the motion and the customer's sworn statement on the Government.
- (2) Records may be obtained from the financial institution upon expiration of the applicable time frame, if the customer has not filed a motion with the court and served the issuing agency.

- (3) If records are received prior to the expiration of the time to file a motion to quash, the examiner must not open the package containing the records until the entire time has expired. This must be noted in the examiner's activity record.

#### **4.26.8.4.4**

##### **Examination of Books and Witnesses**

- (1) Any person authorized to issue a Title 31 Summons, or any officer or employee of the Treasury Department who is designated by that person, may receive evidence, and examine witnesses pursuant to the summons. See 31 CFR 1010.915(a), Examination of witnesses and records.
- (2) Any person authorized by law may administer any required oaths and affirmations. Testimony of any person may be taken under oath and shall be written down or transcribed if under oath. A transcript copy shall be given to a witness upon request, unless for good cause the person issuing the summons determines, under Title 5 USC 555, Ancillary matters, that a copy should not be provided, in which case the witness may only inspect the official transcript. See 31 CFR 1010.915(b), Examination of witnesses and records.

#### **4.26.8.4.5**

##### **Summons Enforcement**

- (1) 31 CFR 1010.916, Enforcement of summons, allows any person authorized to issue a summons to request the appropriate U.S. Attorney's office to enforce the summons in case of refusal to comply with a Title 31 Summons. The request is made from the examiner through their group manager to the territory manager, who will notify the BSA Policy Program Manager. The territory manager indicates approval of the enforcement request by signing it. After approval by the territory manager, the examiner will forward the request through SB/SE Division Counsel to the U.S. Attorney, who may bring an action to compel compliance in any U.S. court within the jurisdiction in which:
- a. The investigation that gave rise to the summons is or has been carried on;
  - b. The person summoned is a resident; or
  - c. The person summoned carries on business or may be found.
- (2) When a referral is made for enforcement of a Title 31 Summons, prompt notification must be made through the BSA Exam Liaison to FinCEN's Associate Director, Office of Regulatory Policy and Programs Division.
- (3) Prepare requests for enforcement of a Title 31 Summons using a memorandum report format, to include the following information:
- Name and full address of the person being summoned
  - Summary of the pertinent facts in the investigation

- Exactly what the Service employee is seeking to obtain
- Relevancy of the records sought, including the relevancy of records pertaining to third parties
- Need or importance of such evidence to the success or completion of the investigation
- Statement of whether service of the summons has been made on a responsible corporate officer, and if not why
- Circumstances surrounding contacts with the person summoned, explaining the defense(s) claimed for refusing to comply with the summons, and the circumstances under which the person summoned
- Transcript (if recorded) or memorandum of interview of the questions asked to the person summoned and the person's responses
- Description of any problems involving the imminent expiration of the statutes of limitation
- Statement as to any known criminal investigations by other federal agencies of the individual, and, in the case of a corporation, its officers or employees
- Statement as to any other known requests for summons or subpoena enforcement against the person or related parties

(4) The territory manager signs the memorandum and the request is routed back to the examiner who transmits the original and one copy of the summons through SB/SE Division Counsel to the U.S. Attorney's office in which the venue lies.

(5) The court may issue an order requiring the person summoned to appear before the Secretary or delegate to produce documentation or to give testimony explaining how the documentation was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may result in a contempt charge. All processes in any case under this section may be served in any judicial district in which such person is found.

#### **4.26.8.4.6**

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

- (1) Under 31 CFR 1010.915(c), Disclosure of summons, testimony, or records, delegates of the Secretary or other officer or employee of the Treasury Department may not:
- a. Make public the name of any person to whom a summons has been issued under this chapter or release any information to the public concerning that person or the issuance of a summons prior to the time and date set for the appearance or production of records or
  - b. Disclose any testimony taken or material summoned (including the name of the witness) to anyone other than an officer or employee of the Treasury Department or of any component thereof.

(2) Exceptions to the disclosure prohibitions of 31 CFR 1010.915:

- a. Nothing precludes a delegate of the Secretary, or other officer or employee of the Treasury Department, from disclosing testimony taken, or material presented to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.
- b. The Secretary or his delegate may authorize disclosure in writing.
- c. Disclosure may otherwise be required by law.

(3) Disclosures must be approved by FinCEN, except as provided above. A written request for disclosure must be submitted to the Chief, BSA Examination who will forward the request to FinCEN through the BSA Exam Liaison to FinCEN.