



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

SMALL BUSINESS / SELF-EMPLOYED DIVISION

June 14, 2024

Control Number: SBSE-04-0624-0001  
Expiration Date: 06-14-2026  
Affected IRM: 4.8.9

MEMORANDUM FOR SB/SE TECHNICAL SERVICES EMPLOYEES

FROM: Heather J. Yocum /s/ *Heather J. Yocum*  
Director, Examination Field and Campus Policy

SUBJECT: Interim Guidance for Mandatory Counsel Review

This memorandum issues guidance for mandatory Counsel review of statutory notices issued by SB/SE Technical Services, including statutory notices of deficiency, notices of final partnership adjustment (Bipartisan Budget Act (BBA) of 2015), and notices of final partnership administrative adjustment (Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982), until IRM 4.8.9, *Statutory Notices of Deficiency*, is published. Please distribute this information to all affected employees within your organization.

**Purpose:** To provide SB/SE Technical Services employees guidance when statutory notices and cases containing certain issues or criteria require Area Counsel review.

**Background/Source(s) of Authority:** SB/SE Technical Services employees are required to contact Area Counsel for review of certain statutory notices and cases containing specific issues or criteria. IRM 4.8.9.6.4, *Electronic Counsel Referral - Mandatory Statutory Notice Review*, provides criteria for statutory notices, including required documentation and procedures for contacting Area Counsel. IRM 4.8.9.10.2.1, *Mandatory Area Counsel Review*, provides cases containing certain issues (e.g., fraud penalties, notices of transferee liability, notices asserting substantial deficiencies or imputed underpayment for BBA cases, etc.) require mandatory review by Area Counsel. IRM 4.8.9.10.2.4, *Submitting Cases to Area Counsel*, provides ERCS indicators (review and suspense type) for cases under Area Counsel review and cases received back for issuance of the notice.

**Procedural Change:** Notices of proposed partnership adjustment (NOPPA) and final partnership adjustment (FPA), no longer require mandatory Area Counsel review, unless the case meets the revised criteria under IRM 4.8.9.10.2.1.

**Effective Date and Effect on Other Documents:** This guidance is effective

immediately and will be incorporated into IRM 4.8.9 by a date not to exceed two years from the date of this memorandum.

**Contact:** Cathy Demetra, Program Manager, Examination Field and Campus Policy, Field Exam General Processes, with any questions.

Attachment 1

Distribution: [IRS.gov](https://www.irs.gov)

**Attachment 1 – Interim Guidance: SBSE-04-0624-0001**

**IRM 4.8.9.6.4**

**Electronic Counsel Referral - Mandatory Statutory Notice Review**

- (1) This section applies to statutory notices issued by Technical Services (TS), including a statutory notice of deficiency (SNOD), a Bipartisan Budget Act (BBA) of 2015 notice of final partnership adjustment (FPA), and a Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 notice of final partnership administrative adjustment (FPAA).
- (2) TS reviewers review all cases requiring a SNOD. When a SNOD requires Area Counsel review, the reviewer prepares and provides the following documents:
  - Letter 531, *Notice of Deficiency*.
  - Form 4089-A, *Notice of Deficiency Statement*, or Form 4089-B, *Notice of Deficiency - Waiver*.
  - Form 4549-A, *Report of Income Tax Examination Changes (Without Taxpayer Signature)*.
  - Form 5278, *Statement - Income Tax Changes*.
  - Form 886-A, *Explanation of Items*.
- (3) TS pass-through coordinators (TSPCs) review all BBA cases with adjustments and prepare and issue FPAs for cases in Technical Services. When a BBA FPA requires Area Counsel review, the TSPC prepares and provides the following documents:
  - Form 15027, *Partnership Summary of Approved Modifications and the Imputed Underpayments*.
  - Letter 5933, *Notice of Final Partnership Adjustment - Partnership*.
  - Letter 5933-A, *Notice of Final Partnership Adjustment - Partnership Representative*.
  - Form 886-A, *Explanation of Items*.
- (4) TSPCs review all TEFRA cases and prepare and issue FPAAAs. All TEFRA FPAAAs require mandatory Area Counsel review. The TSPC prepares and provides documents in accordance with IRM 4.31.2.7.2.5(3), *Final Partnership Administrative Adjustment Cases*.
- (5) The TS reviewer must contact their applicable Area Counsel contact (see Counsel Case Routing Tool) to request a link to the Counsel Client Referral SharePoint site or email the request for a statutory notice review. The reviewer must follow the guidance in IRM 4.8.9.10.2.4(4) and (5), *Submitting Cases to Area Counsel*, for updating ERCS when sending and receiving cases back from Area Counsel.

- (6) Area Counsel generally reviews the statutory notice along with case documents in CEAS View Case (for RGS cases) or IMS Team Website, SAIN 090 (for IMS cases) and responds to the TS reviewer with a determination. The reviewer must document Area Counsel's determination on the activity record and save it in the case file electronically.

## IRM 4.8.9.10.2.1 Mandatory Area Counsel Review

(1) Cases containing any of the following issues require mandatory review by Area Counsel:

**Note:** If a campaign or compliance project guidance paper (i.e., a memorandum or other document that includes specific campaign or compliance project information) is issued in consultation with Area Counsel, and it specifically excludes or includes cases in the campaign or compliance project as being subject to mandatory Area Counsel review, the guidance paper will override the criteria below.

- a. Fraud penalty, including notices where no fraud penalty is asserted against the taxpayer, but the assessment statute of limitations (for BBA cases, the statute of limitations for making adjustments) is open because the case involves a fraudulent return prepared by a return preparer. See *Allen v. Commissioner*, 128 T.C. 37 (2007).
- b. Notices of transferee liability.
- c. Notices asserting substantial deficiencies or imputed underpayments for BBA cases (in excess of \$100,000 per tax period, excluding penalties and interest) when the burden of production is on the IRS.

**Example:** Indirect method of determining unreported income, solely using Bureau of Labor Statistics information for determining income, or the taxpayer raises a reasonable dispute of an Information Returns Process (IRP) amount and has fully cooperated with the IRS in accordance with IRC 6201(d), *Required reasonable verification of information returns*. Refer to IRM 4.10.7.6.1.2, *Relationship with IRC section 6201(d)*.

**Note:** All tax years in the statutory notice (including BBA FPA) must be sent to Area Counsel for mandatory review, even if only one tax year meets the substantial deficiency or imputed underpayment (BBA) assertion.

- d. Notices in burden of proof cases (e.g., exceptions to the statute of limitations due to mitigation, IRC 6501(e), *Substantial omission of items*, (i.e., income), accumulated earnings tax, illegal bribes or kickbacks, etc.) except for deficiencies or imputed underpayments (BBA) of \$100,000 or less per tax period, excluding penalties and interest based on IRP.
- e. Notices in cases where there has been or will be a jeopardy or termination assessment.
- f. Notices in cases where there is doubt as to the proper party to whom the statutory notice (including BBA FPA), should be sent (e.g., BBA cases with no valid partnership representative, questions about validity of last known address, questions about substantial presence in the United States, etc.).

- g. Notices in cases where the issues affect parent and subsidiary corporations, corporate distributions, corporate reorganizations, or similar issues or facts.
- h. Notices in high profile media attention cases where the appropriateness of conducting the examination may be questioned (e.g., cases where the taxpayer is famous or notorious, had a prior criminal case which was the subject of media attention, or any case involving politicians, congressional hearing witnesses, or allegations that the IRS had examined the taxpayer for impermissible reasons).
- i. Notices that involve difficult, complex, or unique legal issues, including notices with alternative positions and complex international issues.
- j. Notices involving whipsaw positions.
- k. Notices issued on the recommendation of the Department of Justice or the Office of Chief Counsel (including cases where Area Counsel attorneys assisted in developing the position in the notice).
- l. Notices in cases involving any issue requiring coordination under Exhibit 35.11.1-1, *Issues Requiring Associate Office Review*, of the CCDM, which includes any issue on the priority guidance plan.
- m. Notices involving *Munro* calculations or notices involving over sheltered returns per IRM 4.8.9.19.6, *TEFRA Investor With Open TEFRA Proceeding*.
- n. Notices involving listed transactions, transactions of interest, or other reportable transactions.
- o. All FPAA letters in TEFRA cases. See IRM 4.31.2.7.2.5, *Final Partnership Administrative Adjustment Cases*.
- p. Notices where the deficiency or imputed underpayment (BBA) plus penalty exceeds \$1,000,000 in the aggregate (excluding interest and without considering offsets). Notices falling below this dollar threshold must be reviewed by Area Counsel if other mandatory review criteria apply.
- q. Any notice asserting the economic substance doctrine under IRC 7701(o), *Clarification of economic substance doctrine*, and the related penalty under IRC 6662(b)(6), *Imposition of accuracy-related penalty on underpayments*, and IRC 6662(i), *Increase in penalty in case of non-disclosed non-economic substance transactions*.
- r. Captive Insurance cases.
- s. Any notice, regardless of amount, that an Area Director or Director of Field Compliance (or designee) believes warrants Area Counsel review.

**IRM 4.8.9.10.2.4**  
**Submitting Cases to Area Counsel**

- (1) No change.
- (2) No change.
- (3) No change.
- (4) The reviewer should ensure cases are updated on Examination Returns Control System (ERCS) to indicate they are with Area Counsel for review. The reviewer will ensure the case is updated on ERCS as follows:
  - SNOD - Review Type 042, Suspense Type 542
  - BBA - Review Type 124, Suspense Type 573
  - TEFRA - Review Type 042, Suspense Type 573
- (5) Once cases are received back when Area Counsel has completed their review, they should be updated on ERCS until the statutory notice is issued. The reviewer will ensure the case is updated on ERCS as follows:
  - SNOD - Review Type 024, Suspense Type 519 (optional suspense type)
  - BBA - Review Type 106, Suspense Type 575
  - TEFRA - Review Type 081, Suspense Type 573