




DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR: ALL SB/SE FIELD AND SPECIALTY EXAMINATION EMPLOYEES;
DIRECTOR, WITHHOLDING, EXCHANGE AND INTERNATIONAL
INDIVIDUAL COMPLIANCE, LB&I;
DIRECTOR, WESTERN COMPLIANCE, LB&I;
DIRECTOR, PASS-THROUGH ENTITIES, LB&I;
DIRECTOR, ENTERPRISE ACTIVITIES, LB&I;
DIRECTOR, CROSS BORDER ACTIVITIES, LB&I;
DIRECTOR, EASTERN COMPLIANCE, LB&I;
DIRECTOR, TREATY & TRANSFER PRICING OPERATIONS, LB&I;
DIRECTOR, NORTHEASTERN COMPLIANCE, LB&I;
DIRECTOR, EMPLOYEE PLANS, TE/GE; AND
DIRECTOR, EXEMPT ORGANIZATIONS/GOVERNMENT ENTITIES,
TE/GE

FROM: Daniel R. Lauer Daniel R.  Digitally signed by Daniel R. Lauer Date: 2024.10.17 12:54:28 -04'00'
Director, Examination Headquarters, SB/SE Lauer

SUBJECT: Interim Guidance on Servicewide FBAR Examination Procedures
Obsoleting Letter 4265

This memorandum issues guidance updating IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures. Updates include introducing new recently published Letter 6639, FBAR Initial Contact, Letter 6640, FBAR Pre-Scheduled Appointment, and Letter 6641, FBAR Appointment Confirmation. These new letters obsolete Letter 4265, FBAR Appointment. Additional updates resulting from the content of the new letters and the creation of Form 4318-B, FBAR Examination Workpapers Index, are also encompassed. Please ensure this information is distributed to all affected employees within your organization.

Purpose: IRM 4.26.17 requires updates due to the obsolescence of Letter 4265; the introduction of Letter 6639, Letter 6640, and Letter 6641; the procedural changes resulting from the content of the new letters; and the creation of Form 4318-B.

Background: Prior to this IGM, IRM 4.26.17.3.3, FBAR Examination - Initial Contact, instructed examiners to issue Letter 4265 which employed a pre-set appointment approach as first contact to filers. The new three-letter series was created to improve filer experience in FBAR examinations. Letter 6639 notifies filers of an FBAR examination and encourages voluntary participation in the scheduling of an initial appointment. Letter 6640 will be utilized when a response from Letter 6639 isn't received but the deliverable address has been verified, allowing examiners to move FBAR examinations forward without an initial response. Letter 6641

provides written confirmation of scheduled FBAR appointments.

Given new content in the letter series and the creation of Form 4318-B additional procedural changes are covered within this IGM. These procedural changes, detailed below, help add clarity to procedures relating to initial contact, filer representation procedures, information document request procedures, and FBAR case file documentation.

Procedural Change: This memorandum revises IRM 4.26.17 to ensure that the new FBAR initial contact letter series (Letter 6639, Letter 6640, and Letter 6641) and updated initial contact procedures are reflected. Instructions for preparation of each letter are included (Attachment 1).

Additional changes to FBAR procedural guidance resulting from Letter 6639, Letter 6640, and Letter 6641, and the creation of Form 4318-B are also incorporated (Attachment 2). These additional changes include:

- Updating IRM 4.26.17.3.2, Power of Attorney in FBAR Examinations, to allow Form 2848, Power of Attorney and Declaration of Representative, be used for FBAR examinations regardless of related statute determination status. Additionally, clarity is being added in relation to representation for decedents, estates, incompetent/incapacitated persons, and minors.
- Updating IRM 4.26.17.3.3, FBAR Examination - Initial Contact, to clarify last known address for FBAR examinations, procedural requirements and next steps for non-responsive filers, initial contact procedures with filers, and the mailing of an official confirmation of FBAR appointment.
- Updating IRM 4.26.17.3.4.1, Information Document Requests, to clarify that written information document requests are to be issued and that foreign financial account statements are to be requested prior to initial appointment.
- Updating IRM 4.26.17.2.4.1, FBAR Case File Documents, to clarify what documents must be included in the FBAR case file.

Effect on Other Documents: Guidance in this memorandum will be incorporated into IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures, by a date not to exceed two years from the date of this memo.

Effective Date: This guidance is effective immediately.

Contact: Email BSA Policy at # [REDACTED] #.

Attachments:

Updated FBAR Exam Initial Contact Procedures (Attachment 1)

Updated FBAR procedural guidance changes resulting from the content of Letter 6639, Letter 6640, and Letter 6641 (Attachment 2)

Distribution: FOIA Library on IRS.gov

Attachment 1 - Updated FBAR Exam Initial Contact Procedures

The following changes are effective immediately for IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures.

IRM 4.26.17.3.3, FBAR Examination - Initial Contact

Revise IRM 4.26.17.3.3 paragraph (1) to read as follows:

Prepare and mail Letter 6639, FBAR Initial Contact, to the filer's last known address to notify them an FBAR examination has started. Document issuance in the Examiner's Activity Record. See IRM 4.26.17.3.3.1, Letter 6639, for preparation instructions.

a. For FBAR examinations, unless clear and concise notification of a different address has been provided, last known address is the case-built address

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b. For FBAR examinations with an approved Related Statute Memorandum (RSM) compare the case-built address to the Master File address. Where a disagreement between the case-built address and the Master File address is present, last known address is the Master File address, unless clear and concise notification of a different address has been provided.

c. For purposes of meeting last known address requirements, information provided by a third-party other than the United States Postal Service, such as a payor or another government agency, is not clear and concise notification of a different address.

Add paragraph (2) to read as follows:

If Letter 6639 is not returned as undeliverable and there is no response by the due date, attempt to contact the filer by alternative means, ensuring all steps taken are documented. Examples of alternative means include:

- Resend Letter 6639 to the case-built address using certified mail procedures (registered mail procedures if the address is international).
- Research Accurant (or other approved data collection service) to identify other current addresses to send Letter 6639.
- If a valid phone number is identified, contact the filer via phone to obtain current mailing address and hold the initial conversation discussed in IRM 4.26.17.3.3(6).
Note: Written notice of examination should be sent prior to phone contact.
- Issue Form 4759, Address Information Request - Postal Tracers, for all possible current addresses.

Add paragraph (3) to read as follows:

If Letter 6639 is returned undeliverable, the examiner will take the following steps:

- If the returned mail has an affixed USPS yellow label, the examiner will follow the procedures in IRM 1.22.5.13.3(1), Handling Undeliverable Mail, ensuring no Title 26 protected records (for example IDRS information or income tax filings) are reviewed without a related statute memorandum in place. For FBAR examinations "update the taxpayer's mailing address" referenced in IRM 1.22.5.13.3(1) is referring to only updating the FBAR case file address used for FBAR correspondence.
- Attempt to determine a deliverable address for the filer using alternative means described in IRM 4.26.17.3.3(2).
- Review BSA Portal (formerly FinCEN Query) data to determine if there is a third-party contact to contact for a current address.

- Ensure all steps taken are documented in the FBAR case file.

Add paragraph (4) to read as follows:

If through examination a deliverable address is verified and the filer continues to fail to respond to Letter 6639, prepare and mail Letter 6640, FBAR Pre-Scheduled Appointment, to the verified address with Form 4564, Information Document Request. See IRM 4.26.17.3.3.2, Letter 6640, for preparation instructions. See IRM 4.26.17.3.4.1 on Form 4564 preparation. Document issuance of Letter 6640 with Form 4564 in the Examiner's Activity Record.

Add paragraph (5) to read as follows:

If the filer cannot be located or if a deliverable address is verified but the filer continues to fail to respond to Letter 6639 and Letter 6640, contact your operating division FBAR coordinator for guidance on case-specific next steps, engaging FBAR Counsel as appropriate. Refer to Exhibit 4.26.17-3 for more information.

Add paragraph (6) to read as follows:

If an initial contact discussion is held with the filer, ensure the following topics are discussed:

- Explain FBAR examination procedures (interview will be held, records will be requested and reviewed, written determinations will be provided, etc.).
- Confirm the filer's contact information (including phone number).
- Inform the filer that written confirmation of the appointment scheduled will be sent to them.
- Communicate to the filer that foreign financial statements are to be submitted prior to the appointment and their options for submission.
Note: If the filer needs extended time to obtain the required statements, the examiner may consider that when setting the initial appointment, where reasonable.
- Answer any initial questions the filer may have regarding the examination.

Add paragraph (7) to read as follows:

After scheduling an FBAR examination appointment with the filer or a representative, prepare and mail Letter 6641, FBAR Appointment Confirmation, to provide written confirmation to the filer and representative (if appropriate) of the scheduled appointment. See IRM 4.26.17.3.3.3, Letter 6641, for preparation instructions. Form 4564 must be prepared and included with Letter 6641. See IRM 4.26.17.3.4.1, Information Document Requests, for more information.

NEW - IRM 4.26.17.3.3.1, Letter 6639, created to fully explain the preparation of Letter 6639.

Add paragraph (1) to read as follows:

Letter 6639, FBAR Initial Contact, is the initial contact letter issued to notify the filer that an FBAR examination has started.

Add paragraph (2) to read as follows:

Examiners will prepare Letter 6639 as follows:

- a. Update the operating division/program name and respective address.
- b. Update the filer name and address section.

- c. Complete the “For your reference” section with audit specific information and examiner contact information.
- d. Complete the date to respond by in the “What you need to do” section. Allow 14 calendar days to respond unless a group manager approves a deviation. Document any such deviation in the Examiner’s Activity Record.
- e. Update the name and title to that of the issuing examiner.
- f. Sign the letter before issuance.
- g. Ensure Publication 4261, Do You Have a Foreign Financial Account?, is enclosed with Letter 6639.

Add paragraph (3) to read as follows:

Ensure a copy of the mailed Letter 6639 is maintained in the FBAR case file. In the instance of multiple issuances of Letter 6639, all versions must be maintained in the FBAR case file.

Add paragraph (4) to read as follows:

See IRM 4.26.17.3.3, FBAR Examination - Initial Contact, for complete initial contact procedures.

NEW - IRM 4.26.17.3.3.2, Letter 6640, created to fully explain the preparation of Letter 6640.

Add paragraph (1) to read as follows:

Letter 6640, FBAR Pre-Scheduled Appointment, is issued when an address has been verified as deliverable but no response to Letter 6639 has been received.

Add paragraph (2) to read as follows:

Examiners will prepare Letter 6640 as follows:

- a. Update the operating division/program name and respective address.
- b. Update the filer name and address section.
- c. Complete the “For your reference” section with audit specific information and examiner contact information.
- d. Complete the date Letter 6639 was issued in the opening paragraph.
- e. Complete the appointment information under the “What you need to know” section.
- f. Complete the calendar years under the “What you need to provide” section.
- g. Update the name and title to that of the issuing examiner.
- h. Sign the letter before issuance.
- i. Enclose Form 4564 prepared per IRM 4.26.17.3.4.1.

Add paragraph (3) to read as follows:

Ensure a copy of the mailed Letter 6640 is maintained in the FBAR case file.

Add paragraph (4) to read as follows:

See IRM 4.26.17.3.3, FBAR Examination - Initial Contact, for complete initial contact procedures.

NEW - IRM 4.26.17.3.3.3, Letter 6641, created to fully explain the preparation of Letter 6641.

Add paragraph (1) to read as follows:

Letter 6641, FBAR Appointment Confirmation, is issued when an FBAR appointment has been scheduled.

Add paragraph (2) to read as follows:

Examiners will prepare Letter 6641 as follows:

- a. Update the operating division/program name and respective address.
- b. Update the filer name and address section.
- c. Complete the "For your reference" section with audit specific information and examiner contact information.
- d. Complete the appointment information under the "Appointment information" section.
- e. Complete the calendar years under the "Appointment information" section.
- f. Update the name and title to that of the issuing examiner.
- g. Sign the letter before issuance.
- h. Enclose Form 4564 prepared per IRM 4.26.17.3.4.1.

Add paragraph (3) to read as follows:

Ensure a copy of the mailed Letter 6641 is maintained in the FBAR case file.

Add paragraph (4) to read as follows:

See IRM 4.26.17.3.3, FBAR Examination- Initial Contact, for complete initial contact procedures.

Attachment 2 - Updated FBAR procedural guidance changes resulting from the content of Letter 6639, Letter 6640, and Letter 6641

The following changes are effective immediately for IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures:

IRM 4.26.17.2.4.1, FBAR Case File Documents

Revise IRM 4.26.17.2.4.1 paragraph (1) to read as follows:

Each FBAR examination case file must include Form 4318-B, FBAR Examination Workpapers Index, and all items referenced therein to the extent applicable.

Add paragraph (2) to read as follows:

The possibility of duplication of records in any related Title 26 case is recognized, but required due to different processing, assessment, and appeal procedures for the Title 26 case and the FBAR case.

IRM 4.26.17.3.2, Power of Attorney in FBAR Examinations

Revise IRM 4.26.17.3.2 paragraph (1) to read as follows:

A person may authorize a representative to represent them and to receive information with respect to the FBAR examination by using Form 2848, Power of Attorney and Declaration of Representative. Line 3 on the Form 2848 should reflect "FBAR Examination" or "Matters Relating to Report of Foreign Bank and Financial Accounts."

- a. Any power of attorney submitted to authorize a representative on behalf of an entity (such as a corporation, partnership, or trust), decedent, estate, incompetent/incapacitated person, or minor, is only valid if the person authorizing the power of attorney on behalf of the entity, decedent, estate incompetent/incapacitated person or minor had authority to do so.

Revise paragraph (2) to read as follows:

For deceased individuals, estates, incompetent/incapacitated persons and minors, Form 56, Notice Concerning Fiduciary Relationship, must include wording covering the FBAR examination.

- Form 56 by itself is not sufficient to establish fiduciary authority.
- Review Counsel's Authority to Act State Law Guide to identify requirements for valid fiduciary authority for decedents, estates, incompetent/incapacitated persons and minors. Legal requirements and necessary documentation vary by state. Review of this guide and discussion with FBAR Counsel is mandatory to ensure valid fiduciary authority exists and sufficient evidence of that authority has been provided for the FBAR case file.

Revise paragraph (3) to read as follows:

As an alternative to Form 2848, a general power of attorney valid under state law may be used.

- a. Power of attorney is a document that evidences the creation of a relationship between two people who are designated as the "principal" and the "agent." The principal designates the agent in the document, and the agent is authorized to act on the principal's behalf -- to stand in the shoes of the principal -- for whatever business the power of attorney permits.
- b. The examiner should not draft a general power of attorney. Any general power of attorney must be provided by the filer.

- c. The power of attorney must state that it is for the limited purpose of representing the filer during the FBAR examination, name all representatives, and cover the same topics as Form 2848 (for example, if communications need to be made in duplicate).

Remove paragraph (6) - OBSOLETE

IRM 4.26.17.3.4.1, Information Document Requests

Revise IRM 4.26.17.3.4.1 paragraph (3) to read as follows:

Request in writing, via an IDR, all relevant documents needed to determine compliance with the FBAR filing and recordkeeping requirements. Prepare an IDR after considering the issues that need to be developed. Request documents that are relevant to the issues in the case, as well as documents that the filer is required to maintain with respect to their foreign financial accounts. See IRM 4.26.16.4, FBAR Recordkeeping. Avoid asking for irrelevant information by drafting the IDR precisely. Indicate due dates for information to be provided and options for submission.

Add paragraph (4) to read as follows:

FBAR examinations require that foreign financial account statements be requested for, at a minimum, the calendar year(s) under examination.

Note: In some cases, it can be appropriate to request statements beyond the calendar year(s) under examination, such as if the facts and circumstances deem them relevant to the exam or to establish a violation date balance if indicators of willfulness are present. See IRM 4.26.16.5.5.3, Penalty for Willful FBAR Violations - Calculation.

Add paragraph (5) to read as follows:

Letter 6640 and Letter 6641 request that the filer provide foreign financial account statements prior to the initial appointment. The initial IDR prepared by examiners must also make the request by including the due date for providing the foreign financial account statements, the due date for the remaining requested documentation, and clarify how the requested information can be provided.