



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.1.5

JUNE 10, 2021

EFFECTIVE DATE

(06-10-2021)

PURPOSE

- (1) This transmits revised IRM 25.1.5, Fraud Handbook - Grand Jury Investigations.

MATERIAL CHANGES

- (1) IRM 25.1.5.1 - Added new subsection, Program Scope and Objectives, to provide internal controls information. 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. The addition of this subsection renumbered existing subsections.
- (2) IRM 25.1.5.4 - All references to four-way conferences have been changed to quarterly conferences in this section and throughout the IRM.
- (3) IRM 25.1.5.4(3)(b) - Added guidance on who should ensure appropriate parties are on the 6(e) list.
- (4) IRM 25.1.5.4(3)(c) - The note was deleted.
- (5) IRM 25.1.5.4(6)(d) - Clarification added to the second bullet point that documents secured by the cooperating revenue agent should be grand jury.
- (6) IRM 25.1.5.4(6)(d) - Bullet point was added to include any non-grand jury documents described in IRM 11.3.13.9.25.
- (7) IRM 25.1.5.5(1) - Further clarified assistance that is provided during a grand jury investigation.
- (8) IRM 25.1.5.5(5) - Clarified additional responsibilities that the cooperating grand jury agent may be involved in.
- (9) IRM 25.1.5.5(7) - Added guidance that all emails, correspondence, activity records and other items can be provided to Defense or presented in court and personal opinions and comments should be excluded.
- (10) IRM 25.1.5.6(3) - Added guidance that the revenue agent (RA) may go to the courts and obtain court documentation.
- (11) IRM 25.1.5.6(6) - Added guidance about what non-grand jury evidence can be requested.
- (12) IRM 25.1.5.6(8) - Added guidance that the examiner/officer should contact their local fraud enforcement advisor (FEA) for advice on how to obtain documentation.
- (13) 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 IRM supersedes IRM 25.1.5 dated June 7, 2016.

AUDIENCE

Criminal Investigation (CI), Large Business & International (LB&I), Small Business/Self-Employed (SB/SE), Tax Exempt/Government Entities (TE/GE), and Wage & Investment (W&I)

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25.1.5

Grand Jury Investigations

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25.1.5.1
(06-10-2021)
Program Scope and Objectives

- (1) **Mission.** 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) OFE builds strong internal and external partnerships and serves as the primary civil liaison to IRS-Criminal Investigation. By supporting cases throughout the life cycle and through full consideration of available treatments, OFE facilitates optimal disposition of cases with civil or criminal fraud potential.
- (3) **Purpose.** The purpose of this section is to address grand jury investigations.
- (4) **Audience.** IRS servicewide employees and CI.
- (5) **Policy Owner.** Director, Office of Fraud Enforcement (OFE) of the Small Business Self Employed (SB/SE) Division.
- (6) **Program Owner.** OFE, Policy, SB/SE.
- (7) **Primary Stakeholders.** The primary stakeholders are IRS compliance and CI.

25.1.5.1.1
(06-10-2021)
Background

- (1) An attorney for the government, such as an Assistant United States Attorney (AUSA), may ask for Criminal Investigation's (CI) assistance in an ongoing or proposed grand jury investigation whenever the information available to the attorney indicates possible commission of crimes under the jurisdiction of the IRS. An attorney for the government may request special agents and examiners to assist in investigations by a federal grand jury.

25.1.5.1.2
(06-10-2021)
Authority

- (1) By law, the IRS has the authority to conduct examinations under U.S. Code Title 26, Internal Revenue Code Subtitle F – Procedure and Administration - Chapter 78 - Discovery of Liability and Enforcement of Title, Subchapter A, Examination and Inspection.

25.1.5.1.3
(06-10-2021)
Roles

- (1) 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.
- (2) The fraud enforcement advisor (FEA) serves as a resource and liaison to civil compliance employees in all operating divisions. The FEA is available to assist in civil fraud investigations and offer advice on matters concerning tax fraud.
- (3) Employees who work potential fraud cases are responsible for following the procedures in this IRM. All examiners and their managers working potential fraud cases should familiarize themselves with the information contained in this IRM.

25.1.5.1.4
(06-10-2021)

**Program Management
and Review**

- (1) The OFE Policy staff prepares and issues the following reports to servicewide customers:
 - Three-year reports prepared using Fraud Information Tracking System (FITS) data
 - Status 17 reports using Audit Information Management System (AIMS) or AIMS Centralized Information System (ACIS) data
- (2) OFE Policy staff can create reports by area, territory or group. These reports help manage fraud inventory and provide review information for managerial use:
 - Cases on FITS but not on AIMS or ACIS
 - Cases on AIMS or ACIS but not on FITS
 - Cases in fraud development status
 - Cases in criminal fraud status
- (3) Ad-hoc reports are produced as requested by OFE customers.
- (4) 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.
- (5) FEA managers utilize reports generated from FITS to monitor and track FEA inventory assignments.

25.1.5.1.5
(06-10-2021)

Program Controls

- (1) FEA managers verify program and procedural compliance by conducting case consultations, case reviews, performance reviews, and security reviews with all FEAs.
- (2) FEAs are required to follow-up on all cases in fraud development status at least every 60 days as required by IRM 25.1.2.2(6)(e), Fraud Development Procedures.
- (3) 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.

25.1.5.1.6
(06-10-2021)

Acronyms

- (1) The following table defines acronyms commonly used throughout this IRM section:

Acronym	Definition
AC	Action Code
ACS	Automated Collection System
ACIS	AIMS Centralized Information System
ACTC	Additional Child Tax Credit
AIMS	Audit Information Management System
AIS	Automated Insolvency System
AOIC	Automated Offer in Compromise
AOTC	American Opportunity Tax Credit
ASED	Assessment Statute Expiration Date
ATAT	Abusive Tax Avoidance Transactions
ATFR	Automated Trust Fund Recovery
AUSA	Assistant U.S. Attorney
BD	Balance Due
BMF	Business Master File
BSA	Bank Secrecy Act
CCFC	Collection Campus Fraud Coordinator
CCP	Centralized Case Processing
CFC	Campus Fraud Coordinator
CFFC	Collection Functional Fraud Coordinator
CI	Criminal Investigation
COIC	Centralized Offer In Compromise
COP	Conditions of Probation
CSCO	Compliance Services Collection Operations
CSED	Collection Statute Expiration Dates
CTC	Child Tax Credit
CTR	Currency Transaction Report
DEL RET	Delinquent Return
ECS	Exam Case Selection
EFC	Examination Fraud Coordinator
EITC	Earned Income Tax Credit
EPR	Examination Planning and Review
ERCS	Examination Returns Control System
FBAR	Foreign Bank and Financial Accounts

Acronym	Definition
FCQ	FinCEN Query
FEA	Fraud Enforcement Advisor
FFC	Functional Fraud Coordinator
FFTF	Fraudulent Failure to File Penalty
FinCEN	Financial Crimes Enforcement Network
FIRM	Fraudulent Intent Referral Memorandum
GM	Group Manager
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRP	Information Return Processing
IRS	Internal Revenue Service
LB&I	Large Business & International
ODC	Other Dependent Credit
OFE	Office of Fraud Enforcement
OIC	Offer in Compromise
OS	Offer Specialist
PII	Personally Identifiable Information
PSP	Planning and Special Programs
RA	Revenue Agent
RAR	Revenue Agent's Report
RICS	Return Integrity and Compliance Services
RO	Revenue Officer
SA	Special Agent
SAC	Special Agent in Charge
SAR	Special Agent's Report or Suspicious Activity Report
SB/SE	Small Business/Self Employed
SOL	Statute of Limitation
SSA	Supervisory Special Agent
TBOR	Taxpayer Bill of Rights

Acronym	Definition
TC	Transaction Code
TE/GE	Tax Exempt/Government Entities
TFRP	Trust Fund Recovery Penalty
TM	Territory Manager
TP	Taxpayer
TS	Technical Services
W&I	Wage & Investment

25.1.5.1.7
(06-10-2021)
Terms

- (1) Compliance employees must be familiar with the following legal terms to understand the requirements of proof. The following table defines terms commonly used throughout this IRM section:

Term	Definition
Burden of Proof	Includes both the burden of producing evidence and persuading a court (judge or jury) by clear and convincing evidence that the facts support the contention of civil fraud. In tax fraud cases, the burden of proof is on the government.
Circumstantial Evidence	Evidence that relies on an inference to connect it to a conclusion of fact.
Clear and Convincing Evidence	Evidence showing that the assertion made is highly probable or reasonably certain. This is a greater burden of proof than preponderance of the evidence but less than beyond a reasonable doubt.
Direct Evidence	Evidence in the form of documents or testimony from a witness who actually saw, heard, or touched the subject of questioning. Direct evidence, which is believed, proves existence of fact in issue without inference or presumption.
Evidence	Data presented to a judge or jury to prove the facts in issue. Evidence includes the testimony of witnesses, records, documents, or objects. Evidence is distinguished from proof, in that proof is the result or effect of evidence.
Fraud	Deception by misrepresentation of material facts, or silence when good faith requires expression, which results in material damage to one who relies on it and has the right to rely on it. Simply stated, it is obtaining something of value from someone else through deceit.
Inference	A logical conclusion from given facts.

Term	Definition
Preponderance of Evidence	Evidence that will incline an impartial mind to one side rather than the other so as to remove the cause from the realm of speculation. It does not relate merely to the quantity of evidence. Simply stated, evidence which is more convincing than the evidence offered in opposition.
Presumption (of law)	A rule of law that a judge or jury will draw a particular inference from a particular fact, or from particular evidence, unless and until the truth of such inference is disproved.
Reasonable Doubt	The evidence must be so convincing that a reasonable person would not question the defendant's guilt.
Willful Intent to Defraud	An intentional wrongdoing with the specific purpose of evading a tax believed by the taxpayer to be owing.

25.1.5.1.8
(06-10-2021)

Related Resources

- (1) See IRM 9.5.2, Grand Jury Investigations, for further information on the initiation, procedures, and rules pertaining to grand jury investigations.
- (2) 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>

25.1.5.2
(06-10-2021)

Overview

- (1) The IRS may request the use of a grand jury either before, during, or after conducting an administrative investigation. A grand jury may normally be requested whenever:
 - a. Using a grand jury would be more efficient, e.g., the administrative process cannot develop the relevant facts within a reasonable period of time.
 - b. An investigation has proceeded as far as the administrative process allows, but prosecution potential would be strengthened by the grand jury process.
- (2) Criminal Investigation (CI) may request a grand jury investigation by referring the matter to the Department of Justice (DOJ), Tax Division or an investigation may be initiated by the U.S. Attorney's Office, which requests the assistance of the IRS.
- (3) By Federal Rules of Criminal Procedure, Rule 6(e), information transpired during a grand jury investigation proceeding is secret and cannot be disclosed or used in any civil proceeding.

Examples of items that are covered by the secrecy rules of Rule 6(e):

- The identities of witnesses or jurors
- The substance of testimony as well as actual transcripts
- The strategy or direction of the investigation
- The deliberations or questions of jurors

25.1.5.3
(06-10-2021)
Grand Jury Suspense

- (1) When CI initiates a grand jury investigation which has not been referred by a civil compliance function or when the grand jury was initiated by the DOJ, the special agent (SA) must determine if any civil action is being taken or planned. The SA will complete and submit Form 14584, IRS - Criminal Investigation - Check for and Suspend Civil Activity Notification, to the civil business operating divisions for deconfliction. Upon receipt of notification, taxpayer contact must immediately cease on tax years currently under examination/collection activity unless a parallel investigation is authorized.
 - For cases in examination, the Examination group will forward the case to Technical Services (TS), or to the appropriate Tax Exempt/Government Entities (TE/GE) suspense unit, for grand jury suspense, and Collection will close the case and transfer it to Advisory.
 - Procedures for civil/criminal parallel investigations in Examination Abusive Transaction (AT) promotion cases are in IRM 4.32.2.7, Parallel Investigations.
 - Procedures for civil/criminal parallel investigations in Collection Field cases are in IRM 5.1.5, Balancing Civil and Criminal Cases.
- (2) When an existing administrative criminal investigation, either with or without an assigned cooperating compliance employee, becomes an approved grand jury investigation, CI will send a Notice of Department of Justice Referral memorandum to TS, Advisory, and the civil business operating divisions to initiate suspense action. Upon receipt of such notification:
 - The Examination group will forward the case to TS, or to the appropriate TE/GE suspense unit, for grand jury suspense, and Collection will close the case and transfer it to Advisory. <http://mysbse.web.irs.gov/collection/aiqorg/default.aspx> Other civil business operating divisions will forward the case to their appropriate suspense unit.
- (3) The examiner will prepare an unagreed income tax examination changes report, identifying only known and supportable adjustments and applicable penalties. See IRM 4.8.11.3.4, Review of Cases Submitted to Fraud or Grand Jury Suspense. Workpapers should reflect the results of the examination, as far as it has progressed, and support all known applicable adjustments and penalties. All workpapers and documentation in the case file must reflect the dates of receipt or preparation which must precede the acceptance date by the grand jury. If additional documents are gathered by Examination or Collection between the date of the grand jury's commencement and the date when Examination or Collection was notified about the grand jury proceedings, those documents should be included in the file, but separately marked. In addition, the transmittal memorandum must include a statement about the existence of additional documents and the date(s) they were collected. Additional information on grand jury suspense can be found in IRM 4.8.11.3.3, Initial Receipt of Fraud and Grand Jury Cases for Suspense in Technical Services.
- (4) The examiner should be aware that Criminal Investigation may require the agent to provide original documentation to the SA prior to closing the civil case to grand jury. Original documentation may include any summonsed documen-

tation, third-party correspondence, interviews and agent workpapers. If the SA requires original documentation, the case agent should scan or make a copy of the information prior to giving it to the SA.

- (5) The agent should not write on, or alter, original documentation. Summoned items or original documents should be date stamped on the envelope or other area that is not on the original documentation. Items that should be kept in a confidential envelope with a TD F 15-05.11, *Sensitive But Unclassified (SBU)* Cover Sheet, attached to the confidential envelope and be kept separate from Form 4665. Sensitive documents could include, but are not limited to: TECS reports, Passport requests, Form 10509, FinCEN Query and Form 10509-A, FinCEN Query SAR Request.
- (6) The examiner will also prepare Form 4665, as explained in IRM 25.1.4.4.10(6), Preparation of the Pre-Prosecution Report, except the transmittal should not be labeled "Pre-Prosecution Report."
- (7) After receiving notification of the grand jury investigation, the examiner should **not** establish Audit Information Management Systems (AIMS) controls for prior or subsequent periods, including any related entities. The related entities should be addressed in the workpapers and/or T Letter.
- (8) Prior to forwarding the case for grand jury suspense, the examiner must ensure all open statutes of limitation are protected and a minimum of one year remains on the statute for each open return. If there is less than 1 year remaining on the statute for any open year, Form 10498-B, Intent to Commence Civil Action - Statute Protection, must be secured.
- (9) If the target of a grand jury investigation is **not** currently under examination/ collection activity, AIMS controls should not be established and statute protection is **not** the responsibility of examination or collection.
- (10) After closing the civil case to suspense, the cooperating agent's role will change to a grand jury agent. See IRM 25.1.5.4 Cooperating Grand Jury Examiner/Revenue Officer Procedures.

25.1.5.4
(06-10-2021)

**Cooperating Grand Jury
Examiner/Revenue
Officer Procedures**

- (1) Civil information may be used when the case is returned to the field for civil resolution. The information must either be a matter of public record, or be obtained prior to convening the grand jury. One of the most important responsibilities of the cooperating grand jury examiner/revenue officer is to ensure this information is provided to the field.
- (2) If a taxpayer files a delinquent or amended return during a grand jury investigation, the assigned cooperating examiner/revenue officer must discuss such filing with the assigned SA. The assigned SA must provide written guidance to the cooperating examiner/revenue officer whether or not any tax shown on such return should be immediately assessed. If the SA determines that such an assessment may jeopardize the criminal case, then the SA should advise the cooperating examiner/revenue officer to not make the assessment at that time. At a minimum, however, the cooperating examiner/revenue officer must update the statute for assessment on AIMS to reflect receipt of the delinquent return and insure transaction codes are reflected on master file to reflect the receipt of an amended or delinquent tax return.
- (3) The quarterly conference requirement:

- a. All grand jury investigations in which an examiner/revenue officer is asked to participate as a cooperating grand jury examiner/revenue officer, are subject to the mandatory quarterly conference requirements prescribed in IRM 25.1.4.4.3, Required Communications.
 - b. The names of all participants, including the compliance group manager, will appear on the Federal Rules of Criminal Procedure, Rule 6(e), "6(e) list", or official list filed with the court of those individuals authorized to view information protected by that statute. The quarterly conference may include the fraud enforcement advisor (FEA) when deemed necessary. In such instances, the FEA will be added to the 6(e) list but will not be able to assist in the civil resolution of the case. The grand jury examiner/revenue officer will coordinate with the Supervisory Special Agent/Special Agent to ensure all parties, including group manager and FEA, if warranted, are added to the 6(e) list.
 - c. All grand jury investigations resulting from compliance referrals in which a cooperating compliance employee is not asked to participate, are also subject to the mandatory quarterly conference requirements. See IRM 25.1.3.4(5), Accepted Criminal Referrals, for conference activities in this scenario. When the FEA is not included on the 6(e) list and does not participate in the mandatory quarterly conferences, the FEA is available to assist the conference participants for the sole purpose of scheduling the mandatory quarterly conferences, if requested.
- (4) See IRM 25.1.4.4.1, Conduct of the Cooperating Compliance Employee, for guidance on the proper conduct of a cooperating compliance employee during a criminal tax case.
- (5) There are generally four critical stages of the cooperating grand jury examiner's/revenue officer's involvement in the grand jury investigation and subsequent criminal proceedings. During these stages pertinent civil assessment information (specific tax information, including the sources of income for each year under investigation) or collection information, with respect to the taxpayer's ability to pay a tax that is due and owing, may be developed and preserved. During these four stages, the cooperating grand jury examiner/revenue officer should identify and secure pre-grand jury information and grand jury information that is a matter of public record. The cooperating grand jury examiner/revenue officer must take action to preserve all non-grand jury information for the subsequent civil resolution of the case.
- a. Pre-Investigation Stage — Immediately after assignment, the cooperating grand jury examiner/revenue officer must identify the records, evidence and other documents secured to date. Information secured prior to the grand jury should be identified and dated. This information will be free of secrecy restrictions imposed by Rule 6(e) and may be used for civil purposes. Examples of information excluded from the secrecy restrictions include:
 - Interviews conducted and documents obtained by CI prior to referral to the grand jury.
 - Information obtained by search warrants issued and executed prior to referral to the grand jury.
 - Affidavits sworn by the SA pursuant to securing a search warrant issued by the court. These affidavits reflect alleged offenses.
 - b. Indictment Stage — An indictment is the formal document identifying the grand jury's charges against the defendant. The indictment is a matter of public record. The cooperating grand jury examiner/revenue officer, in

cooperation with the AUSA, should include complete civil assessment information required for the collection of taxes in the indictment. However, depending on the charges alleged in the indictment, the AUSA may or may not be able to include this information in the indictment. If the case does not go to trial, the next opportunity for the cooperating grand jury examiner/revenue officer to ensure civil assessment information required for the collection of taxes is preserved, is during the plea agreement stage.

- c. **Plea Agreement Stage** — Even though the cooperating grand jury examiner/revenue officer usually does not participate in this stage, it is important that the cooperating grand jury examiner/revenue officer convey to the AUSA the importance of including specific civil assessment information and/or information required for the collection of taxes in the plea agreement. Plea negotiations generally result in the defendant pleading guilty to lesser charges. If there was limited disclosure of civil information in the indictment, the absence of specific civil assessment information and/or information required for the collection of taxes in the plea agreement may result in the civil examiner/revenue officer not having enough non-grand jury information to propose adjustments, make assessments or provide information needed for the collection of taxes. Thus, the defendant may receive a criminal sentence but may not pay any tax and penalties due to lack of information in the public record. If specific civil assessment information and/or information required for the collection of taxes is not made a matter of public record through the indictment or plea agreement, the last opportunity to achieve this objective is during formal sentencing proceedings.
- d. **Formal Sentencing Proceedings Stage** — There are many statements and documents entered into the public record during this stage. One of the most important documents entered in the public record is the *Government's Version of the Facts*. This document is often read into the record by the prosecuting attorney. This document usually summarizes what the government would have proven if the case had gone to trial and covers years and/or charges to which the defendant did not plead. Because the *Federal Sentencing Guidelines* advise that the entire intended loss to the government be disclosed, including years not included in the plea agreement or indictment when sentencing an offender on a tax charge, the cooperating grand jury examiner/revenue officer or special agent should request the AUSA read this information into the record. This is necessary because this information is often sealed as part of the probationary report.

Note: Information entered into the record during sentencing proceedings must be relevant to the question of guilt or assist the court in sentencing the defendant. In United States v. Alexander, 860 F.2d 508 (2d Cir. 1988), the court rejected the government's argument that unlimited public disclosure of grand jury materials was permissible during sentencing proceedings. Rather, the court stated that "[a] party moving for a relaxation of the normal rule of secrecy should structure its request to cover only material that is needed." 860 F.2d at 513. This holding is consistent with the Supreme Court's interpretation of Rule 6(e) to require a "strong showing of particularized need for grand jury materials before any disclosure will be permitted." United States v. Sells Engineering, Inc., 463 U.S. 418, 443 (1983).

- (6) The cooperating grand jury examiner/revenue officer is responsible for assembling and forwarding documents and evidence, necessary for a civil tax closing

of a grand jury investigation, to the SA and for association with Form 13308, Criminal Investigation Closing Report (Tax and Tax related Only). The cooperating grand jury examiner/revenue officer, in preparing to close the case after the grand jury investigation, should complete the following actions:

- a. If the investigation is discontinued and/or no indictment is returned, the cooperating grand jury examiner/revenue officer will assist the SA in preparing a memorandum, which informs TS and any appropriate civil business operating divisions that the grand jury investigation has been concluded and the case should be released for civil resolution.
- b. If the investigation was entirely conducted using grand jury procedures and as a result there are no pre-grand jury documents, the cooperating grand jury examiner/revenue officer will assist the SA in preparing a memorandum to TS and any appropriate civil business operating divisions which informs them that the grand jury investigation has been concluded, there are no pre-grand jury documents and the case should be released for civil resolution.
- c. Segregate and assemble non-grand jury documents that will be used in the civil resolution.
- d. Immediately following sentencing of the defendant, the cooperating grand jury examiner, if one was assigned, must prepare Form 5346, Examination Information Report, addressing the civil aspects of the case.

Form 5346 should include the following non-grand jury information:

- A narrative summarizing the case history and the results of the investigation;
 - An index of documents included in the case file, briefly describing the source of the documents and their content. If there is a case file, Technical Services (TS), usually will have it assigned to fraud/grand jury suspense. Otherwise, the documents secured by the cooperating revenue agent should be grand jury and will not be included in the case file;
 - Copies of documents, i.e., juror books, evidence admitted during trial, transcripts of the trial proceedings, if available;
 - Cooperating grand jury examiners workpapers and schedules admitted or referenced, and specifically discussed in open court;
 - Any non-grand jury documents described in IRM 11.3.13.9.25;
 - Cooperating grand jury examiners trial notes, if appropriate and useful in civil resolution;
 - Tax computations; and
 - Any other pertinent and relevant public documents that the SA did not attach to Form 13308.
- e. The cooperating grand jury revenue officer, if one was assigned, must prepare a memorandum addressing the civil aspects of the case.

The memorandum should include the following non-grand jury information:

- A narrative summarizing the case history and the results of the investigation;
- An index of documents included in the case file, briefly describing the source of the documents and their content;
- Copies of documents, i.e., juror books, evidence admitted during trial, transcripts of the trial proceedings, if available;

- Cooperating grand jury revenue officer's notes and schedules admitted or referenced, and specifically discussed in open court;
- Cooperating grand jury revenue officer's trial notes, if appropriate and useful in civil resolution; and
- Any other pertinent and relevant public documents that the SA did not attach to Form 13308.

- (7) The completed information item package must be associated with Form 13308 and forwarded through the Supervisory Special Agent (SSA) to TS/Advisory and any appropriate civil business operating divisions for civil disposition. TS/Advisory and any appropriate civil business operating divisions will forward the Form 13308 information package and a memorandum notifying the initiating group (if any) that the civil case cannot be assigned to any employee "tainted" by grand jury information. In other words, the case must be assigned to an examiner/revenue officer whose name was not on the 6(e) list or who was not privy to grand jury information; and to another group, if the name of the group manager was on the 6(e) list or if the group manager was privy to grand jury information.

Note: In such instance, TS will consult with Planning and Special Programs (PSP) for SB/SE cases, LB&I Ogden PSP for LB&I cases, or appropriate TE/GE functional Examination Planning and Review (EPR) unit for TE/GE cases to determine which group will receive the case for civil disposition.

Grand jury cases that are not in suspense or controlled by examination should be routed to PSP for group assignment by TS.

25.1.5.5 (06-10-2021)

Unique Features

- (1) IRS relinquishes control of a grand jury case to the AUSA. The cooperating grand jury examiner/revenue officer assists the AUSA with the consideration, resolution and review of technical issues related to the criminal charges being investigated. This assistance includes (but is not limited to) being familiar with tax law, schemes, civil investigative techniques, interviews, as well as plea and proffer meetings with various parties.
- (2) Evidence obtained during a grand jury investigation is protected under the secrecy provisions of Rule 6(e) of the Federal Rules of Criminal Procedure. Therefore, in a civil case, the cooperating grand jury examiner/revenue officer cannot disclose any information obtained by the grand jury, unless that grand jury information has been made a matter of public record.
- (3) The cooperating grand jury examiner/revenue officer assigned to a grand jury investigation is "tainted" and therefore prohibited from any subsequent civil examination/collection action. This also applies to a group manager that has access to grand jury information.
- (4) Examiner's time should be charged to the applicable activity code:
 - Activity Code 815 Grand Jury — Non Narcotics Related
 - Activity Code 816 Grand Jury — Drug Enforcement Task Force Case
 - Activity Code 817 Grand Jury Narcotics Related — Other
 - Activity Code 155 Fraud/Fraud Related Activities, (TE/GE Only). See IRM 25.1.9.3.1, General Information, <http://irm.web.irs.gov/Part25/Chapter1/Section9/IRM25.1.9.asp#25.1.9.3.1>

- (5) During a grand jury investigation, the cooperating grand jury examiner/revenue officer should be identified as an assistant to the AUSA and not an IRS employee. IRS credentials may only be used for identification purposes. The grand jury examiner/revenue officer may be involved in interviews, plea agreements and court proceedings.
- (6) Grand jury materials should be kept in a secured workspace, inaccessible to others who do not have grand jury authorization from the AUSA.
- (7) The cooperating grand jury examiner's/revenue officer's workpapers will be part of the CI grand jury files. The files will not be available for the civil examination/collection activity without a release of grand jury materials pursuant to a Rule 6(e) court order. Workpapers, however, that have been admitted through a court proceeding are available for use in any subsequent civil examination/collection action. The grand jury examiner/revenue officer should be aware that all emails, correspondence, activity records and other items can be provided to the defense or presented in court. Personal opinions, comments and items that are non-factual should be excluded from any documents.

25.1.5.6
(06-10-2021)
Civil Case Resolution

- (1) Upon completion of the grand jury investigation, cases open in an Examination group when the grand jury was initiated will be released by TS from grand jury suspense and returned to the field for civil case resolution with a memorandum explaining the required procedures. Collection cases will be released from Advisory with a memorandum explaining the civil settlement procedures for collection action. Other civil business operating divisions will release cases in suspense to the field for civil case resolution. Examiners/revenue officers who had access to grand jury information are "tainted" for civil case resolution and cannot be assigned to the case. Likewise, if the group manager had direct or indirect access to grand jury information, the case must be assigned to another manager for civil resolution. Rule 6(e) precludes the use of "matters occurring before the grand jury" in any subsequent civil action.

Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law.

Note: TS/Advisory and any appropriate civil business operating divisions will release the case from suspense after the Form 13308 package is received from CI. Once received, the case will be released as prescribed in IRM 25.1.5.4 (6).

- (2) The civil examiner/revenue officer may use information in public record, including the search warrant, affidavit, indictment, plea agreement and other information in the court file for civil settlement purposes. As noted above, the cooperating grand jury examiner/revenue officer will gather this information during the grand jury investigation. At the conclusion of the grand jury investigation, that information will be given to the SA to attach to Form 13308 and will be forwarded to TS/Advisory and any appropriate civil business operating divisions for the civil examination case file.

- (3) The civil examiner/revenue officer may go to the courts and obtain court documentation using their credentials to identify themselves as civil compliance employees requesting information in connection with an official duty. Contact your FEA for further guidance.
- (4) Since the taxpayer may not be convicted for all years in the indictment, information available may not be complete. A Rule 6(e) order may be requested through the AUSA to disclose grand jury information when the information is needed “preliminarily to or in connection with a judicial proceeding.” There must be a “particularized need,” in that, the information cannot be obtained from some other source. An IRS civil examination does **not** meet this requirement. There must be specific litigation, such as a tax court or district court proceeding. Once a tax case is in litigation, the civil government attorneys may obtain a Rule 6(e) order to get more information to support their case.
- (5) The touchstone of Rule 6(e)’s applicability is whether the disclosed material would “elucidate the inner workings of the grand jury.” The “inner workings” test would preclude disclosure of evidence, which tended to reveal the identity and/or testimony of witnesses, the direction of the investigation, and the deliberation of the grand jurors.
- (6) The civil examiner/revenue officer should ask CI if they have possession of specific documents known to be non-grand jury evidence. Documents that may be requested are described in IRM 25.1.5.4(6)(d). Any non-grand jury items completed by the SA, such as Memorandum of Interviews and workpapers may also be requested by the civil examiner/revenue officer. A memorandum from the field territory manager, or its equivalent in other business units, to the Special Agent in Charge (SAC) should be prepared, providing a brief explanation of the situation and the specific documents requested.
- (7) Grand jury evidence cannot be released even when the taxpayer volunteers to execute a waiver authorizing disclosure. However, the taxpayer can furnish records in their possession even though the grand jury subpoenaed the same records.
- (8) If a court determines the IRS has improperly used grand jury material, the court may refuse to admit the evidence, reverse the burden of proof and/or require the IRS to proceed with evidence not derived from the grand jury. Further, the court may decide to dismiss the case, without prejudice, due to government misconduct. If the court determines that the IRS intentionally used grand jury material, attorney and legal fees can be awarded to the taxpayer. The examiner/officer should contact their local FEA for advice on how to obtain documentation and other non-grand jury items.