

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

<b>OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet</b>				
<b>Tax Period</b>	<b>Previously Assessed</b>	<b>Per Exam</b>	<b>Adjustment</b>	<b>Reference</b>
<b>Conclusion:</b> <i>(Reflects the final determination on the issue.)</i>				
<i>The following techniques are not intended to be all-inclusive nor are they mandatory steps to be followed. Judgment should be used in selecting the techniques that apply to each taxpayer.</i>				
<b>Audit Steps:</b> <i>(Document audit steps taken or to be taken.)</i>				<b>Workpaper Reference</b>
1. When there are definite indications that the taxpayer will opt out or be removed from the OVDI program, please take all steps to insure the following: <ul style="list-style-type: none"> <li>a. Waivers to extend the statute for FBAR penalty assessments have been secured for all applicable periods. See Step 15.</li> <li>b. Bank statements and other documents impacting account balances and transactions have been obtained through OVDI to the fullest extent possible; remind taxpayers of the requirement to cooperate, even in OOR cases.</li> <li>c. The OVDI TA (Technical Advisor) should be involved in determining the potential OOR examination implications. In addition, the OVDI TA should review all OORC submission packages prior to submission to the OORC for FBAR penalty considerations, reasonable cause evaluations, open statute determinations, and general assistance in preparing the OORC submission package.</li> </ul>				
2. General Info – <a href="#">Report of Foreign Bank &amp; Financial Accounts TD-F 90-22.1</a> [FBAR paper form is now obsolete]: <ul style="list-style-type: none"> <li>a. FBAR Form TD-F 90-22.1 is due <b>June 30</b> following the calendar year in which reporting requirements were met.</li> <li>b. FBARS are Treasury forms, not regular IRS forms. Form TD-F 90-22.1 can be found in the IRS Forms Repository by entering Catalog # 12996D.</li> <li>c. FBARS are filed with the Enterprise Computing Center in Detroit [ECC], not IRS campuses.</li> <li>d. Income tax audits = Title 26 examinations; FBAR inquiries = Title 31 examinations.</li> <li>e. FBAR Code &amp; Regs - 31 USC §§ 5314 &amp; 5321; 31 CFR §§ 1010.350 &amp; 1010.306 &amp; 1010.420 &amp; 1010.820 &amp; 1010.840, Formerly: 31 CFR §§ 103.24 &amp; 103.27 &amp; 103.32 &amp; 103.57 &amp; 103.59, respectively.</li> <li>f. April 2003, Title 31 FBAR enforcement authority was delegated from FinCEN to IRS.</li> <li>g. Info gathered in a Title 26 audit cannot be used in a Title 31 inquiry <b>unless</b> there is a Related Statute determination. See Step 4.</li> <li>h. Penalties for periods after 10/22/2004 are computed differently than under prior law.</li> </ul>				

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

<p>3. Determine if FBAR was required [31 USC §§ 5314; 31 CFR §§ 1010.350 &amp; 1010.306 &amp; 1010.420. Formerly: 31 CFR §§ 103.24 &amp; 103.27 &amp; 103.32]:</p> <ul style="list-style-type: none"> <li>a. Taxpayer is a “US person”. [IRM 4.26.16.3.1]</li> <li>b. US person had a financial account. [IRM 4.26.16.3.2]</li> <li>c. Financial account was in a foreign country. [IRM 4.26.16.3.3]</li> <li>d. US person had financial/signatory/other authority over the foreign financial account. [IRM 4.26.16.3.4 &amp; IRM 4.26.16.3.5]</li> <li>e. Aggregate foreign account balances, in dollars, exceeded \$10,000 at any time in the calendar year. [IRM 4.26.16.3.6]</li> </ul>	
<p>4. In OVDI-OOR cases, a blanket RSM has been prepared and approved. Therefore, a separate RSM is not required for OVDI-OOR cases for years in the OVDI disclosure scope. [See Audit Step # 4 in the “Penalty_FBAR_Lead_Sheet.doc” for complete instructions on RSM’s in years outside of the OVDI scope.]</p> <p><a href="#">OVDI Blanket RSM</a></p> <p>IMPORTANT: If subsequent years are to be opened, an RSM is required.</p>	
<p>5. Determine if FBARs were filed and when:</p> <ul style="list-style-type: none"> <li>a. Check the FinCen Query system [FCQ] for FBAR filings. (F-10509, available from the IRS Forms Repository can be used to request this information. Check with your FBAR Coordinator for current procedures to request FCQ searches.) <ul style="list-style-type: none"> <li>I. Research name(s) of the entity, spouse, officers &amp; employees with interest in, or authority over the foreign accounts, as well as by known TINs.</li> <li>II. Research the last 8 years and verify current compliance. Filing for some years or accounts, but not others, can indicate knowledge or willfulness.</li> </ul> </li> <li>b. Asking the taxpayer if FBARS were filed, <b>prior</b> to a Related Statute determination [Step # 4], would cause all info from a Title 26 audit to be unusable in a Title 31 inquiry. [IRM 4.26.17.2 (1) f] [Step # 4-blanket RSM covers OVDI-OOR cases for years in the OVDI scope.]</li> <li>c. Information Document Request [“IDR”] on Title 26 case can ask for foreign account information, just cannot ask if FBARS were filed, <b>prior</b> to a Related Statute determination [Step # 4-blanket RSM covers OVDI-OOR cases for years in the OVDI scope.]</li> </ul>	
<p>6. Set-up the FBAR penalty investigation years on ERCS. (Instructions are found in the OVDI Library.)</p>	
<p>7. Set up a separate FBAR case file – at the outset, include:</p> <ul style="list-style-type: none"> <li>a. F-4318.</li> <li>b. Activity Record – time on the FBAR case is charged to the modules as set-up on ERCS.</li> </ul>	

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

<ul style="list-style-type: none"> <li>c. Copy of OVDI Blanket RSM</li> <li>d. OOR-OVDI-FBAR Lead Sheet.</li> <li>e. Copies of FCQ research.</li> <li>f. Copies of relevant records from the Title 26/OVDI case.</li> </ul> <p>See Step # 29 for contents of a closed FBAR case file.</p>	
<p>8. Complete <b>F-13536</b> FBAR Monitoring Document [<b>FMD</b>] to the extent possible</p> <ul style="list-style-type: none"> <li>a. Complete a separate FMD for each year (and each spouse, as applicable.)</li> <li>b. E-mail (preferred) the FMD to <b>*SBSE BSA Compliance-FBAR Penalty Coordinator</b> or Fax the FMD to ECC at <b>FAX # 313-234-2278</b>. Include a copy of the blanket RSM and any applicable statute extension forms with the initial FMD.</li> <li>c. Continue to e-mail or fax updates of FMD F-13536 to ECC as needed. Refer to the <a href="#">Where do I send . . .</a> information sheet (FBAR Library).</li> <li>d. The original FMD stays in the FBAR case file until closing. [IRM 4.26.17.2.2 (4)]</li> </ul>	
<p>9. Notify taxpayer that an FBAR penalty investigation has commenced. Notice can be either:</p> <ul style="list-style-type: none"> <li>a. Verbal - during work on the Title 26 case. Document FBAR activity record; or</li> <li>b. Letter – issue L-4265.</li> </ul>	
<p>10. Power of Attorney [<b>POA</b>] for FBAR representation:</p> <ul style="list-style-type: none"> <li>a. <b>F-2848</b>, The OVDI language for F2848 should include FBAR matters. If the existing F2848 does not address FBAR matters, refer to the OVDI Library for the correct wording and special language for F2848</li> <li>b. Update the FMD F-13536 with the POA info, as necessary, and E-mail (preferred) the FMD to <b>*SBSE BSA Compliance-FBAR Penalty Coordinator</b> or Fax the FMD to ECC at <b>FAX # 313-234-2278</b>.</li> <li>c. The original F-2848 stays in the FBAR case file.</li> </ul>	
<p>11. Work the FBAR case:</p> <ul style="list-style-type: none"> <li>a. Work papers created for FBAR issues go in the FBAR file, not the Title 26 file.</li> <li>b. For each year, and each entity/spouse, establish that the FBAR filing criteria were met as listed in Step # 3. [Also see instructions listed at end of FBAR TD F 90-22.1, and the Bank Secrecy Act (<b>BSA</b>) website.]</li> <li>c. Documenting ownership and type of authority over foreign accounts is critical to establish FBAR filing requirements. Documenting account transactions, aggregate and maximum balances, is critical in determining penalty amounts and mitigation. [Cross-reference Steps # 17 through 21.]</li> <li>d. Willfulness – see IRM 4.26.16.4.5.4 for evidence needed.</li> </ul>	
<p>12. Information Document Request [“IDR”]: (<b><u>In cases where no FBARs have been provided or additional years FBARs required</u></b>)</p>	

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

- a. Account balances on the date the examiner requests the taxpayer to produce FBAR records ["IDR date"] may be necessary to compute the FBAR statutory penalty ceiling for recordkeeping violations, per IRM 4.26.16.4.5.5 (5). [Cross-reference Step # 20].
- b. To document the date the taxpayer received the IDR, [which fixes the date on which account balances are used to compute recordkeeping violation statutory penalty maximums], it is suggested that the IDR for FBAR records be issued either:
  - I. By certified mail, return receipt requested, or,
  - II. In person, by having the taxpayer initial & date the IDR to confirm receipt.
- c. Document the activity record as to the date taxpayer received the IDR.
- d. **SEE STEP #15.**

**13. Summons:**

- a. Title 26 summons on **F-2039** may be used since there is a blanket RSM. [IRM 4.26.17.3.1 (2) (c)]
- b. If no approved RSM (or blanket RSM), or info will not be used in a Title 26 matter, **BSA Title 31 summons** must be used – refer to IRM 4.26.17.5.3 & IRM 4.26.8.3.  
Discuss with your FBAR Coordinator if you have questions about issuing a summons in connection with an FBAR Penalty investigation.

**14. Statutes [31 U.S.C. § 5321(b)(1); IRM 4.26.17.5.5]:**

- a. Title 26 ASED extension will **not** extend the Title 31 FBAR penalty statute.
- b. FBAR **civil** penalty statute - 6 years from "transaction date" without regard to whether the FBAR has been filed or not.
- c. Filing violations – "transaction date" is FBAR due date [6/30 of following year].
- d. Recordkeeping violations – "transaction date" is date examiner first requests the records required by **31 CFR §§ 1010.420**, Formerly: 31 CFR 103.32 [required record retention generally 5 years].
- e. FBAR civil penalty assessment date – date the **Operations Officer, Cincinnati Compliance Services, CTR Operations** [or delegate] stamps the assessment certification F-13448. Examiners must close FBAR civil penalty cases with sufficient time on the statute to allow processing of the assessment certification F-13448.
- f. Document FBAR penalty statute in the Administrative section of FBAR case and update on ERCS, as necessary.
- g. In most OVDI-OOR cases there should be an extension/waiver for at least some of the years. When necessary to solicit additional consents to extend/waive the FBAR statute, you will use this form: [FBAR Penalty Statute Extension Consent 04-23-2012](#)
  - i. Group Managers are delegated to sign the FBAR statute extension/waiver.
  - ii. A copy of the fully executed statute extension should be forwarded along with the appropriate year FMD to the ECC. E-mail (preferred) the statute extension and FMD to **\*SBSE BSA Compliance-FBAR Penalty Coordinator** or Fax the statute extension and FMD to ECC at **FAX # 313-234-2278**.

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

<p>h. FBAR <b>criminal</b> penalty statute – 5 years from the date the offense was committed.</p>	
<p>15. Delinquent FBARs secured by Examination [IRM 4.26.17.4.8]: If FBARs have not been secured for all years of the penalty investigation, follow these instructions for securing:</p> <p>a. Solicit delinquent or amended FBARs, unless criminal referral is contemplated.</p> <p>b. <b>Provide the following information to the taxpayer:</b>  Effective July 1, 2013, filers must electronically file the FBAR through the BSA E-File system at <a href="http://bsaefiling.fincen.treas.gov/main.html">http://bsaefiling.fincen.treas.gov/main.html</a>. If unable to E-file, filers may contact the FinCEN Regulatory Helpline at 800-949-2732 to request an exemption.</p> <p>Help in completing the FBAR is available Monday - Friday, 8 a.m. to 4:30 p.m. Eastern Time, at (866) 270-0733 (toll-free inside the U.S.) or (313) 234-6146 (not toll-free, for callers outside the U.S.). Questions regarding the FBAR can be sent to <a href="mailto:FBARquestions@irs.gov">FBARquestions@irs.gov</a>. Filers residing abroad may also contact U.S. embassies and consulates for assistance.</p> <p>For E-Filing system questions, call the FinCEN E-Filing Help Desk at (866) 346-9478, option 1 (M-F, 8-6 Eastern time) or email at <a href="mailto:BSAEFilingHelp@fincen.gov">BSAEFilingHelp@fincen.gov</a>.</p> <p>c. Request that the taxpayer notify you in writing when they have filed the solicited FBARs. Once notified of the e-filing, request a copy of the e-filing information and FBAR data. If the taxpayer cannot provide this information, request FCQ research to confirm the filing dates and to obtain the FBAR information.</p>	
<p>16. Bankruptcy Procedures – See IRM 4.26.17.5.6</p>	
<p>17. FBAR Penalty Computation in General [IRM 4.26.16.4]:</p> <p>a. Penalties can be for violation of filing requirements [31 CFR 1010.350, Formerly: 31 CFR 103.24] or recordkeeping requirements [31 CFR 1010.306, Formerly: 31 CFR 103.32]. <b>Both</b> filing and recordkeeping penalties can apply to the same <b>account</b> for the same <b>year</b>.</p> <p>b. After 10/22/04 – four civil penalties – Non-willful; Willful; Negligence; &amp; Pattern of negligence.</p> <p>c. Civil penalties – statutory maximum amounts, but no floor. Penalty amount is at examiner’s discretion, which is the reason for penalty mitigation guidelines.</p> <p>d. May have multiple penalties for each foreign account, e.g., there could be both a reporting &amp; a recordkeeping violation for a single account in which 2 persons have an interest. There would be 2 FBAR penalties against each person, for a total of 4 penalties arising from the single account.</p> <p>e. Can impose both civil &amp; criminal penalties for same FBAR violation [31 USC § 5321(d)].</p>	
<p>18. Penalty Amounts, Post 10/22/2004, if no mitigation [IRM 4.26.16.4.3 &amp; IRM 4.26.16.4.4]:</p> <p>a. Non-willful violations – 31 USC § 5321(a)(5)(A) &amp; (B) – applies to individuals &amp; business entities; maximum \$10,000; reasonable cause exception if the foreign transaction or account balance was properly reported on a delinquent or amended FBAR; mitigation guidelines available.</p> <p>b. Willful violations – 31 USC § 5321(a)(5)(A) &amp; (C) – applies to individuals &amp; business</p>	

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

<p>entities; maximum is greater of \$100,000 or 50% of the transaction amount or account balance; no reasonable cause exception; mitigation guidelines available.</p> <p>c. Negligence – 31 USC § 5321(a)(6)(A) – applies only to business entities; maximum \$500 per each violation; no reasonable cause exception; no mitigation.</p> <p>d. Pattern of Negligence – 31 USC § 5321(a)(6)(B) – applies only to business entities; maximum \$50,000 per entity; no reasonable cause exception; no mitigation.</p> <p>e. <b>Warning:</b> The FBAR regulations, 31 CFR 1010.820, Formerly: 31 CFR 103.57, have <b>not</b> yet been revised to reflect changes in:</p> <p>I. Negligence penalty, 31 USC 5321(a)(6)(A): applicability extended to all businesses [not just financial institutions], effective 10/27/2001.</p> <p>II. Willfulness penalty, 31 USC 5321(a)(5)(C): ceiling increased effective 10/23/2004.</p>	
<p>19. Mitigation Guidelines, “Normal” FBAR Penalties [IRM 4.26.16.4.6]:</p> <p>a. Mitigation computations use maximum account balances during the calendar year, &amp; the guidelines are found only in the IRM, not in the Title 31 Code or Regulations.</p> <p>b. Mitigation is not available for FBAR Negligence or Pattern of Negligence penalties [IRM 4.26.16.4.3.4 (2) &amp; 4.26.16.4.3.6 (2)].</p> <p>c. Threshold Conditions – 4 conditions – IRM 4.26.16.4.6.1</p> <p>d. Non-willful – 3 penalty levels – IRM 4.26.16.4.6.2 &amp; IRM Exhibit 4.26.16-2</p> <p>e. Willful – 4 penalty levels – IRM 4.26.16.4.6.3 &amp; IRM Exhibit 4.26.16-2f.</p>	
<p>20. Penalty Computations --</p> <p>a. Different reference amounts are used to compute the <b>statutory</b> penalty ceiling under the Title 31 Code &amp; Regulations, and <b>mitigated</b> penalty maximums under the IRM.</p> <p>I. Statutory penalty ceilings – based on account balances on the “<b>violation date</b>”, per Title 31 Code &amp; Regs.</p> <p>II. Mitigated penalty maximums – based on highest account balances (use the mitigation worksheet in the FBAR Library).</p> <p>b. Filing violations – FBAR <b>due date</b> is the violation date. Balance in account at the close of the following June 30 [due date] is the statutory penalty ceiling calculation amount. [IRM 4.26.16.4.5.5(4)]</p> <p>c. Recordkeeping violations - date examiner requests records [<b>IDR date</b>] is the violation date. Balance in account at the close of the day records are requested [IDR date] is the statutory penalty ceiling calculation amount. [IRM 4.26.16.4.5.5(5)]</p> <p>d. For mitigation levels &amp; mitigated penalty amounts, need maximum aggregate balances and maximum separate balances in each account <b>during the calendar year</b> to compute using the mitigation worksheet in the FBAR Library.</p>	
<p>21. CI Referral &amp; FBAR Criminal Penalties – See IRM 4.26.17.5.4</p>	
<p>22. Closing - No violation [IRM 4.26.17.4.1]:</p>	

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

- a. Summary Memorandum – show years opened, filing requirement, or lack thereof, for each year, computation of aggregate balances & work paper references [IRM 4.26.17.4].
- b. Discuss case with the FBAR Coordinator for review and concurrence. Document the discussion and decisions/conclusions reached in the FBAR case file activity record.
- c. After concurrence from FBAR Coordinator, update FMD F-13536 for each year & close to Group Manager.
- d. Group Manager updates activity record & the FMD F-13536 for closing information & forwards the FBAR file on a F-3210 to **IRS, PO Box 33113, Detroit, MI 48232-0113**.
- e. Close on ERCS.

**23. Closing - Warning only [IRM 4.26.17.4.2]:**

- a. Violations may not warrant penalties.
- b. Summary Memorandum – show years opened, filing requirements, aggregate balances, penalty determination for each year, reason(s) for non-assertion & work paper references [IRM 4.26.17.4].
- c. "Warning Letter" determinations should be discussed with the FBAR Coordinator for review and concurrence before contacting the taxpayer and case closing. Document the discussion(s) and concurrence in the FBAR case file activity record, including decisions/conclusions reached during the discussion(s) with the FBAR Coordinator. It is important to maintain consistency in all FBAR investigation outcomes and this step provides some assurance that taxpayers with similar case facts/circumstances receive similar treatment throughout the Area.
- d. Issue L-3800 - Original & copy to taxpayer; keep a copy for the case file. L-3800 is not used in LCCI cases where FBAR penalties are forgiven.
- e. Delinquent/corrected FBARs – Taxpayer sends to examiner, with a copy of L-3800.
- f. Examiner processes delinquent FBARs as per IRM 4.26.17.4.8.
- g. Update FMD F-13536 for each year & close to Group Manager
- h. Group Manager updates activity record & the FMD F-13536 for closing information & forwards the FBAR file on a F-3210 to **IRS, PO Box 33113, Detroit, MI 48232-0113**.
- i. Close on ERCS.

**24. Closing – Penalties Asserted – General Procedures [IRM 4.26.17.4.3]:**

- a. Summary Memorandum – show years opened, filing requirements, aggregate balances, penalty determination for each year, reason(s) for assertion/non-assertion; reasonable cause, mitigation & work paper references [IRM 4.26.17.4]  
 OVDI TA involvement is required to review the Summary Memorandum and penalty recommendations prior to submission to the Area FBAR Coordinator.  
 For willful penalty recommendations, FTA must concur and the case file must document FTA involvement/concurrence.
- b. Counsel Review – Before proposing FBAR penalties to taxpayers, Counsel review is mandatory. Counsel should render advice within 45 days. Counsel review is not required for warning letter cases or no violation cases.
  - I. SB/SE examiners submit FBAR case files to FBAR Coordinators for review and

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

forwarding to the appropriate SB/SE Counsel Area FBAR Coordinator. If necessary, the FBAR Coordinator will contact the examiner for additional information or case development prior to sending the case forward to SB/SE Counsel Area FBAR Coordinators.

After SB/SE Counsel Area FBAR Coordinator's concurrence:

- I. Issue L-3709, FBAR 30-day letter [2 copies to taxpayer].
  - II. Issue F-13449, FBAR Agreement to Assessment [FBAR RAR; 2 copies]
  - III. Include Notice 1330, Making FBAR Penalty Payment by Check
- c. Payment issues [IRM 4.26.17.4.3 (6)(c) – (e) and IRM 4.26.17.4.5 (1)]:
- I. Checks - credited electronically, so cancelled checks not returned to the payer. If receipt requested – recommend payment by money order or cashiers check. **Form 809 tax receipts are not issued.**
  - II. Separate check/money order for FBAR penalties, made out to United States Treasury, with taxpayer's TIN & year(s) penalties were applied.
  - III. Interest – no pre-assessment interest; does not accrue if penalty paid within 30 days after the penalty assessment is mailed.
  - IV. Copy the check/money order for the case file. Examiner sends the payment, copy F-13449, and F-3210 to FBAR Payment address: **IRS, PO Box 33115, Detroit, MI 48232-0115** [different address than where case files are sent].
  - V. **Do NOT use F-3244 for FBAR payments.** See IRM 4.26.17.4.5 (1)(e) for the consequences.

**25. Closing - Penalties Recommended – Agreed [IRM 4.26.17.4.4]:**

- a. Signed & dated F-13449 received from taxpayer.
- b. Delinquent/corrected FBARs – received from Taxpayer.
- c. Examiner processes FBARs as per IRM 4.26.17.4.8.
- d. Payment processed as per Step # 24 [IRM 4.26.17.4.3 (6)(c) – (e) and IRM 4.26.17.4.5 (1)].
- e. Update FMD F-13536 & Summary Memorandum to indicate agreement/payment.
- f. Close to Group Manager.
- g. Group Manager updates the activity record & FMD F-13536 with closure info & forwards the FBAR case file on a F-3210 to **IRS, PO Box 33113, Detroit, MI 48232-0113** [different address than where payments are sent].
- h. Close on ERCS.

**26. Closing - Penalties Recommended – Unagreed - Regular [IRM 4.26.17.4.6](An Unagreed FBAR case is where the taxpayer fails to respond to L3709):**

- a. Wait 45 days after issuance of L-3709 & F-13449 for taxpayer to request an appeal.
- b. Ensure all documents needed from a Title 26 case are copied for the FBAR file.
- c. Update the FMD F-13536 & Summary Memorandum to indicate no appeal & close case to Group Manager.
- d. Group Manager updates activity record & the FMD F-13536 for closing information &



**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

<p>forwards the FBAR file on a F-3210 to <b>IRS, PO Box 33113, Detroit, MI 48232-0113.</b></p> <p>e. Close on ERCS.</p>	
<p>27. Closing - Penalties Recommended – Unagreed – Appealed with Pre-Assessment Appeal Rights [IRM 4.26.17.4.7]:</p> <p>a. Wait 45 days after issuance of L-3709 &amp; F-13449 for taxpayer to request an appeal.</p> <p>b. An appeal requires 2 copies of a written protest to examiner, postmarked prior to the L-3709 response date, containing all information listed in L-3709, and <u>with 210* days remaining on the FBAR penalty assessment statute.</u></p> <p>i. If there are 210 days remaining on the FBAR penalty assessment statute and the taxpayer has provided a timely written protest, they will have pre-assessment Appeal Rights.</p> <p>i. If taxpayer will not sign a consent to extend the statute, then they will have only post- assessment Appeal Rights. See Audit Step # 28.</p> <p>c. Ensure all documents needed from a Title 26 case are copied for the FBAR file.</p> <p>d. Transmittal Letter L-4665 – Note <b>“FBAR category case; UIL 999.99-01; Appeals Coordinated Issue [ACI] Program”, and “Appeals Officer must contact Appeals FBAR Coordinator prior to scheduling initial conference at 818-242-8143 x3014”.</b></p> <p>e. Update the FMD F-13536 &amp; Summary Memorandum to indicate an appeal &amp; close case to Group Manager.</p> <p>f. Group Manager completes FMD F-13536 and forwards it to ECC at <b>IRS, PO Box 33113, Detroit, MI 48232-0113.</b> Group Manager documents the activity record, and <b><u>closes the case file to Appeals through TECHNICAL SERVICES.</u></b></p> <p>g. Close on ERCS using the most current guidance.</p> <p><b><u>Where Possible and Applicable, send the related, unagreed Income Tax cases and FBAR cases to Appeals at the same time.</u></b></p> <p><b>*Appeals will reject any case with less than 180 days remaining on the penalty assessment statute. Therefore, there must be at least 210 days remaining on the statute at the time the case is closed to Technical Services to allow routine mailing and processing times prior to the case physically arriving at Appeals.</b></p>	
<p>28. Closing - Penalties Recommended – Unagreed – Appealed with Post-Assessment Appeal Rights [IRM 4.26.17.4.7]:</p> <p>a. The taxpayer timely responds to L3709 and requests an Appeals conference but refuses to sign the FBAR penalty assessment statute extension to allow at least 210 days on the FBAR penalty assessment statute: Then the taxpayer will not have pre-assessment Appeal rights and the following steps are required.</p> <p>b. Where the proposed unagreed penalties exceed \$100,000 and are assessed, Appeals has limited authority to settle the case. In this instance, the Group Manager must advise the taxpayer of this provision and document this contact in the case activity record.</p> <p>c. <u>Assess the FBAR penalties for the short-statute year(s) only</u> by sending the following documents to <b><u>*SBSE BSA Compliance-FBAR Penalty Coordinator</u></b> or Fax to 313-234-2278:</p>	

**Taxpayer Name:**  
**TIN:**  
**Form:** TD F 90-22.1  
**Tax Year (s):**

**Examiner:**  
**Date:**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

- i. Copy of the FMD. Check the disposition box "Case Closed with Penalty to Appeals".
- ii. Unsigned F13449 showing the penalty assessment for the year with less than 210 days on the assessment statute.
- iii. A statement that the FBAR penalty case is being forwarded to Appeals.
- iv. If the documents are not e-mailed by the Group Manager, then the Group Manager must attach a statement (or document on FMD) that he approved the penalty assessment.
- d. After ECC (immediately) assesses the FBAR penalty for the short-statute year(s), the originating group should receive a copy of the FBAR penalty assessment document and a copy of the balance due letter sent to the taxpayer. Once these documents are received in the group, the case can be closed from the group.
  - i. Ensure all documents needed from a Title 26 case are copied for the FBAR file.
  - ii. Transmittal Letter L-4665 – Note **"FBAR category case; UIL 999.99-01; Appeals Coordinated Issue [ACI] Program"**, and **"Appeals Officer must contact Appeals FBAR Coordinator prior to scheduling initial conference at 818-242-8143 x3014"**
  - iii. Update the Summary Memorandum to indicate an appeal & close the case file to the Group Manager.
  - iv. The Group Manager documents the activity record, and **closes the case file to Appeals through TECHNICAL SERVICES.**
  - e. Close on ERCS using current guidelines.

Note: Use the procedures in Audit Step #27 for any remaining pre-assessment Appeal rights years and to close the FBAR penalty cases to Appeals through TECHNICAL SERVICES. If both pre- and post-assessment Appeals years, send cases together.

**Where Possible and Applicable, send the related, unagreed Income Tax cases and FBAR cases to Appeals at the same time.**

29. Closing – Follow guidelines for case file assembly per the FBAR Library examples:
- a. Copies of secured delinquent FBARs
  - b. Closing documents could include:
    - I. L-3800 copy – Warning Letter
    - II. L-3709 copy – FBAR 30-day Letter
    - III. F-13449 original – Agreement to Penalties [should be accompanied by an extra copy of any POA form, per IRM 4.26.17.3.1(2)(a)]
    - IV. Notice 1330 copy – Making FBAR Penalty Payment by Check
  - c. Power of Attorney [General or F-2848] - original
  - d. FMD F-13536 [w/ Fax Transmission Report & memo to ECC, if there was no RSM]
  - e. Summary memorandum explaining the FBAR violations.
  - f. Copy of any payments of FBAR penalties made by the Taxpayer.
  - g. F-4318.
  - h. Activity record.
  - i. Original RSM F-13535 & Transmission Information (E-mail copy or Fax transmission)

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

<p>report) and/or OVDI Blanket RSM.</p> <p>j. FBAR Lead Sheet.</p> <p>k. FBAR penalty computations.</p> <p>l. Copies of FCQ research.</p> <p>m. Copies of relevant records from the Title 26 case, or records secured via FBAR IDR.</p> <p>n. Correspondence – could include copies of L-4265; L-3899; L-3709; Notice 1330</p> <p>o. Information Document Requests – with certified mail receipt attached, if applicable</p>	
--	--

**Facts:** (Document the relevant facts.)

**Law:** (Tax Law, Regulations, court cases, and other authorities. If Unagreed, include Argument.)

31 U.S.C. §§ 5314; 5321(a)(5)(A) & (B); 5321(a)(5)(C) & (D); 5321(a)(6); 5321(b)(1)

**Specific citations:**

**31 U.S.C. § 5314 (a)**– Requires that certain U.S. entities must file FBARs, as follows:

*... the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in the United States, to keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. The records and reports shall contain the following information in the way and to the extent the Secretary prescribes:*

- (1) the identity and address of participants in a transaction or relationship*
- (2) the legal capacity in which a participant is acting*
- (3) the identity of real parties in interest.*
- (4) a description of the transaction.*

**31 U.S.C. § 5321(a)(5)(A) & (B)**– Provide for a non-willful penalty for FBAR violations as follows:

- (5) Foreign financial agency transaction violation. -*

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

## **OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

*(A) Penalty authorized. - The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.*

*(B) Amount of penalty. -*

*(i) In general. - Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.*

*(ii) Reasonable cause exception. - No penalty shall be imposed under subparagraph (A) with respect to any violation if -*

*(I) such violation was due to reasonable cause, and*

*(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.*

**31 U.S.C. § 5321(a)(5)(C) & (D)** - Provide for a willfulness penalty for FBAR violations as follows:

*(C) Willful violations. - In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314 -*

*(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of -*

*(I) \$100,000, or*

*(II) 50 percent of the amount determined under subparagraph (D), and*

*(ii) subparagraph (B)(ii) shall not apply.*

*(D) Amount. - The amount determined under this subparagraph is -*

*(i) in the case of a violation involving a transaction, the amount of the transaction, or*

*(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.*

**31 U.S.C. § 5321(a)(6)(A)** - Provides a negligence penalty for foreign financial agency transaction violations as follows:

*(6) Negligence. -*

*(A) In general. - The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution or nonfinancial trade or business which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.*

**31 U.S.C. § 5321(a)(6)(B)** - Provides a negligence penalty for a pattern of foreign financial agency transaction violations as follows:

*(B) Pattern of negligent activity. - If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than \$50,000 on the financial institution or nonfinancial trade or business.*

**31 U.S.C. § 5321(b)(1)** – prescribes the statute of limitation for civil FBAR penalties, as follows:

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

## OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet

*(b) Time Limitations for Assessments and Commencement of Civil Actions. -*

*(1) Assessments. - The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.*

### **31 CFR § 1010.350 - Reports of foreign financial accounts:**

**(Revision 2/24/2011, Effective 3/28/2011 & Formerly 31 C.F.R. § 103.24-See below)**

*(a) In general. Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD-F 90-22.1), or any successor form. See paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.*

*(b) United States person. For purposes of this section, the term "United States person" means--*

*(1) A citizen of the United States;*

*(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of "United States" provided in 31 CFR 1010.100(hhh) rather than the definition of "United States" in 26 CFR 301.7701(b)-1(c)(2)(ii); and*

*(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.*

*(c) Types of reportable accounts. For purposes of this section--*

*(1) Bank account. The term "bank account" means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.*

*(2) Securities account. The term "securities account" means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.*

*(3) Other financial account. The term "other financial account" means--*

*(i) An account with a person that is in the business of accepting deposits as a financial agency;*

*(ii) An account that is an insurance or annuity policy with a cash value;*

*(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or*

*(iv) An account with--*

*(A) Mutual fund or similar pooled fund. A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or*

*(B) Other investment fund. [Reserved]*

*(4) Exceptions for certain accounts.*

*(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity*

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

### **OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

*established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.*

*(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.*

*(iii) An account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.*

*(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.*

*(d) Foreign country. A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010(hhh).*

*(e) Financial interest. A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):*

*(1) Owner of record or holder of legal title. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.*

*(2) Other financial interest. A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is--*

*(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;*

*(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;*

*(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. See 26 U.S.C. 671-679 and the regulations thereunder to determine if a grantor has an ownership interest in the trust for the year; or*

*(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.*

*(3) Anti-avoidance rule. A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.*

*(f) Signature or other authority --(1) In general. Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held*

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

### **OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

*in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.*

*(2) Exceptions --(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.*

*(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.*

*(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.*

*(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.*

*(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.*

*(g) Special rules --(1) Financial interest in 25 or more foreign financial accounts. A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

*(2) Signature or other authority over 25 or more foreign financial accounts. A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

*(3) Consolidated reports. An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.*

*(4) Participants and beneficiaries in certain retirement plans. Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.*

*(5) Certain trust beneficiaries. A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is*

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

### **OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

*not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust's foreign financial accounts.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010; 76 FR 10234, 10245, Feb. 24, 2011]

**NOTES:** [EFFECTIVE DATE NOTE: 76 FR 10234, 10245, Feb. 24, 2011, revised this section, effective Mar. 28, 2011.]

**31 C.F.R. § 103.24** – Requires FBAR filing and recordkeeping, as follows:

[Generally effective through 3/28/2011 unless elect to follow **31 CFR § 1010.350- See above**]

(a) *Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.*

**31 CFR § 1010.306 Filing of reports:**

[Effective Mar. 1, 2011 & Formerly 31 C.F.R. § 103.27-See below]

(c) *Reports required to be filed by § 1010.350 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$ 10,000 maintained during the previous calendar year.*

(d) *Reports required by § 1010.311, § 1010.313, § 1010.340, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.*

(e) *Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010]

**NOTES:** [EFFECTIVE DATE NOTE: 75 FR 65806, Oct. 26, 2010, added Chapter X, effective Mar. 1, 2011.]

**CROSS REFERENCE:** General Accounting Office: See 4 CFR Chapter I.

**31 C.F.R. § 103.27** – Provides FBAR filing rules, as follows:

[**Only Change - Renumbered under Chapter X as 31 CFR § 1010.306- See above**]

(c) *Reports required to be filed by Sec. 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.*

(d) *Reports required by Sec. 103.22, Sec. 103.23 or Sec. 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.*



**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

## **OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

(e) Forms to be used in making the reports required by Sec. 103.22 and 103.24 may be obtained from the Internal Revenue Service.

### **31 CFR § 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts: [Effective Mar.1, 2011 & Formerly 31 C.F.R. § 103.32-See below]**

*Records of accounts required by § 1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.*

**HISTORY:** [75 FR 65806, Oct. 26, 2010]

**NOTES:** [EFFECTIVE DATE NOTE: 75 FR 65806, Oct. 26, 2010, added Chapter X, effective Mar. 1, 2011.]

**31 C.F.R. § 103.32** – Provides FBAR recordkeeping rules, as follows:

#### **[Only Change - Renumbered under Chapter X as 31 CFR § 1010.420 - See above]**

*Records of accounts required by Sec. 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file.*

### **31 CFR § 1010.820 Civil penalty:**

**[Effective Mar.1, 2011 & Formerly 31 C.F.R. § 103.57 (g) & (h) -See below]**

(g) For any willful violation committed after October 27, 1986, of any requirement of § 1010.350, § 1010.360 or § 1010.420, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 1010.360 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed \$ 100,000) of the transaction, or \$ 25,000; and

(2) In the case of a violation of § 1010.350 or § 1010.420 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed \$ 100,000) equal to the balance in the account at the time of the violation, or \$ 25,000.

(h) For each negligent violation of any requirement of this chapter, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed \$ 500.

**Taxpayer Name:**

**Examiner:**

**TIN:**

**Form:** TD F 90-22.1

**Date:**

**Tax Year (s):**

**OVDI-OOR: FBAR Penalty Investigation (Post 10/22/04) Lead Sheet**

**HISTORY:** [75 FR 65806, Oct. 26, 2010]

**NOTES:** [EFFECTIVE DATE NOTE: 75 FR 65806, Oct. 26, 2010, added Chapter X, effective Mar. 1, 2011.]

**CROSS REFERENCE:** General Accounting Office: See 4 CFR Chapter I.

**31 C.F.R. § 103.57(g) & (h)** – Provides FBAR civil penalty rules. This regulation had not yet been updated to reflect the new provisions of the non-willful & willful penalties under 31 U.S.C. § 5321(a)(5)(B) through (D). The prior rules are as follows:

**[Only Change - Renumbered under Chapter X as 31 CFR § 1010.820 - See above]**

*(g) For any willful violation committed after October 27, 1986, of any requirement of Sec. 103.24, Sec. 103.25, or Sec. 103.32, the Secretary may assess upon any person, a civil penalty:*

*(1) [Not applicable to FBAR]*

*(2) In the case of a violation of Sec. 103.24 or Sec. 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed \$100,000) equal to the balance in the account at the time of the violation, or \$25,000.*

*(h) For each negligent violation of any requirement of this part, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed \$500.*

**Taxpayer Position:** *(If applicable)*