

SUMMARY OF CIVIL FBAR PENALTIES

(After October 22, 2004 and not LCCI Cases)

Violation	Per FBAR Statute	Per Mitigation Guidelines			
Any Negligent Violation	Not more than \$500. • 31 USC §5321(a)(6)(A)	N/A			
Pattern of Negligent Activity	In addition to penalties under the Negligent Violation with respect to any such violation, not more than \$50,000. • 31 USC §5321(a)(6)(B)	N/A			
Non-Willful Violation	Shall not exceed \$10,000. • 31 USC §5321(a)(5)(B)	Level	If Maximum Acct. Balances	THEN the Penalty is the LESSER of:	
		I	≤ \$50,000	\$500 / violation	\$5,000 (in aggregate)
		II	≤ \$250,000	\$5,000 / violation	10% of maximum account balance
		III	> \$250,000	\$10,000 / violation	\$10,000 / violation
Willful - Failure to File TD F 90-22.1 or retain records of account	The greater of \$100,000 or 50% of the balance in the account at the time of the violation (June 30 of subsequent year) . • 31 USC §5321(a)(5)(C)	Level	If Maximum Acct. Balances	THEN the Penalty is the GREATER of:	
		I	≤ \$50,000	\$1,000 / violation	5% of maximum account balance
		II	≤ \$250,000	\$5,000 / violation	10% of maximum account balance
		III	≤ \$1 Million	10% of maximum account balance	50% of balance at time of violation (June 30 of subsequent year)
		IV	> \$1 Million	\$100,000 / violation	50% of balance at time of violation (June 30 of subsequent year)

IRM 4.26.16.4 (07-01-2008)

FBAR Penalties

(7) FBAR penalties are **determined per account**, not per unfiled FBAR, **for each person required to file**. Penalties **apply for each year of each violation**. As noted above, however, examiners are expected to exercise discretion, taking into account the facts and circumstances of each case, in determining whether penalties should be asserted and the total amount of penalties to be asserted.

31 USC §5321 Civil penalties

(a)(5) Foreign financial agency transaction violation.—

(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.

(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**.

IRM 4.26.16 Report of Foreign Bank and Financial Accounts

IRM 4.26.16.4.6.2 Mitigation of the Non-willful FBAR Penalty

(3) There are three penalty levels depending on the highest amount in the account during the period for which the FBAR should have been filed.

(4) **IF** the **aggregate balance of all accounts** held during the year does not exceed \$50,000, **THEN** the **penalty for each violation is \$500**, not to exceed a total of \$5,000 in penalties.

(5) **IF** the aggregate balance of the accounts is over \$50,000, but less than \$250,000, the penalty is, per violation, the lesser of \$5,000 or ten per cent of the **highest balance in the account during the year** for which the account should have been reported.

(6) For violations regarding an account exceeding \$250,000, the penalty per violation is the statutory maximum of \$10,000.

4.26.16.4.6.3 Mitigation Levels for Willful FBAR Penalties

(3) Mitigation guidelines for willfulness penalties occurring after October 22, 2004:

- a. **Level I** Willful Violations Occurring After October 22, 2004 - **If the maximum aggregate balance for all accounts** to which the violations relate did not exceed \$50,000, Level I applies to all accounts. Determine the **maximum balance during the calendar year** for each account. Add the various maximums to find the maximum aggregate balance. The Level I penalty is the greater of \$1,000 per violation or 5% of the maximum account balance during the calendar year for each Level I account.
- b. **Level II** Willful Violations Occurring After October 22, 2004 - If Level I does not apply and if the **maximum account balance to which the violations relate** at any time during the calendar year did not exceed \$250,000, Level II applies to that account. The Level II penalty assessed for each account is the greater of \$5,000 per violation or 10% of the **maximum account balance during the calendar year** for each Level II account.
- c. **Level III** Willful Violations Occurring After October 22, 2004 - If the **maximum account balance to which the violations relate** at any time during the calendar year exceeded \$250,000 but did not exceed \$1,000,000, Level III applies to that account. The Level III penalty assessed for each account is the greater of 10% of the **maximum account balance during the calendar year** for each Level III account or 50% of the **closing balance in the account as of the last day for filing the FBAR**.
- d. **Level IV** Willful Violations Occurring After October 22, 2004 - If the **maximum account balance to which the violations relate** at any time during the calendar year exceeded \$1 million, Level IV, the statutory maximum, applies to that account. The Level IV penalty is the statutory maximum applied to each account. It is the greater of \$100,000 or 50% of the **closing balance in the account as of the last day for filing the FBAR**.