

Regulatory Bulletin

RB 8 was rescinded 1/13/95. It was incorporated into Compliance Activities 400.

Handbook: Co
Subjects: Bank Secrecy Act

Section: 400
RB 8

December 13, 1988

Guidelines for Referral of Bank Secrecy Act Violations to Treasury for Civil or Criminal Penalties

RESCINDED

Summary: This bulletin provides guidance in determining when a BSA violation of a significant or serious nature should be referred to the Treasury Department for review for civil or criminal penalties. Referral procedures are also set forth.

For Further Information Contact:

The FHLBank District in which you are located, or the Compliance Programs Division of the Office of Regulatory Activities, Washington D.C.

Supplementary Information:

Memorandum SP-31-2 is hereby rescinded.

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Introduction

The Bank Secrecy Act (BSA), 31 USC 5311 et seq., and the regulations promulgated thereunder, 31 CFR Part 103, provide the Treasury Department with authority to assess civil money penalties and authorize criminal prosecution. Section 103.47 of the regulations authorizes the Treasury Department to assess a civil money penalty upon any domestic financial institution and any partner, director, officer or employee thereof for any willful violation of a reporting or recordkeeping requirement. Also, a civil money penalty may be assessed upon any "person" for structuring a currency transaction to evade a reporting requirement and for certain other willful violations, and upon any financial institution for a negligent violation of any Section 103 Treasury Department regulation.

Section 103.49 of the regulations provides for the imposition of a criminal penalty upon any person for willful violations of the Act or regulations.

Referral Policy

The Treasury Department advises examiners to consider the following factors in determining whether BSA violations should be formally referred to it for either civil or criminal penalties:

- Suspected instances of money laundering or transaction structuring to avoid reporting.
- Evidence that a violation was flagrant, demonstrated bad faith, concealment was attempted, or was committed with disregard for the law or the consequences to the institution.
- Failure of an institution or individual to cooperate with the Bank Board to effect an early resolution and correction of a violation.
- Continuation or recurrence of a violation, especially when the institution has been advised of the violation by the Bank Board, Treasury, IRS, Securities and Exchange Commission, Customs Service, or the institution's independent reviewer(s). Such notification would include supervisory letters, previous civil money penalty agreements between Treasury and the institution, or investigation/prosecution stemming from criminal investigations.

- Evidence that institution insiders, participants in the currency transaction, or their associates directly or indirectly benefited as a result of a violation.
- Evidence that a violation did or may have facilitated or concealed illegal activity by the institution, its employees, its customers, or others.
- Absence of, or severe inadequacies in, a compliance program.
- Failure by an institution or individual(s) to adhere to the requirements of a compliance program.
- Indication of false recordkeeping entries.

The Treasury Department also advises that the following are examples of situations that may warrant referral:

- Failure to file Forms 4789 or 4790, whether intentional or not, as a pattern or practice at a certain location, or as a pattern or practice for one or more specific customers or accounts. This includes a failure to report aggregated transactions when the institution has a system that identifies multiple related transactions occurring on the same business day.

Attachment to Regulatory Bulletin 8

Appendix A

U.S. Treasury Referral Content Guidance and Examples of Documentation Necessary to Support Referred Violations

Referral Content

1. A description of the examination procedures used. The description should note the as of date of the information reviewed, whether a review of currency transactions was conducted and, if so, the dates for which transactions were tested.
2. A history of the bank's compliance with the BSA.
3. A description of the violations. The descriptions should contain adequate detail to allow Treasury to determine whether or not to pursue enforcement action, e.g. name of the customer, nature of the customer's business, the customer's tax identification number, and the purpose or type of transaction. The information regarding the violation should identify the area or branch of the bank in which the violations occurred. Also, if the violation involves ineligible customers on the exemption list, it should indicate whether the exemption certificate, required for additions to the list after October 27, 1986, is on file.

Copies of selected workpapers may be submitted with a referral. For instance, examiners may obtain copies of source documents (e.g. teller tapes or microfilm) to substantiate violations and then prepare a separate workpaper summarily listing the violations and other pertinent information. If the summary workpaper is legible and photocopies clearly, a photocopy may be submitted with the referral. Retyping information that can be clearly transmitted in this manner is not necessary. Photocopies of source documents should not be submitted with the referral. For exemption list problems, the exemption list may be photocopied and submitted. Problems with the list or absence of the required exemption certification statement can be noted on the photocopy.

4. The bank's employer identification number (EIN) and the MICR number for the office in violation.
5. Identification of the individuals responsible for the violations or having knowledge of the violations.
6. Bank management's response to the violations.

Documentation for Referred Cases

1. For exemption list violations:

A copy of the exemption list should be retained in the workpapers. In some cases, the bank may provide a working copy that includes only the customer's name and account number(s), types of exempt transactions, and the dollar limits. If this is the case, the bank must maintain a subsidiary document which contains the remaining required data not included on the working copy. Such other data would be the customer's address, type of business and taxpayer identification number.

If the examiner questions the reasonableness of an exemption or the business of an exempt customer, the bank should be able to provide documentation to support its position and, at the very least, the exempt certification statement required for each customer exempted after October 27, 1986. Documentation regarding exemptions may also include copies of bank statements, copies of letters to/from Treasury/IRS, internal bank memoranda, and other items evidencing cash flows and descriptions of the business.

If an ineligible customer is on the exemption list, copies of the exemption certification statement for customers exempted after October 27, 1986, and bank documents stating why the customer is included on the list should be retained. Reasons for the bank's belief that the customer is exempt should be recorded. The bank should be directed to contact the Director, Office of Financial Enforcement, Department of the Treasury, Washington D.C. 20220 to determine if backfiling CTRs is warranted.

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Appendix B

Mr.
Director, Office of Financial Enforcement
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: _____

Dear _____:

A recent examination of the subject institution revealed significant violations of the various 31 CFR 103 regulations.

Specifically, our examiners uncovered violations of _____ (List the regulations).
(Add specifics here, especially if egregious, or if referral represents a repeat violation.) These violations are further detailed in the enclosed examination report extracts and other memoranda.

Due to the level of noncompliance and the type of violations uncovered, we are forwarding this information to you for further investigation and consideration of civil or criminal penalties.

If additional information or assistance is necessary, please contact the undersigned. So that we will be informed of the disposition of this referral, please notify us when final action is taken.

Finally, please acknowledge receipt of this letter and enclosures on the extra copy provided and return in the enclosed envelope.

Sincerely,

Executive Director

Enclosures

cc: Office of Enforcement