MSP #9 COLLECTION APPEALS PROGRAM (CAP): The CAP Provides Inadequate Review and Insufficient Protections for Taxpayers Facing Collection Actions

RESPONSIBLE OFFICIAL

Kirsten B. Wielobob, Chief, Appeals

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DEFINITION OF PROBLEM

The IRS developed the Collection Appeals Program (CAP) in stages as a response to congressional concerns regarding the rights of taxpayers subject to collection activity relating to liens, levies, and installment agreements.[2] Congress also established collection due process (CDP) protections under Internal Revenue Code (IRC) § 6320 for liens and IRC § 6330 for levies.[3] Congress believed that the existence of "procedures designed to afford taxpayers due process in collections [would] increase fairness to taxpayers."[4]

Instead, this patchwork of protections has led to some overlapping Collection appeals procedures within the IRS Office of Appeals (Appeals) that are confusing and potentially problematic for taxpayers. CAP hearings do have some attractive aspects in comparison with CDP appeals that make CAP worth preserving, including expanded coverage of collection actions and an expedited timeframe. They remain severely limited, however, in the remedies and scope of review they offer taxpayers, providing no judicial oversight of the outcome and no consideration of collection alternatives.

From fiscal years (FY) 2012 through 2015, approximately 44,500 CDP appeals per year have been received by the IRS, while taxpayers have sought just 4,600 CAP hearings per year over this same period.[5] Approximately 22 percent of taxpayers emerged fully or partially victorious from CAP hearings during these years, while 68 percent of taxpayers were fully or partially victorious in CDP appeals.[6]

CAP would be fairer and more widely embraced if it offered taxpayers and their representatives an expedited resolution vehicle that was combined with a meaningful level of review and a reasonable

1 Taxpayer Bill of Rights, *available at* www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

2 Internal Revenue Manual (IRM) 8.24.1.1.1(1), *Administrative and Legislative History* (Dec. 2, 2014). *See also* Taxpayer Bill of Rights 2 (TBOR 2), Pub. L. No. 104-168, 110 Stat. 1457 (1996).

3 The IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746 (1998).

4 S. Rep. No. 105-174, at 67 (1998).

5 Appeals' response to TAS information request (May 18, 2015), as supplemented by FY 2015 data provided by Appeals (Nov. 3, 2015).

6 *Id*. For a more detailed breakdown of this data and a discussion of the underlying assumptions, see figure entitled "Comparison of Outcome Percentages in CAP Hearings and CDP Appeals," *infra*.

opportunity for a negotiated settlement. CAP hearings that allowed for the consideration of collection alternatives and sought a quality outcome for both taxpayers and the government would provide a real benefit, even if that process required slightly expanded timeframes. The result would likely be more settlements, more balanced outcomes for participants, and a more attractive process for taxpayers.

Absent these improvements, the National Taxpayer Advocate is concerned that:

- Appeals adopts an unnecessarily narrow view of its role within CAP and needlessly restricts the scope of available review;
- CAP's emphasis on speed curtails the effectiveness and meaningfulness of Appeals' review;
- Procedures implemented by the Appeals Judicial Approach and Culture (AJAC) Project exacerbate CAP's shortcomings by adding to the inflexibility of an already limited mechanism;[7]
- Pursuit of a CAP hearing by a taxpayer can inadvertently cause the loss of all substantive administrative and judicial review of a collection action; and
- Taxpayers are underutilizing a potentially valuable Collection Appeals alternative.

ANALYSIS OF PROBLEM

CAP's Narrow Scope of Collection Actions and the Collection Vehicles Covered by It Are the Result of IRS Discretion, Not Congressional Intent

The IRS initially created CAP to provide review of lien, levy, or seizure actions taken or proposed by the Collection function. Only a few months after CAP's initiation, Congress enacted TBOR 2, which, among other things, added IRC § 6159(c) requiring the IRS to "establish procedures for an independent administrative review of terminations of installment agreements (IAs) under this section for taxpayers who request such a review."[8] Later, as part of Internal Revenue Restructuring and Reform Act of 1998 (RRA 98), Congress added appeal rights for rejected installment agreements in the same section relating to offers in compromise (OIC).[9] The treatment subsequently accorded these collection alternatives by the IRS, however, was substantially different.

Although the legislative history of RRA 98 made a passing reference to CAP, Congress defined neither the parameters of CAP nor the manner in which it should operate.[10] The IRS itself determined which Collection actions, now including rejected, modified, or terminated IAs, would be subject to CAP hearings, and then imposed an increasingly narrow scope of review available to taxpayers seeking protection of their rights within CAP.[11] Unlike actions taken or proposed regarding IAs, OICs were not placed

7 For an in-depth discussion of AJAC and its impact on taxpayers, see Most Serious Problem: *APPEALS: The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*, *supra*.

8 TBOR 2, Pub. L. No. 104-168, 110 Stat. 1457 (1996). The text of IRC § 6159(c) has since been moved to IRC § 6159(e).

9 RRA 98, Pub. L. No. 105-206, Title III, Subtitle E, § 3462(c) (July 22, 1998). *See* IRC §§ 6159(e) and (f); 7122(e).

10 *See* S. Rep. No. 105-174, at 92 (1998); IRM 8.24.1.1.1(4), *Administrative and Legislative History* (Dec. 2, 2014).

11 Independent administrative reviews of terminated IAs are made available under IRC § 6159(e), while independent administrative reviews of rejected IAs are furnished by IRC § 7122(e)(1), and appeal rights with respect to such rejections are provided by IRC § 7122(e)(2). While Congress established these protections, the IRS determined that they would be exercised via CAP. IRM 8.24.1.1.1, *Administrative and Legislative History* (Dec. 2, 2014).

within CAP by the IRS and are subject to broader, more substantive Appeals oversight and resolution procedures.[12]

The legislative history indicates that, over the years, Congress has focused on expanding taxpayer rights through the creation of CDP appeals and the mandated review of adverse determinations regarding IAs and OICs. For the IRS to move IAs under CAP and then conduct CAP hearings in a way that potentially limits the protections afforded by CDP appeals and is less beneficial than OIC reviews is inconsistent with the spirit of TBOR 2, RRA 98, and the Taxpayer Bill of Rights recently adopted by the IRS.[13] More broadly, the restrictions placed on the availability and scope of CAP hearings jeopardize the fundamental rights of taxpayers *to appeal an IRS decision in an independent forum*, *to challenge the IRS's position and be heard*, *to a fair and just tax system*, and *to privacy.*

National Association of Enrolled Agents testimony submitted almost 20 years ago to the National Commission on Restructuring the IRS assessed the limitations of CAP hearings in terms that are as applicable now as they were then.

> The scope of this program is so circumscribed by the procedural limitations imposed that it really does not constitute a true appellate process… We believe the lack of taxpayer and practitioner use of this "appeals" process is ample evidence that this program is not perceived as a fair and independent appellate procedure and believe the Commission ought to examine its intent and practice.[14]

CAP's Emphasis on Speed Comes at the Unnecessary Cost of Meaningful Appeals Review

CAP hearings provide taxpayers with some distinct benefits in comparison to CDP Appeals. CAP hearings, even more so than CDP appeals, can be utilized to challenge a range of Collection actions and can be sought:

- Before or after the IRS files a Notice of Federal Tax Lien (NFTL);
- Before or after the IRS levies or seizes property;
- Before or after the IRS terminates or modifies an IA; or
- After the IRS initially rejects a proposed IA.[15]

On the other hand, CDP appeals can only be pursued after the filing of the *first* NFTL or issuance of the *first* levy with respect to any tax liability.[16] The rejection, modification, or termination of an IA or an OIC do not trigger the right to a CDP appeal, nor are CDP hearings available for *subsequent* liens or levies.[17]

12 IRM 8.23.1.3, *Conference and Settlement Practices* (Oct. 10, 2014). Note that an exception to the more robust protections generally granted to taxpayers under the OIC regime occurs if the IRS determines that the OIC was filed solely to delay collection, in which case the OIC will be rejected and collection activity recommenced. IRM 5.8.4.20, *Offer Submitted Solely to Delay Collection* (May 10, 2013).

13 For a more in-depth discussion regarding the potential ways in which CAP hearings can limit CDP rights, see the below section entitled *The Choice By a Taxpayer to Pursue a CAP Hearing Can Inadvertently Result In the Loss of All Substantive Administrative and Judicial Review of a Collection Action*.

14 Written testimony of Joseph F. Lane, Enrolled Agent on behalf of the National Association of Enrolled Agents, submitted to the National Commission on Restructuring the IRS (Feb. 26, 1997), *available at* http://www.house.gov/natcommirs/naea1.htm.

15 IRM 8.24.1.2(2), *Collection Appeals Program* (CAP) (Dec. 2, 2014).

16 IRC § 6320(a).

17 IRC § 6330(a). *See* IRM 8.22.4, *Collection Due Process Appeals Program* (Sept. 25, 2014). *See also* IRM 8.24.1.1.1, *Administrative and Legislative History* (Dec. 2, 2014).

An additional benefit of CAP hearings is that they are designed to provide taxpayers with an expedited response. Appeals attempts to move CAP proceedings forward quickly, ideally within five business days, with Hearing Officers generally directed to make CAP cases their first priority.[18] The average cycle time for resolution of a CAP proceeding during FYs 2012 through 2015 is 13 days.[19] By contrast, the average cycle time for a CDP appeal during the same period is approximately 196 days.[20]

These benefits under CAP as it is currently conducted come at a cost, however. Taxpayers are not allowed to challenge the underlying liability in a CAP hearing and cannot later seek judicial review of the CAP determination.[21] Further, Hearing Officers conducting a CAP proceeding undertake only a procedural review "of the action proposed or taken based on law, regulations, policy and procedures considering all the facts and circumstances."[22] As part of this inquiry, Appeals will not consider Collection alternatives (*e.g.*, IAs or OICs) to the issue under appeal or otherwise seek the "best" answer. By contrast, CDP appeals will weigh collection alternatives or challenges to the liability, and balance the proposed collection action with the taxpayer's legitimate concern regarding intrusiveness.[23]

Likely as a result of the limited review and remedies provided by the CAP process, taxpayers infrequently prevail in CAP hearings. The converse, however, is true in the case of CDP appeals. A comparison of these outcomes in contested proceedings is illustrated in the following figure.

FIGURE 1.9.1, Comparison of Outcome Percentages in CAP Hearings and CDP Appeals[24]

Outcome	Review Method	FY 2012	FY 2013	FY 2014	FY 2015
Percent of Cases IRS Fully Sustained	CAP	74%	76%	81%	80%
	CDP	34%	31%	32%	33%
Percent of Cases IRS Only Partially Sustained or Fully Overturned	CAP	26%	24%	19%	20%
	CDP	66%	69%	68%	67%

18 IRM 8.24.1.2.7, *Case Procedures Under CAP* (Dec. 2, 2014).

19 Appeals' response to TAS information request (May 18, 2015), as supplemented by FY 2015 data provided by Appeals (Nov. 3, 2015). Cycle time for non-docketed closed cases is measured from the point when a taxpayer's request for a hearing is filed with the IRS until a CAP proceeding is closed.

20 *Id.*

21 IRM 8.24.1.1.1(10), *Administrative and Legislative History* (Dec. 2, 2014); IRM 8.24.1.1.1(5), *Administrative and Legislative History* (Dec. 2, 2014). *See, e.g., Budish v. Comm'r*, T.C. Memo 2014-239.

22 IRM 8.24.1.1.1(9), *Administrative and Legislative History* (Dec. 2, 2014).

23 IRM 8.24.1.1.1, *Administrative and Legislative History* (Dec. 2, 2014); National Taxpayer Advocate 2014 Annual Report to Congress 185.

24 Where outcome percentages are concerned, the extent to which the IRS position is sustained by Appeals generally indicates that the taxpayer's position has been unsuccessful to the same degree. Data for this figure is drawn from the IRS response to TAS information request (May 18, 2015), as supplemented by FY 2015 data provided by Appeals (Nov. 3, 2015). The term "Percent Fully Sustained Cases" reflects closing code 14 data taken from the responses provided by Appeals. The term "Percent Partially Sustained or Fully Overturned Cases" reflects closing codes 15 and 16 data taken from the responses provided by Appeals. The comparisons are expressed as a percentage of the data furnished by Appeals under the category "Other Nondocketed Total" in Tab 1 and Tab 2 respectively, which category best captures the vast majority of contested cases. In order to reflect the different natures of CDP proceedings and CAP hearings, which have a five-day turnaround so few withdrawals take place, Appeals includes withdrawn cases under code 14 for CAPs and under code 16 for CDPs. CAP withdrawals have the same effect as CAP sustentions—that being no change to Collection's position. As a result, CAP withdrawals are included under closing code 14. *See* Appeals Clarification Response (June 19, 2015). For CAP closing codes, see IRM 8.24.1.3, *APS CAP Case Closing Procedures* (Dec. 2, 2014); for CDP and Equivalent Hearing closing codes, see IRM 8.22.9.8, *Closing Codes for CDP, EH, and RJ Hearings* (Nov. 13, 2013).

CAP hearings and CDP appeals have distinct reasons for existing and play different roles. Each review mechanism is valuable and should be preserved. Nevertheless, CAP hearings should more effectively protect taxpayer rights and serve the needs of taxpayers subject to a Collection action, which in turn will minimize IRS rework.

CAP's primary weakness is its inflexibility, expressed in terms of a lack of substantive review and a prohibition against the consideration of alternative Collection options. CAP's rigidity and limited parameters are partially explained by Appeals' laudable desire to hasten review and provide an expedited decision. Nevertheless, an incomplete or ill-considered decision is not made better for having been reached more quickly. While speed is an important priority, Appeals should also focus on allowing a robust review and dialogue with taxpayers so that CAP proceedings can reach the best decision for all concerned at the earliest possible stage.

CAP hearings and CDP appeals may, of necessity, involve different degrees of substantive review. Nevertheless, CAP hearings should still include a meaningful level of inquiry sufficient to allow for the consideration of Collection alternatives and a quality answer based on the existing facts after remand to Collection when the circumstances dictate.

For example, assume that Collection proposed filing an NFTL against a financial advisor who is concerned that the impact on his credit report would jeopardize his employment status.[25] As a result, the taxpayer filed for a CAP hearing. Currently, the Hearing Officer would undertake a review to determine only whether Collection followed the applicable procedures. The Hearing Officer would not consider Collection alternatives, which would involve an examination of whether Collection had reasonably balanced the government's need for efficient collection of taxes with the legitimate concerns of the taxpayer. Thus, the Hearing Officer would not necessarily examine the effect of the NFTL on the taxpayer's ability to maintain or find employment in the financial industry, thereby potentially imperiling the taxpayer's job and the government's ability to collect the taxes — a lose-lose situation for both parties.[26]

The taxpayer and the government would benefit considerably if the Hearing Officer reviewed the proposed NFTL to see if the taxpayer had offered reasonable collection alternatives and Collection had properly considered these alternatives and the intrusiveness of the proposed NFTL. If not, a remand for such consideration or for pursuit of an OIC would be highly desirable for all concerned, regardless of whether Collection had the legal authority to file the NFTL in the first instance. If this additional review requires a 14-day or 21-day, rather than a five-day, target for resolution, then the time would be well spent.

Procedures Implemented by the Appeals Judicial Approach and Culture (AJAC) Project Only Exacerbate CAP's Shortcomings

Unfortunately, under AJAC, the IRS appears to be moving precisely in the wrong direction. IRM changes implemented with respect to CAP hearings as part of AJAC clarify that "Appeals does NOT consider alternatives to the issue under appeal, but solely determines the appropriateness of the issue under

25 IRM 5.12.2.6(1), *NFTL Filing Criteria* (Oct. 14, 2013). In general, an NFTL will be filed if the aggregate unpaid balance of assessments is $10,000 or more.

26 IRM 5.12.2.4(6), *Determination Criteria for Do-Not-File or Deferring the NFTL Filing* (Jan. 1, 2015). The filing of an NFTL may be deferred where the Revenue Officer can substantiate with reasonable certainty, supported by documentation from the taxpayer, that filing the NFTL will hamper collection.

To be effective, the Collection Appeals Program (CAP) hearings should examine Collection alternatives, at least to the extent they shed light on the appropriateness and intrusiveness of the collection action, and the case should be remanded to Collection for consideration of those alternatives when necessary.

appeal."[27] Thus, Hearing Officers are directed only to sustain or not sustain Collection's position and are expressly admonished not to negotiate any Collection alternatives.[28]

This approach is bad for taxpayers and counterproductive for the IRS. For example, under the current guidance, if Compliance follows the applicable procedural rules in proposing an NFTL filing, even if the lien is inadvisable and there are other viable collection alternatives, the Hearing Officer will be required to approve the NFTL filing. This regime jeopardizes the taxpayer's *rights to privacy* and *to a fair and just tax system*, and will inevitably cause the IRS to do substantial downstream work to address harmful and unnecessary Collection actions. To be effective, CAP hearings should examine Collection alternatives, at least to the extent they shed light on the appropriateness and intrusiveness of the collection action, and the case should be remanded to Collection for consideration of those alternatives when necessary.

According to responses obtained from focus groups and TAS interviews with tax practitioners, these procedural clarifications made under AJAC have added to the inflexibility of an already limited review mechanism.[29] Some taxpayer representatives have reported that, prior to AJAC, they typically were able to obtain face-to-face conferences with Hearing Officers.[30] Nevertheless, the renewed emphasis on narrow scope and quick disposition of cases under AJAC has led to a general inability to engage in such conferences, even though practitioners view face-to-face conferences as an essential element of the accurate and equitable disposition of taxpayers' cases.

The rush to disposition is particularly problematic in CAP cases involving IAs which, according to tax practitioners interviewed by TAS, often require approximately 30 days for proper consideration and reasonable disposition.[31] This extra time occasionally is necessary for taxpayers to answer questions raised by Hearing Officers and to obtain and present requested documentation. Nevertheless, such cases, along with other CAP cases, now are rigorously subjected to the five-day rule, often to the detriment of taxpayers whose arguments may require considerably longer than five days for proper presentation or thorough consideration.[32]

Further, some taxpayer representatives have reported instances in which CAP Hearing Officers are simply "rubber stamping" Collection decisions after only a nominal review.[33] One practitioner who is active in representing taxpayers in CAP related a comment by a Hearing Officer that "[i]f all of the boxes were checked, then Appeals would sustain Collection's decision."[34] The lack of oversight by Appeals and its unwillingness to consider legitimate arguments are more troubling to these representatives than even an unfavorable outcome reached after an unbiased and comprehensively conducted proceeding.[35]

27 IRM 8.24.1.1.1(9), *Administrative and Legislative History* (Dec. 2, 2014).
28 *Id.*
29 TAS conference call with practitioners associated with the American Bar Association Tax Section (Mar. 17, 2015).
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.*
35 *Id.*

Pursuit of a CAP Hearing by a Taxpayer Can Inadvertently Cause the Loss of All Substantive Administrative and Judicial Review of a Collection Action

One of the dangers confronting taxpayers as they try to choose between their CAP and CDP options is the chance that an inopportune decision could cost them the possibility of a substantive review. If a taxpayer proceeds with a CAP hearing and if that proceeding concludes before a CDP appeal is lodged, then the issue raised and considered at the CAP hearing may be precluded from consideration in a subsequent CDP appeal.[36] This risk exists because the completed CAP hearing can be viewed as a "previous administrative proceeding" under IRC § 6330(c)(4).[37]

For example, assume that a taxpayer pursues a CAP hearing with respect to a proposed levy that is sustained by Appeals because Collection followed the requisite procedural steps. Thereafter, the taxpayer may be denied access to a CDP with respect to this initial levy based on the argument that the matter is now barred from review because the taxpayer is raising no new issues. In this event, the taxpayer would lose the additional benefits conferred in a CDP appeal such as substantive review, consideration of Collection alternatives, application of the balancing test, and judicial oversight of the outcome.

Even if the issue is not precluded from a subsequent decision in a CDP appeal because the CDP request was filed prior to, or concurrently with, the CAP hearing, the Hearing Officer conducting the CDP appeal still has the option of adopting the decision made in the CAP proceeding as part of the CDP determination.[38] Hearing Officers are allowed to take this approach as long as the taxpayer does not present any new information or arguments in the CDP appeal regarding the issue raised in CAP.[39] A CDP review would be appropriate if a taxpayer raised collection alternatives, but the risk remains in this uncertain environment that a Hearing Officer might mistakenly invoke issue preclusion or adopt the prior CAP decision in any event. Thus, under a variety of circumstances, taxpayers availing themselves of the attractive aspects of CAP could unwittingly forfeit their ability to seek a CDP appeal.[40]

These potentially binding effects of a CAP hearing on a CDP appeal would be less problematic if the scope of review conducted in these proceedings and the rights they confer were synonymous, but they are not.[41] The more searching inquiry required by a CDP appeal arguably should be construed as a "new issue" and thus should be separately pursued as part of the ensuing CDP appeal. Nevertheless, many taxpayers, particularly low income taxpayers, may lack the legal sophistication or legal representation to frame such nuanced arguments. As a result, such taxpayers may believe an adverse CAP decision automatically precludes any further consideration of the issue and may therefore not even raise the matter in a later occurring CDP appeal.

36 IRC § 6330(c)(4). IRS Office of Chief Counsel Memorandum, *Collection Appeal Program and I.R.C. § 6330(c)(4) Issue Preclusion*, PMTA 2012-14, 4 (May 3, 2012). For this issue preclusion to occur, the taxpayer must meaningfully have participated in the CAP appeal and the issue under consideration in the two proceedings must be identical. *Id*. Doubts are to be resolved in favor of the taxpayer. IRM 8.22.5.5.1(2), *Issues Excluded under IRC 6330(c)(2)(B) and I.R.C. 6330(c)(4)(A)* (Mar. 29, 2012). Nevertheless, this determination has few meaningful parameters, and taxpayers finding themselves in such a situation are left in a highly uncertain and vulnerable position.

37 *Id.*

38 *Id.*

39 *Id.*

40 Note that if a taxpayer requests both a CDP and a CAP regarding a proposed levy or NFTL filing, the taxpayer is required to choose one or the other. IRM 8.24.1.1.1(8), *Collection Appeals Program Overview* (Dec. 2, 2014). Some taxpayers, however, particularly low income taxpayers, may lack the sophistication or legal representation, to adequately understand the ramifications of their choices in the absence of a thorough explanation from the Hearing Officer, which may not be forthcoming.

41 IRM 8.24.1.1.1(5), *Collection Appeals Program Overview* (Dec. 2, 2014).

Moreover, Hearing Officers themselves may not be immune from confusion regarding the impact of a CAP decision. A request for CDP consideration of an issue previously included in a CAP hearing may erroneously be denied by Hearing Officers unaware that their exercise of the additional substantive review inherent in a CDP appeal generally would require a thorough reconsideration of the issue previously presented in a CAP proceeding. Alternatively, Hearing Officers, while not specifically invoking issue preclusion, may still adopt a prior CAP determination rather than providing taxpayers with the more in-depth substantive CDP analysis to which they are entitled.

In an effort to quantify the magnitude of this problem and analyze the extent to which taxpayers availing themselves of CAP hearings are being denied CDP appeals, TAS requested specific data from Appeals regarding issue preclusion and the adoption of CAP determinations in CDP cases. Appeals responded that it did not track such data.[42]

Taxpayers Are Underutilizing a Potentially Valuable Collection Appeals Alternative

The available data illustrates that CAP is used relatively infrequently by taxpayers and their representatives. From FY 2012 through 2015, approximately 44,500 CDP appeals per year have been received by the IRS.[43] On the other hand, taxpayers have sought only 4,600 CAP hearings per year over this same period.[44] Thus, CAP usage has represented barely ten percent of CDP utilization.

This relatively low use of CAP may, at least in part, be attributable to the circumstance that outcomes are comparatively unfavorable for taxpayers. Between FY 2012 and 2015, only 22 percent of taxpayers emerged fully or partially victorious from CAP hearings, while 68 percent of taxpayers were fully or partially victorious in CDP appeals during this same period.[45]

> The relatively few negotiated settlements in the Collection Appeals Program (CAP) hearings and the poor outcomes that CAP hearings generate for taxpayers when Appeals does reach a decision may well help explain why most taxpayers and their representatives decline to pursue this course.

Further, between FY 2012 and 2015, virtually no CAP proceedings were closed as "agreed" by Appeals.[46] By contrast, well over half of the CDP appeals filed during these years yielded a compromise between the IRS and taxpayers.[47] The relatively few negotiated settlements in CAP hearings and the poor outcomes that CAP hearings generate for taxpayers when Appeals does reach a decision may well help explain why most taxpayers and their representatives decline to pursue this course.

CAP would be more widely embraced if it offered taxpayers and their representatives an expedited resolution vehicle that was combined with a meaningful level of review and the reasonable opportunity for a negotiated settlement. CAP hearings that allowed for the consideration of collection alternatives and sought a quality outcome for both taxpayers and the government would provide a real benefit, even if that process required slightly expanded timeframes. The result likely would be more settlements, more balanced outcomes for participants, and a more attractive process for taxpayers. Failure to implement such improvements creates unnecessary downstream rework for the government and

42 Appeals' response to TAS information request (May 18, 2015).
43 *Id.*
44 *Id.*
45 *Id.* For a more detailed breakdown of this data and a discussion of the underlying assumptions, see figure entitled *Comparison of Outcome Percentages in CAP Hearings and CDP Appeals*, *supra*.
46 *Id.*
47 *Id.*

perpetuates an antagonistic environment because taxpayers have difficulty exercising their *right to challenge the IRS's position and be heard.*

Another cause for the underutilization of CAP appears to be the lack of awareness regarding its availability. Although CAP is mentioned on irs.gov, it is not readily apparent and could be easily overlooked. Moreover, some taxpayer representatives interviewed by TAS stated that no one in the IRS had ever mentioned CAP to them or the taxpayers they represented.[48] After implementing the improvements in CAP discussed above, the IRS should increase its efforts to publicize the benefits of CAP, both to taxpayers and their representatives. This enhanced publicity could begin by increasing the profile of CAP on irs.gov as a potential mechanism for contesting Collection actions. Further, the IRS should remind Hearing Officers and all IRS employees with taxpayer contact of the importance of verbally communicating this alternative Collection Appeals process to taxpayers.

CONCLUSION

The IRS created the restrictive regime currently applicable to CAP hearings and has the power to improve it. While preserving the concept of expedited review, the IRS should deemphasize speed as the defining principle of CAP hearings in favor of more meaningful review overall and issue resolution. As the quality and independence of CAP hearings improve, usage will expand, and both taxpayers and the IRS will benefit from increased resolution of Collection issues at an earlier stage in the administrative process.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Revise the policies and procedures governing CAP to allow Hearing Officers the expanded authority, and where necessary, the additional time to review Collection alternatives and remand cases to Collection for consideration of those alternatives.
2. Issue guidance specifying that taxpayers' use of CAP will no longer preclude them from receiving an independent reconsideration via a CDP appeal based on either issue preclusion or pro forma adoption of the prior CAP decision.
3. After implementing the improvements in CAP discussed above, make a concerted effort to publicize the benefits of CAP and ensure that Hearing Officers and all IRS employees with taxpayer contact more effectively inform taxpayers and their representatives about the availability of CAP hearings.

48 TAS conference call with Low Income Tax Clinics practitioners (Apr. 22, 2015).