



Volume 2

NATIONAL TAXPAYER ADVOCATE

# Objectives Report to Congress

Fiscal Year 2020

*IRS Responses and National Taxpayer Advocate's Comments Regarding  
Most Serious Problems Identified in the 2018 Annual Report to Congress*

[www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020)

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## INTRODUCTION

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Honorable Members of Congress:

Internal Revenue Code (IRC) § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to prepare an Annual Report to Congress that, among other things, contains a summary of the Most Serious Problems encountered by taxpayers. For 2018, the National Taxpayer Advocate identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving 20 such problems.<sup>1</sup>

In this volume, we are publishing the IRS's responses to our recommendations.

By way of background, IRC § 7803(c)(2)(B)(iii) requires the National Taxpayer Advocate to submit her reports "directly" to the House Committee on Ways and Means and the Senate Committee on Finance "without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget." This provision protects the independence of the National Taxpayer Advocate's perspective. For that reason, the Office of the Taxpayer Advocate does not share its recommendations to address identified problems before its reports are submitted to the tax-writing committees.

However, we believe it is important that Members of Congress and the taxpaying public have an opportunity to read and assess the IRS's perspective on these issues. IRC § 7803(c)(3) provides that when the National Taxpayer Advocate submits recommendations to the Commissioner, "[t]he Commissioner shall establish procedures requiring a formal response ... within 3 months." I submitted all recommendations in the "Most Serious Problems" section of the National Taxpayer Advocate's report to the Commissioner shortly after publication, and the Commissioner has fulfilled his statutory responsibility by providing written responses to these recommendations.

In this volume, we present the problems, recommendations, and responses in the following format:

- A problem statement for each Most Serious Problem from the 2018 Annual Report;
- A summary analysis of the problem;<sup>2</sup>
- The National Taxpayer Advocate's recommendations to address the problem;
- The IRS's narrative response;
- The National Taxpayer Advocate's comments on the IRS's narrative response; and
- A table showing the IRS's responses and actions relating to each recommendation along with the National Taxpayer Advocate's response.

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1 See National Taxpayer Advocate 2018 Annual Report to Congress, <https://taxpayeradvocate.irs.gov/2018annualreport>.

2 The complete analysis of the problem is available in the full text of the 2018 Annual Report to Congress, posted at <http://www.irs.gov/Advocate/Reports-to-Congress>.

I hope you find these additional perspectives useful in understanding the major problems taxpayers encounter in their dealings with the IRS and in fulfilling your oversight responsibilities.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
July 31, 2019

MSP  
#1

## TAX LAW QUESTIONS: The IRS's Failure to Answer the Right Tax Law Questions at the Right Time Harms Taxpayers, Erodes Taxpayer Rights, and Undermines Confidence in the IRS

### PROBLEM

In 2014, the IRS implemented a policy to only answer tax law questions during the filing season, roughly from January through mid-April of any year. It justified this abrupt change in policy as a cost-savings effort in a time of budget constraints. This change does not comport with an agency charged with administering the tax law and focused on the customer experience.

Taxpayers have ever-changing tax situations year-round. People move, open a business, close a business, get married, get divorced, have children, and experience many other life changes that affect their tax obligations. Forcing taxpayers into a 3.5-month window to ask questions or making it necessary for them to seek advice from a third-party source can be frustrating and costly to the taxpayer and result in eroded trust and confidence in the IRS.

### ANALYSIS

The IRS designates certain tax law topics as out-of-scope, meaning it does not provide answers to taxpayers who call or visit the IRS inquiring about those issues. The IRS does not track what taxpayers ask about if the topic is out-of-scope. Failing to do so limits the ability of the IRS to determine if there is sufficient demand for information about a topic to consider declaring the topic in-scope. Providing taxpayers timely and accurate answers to their tax law questions is crucial to helping taxpayers understand and meet their tax obligations and is fundamental to the right to be informed. If a taxpayer cannot find answers from the IRS, it undermines all taxpayer rights. Testing by TAS in spring and fall of 2018 revealed inconsistent service by the IRS in answering tax law questions on the phone. Despite assurances from the IRS that it would answer Tax Cuts and Jobs Act questions year-round, TAS test calls revealed that employees were not able to answer even basic questions about the new tax law. The IRS has many tools available to meet the needs of taxpayers and ensure that taxpayers can find the assistance they need promptly. By meeting taxpayers where they are, whether on the phone or online, more taxpayers will be able to get answers to their tax law questions.

### TAS RECOMMENDATIONS

- [1-1] Answer in-scope tax law questions year-round.
- [1-2] Deem all questions related to the new tax law as in-scope for a reasonable period of at least two years and evaluate taxpayer demand prior to declaring topics out of scope.
- [1-3] Track calls and contacts about out-of-scope topics and develop Interactive Tax Law Assistant (ITLA) scripts for frequently asked questions or consider declaring topics in-scope.
- [1-4] Develop a method to respond to uncommon or complex questions (*i.e.*, those that are out-of-scope for the phones and TACs) via email or call back to the taxpayer, such as utilizing artificial intelligence and pattern recognition.

## IRS RESPONSE

Currently, the IRS provides tax law guidance year-round to taxpayers through a variety of applications and tools on IRS.gov. Taxpayers can find tax law information 24 hours a day, 7 days a week, at IRS.gov. Through IRS.gov, taxpayers have access to numerous Publications, Tax Topics, Frequently Asked Questions, and Tax Trails. Many taxpayers are also able to find answers to common tax law questions while using guided tax software when self-preparing their return.

One of the self-service options on IRS.gov is the Interactive Tax Assistant (ITA) application, in which taxpayers can easily work through a series of questions to obtain responses to their tax law questions. Currently, there are over 40 ITA topics available. Annually we assess whether the existing ITA topics are still relevant to current tax law and whether additional topics should be added.

In March 2018, with the implementation of the Tax Cuts and Job Act (TCJA), we began answering tax law questions on our toll-free telephone line and at the Taxpayer Assistance Centers (TACs) for those taxpayers who had questions regarding the tax law changes. Since the TCJA legislation is the most sweeping change regarding tax law in over 30 years, representatives trained in tax law will continue to answer in-scope tax reform inquiries through the end of calendar year 2019. We are currently evaluating our future in-scope TCJA tax law service delivery. Additionally, we will monitor and analyze data and feedback on this service to improve the overall taxpayer experience.

In addition to the IRS.gov online services and the telephone and TAC services mentioned above, the IRS provides tax law assistance on the telephone year-round for several subject areas, including Affordable Care Act, International, TaxExempt/Government Entities, Business Master File (Employment Tax), and Special Services (Disaster, Combat Zone, etc.).

Beginning with the filing season for tax year 2018 returns, taxpayers may refer to the new Publication 5307, *Tax Reform Basics for Individuals and Families*, and Publication 5318, *Tax Reform What's New for Your Business*, for all tax reform changes. These documents provide an overall summary of the new tax law and provide information to assist taxpayers with filing concerns and questions. These documents are readily available for download on IRS.gov.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

Meeting the needs of taxpayers requires continually reviewing and revising strategies for answering taxpayer questions. The National Taxpayer Advocate is pleased the IRS has agreed to implement or study the feasibility of most of the recommendations from this Most Serious Problem.

However, the National Taxpayer Advocate is concerned that the IRS has only committed to answering in-scope tax reform inquiries through the end of this calendar year. The National Taxpayer Advocate strongly encourages the IRS to answer all questions related to tax reform at least through the end of calendar year 2020, thereby allowing taxpayers two full years to receive live, year-round assistance with tax reform questions.

TAS Recommendation	<b>[1-1] Answer in-scope tax law questions year-round.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by September 15, 2019.
IRS Action	<p>Tax law assistance is provided on the telephone year-round for several subject areas, including Affordable Care Act, International, Tax-Exempt/Government Entities, Business Master File (Employment Tax), and Special Services (Disaster, Combat Zone, etc.). The IRS will also continue to answer in-scope tax law calls related to Tax Cuts and Job Act (TCJA) after the conclusion of the filing season. The IRS agrees to study the feasibility of providing year-round assistance through telephone and TAC service channels for all in-scope tax law topics.</p> <p>The IRS also provides guidance to taxpayers through IRS.gov, including access to numerous Publications, Tax Topics, Frequently Asked Questions, Tax Trails, and the Interactive Tax Assistant (ITA) application.</p>
TAS Response	The National Taxpayer Advocate is pleased the IRS will study the feasibility of returning to the previous practice of answering in-scope tax law questions year-round on the phones. In 2018, more than 17 million individual income tax returns were filed after the April 18 filing deadline. Taxpayers require assistance with tax law questions year-round, and it is important for the IRS to provide it to meet taxpayer needs.

TAS Recommendation	<b>[1-2] Deem all questions related to the new tax law as in-scope for a reasonable period of at least two years and evaluate taxpayer demand prior to declaring topics out of scope.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>Each year we identify a number of new tax law topics as in scope and provide training to our telephone and face-to-face assistors. In attempting to serve as many taxpayers as possible with our limited resources, we are not able to include every tax topic as in-scope and still offer the variety of account-related services sought by our taxpayers.</p> <p>We do offer other alternatives for obtaining information on topics that are not in-scope. Currently, the IRS provides tax law guidance year-round to taxpayers through a variety of applications and tools on IRS.gov. Taxpayers can find tax law information 24 hours a day, 7 days a week, at IRS.gov, where numerous Publications, Tax Topics, Frequently Asked Questions, and Tax Trails are located. Many taxpayers are also able to find answers to common tax law questions while using guided tax software when self-preparing their return.</p> <p>We continue to analyze our telephone and face-to-face demand and staffing needs to improve our service to taxpayers. We will continue to seek input in determining topics to provide as in scope as well as to review the development of ITA topics.</p>



TAS Response	<p>The National Taxpayer Advocates understands that declaring all tax law questions in-scope at all times may not be practical in light of its existing resources. However, this recommendation is narrowly focused on topics related to the TCJA. The National Taxpayer Advocate urges the IRS to consider all TCJA questions in-scope for at least two years and to evaluate topic demand before declaring any TCJA topics out of scope.</p>
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TAS Recommendation	<p><b>[1-3] Track calls and contacts about out-of-scope topics and develop Interactive Tax Law Assistant (ITLA) scripts for frequently asked questions or consider declaring topics in-scope.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full by September 15, 2019.</p>
IRS Action	<p>The Interactive Tax Law Assistant (ITLA) is an internal tool used by assistants to answer tax law questions while the Interactive Tax Assistant (ITA) is a similar tax law tool for use by taxpayers on IRS.gov. In developing ITA topics, we do look at factors such as the volume of taxpayer inquiries for a tax law topic and new topics resulting from tax law changes, including those topics deemed critical.</p> <p>We agree on the importance of reviewing taxpayer contacts to determine the best approach for identifying in-scope Tax Topics and scripts for Frequently Asked Questions. We will analyze and collect data on out-of-scope topics to look for opportunities in determining in-scope and out-of-scope topics as appropriate.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased the IRS will implement this recommendation and looks forward to reviewing the results of the data collection.</p>

TAS Recommendation	<p><b>[1-4] Develop a method to respond to uncommon or complex questions (i.e., those that are out-of-scope for the phones and TACs) via email or call back to the taxpayer, such as utilizing artificial intelligence and pattern recognition.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by September 15, 2019.</p>
IRS Action	<p>The IRS agrees to study the feasibility of using Artificial Intelligence to assist in resolving inquiries, as this aligns with our Customer Experience Vision and Service Delivery Plan designed to provide our customers the best possible service within limited resources. The IRS will continue to provide guidance to taxpayers through a variety of other channels year-round, including on IRS.gov.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased that the IRS will research the possibility of using Artificial Intelligence to assist in answering taxpayer questions. She looks forward to the results of this study.</p>

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## TRANSPARENCY OF THE OFFICE OF CHIEF COUNSEL: Counsel Is Keeping More of Its Analysis Secret, Just When Taxpayers Need Guidance More than Ever

### PROBLEM

The IRS Office of Chief Counsel (OCC) provides advice to headquarters employees called Program Manager Technical Advice (PMTA). PMTAs must be disclosed to the public pursuant to a settlement with Tax Analysts. Due to the Tax Cuts and Jobs Act (TCJA), taxpayers need prompt guidance now more than ever. Notwithstanding their increased need for guidance, the OCC: (1) has been disclosing fewer PMTAs; (2) allows its attorneys to avoid disclosure by issuing advice as an email, rather than a memo; (3) has not issued written guidance to its attorneys describing what must be disclosed as PMTA; and (4) has no systems to ensure all PMTAs are timely identified, processed as PMTAs, and disclosed.

### ANALYSIS

The *right to be informed* is the first right listed in the Taxpayer Bill of Rights for good reason. If taxpayers do not know the rules and why the IRS has adopted them, they cannot determine if they should exercise their other rights (*e.g., the right to challenge the IRS's position and be heard or the right to appeal an IRS decision in an independent forum*). Information about how the OCC interprets the law also helps them avoid taking positions that would incur penalties or ensnare them in audits or litigation. In its formal response to TAS, however, the OCC does not acknowledge that a function of its advice is “to inform taxpayers or practitioners about how it interprets the law,” and says its failure to do so “is not a problem that taxpayers have” and “is not a serious problem encountered by taxpayers.” Accordingly, it has declined to specify in writing what advice must be disclosed as PMTA, except to say that documents other than memoranda (*e.g., email*) need not be disclosed. It also has no procedures to ensure PMTAs are timely identified. The results are predictable. Although it released 68 PMTA following tax law changes in 1998, it has released only 11 in 2018. Only one of these related to the TCJA, and it was released only because of a request by the IRS, not because of the settlement with Tax Analysts.

### TAS RECOMMENDATIONS

- [2-1] Develop clear written guidance that defines when advice constitutes PMTA that must be disclosed.
- [2-2] Require disclosure of any advice that is, in substance, PMTA. For example, the OCC's guidance should not permit attorneys to withhold advice because of its form or mode of transmission (*e.g., email*), because of the title of the recipient, or because a business unit does not want the advice to be disclosed.
- [2-3] Establish a written process to monitor whether advice that should be disclosed as PMTA is being identified and disclosed to the public in a timely manner. For example, consider aiming to disclose PMTAs no later than when the IRS issues guidance (*e.g., FAQs, Publications, News Releases, IRMs, etc.*) that reveals the agency's position.
- [2-4] Incorporate the new PMTA guidance and monitoring procedures into the Chief Council Directives Manual, distribute it at PMTA training classes, and release it to the public.

## IRS RESPONSE

The Office of Chief Counsel (Counsel) provides formal written legal advice to program managers when, in the exercise of professional judgment, it is appropriate to the issues being considered, the context of the request for advice, and the need of the office to set out a full, comprehensive analysis of an issue. Counsel agrees that it would be helpful to clarify the standards that should be considered in deciding whether legal advice should be issued in a formal memorandum and will revise the Chief Counsel Directives Manual (CCDM) to reflect those standards.

Counsel fully complies with the Tax Analysts settlement when it releases formal written memorandum issued to program managers. Counsel attorneys do not provide formal advice to program managers by email to avoid the release of legal advice to the public.

One of the examples cited by the National Taxpayer Advocate concerns legal advice on an issue that arose out of the Tax Cuts and Jobs Act. The suggestion that the advice was not timely released is incorrect. The advice was deliberative in nature and a final decision about how to address the issue was made in conjunction with the decision to issue Program Manager Technical Advice (PMTA). After that decision was made, the PMTA was issued and immediately released.

Taxpayers' right to be informed is satisfied when the IRS provides guidance on how to comply with the Code that is based on a correct and impartial interpretation of the law provided to those who are charged with tax administration. Counsel is committed to serving taxpayers fairly and with integrity, and it accomplishes that goal in part by providing timely, accurate, and impartial legal advice to the IRS.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate is pleased that Counsel has agreed to revise the CCDM to clarify the standards that should be considered in deciding whether legal advice should be issued in a formal memorandum that will be released as PMTA. She is puzzled, however, about why the IRS has asserted that “Counsel attorneys do not provide formal advice to program managers by email to avoid the release of legal advice to the public.” There are hundreds of National Office attorneys, and Counsel management cannot read minds to ascertain why each of its attorneys choose to provide advice in a particular form in individual situations. Counsel has a long history of resisting public disclosure of its legal advice, and attorneys often prefer to avoid public examination—and potential criticism—of their legal conclusions. For these reasons, we think it is far more likely that many attorneys *do* issue advice by email to avoid disclosure. When the National Taxpayer Advocate asks for advice, she generally receives an email unless she asks for a memo. Thus, it seems likely that Counsel attorneys often issue memos (rather than emails) only upon request.

More importantly, the IRS's assertion that it “fully complies with the Tax Analysts settlement when it releases formal written memorandum issued to program managers,” seems wrong. As explained in our report, the IRS settled with Tax Analysts in July 2007, agreeing to disclose PMTA dated or prepared after 1994 “on the basis of the standards announced by” the U.S. Court of Appeals for the District of Columbia Circuit in its June 14, 2002, opinion in *Tax Analysts v. IRS*, “as applied by the district court” in its February 7, 2007, opinion.<sup>1</sup>

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<sup>1</sup> *Tax Analysts v. IRS*, 294 F.3d 71 (D.C. Cir. 2002), remanded, 483 F. Supp. 2d 8 (D.D.C. 2007).

These cases generally permit Counsel to withhold deliberative and pre-decisional communications, but not its final legal positions. The Court of Appeals explained: “It is not necessary that the TAs [advice] reflect the final programmatic decisions of the program officers who request them. It is enough that they represent OCC’s [the Office of Chief Counsel’s] final legal position....”<sup>2</sup> Once Counsel sends its legal analysis to the program manager, it is presumably sending its final legal position, a position the program manager is likely to act upon.<sup>3</sup>

The cases that the IRS agreed to follow make no distinction based on the form of the advice. Indeed, any such distinction seems absurd. It would be like concluding that Counsel only must disclose memos written with blue ink, but not those written with black ink. Moreover, the IRS has never previously made any distinction based on the form of its advice. In 2007, it posted at least three PMTA that were issued as e-mails.<sup>4</sup> The formalistic distinction between emails and memos makes even less sense than the IRS’s former two-hour rule—the rule that the IRS would withhold Counsel advice issued after less than two hours of legal work—which the U.S. Court of Appeals for the D.C. Circuit found lacked any legal basis.<sup>5</sup> Further, the IRS’s formal response to the MSP lacks transparency because it does not explain its conclusions, such as the conclusion that the IRS can withhold advice based on its form.

Another mostly unexplained conclusion in the response is the IRS’s assertion that the PMTA addressing the new transition tax under Section 965 was timely released.<sup>6</sup> Under Internal Revenue Code (IRC) § 965(h), taxpayers could pay the transition tax in installments without interest. The IRS’s response suggests that its conclusion about why extra transition tax payments could not be refunded was not final before the PMTA was released. The PMTA was issued and posted on August 2, 2018, but the IRS had posted the PMTA’s conclusion on its website as an FAQ on April 13, 2018. The FAQ said that any excess payments could not be refunded. Thus, the legal basis for the decision must have been finalized before April 13.

Ideally, the PMTA would have been posted before or at the same time as the FAQ. Had the PMTA’s legal reasoning been posted sooner, at least some of the controversy and confusion could have been avoided.<sup>7</sup> More taxpayers would have been aware of the IRS’s position before making extra payments and fewer would have assumed the FAQ was legally incorrect and asked TAS to intervene. This was not a victimless problem. According to the Treasury Inspector General for Tax Administration (TIGTA), a lack of timely guidance led 115 taxpayers to make \$2.8 billion in payments on their Section 965

2 *Tax Analysts v. IRS*, 294 F.3d at 81.

3 The IRS has not taken the position that IRS program managers work with Counsel on legal advice. If the IRS were to take that position, then there would be a risk that unlicensed program managers would be engaged in the unauthorized practice of law. For program managers who were licensed as attorneys, there would be a risk that they were in violation of Treasury Order 107-04 (Jan. 16, 2009) and Treasury General Counsel Directive No. 2 (July 8, 2015). Those authorities generally require attorneys whose duties include providing legal advice to report to the IRS Chief Counsel.

4 See, e.g., PMTA 2008-01567 (Sept. 28, 2007); PMTA 2007-01190 (Aug. 14, 2007); PMTA 2007-01186 (June 11, 2007).

5 See *Tax Analysts v. IRS*, 495 F.3d 676, 681 (D.C. Cir. 2007) ([the Internal Revenue Code (IRC) § 6110 disclosure provision] “requires no particular form or formality. Nor does it distinguish between advice a lawyer renders in less than two hours and advice that takes longer than two hours to prepare. Thus, given the broad definition of “Chief Counsel advice” in section 6110(i)(1)(A), we believe that the temporal distinction the IRS draws in its two-hour disclosure rule is contrary to the unequivocal statutory directive...”).

6 Although the IRS response contains no detail or footnotes, we assume it is referencing PMTA 2018-16 (Aug. 2, 2018), [https://www.irs.gov/pub/iranoa/pmta\\_2018\\_16.pdf](https://www.irs.gov/pub/iranoa/pmta_2018_16.pdf).

7 Moreover, neither this memo nor any other legal analysis posted by the IRS addressed whether the IRS could grant applications on Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax*, for refunds of excess estimated tax payments pursuant to IRC § 6425, before any tax had been assessed for 2017. We understand that the IRS does not believe it can pay such “quickie” refunds, however, this lack of transparency led taxpayers to ask TAS for assistance in obtaining such refunds.

liabilities that they did not intend to make and could not recover.<sup>8</sup> The IRS should change the PMTA disclosure process to help prevent a similar situation from happening again.

Finally, the IRS response says a “taxpayers’ right to be informed is satisfied when the IRS provides guidance ... to those who are charged with tax administration.” However, taxpayers need to receive information to be informed. When the IRS provides guidance to itself, it is bizarre to suggest that it has satisfied the *taxpayer’s right to be informed*. [Emphasis added.]

TAS Recommendation	[2-1] <b>Develop clear written guidance that defines when advice constitutes PMTA that must be disclosed.</b>
IRS Response	Counsel agrees to implement TAS recommendation in full by September 30, 2019.
IRS Action	Counsel agrees with this recommendation and plans to incorporate clear direction about PMTA in the CCDM.
TAS Response	The National Taxpayer Advocate is pleased that the IRS has agreed to issue guidance and looks forward to working with Counsel on the CCDM. The CCDM should provide objective standards that are based on the settlement and the Freedom of Information Act (FOIA) law, rather than squishy concepts like the form of the advice, the “need of the office,” and the “issue being considered,” as the IRS’s narrative response suggests.

TAS Recommendation	[2-2] <b>Require disclosure of any advice that is, in substance, PMTA. For example, the OCC’s guidance should not permit attorneys to withhold advice because of its form or mode of transmission (e.g., email), because of the title of the recipient, or because a business unit does not want the advice to be disclosed.</b>
IRS Response	Counsel Does Not Agree to Implement TAS Recommendation.  Counsel will continue to publish PMTA and will provide clear direction in the CCDM about when advice to program managers should be issued as a formal memorandum rather than in email, but it does not plan to implement the recommendation.
IRS Action	N/A

<sup>8</sup> Treasury Inspector General for Tax Administration (TIGTA), Rep. No. 2019-34-033, *Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges 12* (May 22, 2019), <https://www.treasury.gov/tigta/auditreports/2019reports/201934033fr.pdf>.

TAS Response	<p>The IRS's decision to make disclosure of PMTA dependent on how the advice is transmitted to the program manager is absurd. The only way a distinction about the mode of transmission might make sense is if Counsel believes it is not required to disclose <b>any</b> PMTA under the settlement or the FOIA law. Under this view, it can choose which advice it discloses.</p> <p>However, the National Taxpayer Advocate does not believe it is good policy to allow Counsel attorneys to choose not to disclose legal advice to program managers, particularly when the program managers are relying on it to make policy decisions. Even other attorneys within the Chief Counsel's office generally check publicly available sources—including PMTAs that have been released—when analyzing a legal issue. If they cannot find PMTAs that they or their colleagues have issued, they risk providing inconsistent or incorrect legal advice to their colleagues, the IRS, or the public.</p> <p>Moreover, the National Taxpayer Advocate cannot do her job without real-time direct access to the legal advice the program managers have received. Even if the National Taxpayer Advocate could obtain copies of advice upon request, the lack of direct access to it would mean that she would not know the advice exists or that she should request a copy.</p>
TAS Recommendation	<p><b>[2-3] Establish a written process to monitor whether advice that should be disclosed as PMTA is being identified and disclosed to the public in a timely manner. For example, consider aiming to disclose PMTAs no later than when the IRS issues guidance (e.g., FAQs, Publications, News Releases, IRMs, etc.) that reveals the agency's position.</b></p>
IRS Response	<p>Counsel agrees to implement TAS recommendation in part by September 30, 2019.</p>
IRS Action	<p>Counsel will continue to rely on its professional staff, including managers, to ensure that PMTA is being released. Counsel will change its process for releasing PMTAs so that they are released more contemporaneously with issuance to the program manager.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased that Counsel will change its processes so that PMTAs are released more contemporaneously with issuance to the program manager. She believes, however, that Counsel should set a goal for its attorneys to post PMTA within a specific period (e.g., a week) after it is issued to a program manager. Without specific goals or targets, it will be impossible for the National Taxpayer Advocate, IRS management, the Counsel organization, or other stakeholders to determine whether the advice is being disclosed timely. Moreover, the longer the delay between the issuance of the advice and its publication, the greater the risk that the IRS will act on Counsel's conclusions without disclosing the underlying legal analysis, potentially prompting practitioners, TAS, or other stakeholders to doubt the legality of the IRS's FAQs, fact sheets, publications, instructions, or programs.</p> <p>In addition, if Counsel wants to ensure PMTAs are properly disclosed, it needs a system to ensure its PMTAs are routinely identified and provided to the attorneys responsible for disclosing them. It could easily establish an internal mailbox and require its attorneys to "cc" the mailbox when they answer legal questions from program managers. Alternatively, Counsel could expand the email system that it currently uses to identify and disclose Chief Counsel Advice to field employees under IRC § 6110.</p>

TAS Recommendation	<b>[2-4] Incorporate the new PMTA guidance and monitoring procedures into the Chief Council Directives Manual, distribute it at PMTA training classes, and release it to the public.</b>
IRS Response	Counsel agrees to implement TAS recommendation in part by September 30, 2019.
IRS Action	As noted, Counsel will incorporate PMTA guidelines in the CCDM, which is available to the public.
TAS Response	As noted above, the National Taxpayer Advocate is pleased that Counsel will incorporate procedures into the CCDM, which it will release to the public. It is important for taxpayers, stakeholders, and IRS employees to be able to identify advice that Counsel will and will not disclose. Accordingly, Counsel should use the same guidance in its disclosure training classes that it has posted on its website (e.g., as CCDM or other training material). If it develops different materials for the purpose of training, then the training materials should be released to the public.

**MSP  
#3**

## **NAVIGATING THE IRS: Taxpayers Have Difficulty Navigating the IRS, Reaching the Right Personnel to Resolve Their Tax Issues, and Holding IRS Employees Accountable**

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### **PROBLEM**

Taxpayers often have difficulty locating IRS personnel who can provide accurate and responsive information regarding their cases. The IRS emphasizes its main toll-free phone line, which includes difficult-to-interpret options and often leads to extended hold times. Even when taxpayers are provided with a specific phone number, most often it is for a group, rather than for an individual employee. These group numbers make it difficult for taxpayers to have a sense of continuity and rapport with the personnel working their cases. Moreover, a lack of ownership on the part of IRS personnel who work these cases can decrease the efficiency and effectiveness of case resolutions and worsen the customer experience.

### **ANALYSIS**

The group numbers relied upon by the IRS as one of two primary mechanisms for addressing taxpayer inquiries sometimes leave much to be desired. For example, TAS conducted a test in which a hypothetical caller telephoned the IRS main toll-free line to ask questions about filing a request for an offer in compromise. That caller was kept waiting on hold for approximately one hour before finally giving up and terminating the call. Instead of improving telephone service, the IRS prefers to channel sometimes-unwilling taxpayers into online self-service venues, which the majority of users deem to be substandard in many respects. For example, under 20 percent of surveyed taxpayers thought the IRS website was easily searchable, well organized, and user-friendly. Accordingly, it is little wonder that the IRS has been recently ranked last in quality communication in a study of 15 federal agencies undertaken by Forrester Research. In addition to these communication shortcomings, the IRS has no overarching mechanism for allowing taxpayers to raise questions and complaints to managers directly and to hold both employees and managers accountable for addressing such complaints. Thus, even if taxpayers can navigate to the proper location within the IRS, no systemic institutional safeguards exist to ensure that their inquiries will be addressed accurately and responsively.

### **TAS RECOMMENDATIONS**

- [3-1]** Provide all members of the general public with an accessible and easily searchable IRS directory that incorporates metadata and common-speech terminology to assist taxpayers in contacting particular offices within the IRS.
- [3-2]** Institute a 311-type system where taxpayers can be transferred by an operator to the specific office within the IRS that is responsible for their cases.
- [3-3]** Adopt a model for correspondence examinations and similar cases, such as those worked in Automated Collection System (ACS), in which a single employee is assigned to the case while it is open within the IRS function.
- [3-4]** Establish a complaint and inquiry tracker that monitors and records requests to speak with supervisors, subsequent follow-up, and the results of that contact.



## IRS RESPONSE

The IRS recognizes that taxpayers need access to effective service options to understand their tax obligations and pay their taxes in a timely manner. The IRS will continue to provide service through web capabilities, telephones, correspondence, and face-to-face interactions as part of our omnichannel approach. We continue to educate and encourage the use of a variety of tools across channels.

The IRS continues to look for opportunities to improve telephone efficiency. For filing season 2019 we are conducting a limited test of customer callback/virtual hold technology. We will consider expanding the capability if the results show significant benefits for customer service.

We are also exploring a modernized Enterprise Case Management (ECM) environment. Building on the precepts of the IRS Future State, the ECM vision specifically highlights the importance of empowering employees to rapidly resolve cases, providing top quality service to taxpayers, and upholding the fair administration of tax law. As a more efficient and modern ECM solution is developed, the IRS will continue to engage employees and other stakeholders to identify opportunities to provide quality customer service to taxpayers.

An example of our multi-channel approach that minimizes taxpayer burden is the Taxpayer Assistance Center (TAC) Appointment Line. When taxpayers call for an appointment, telephone assistors attempt to resolve the taxpayer's inquiry prior to setting up a TAC appointment in an attempt to save the taxpayer an unneeded and potentially time-consuming trip to a TAC. In fiscal year 2018, over 3.5 million calls were answered and, after speaking to an assister, less than 50% of callers needed an appointment at a TAC. The IRS has upgraded its Field Assistance Scheduling Tool (FAST) to improve scheduling at TACs and provide email confirmation of appointments to taxpayers.

Finally, we acknowledge the importance of having customers speak directly with supervisors when specifically requested or, if unavailable, requiring managers to return customer calls. We have Internal Revenue Manual (IRM) guidelines in place to address this situation. We will continue to pursue improved controls to ensure timely and appropriate actions by managers.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

TAS appreciates the IRS's omnichannel approach, which includes web capabilities, telephones, correspondence, and face-to-face interactions. Efforts to develop customer callback/virtual hold technology, along with an improved Enterprise Case Management (ECM) system, are also welcome. Further, increased empowerment of employees to resolve issues will accrue to the benefit of both taxpayers and the IRS.

As the IRS continues to improve the means by which taxpayers seek answers and issue resolution within the IRS, it should be mindful that taxpayers prefer to communicate in a variety of ways. As a result, even though some taxpayers may be able to resolve their issues over the phone, the accessibility of Taxpayer Assistance Centers should be preserved for those taxpayers whose needs are more effectively addressed through quick and easy in-person support. Likewise, as demographics continue to change, more and more taxpayers will seek effective virtual means of addressing their tax issues. The IRS therefore must improve its performance in this area, given that a recent Forrester Research study found most taxpayers consider their digital experience with the IRS to be unsatisfactory in some important respects. Further, although TAS appreciates that the IRS is making efforts to enhance taxpayers' ability

to navigate throughout the organization, much remains to be done, as the IRS has been ranked last in quality communications in a Forrester Research survey of 15 federal agencies.

Once taxpayers successfully arrive at the proper place in the IRS to resolve their issues, a single employee or group of employees should be assigned to taxpayers’ cases. This approach, which could be applicable to compliance cases and offers-in-compromise in addition to correspondence examinations, would make navigating the IRS a much easier process and lessen the frequency with which it is necessary. It would have the added benefit of increasing the quality of interactions between taxpayers and IRS personnel through the improved case familiarity and the enhanced trust that often would result from ongoing interaction.

Based on TAS’s experience, even when taxpayers are successful in having their calls routed to the appropriate place, they all too often experience problems having those calls returned and receiving responsive information. Further, managers of unresponsive employees can sometimes be equally difficult to locate and contact. The IRS has guidance addressing the handling of taxpayer complaints and, in some cases, does analyze response times. However, taxpayer complaints, the reasons they are made, and the quality of responses they generate are not tracked in a way that can be systematically analyzed to encourage accountability and improved performance. To facilitate accountability, the IRS should create a comprehensive system through which taxpayers can ask to speak with managers and that tracks whether the manager contacts the taxpayer, how quickly the contact is made, what the issue is, and how the issue is addressed. Such a system would help increase the odds that once taxpayers successfully navigate the IRS, they will receive high-quality assistance in addressing the issues they raise.

TAS Recommendation	<b>[3-1] Provide all members of the general public with an accessible and easily searchable IRS directory that incorporates metadata and common-speech terminology to assist taxpayers in contacting particular offices within the IRS.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>We don't agree that providing a directory is the best solution for taxpayers attempting to contact the IRS. Rather than customers trying to track down one specific employee, who may not be available, they can, in most situations, receive the help they need from the "first available" employee. Many employees split their time between answering toll free calls and working amended returns or other correspondence received by the IRS. A telephone assister uses online tools to list pertinent information about a call, so that this information is available to the next assister if the taxpayer calls in again, preventing the caller from having to repeat information. The IRS continues to provide service through a balanced approach to educate and inform each taxpayer as to the variety of service options and channels. Our website, IRS.gov, includes a taxpayer contact page, "Let Us Help You," which provides a wealth of information about service options with specific guidance based on tax issues and telephone numbers.</p>
IRS Action	N/A

TAS Response	<p>Situations exist in which taxpayers or their representatives have a need to contact key offices or personnel. The IRS’s continued refusal to facilitate this direct communication, and, in the case of some units, its unwillingness to implement public-facing phone numbers hinders the ability of taxpayers to navigate the IRS in a consistent and effective way. The steps outlined in the IRS response above are worthwhile and TAS applauds them. However, the IRS mechanisms currently in place should not serve to nullify the ability of taxpayers to seek direct contact when necessary. Further, the more effective the systems for assisting taxpayers, the less of a need taxpayers will have to seek the direct contact being discouraged by the IRS. Rather, the IRS should provide taxpayers with access to the necessary contact information via a searchable database while, if so desired, simultaneously striving to minimize the need for its use.</p>
TAS Recommendation	<p><b>[3-2] Institute a 311-type system where taxpayers can be transferred by an operator to the specific office within the IRS that is responsible for their cases.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>As above, we continue to provide service through a variety of channels, including our website, IRS.gov, and its taxpayer contact page, “Let Us Help You.” In addition, taxpayers who receive IRS correspondence are provided a specific telephone number to call to discuss their issue.</p> <p>On the toll-free lines, to provide customers with efficient and accurate tax law and account assistance, the IRS uses automation when appropriate to connect a taxpayer with an assister who has the skill set to provide the necessary service. If the taxpayer’s issue falls outside the automated choices, the call is answered by a Screener employee. Screeners perform the role of an “operator” by determining the taxpayer’s issue and then transferring the call to the appropriate area. A 311 system may work for smaller government entities that have a limited scope of departments or service options. The extensive scope of IRS tax law and account topics does not lend itself to this type of system.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>As explained by the National Taxpayer Advocate, one way of addressing sometimes differing taxpayer communication preferences, remedying occasionally frustrating IRS computer interactions, and helping taxpayers better navigate the IRS is through the utilization of a 311-type system. This 311 system can fit within a comprehensive omnichannel environment that utilizes customer experience mapping and customer journey analytics now employed in private industry. Such a service channel would facilitate increased efficiencies, diminished wait times, and improved interactions between taxpayers and appropriate IRS personnel. It has been used by cities as large as New York and Chicago, and these models can be combined with advances in customer journey analytics to develop a robust 311-type system that could be used IRS-wide or more narrowly with respect to targeted areas. To the extent that such a system is implemented, it would help taxpayers more easily reach their desired destination within the IRS and would improve taxpayers’ overall experiences.</p>

TAS Recommendation	<b>[3-3] Adopt a model for correspondence examinations and similar cases, such as those worked in Automated Collection System (ACS), in which a single employee is assigned to the case while it is open within the IRS function.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Taxpayer responses to correspondence examination notices are assigned to an examiner when received, and, in almost all cases, the same employee continues to work the case through closure. Additionally, to provide increased access for taxpayers to resolve their account in Campus Examination, all examiners within the specific business operating division have access to the taxpayer's case history, workpapers, notices, and audit report(s), which allows the examiners to sufficiently address the information requested on most calls.
TAS Response	In many circumstances, a single employee or group of employees should be assigned to the taxpayer's case. This approach, which could be applicable to compliance cases and offers in compromise in addition to correspondence examinations, would make navigating the IRS a much easier process and lessen the frequency with which it is necessary. It would have the added benefit of increasing the quality of interactions between taxpayers and IRS personnel through case familiarity and the increased trust that typically results from ongoing interaction. While the "next available examiner" model may be effective in certain contexts, it fails to deliver the range of benefits associated with a single point of contact for ongoing examinations.

TAS Recommendation	<b>[3-4] Establish a complaint and inquiry tracker that monitors and records requests to speak with supervisors, subsequent follow-up, and the results of that contact.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	While systemic data collection tools do not exist for the collection of this data, we have implemented processes to record this information. Each case file history is documented to reflect taxpayer requests to speak with supervisors, any subsequent follow-up actions, and the results of each contact. Each case is then subject to review by the manager, lead tax technician, and national quality reviewers.
TAS Response	The IRS does have guidance addressing the handling of taxpayer complaints and, in some cases, does analyze response times. Likewise, the inclusion in case files of complaint-related information and subsequent follow-up is beneficial. However, taxpayer complaints, the reasons they are made, and the quality of responses they generate are not tracked in such a way that they can be systematically analyzed to encourage accountability and improved performance. To facilitate accountability, the IRS should create a comprehensive system through which taxpayers can ask to speak with managers and that tracks whether the manager contacts the taxpayer, how quickly the contact is made, what the issue is, and how the issue is addressed. A key element of this mechanism should be a tracker that has the capacity to allow for systemic review of complaints and responses, which will enable meaningful oversight of organizational activity and individual performance.

MSP  
#4

## FREE FILE: The IRS's Free File Offerings Are Underutilized, and the IRS Has Failed to Set Standards for Improvement

### PROBLEM

To fulfill its statutory duty to increase electronic filing (e-filing), the IRS partners with Free File, Inc. (FFI), a group of 12 private-sector tax return preparation software providers. This group offers two services—Free File software, which provides free options for online software to guide taxpayers with adjusted gross income of less than \$66,000 through return preparation, and Free File Fillable Forms, a tool available for all taxpayers to enter their income tax forms digitally. Use of the Free File program has steadily declined, and only about 2.5 million people filed returns using Free File software in fiscal year (FY) 2018. The IRS is devoting minimal resources to oversight and testing of this program to understand why taxpayers aren't using it and how the services offered could be improved. When the services provided by FFI fail to meet the needs and preferences of taxpayers, particularly in underserved communities, it reflects poorly on the IRS and can further erode taxpayers' trust in fair tax administration.

### ANALYSIS

Electronic filing has increased greatly since 2002, but the goals of the Free File program have stagnated and use of the program has steadily declined. In tax year 2016, only 2.3 percent of eligible taxpayers used Free File software, and only 0.20 percent of eligible taxpayers used Free File Fillable Forms. The IRS currently has no marketing budget for the Free File program. It has not conducted effective evaluation of the program to understand the experience of taxpayers who do use the program or even if the terms of the agreement with FFI are being met. For example, the IRS no longer conducts Free File satisfaction surveys, which it claims is due to budget constraints, even though the Free File Memorandum of Understanding from 2018 specifically assigns the members of FFI the responsibility to “provide the necessary support to accomplish a customer satisfaction survey.”

Age restrictions sharply curtail the number of FFI options available to elderly taxpayers, as only three of the 12 FFI providers offer services to taxpayers of all ages and five have age limitations that start before the age of 60. In filing season 2018, no Free File options were available for English as a Second Language (ESL) taxpayers. Testing by TAS shows several software providers have limitations in their navigational features and ability to help taxpayers correctly complete their returns, resulting in poor service quality. Furthermore, cross-marketing and advertising of other services on Free File software platforms can confuse taxpayers, and gives the impression of IRS endorsement of for-fee services. Because of these shortcomings, the services provided by FFI do not meet the needs and preferences of eligible taxpayers, undermining taxpayers' *rights to quality service and to pay no more than the correct amount of tax.*

## TAS RECOMMENDATIONS

- [4-1] Develop actionable goals for the Free File program, including targeted-use percentages, prior to entering into a new agreement with Free File, Inc.
- [4-2] Work with TAS to create measures evaluating taxpayer satisfaction with the Free File program and test each return preparation software's ability to complete various forms, schedules, and deductions.
- [4-3] Provide Free File Fillable Forms and Software options for English as a Second Language taxpayers.
- [4-4] Prepare an advertising and outreach plan to make taxpayers, particularly in underserved communities, aware of the services available through the Free File program.
- [4-5] Allow Free File members to provide services to all taxpayers as a part of its next operating agreement instead of capping the percentage of eligible taxpayers each software provider can cover.
- [4-6] Redesign the Free File Software Lookup Tool to better direct taxpayers to software providers that best meet their circumstances.
- [4-7] Improve the capabilities offered to taxpayers through Free File Fillable Forms, including:
  - a) Linking from IRS form instructions to related IRS publications;
  - b) Providing increased guidance for common areas of taxpayer confusion;
  - c) Ensuring taxpayer's abilities to download, save, and print all forms with troubleshooting assistance; and
  - d) Creating a dedicated email where taxpayers can get help when experiencing technology glitches.
- [4-8] If the above recommendations are not substantially adopted, discontinue the Free File Program and create an improved electronic free fillable forms program including the features described in Recommendation 7.

## IRS RESPONSE

The IRS continues to support the growth of the Free File program. Because of our efforts, more taxpayers are using the improved IRS Free File program to prepare and electronically file their returns than in the past two years. Through March 15, 2019, more than 1.54 million taxpayers chose Free File to file their returns, a five percent increase over last year. This is in addition to gains in 2018 over 2017 volumes. This public-private partnership represents an additional choice for taxpayers in the overall tax ecosystem, which also includes paid preparers, Volunteer Income Tax Assistance services, and do-it-yourself options. We appreciate your acknowledgement that the new agreement signed with Free File, Inc. (FFI) broadens the scope of eligibility for the program as well as heightening privacy and security requirements.

**Free File objectives.** While serving low-income and disadvantaged taxpayers remains the primary focus since founding the program, we recognize the need to evaluate new objectives as well. When Free File

launched in 2003, it was one of the few free do-it-yourself options for low-income taxpayers, and far less than 80 percent of all returns were filed electronically. Today there are many free do-it-yourself choices for taxpayers. Most major software providers, in addition to participating in Free File, also offer some form of free tax preparation software and e-filing outside of this public-private partnership. And we are proud to note that, while Free File was originally envisioned as a free federal tax return method, the program has grown to include many free state options as well. This year, four participating Free File members offer free state returns in the 41 states (plus the District of Columbia) with an income tax.

**Eligible taxpayers.** We continue to work with Free File providers and have made improvements to meet taxpayer needs in underserved populations such as the elderly, low-income taxpayers, and taxpayers for whom English is a second language. Now 33 percent of FFI providers offer Free File software to taxpayers of any age, and there is at least one free federal and state return option for all taxpayers of any age who have an income of \$66,000 or less. Using the Free File software look-up tool on [irs.gov](https://www.irs.gov) will easily generate these results for any taxpayer. Elderly taxpayers whose income exceeds \$66,000 may also use Free File Fillable Forms that are available to taxpayers regardless of age, income, or any other criteria.

The FFI members previously offered free file software in Spanish, but this was discontinued due to extremely low usage of annually accepted returns dropping below 1,000. However, we recognize the need to raise this important issue with our FFI partners, and we appreciate the NTA's perspective that the program is helpful enough to expand the program to non-English speaking taxpayers. We will continue to partner with FFI to see if even more options can be made available.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate appreciates that the IRS values the Free File program and continues to work to promote its growth. However, as the National Taxpayer Advocate discussed in her report, taxpayer use of Free File software has generally declined since it was first implemented. Recent gains, while positive, have been relatively minimal, especially when considering that only a few percent of the over 100 million taxpayers eligible for Free File software use it. Additionally, fewer than half a million taxpayers have used Free Fillable Forms in recent years, despite its availability to all taxpayers.

The National Taxpayer Advocate appreciates that the IRS's budget is limited, but to improve the Free File program, it will have to make a greater commitment to publicizing the program and improving its usability. It must also take steps to ensure qualifying taxpayers can easily locate and use a Free File product, without the risk they will be led to purchase a paid version of the same product or other ancillary products. Because the linkage to private Free File products from [IRS.gov](https://www.irs.gov) gives the appearance of IRS endorsement, the National Taxpayer Advocate continues to recommend the IRS establish more rigorous standards and periodically test the software to ensure it meets those standards. If the IRS cannot allocate the necessary resources to offer an adequate Free File program, the National Taxpayer Advocate recommends the IRS eliminate it and strengthen its Free Fillable Forms product instead.

TAS Recommendation	<b>[4-1] Develop actionable goals for the Free File program, including targeted-use percentages, prior to entering into a new agreement with Free File, Inc.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by March 30, 2021.
IRS Action	The existing agreement between IRS and Free File, Inc (FFI) expires on October 31, 2021. We agree to study the issue to identify new actionable goals for the program that will inform the IRS's formal negotiation position with FFI in reaching a new agreement.
TAS Response	The National Taxpayer Advocate appreciates that the IRS will study the issue to identify new actionable goals for the program. The National Taxpayer Advocate looks forward to the results of the study and the opportunity to review the recommended actionable goals. The National Taxpayer Advocate continues to recommend including targeted-use percentages as one of those actionable goals.

TAS Recommendation	<b>[4-2] Work with TAS to create measures evaluating taxpayer satisfaction with the Free File program and test each return preparation software's ability to complete various forms, schedules, and deductions.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by October 31, 2021.
IRS Action	<p>The IRS will work with FFI and TAS to better understand the taxpayer experience between the IRS and member websites and find a means to measure and track customer satisfaction within the limited IRS budget.</p> <p>While the IRS and FFI currently require a minimum listing of core Forms 1040 and schedules, most participating companies go beyond this requirement and offer nearly all available Forms 1040 and schedules. Participating companies guarantee the calculations performed by the federal Free File offering. This guarantee gives taxpayers confidence that the software they select will accurately prepare their return even in complex tax situations, with recourse by taxpayers to the company if there are issues.</p>
TAS Response	The National Taxpayer Advocate appreciates that the IRS will work with TAS to better understand the taxpayer perspective and find ways to measure and track customer satisfaction. The National Taxpayer Advocate also appreciates that the IRS is working with a limited budget, which is why she recommends that the IRS discontinue the Free File program if it is unable to adequately administer and oversee the program.



TAS Recommendation	<b>[4-3] Provide Free File Fillable Forms and Software options for English as a Second Language taxpayers.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by October 31, 2021.
IRS Action	The IRS plans to evaluate opportunities for expanding Free File software services to taxpayers for whom English is considered a second language. The IRS plans to collaborate with FFI to encourage members to offer additional Spanish services. We will include the issue in negotiations with FFI prior to the existing agreement's expiration on October 31, 2021.
TAS Response	The National Taxpayer Advocate appreciates that the IRS will evaluate ways to expand Free File software and Free Fillable Forms for English as a second language taxpayers. TAS has translated the Form 1040 into Spanish and can provide assistance to the IRS to translate Free Fillable Forms and better serve Spanish and other English as a second language taxpayers.

TAS Recommendation	<b>[4-4] Prepare an advertising and outreach plan to make taxpayers, particularly in underserved communities, aware of the services available through the Free File program.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by January 31, 2021.
IRS Action	Due to its current budget, the IRS does not have marketing funds to pursue an advertising campaign to increase Free File program awareness. The IRS does issue annual traditional and social media promotions that include key messages about Free File on IRS.gov and in the Form 1040 instructions. The IRS welcomes feedback from the NTA about strategies for expanding Free File awareness among taxpayers in underserved communities, given our existing resource constraints.
TAS Response	The National Taxpayer Advocate appreciates that the IRS faces budget constraints. The National Taxpayer advocate also appreciates that the IRS has implemented some measures that may have increased participation for the 2019 filing season (e.g., sending emails to taxpayers who used Free File last year welcoming them back to the Free File service). In her 2018 annual report, the National Taxpayer Advocate mentioned that the IRS does little to no advertising of Free Fillable forms. She also pointed out that, while making taxpayers aware of the Free File program is useful, the IRS must help taxpayers understand the <i>value</i> of Free File to encourage more taxpayers to use it. Despite its limited budget, the IRS can take some steps to improve its advertising and explanation of the program on its website (for example, by more prominently positioning information and links about the Free File Program on its website). However, given that many people, especially those in underserved and low income communities, may not have adequate access to the internet, it is also important to conduct outreach and advertising to these communities, and an increased budget may be necessary to make noticeable improvements.

TAS Recommendation	<b>[4-5] Allow Free File members to provide services to all taxpayers as a part of its next operating agreement instead of capping the percentage of eligible taxpayers each software provider can cover.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by October 31, 2021
IRS Action	We appreciate the NTA's perspective that the program is helpful enough that the NTA would like to see it expanded to all taxpayers. The 50 percent limitation in place at the company level included in the agreement provides a very important means to allow small and medium companies to compete with the largest companies. However, we will explore the feasibility of adjusting the current participation percentages.
TAS Response	<p>The National Taxpayer Advocate appreciates that the IRS seeks to provide opportunities for small and medium companies to join Free File and compete with the largest companies. However, the concern is misplaced. When the Free File program was first launched, there was no cap on the percentage of taxpayers a software provider could cover. One of the participants that produced a lesser-known product decided to offer its product to all taxpayers. The larger software companies quickly followed suit out of concern they might lose market share if taxpayers could prepare their returns for free with a different vendor. These companies were also concerned that taxpayers would stop paying for their products if 100 percent of taxpayers could use their software for free through Free File. When the first extension of the Free File agreement was negotiated, it was the providers of the best-known software products that pushed hard to impose an upper limit on the percentage of returns a software provider could cover. For this reason, the National Taxpayer Advocate does not believe an upper limit would aid small and medium-sized software companies.</p> <p>In addition, use of Free File software was at its greatest when software providers could offer unrestricted services to taxpayers. Despite the fact that e-filing has exponentially increased, more taxpayers used Free File software before this restriction was implemented (more than five million in tax year (TY) 2004, compared with about 2.5 million in fiscal year (FY) 2018), and more providers participated in the program (20 in the program's early years compared with 12 currently). Regardless of the intent, this limitation has failed to achieve its goal, and the National Taxpayer Advocate continues to recommend that it be eliminated.</p>

TAS Recommendation	<b>[4-6] Redesign the Free File Software Lookup Tool to better direct taxpayers to software providers that best meet their circumstances.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by October 31, 2021.
IRS Action	The current Free File Software Lookup Tool allows taxpayers to enter criteria such as age, Adjusted Gross Income, state of residence, and Earned Income Tax Credit or military pay received. The combinations of these criteria identify the specific companies that provide products to best fit the taxpayer's needs. We will explore the feasibility of additional improvements that may better assist the taxpayer in choosing a product that will meet their needs.

TAS Response	<p>The National Taxpayer Advocate appreciates that the IRS will explore ways to improve the Free File Software Lookup Tool. Taxpayers are sometimes confused when trying to navigate the website and determining which program is the best one for them. This tool, along with additional guidance provided to taxpayers, can help direct taxpayers to the correct programs that fit their needs and circumstances.</p>
TAS Recommendation	<p><b>[4-7] Improve the capabilities offered to taxpayers through Free File Fillable Forms, including:</b></p> <ul style="list-style-type: none"> <li>a) <b>Linking from IRS form instructions to related IRS publications;</b></li> <li>b) <b>Providing increased guidance for common areas of taxpayer confusion;</b></li> <li>c) <b>Ensuring taxpayer's abilities to download, save, and print all forms with troubleshooting assistance; and</b></li> <li>d) <b>Creating a dedicated email where taxpayers can get help when experiencing technology glitches.</b></li> </ul>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>Free File, Inc. donates the Free File Fillable Forms tool for free and develops and maintains the program at no cost to the federal government. Free File Fillable Forms already offer links to the instructions for the Form 1040 and associated schedules. The IRS provides information on its help page on IRS.gov for taxpayers and publishes a user guide to help taxpayers navigate the tool. Further, the utility of the Free File Fillable Forms has been enhanced over the years with roll-over information on certain fields and drop-down selection options to restrict entry to only those options appropriate for specific information. Users of Free File Fillable Forms may download and save their returns on their computers and print their forms today. Some users do experience problems printing when they use an outdated internet browser or do not fill out the form completely. The IRS includes helpful information about minimum system requirements, including recommended browsers, and printing tips on IRS.gov. The IRS does provide a dedicated email address (wifreefilecs3@irs.gov) for taxpayers to report computer problems. The IRS responds with recommended solutions. This mailbox is made available within the self-help tools so that taxpayers may try to resolve their issue even if encountering a problem after business hours. We will work with FFI to explore the potential for additional capabilities to improve the customer experience.</p>
TAS Response	<p>The National Taxpayer Advocate appreciates the benefits offered by Free Fillable Forms and the IRS's provision of a dedicated email address and other support for taxpayers who experience problems. As she discussed in a blog post, the National Taxpayer Advocate found that the links to the instructions did not function properly when she herself tried to use them while preparing her returns. She appreciates that the IRS will work with FFI to explore the potential for additional capabilities to improve the customer service experience and continues to believe the above recommendations would improve the program.</p>

TAS Recommendation	<b>[4-8] If the above recommendations are not substantially adopted, discontinue the Free File Program and create an improved electronic free fillable forms program including the features described in Recommendation 7.</b>
IRS Response	IRS agrees to implement TAS recommendation.
IRS Action	We have agreed to adopt substantial aspects of the recommendations above, thereby averting the condition on which this Recommendation relies.
TAS Response	The National Taxpayer Advocate appreciates that the IRS has agreed to adopt substantial aspects of the recommendations above to make the Free File program better. The Free File program can serve as an important tool for many taxpayers, and the National Taxpayer Advocate looks forward to working with the IRS to implement necessary improvements, as well as oversight and testing, to Free File software and Free Fillable Forms.

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## **FALSE POSITIVE RATES: The IRS's Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers**

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### **PROBLEM**

IRS fraud detection systems generate high false positive rates (FPRs) and long processing times, which increase taxpayer burden, generate phone calls to the IRS, and create TAS cases. Several IRS policies affect the ability of taxpayers to timely receive legitimate refunds, including the IRS's failure to capture necessary information to evaluate the accuracy and efficiency of its non-identity theft (IDT) and IDT refund fraud programs; its past failure to check for third-party information on a daily, versus weekly, basis; and its failure to implement systemic verification capabilities in its fraud detection systems. Simple adjustments such as these could very well prevent taxpayers from being selected into the pre-refund wage verification process or could expedite the release of the return if selected, allowing the IRS to better use its resources to verify returns where there is a substantial potential for fraud.

### **ANALYSIS**

Although IRS fraud detection systems protected about \$7.6 billion in revenue between January 1 and October 3, 2018, they also delayed the processing of almost \$20 billion in legitimate refunds. Between January 1 and September 30, 2018, the FPR for non-IDT refund fraud filters was 81 percent, while the FPR for IDT refund fraud filters was 63 percent. Further, of the returns remaining in the non-IDT refund fraud program in 2018 after the two-week screening period and two-week review period, 64 percent were legitimate. The IRS refers to this 64 percent figure as the "operational performance rate" (OPR). The high FPR and long delays resulted in a 287 percent increase in TAS Pre-Refund Wage Verification Cases between January 1 and September 30, 2018, when compared to the same time period in the prior year, and in nearly half of the cases closed between January 15 and June 30, 2018, taxpayers ultimately received the refunds originally claimed on their returns.

### **TAS RECOMMENDATIONS**

- [5-1]** Calculate an "Operational FPR" in addition to the FPR and OPR for non-IDT accounts.
- [5-2]** Develop criteria to be used in measuring OPR for IDT accounts.
- [5-3]** Conduct a study to determine why it takes some taxpayers longer to authenticate their identities and what barriers they may encounter when attempting to do so.
- [5-4]** Design the refund fraud system to consider if applying the third-party information to the return would actually result in a larger refund when there is a mismatch between third-party information and the information on a taxpayer's return.
- [5-5]** Request from outside vendors information on ways to improve the FPR, along with proposals to determine the factors that are contributing to high FPRs.

[5-6] Establish a maximum acceptable FPR goal within industry accepted standards and an actionable timeline to achieve that goal, based on the information and proposals received from outside vendors.

## IRS RESPONSE

We appreciate your support of the IRS goal of detecting and mitigating refund fraud. We also understand concerns regarding the False Positive Rate (FPR), which IRS refers to as the False Detection Rate (FDR), and its impact on taxpayers. The IRS processes over 150 million returns every year and IRS fraud filter selections have protected about \$12 billion per year over the last three years. We review the results of programming and processes implemented over the course of each filing season.

We agree more information should be captured to better evaluate non-identity theft and identity theft (IDT) refund fraud programs. The metrics you propose will help in this effort. Also, current metrics focus on the selected population. Metrics such as the FDR provide insight on the performance of filters, but they do not show the impact to taxpayers. Our FDR for 2018 was calculated on about two million refund returns that initially triggered the fraud filters and were held for additional review, of which over half were subsequently released after receiving valid third-party data or upon authentication of the actual taxpayer. Going forward, the IRS has added new metrics to track the effect of refund fraud programs on the broader taxpayer population. Adding these new metrics will help the IRS evaluate the efficiency and accuracy of refund fraud filters and their impact on taxpayers.

We agree with the majority of the recommendations and have implemented, or started implementing, many of them. The IRS has started tracking data that will be used to calculate “Operational FDR” for non-IDT selections. The IRS is also tracking the time it takes the taxpayer to authenticate for use in developing Operational Performance Rate (OPR) criteria for IDT selections. The IRS will undertake a study to understand why authentication timeframes are inconsistent among taxpayers. We agree that outside perspective can benefit our approach to false positives among fraud selections. The IRS is currently working with consultants to adapt fraud detection programs to new schemes and approaches while attempting to limit the effect on legitimate taxpayers.

The number of taxpayers requesting IDT victim assistance is declining. In 2015, 677,000 taxpayers reported being victims of identity theft. That number fell to 242,000 in 2017 and decreased again to 199,000 in 2018. Also, the amount of undetected IDT has decreased from \$2.8 billion in 2015 to under \$1 billion in 2017. Still, there will always be a need to adapt and improve the selection process. The IRS will continue working to improve the refund fraud program and the taxpayer experience.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate acknowledges the immense challenge of detecting and preventing both identity theft and non-IDT refund fraud. The IRS has done an admirable job in preventing fraudulent refunds from being issued, while striving to minimize burden on taxpayers who filed legitimate returns. In fact, in filing season (FS) 2019, the IRS made significant strides in improving its refund fraud processes, such as identifying more refunds for release shortly after they have been selected for further analysis. The IRS’s response here and its agreement to the majority of TAS recommendations demonstrates that it is committed to moving the program forward in a way that protects revenue while minimizing the impact on taxpayers who filed legitimate returns.

The IRS’s agreement to begin tracking an Operational FPR for its non-IDT refund fraud program and to establish an OPR for its IDT refund fraud program illustrates the IRS’s commitment toward collecting as much useful data as possible to evaluate the effectiveness of these programs and how they impact taxpayers. Additionally, the National Taxpayer Advocate is pleased that the IRS has agreed to collaborate on an important study that will analyze why some taxpayers delayed responding to an IRS notice asking them to authenticate their identity, and what barriers taxpayers may encounter when attempting this authentication. The results of this study will provide insight into these issues and will assist in identifying possible ways the authentication process can be improved.

Despite these important areas of agreement, the IRS’s responses to the recommendations regarding the high FPRs, which reached 82 percent for calendar year (CY) 2018 for the non-IDT refund fraud program, were either too vague or too dismissive to be useful. The IRS states it is working with internal and external stakeholders on a number of issues facing the refund fraud program including the FPR, yet its response lacks specific details or information on what stakeholders it is working with, and what it is working with them on. The National Taxpayer Advocate does not doubt the veracity of this vague statement but is unable to meaningfully evaluate if these discussions are addressing the high FPRs. Additionally, the IRS’s refusal to adopt a target FPR illustrates that the IRS views a high FPR as an unavoidable consequence of protecting revenue. Although establishing a target FPR is not the only step that can be taken to improve the effectiveness and accuracy of the refund fraud program, it is an important objective that should be established alongside other critical objectives, such as dollars protected.

TAS Recommendation	[5-1] Calculate an “Operational FPR” in addition to the FPR and OPR for non-IDT accounts.
IRS Response	IRS agrees to implement TAS recommendation in full by June 1, 2019.
IRS Action	The IRS agrees that further exploration and refinement of our methodology for calculating the False Detection Rate (FDR), which TAS refers to as the False Positive Rate (FPR), and related activity would be beneficial in reflecting the customer experience. To that end, the IRS has started tracking new measures such as the operational FDR (termed the Refile Rate).
TAS Response	The National Taxpayer Advocate is pleased that the IRS will begin tracking the Operational FPR. This data point is key to understanding how the IRS fraud detection systems are functioning in regards to selecting returns suspected of refund fraud and the time it takes for those returns to be processed through those systems. This information will be yet another data point that can be considered when designing and modifying filters and developing procedures by which selected returns can be released.

TAS Recommendation	<b>[5-2] Develop criteria to be used in measuring OPR for IDT accounts.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by November 1, 2019.
IRS Action	We agree on the importance of measuring the taxpayer experience when responding to potential IDT notices and letters. We continually look for opportunities to refine our process and provide additional clarity to taxpayers. In response to the feedback, the IRS has started tracking authentication timeframes. We will use this information to develop criteria for an IDT OPR that will provide insight on the functional impact of false detections.
TAS Response	To truly evaluate the effectiveness of the IDT refund fraud program and its impact on taxpayers, it is critical that the IRS measure how long it takes taxpayers to authenticate their identity from the time the initial notice requesting authentication is sent to the taxpayer. The IRS's agreement to collect this information will help identify to what extent IDT refund fraud processing times are attributable to taxpayers authenticating their identity. In other words, this information will assist in determining if processing times are due to the authentication process or are caused by the release process after authentication.

TAS Recommendation	<b>[5-3] Conduct a study to determine why it takes some taxpayers longer to authenticate their identities and what barriers they may encounter when attempting to do so.</b>
IRS Response	IRS agrees to implement TAS recommendation in full by May 1, 2020.
IRS Action	The IRS agrees on the importance of better understanding the customer experience during the authentication process. We will conduct a study to determine the difference in timeframes that some taxpayers may encounter.
TAS Response	This collaborative study is a significant step towards identifying what barriers taxpayers may face when attempting to authenticate their identity, and what other factors may be responsible for taxpayers' delayed responses to IRS notices requesting the taxpayer to authenticate. The results of this study will assist the IRS in measuring the time it takes a refund to be released from the time it is selected into the IDT refund fraud program. TAS looks forward to collaborating with the IRS on design, implementation, and analysis of the study and the study's results.



TAS Recommendation	<b>[5-4] Design the refund fraud system to consider if applying the third-party information to the return would actually result in a larger refund when there is a mismatch between third-party information and the information on a taxpayer's return.</b>
IRS Response	IRS agrees to implement TAS recommendation in full by October 15, 2019.
IRS Action	The IRS is developing a framework to study the information we receive from third parties in order to improve the selection of returns to review. This effort is included in the IRS' rapid project development that permits appropriate changes to occur more quickly.
TAS Response	This quick implementation of this recommendation will ideally reduce taxpayer burden by preventing taxpayers from being selected into the non-IDT refund fraud program, where a change to the income on the return would result in a larger refund, not a smaller one. In addition to reducing taxpayer burden, this will remove yet another segment of returns that should never have been selected in the first place, thereby allowing the IRS to focus on returns that truly deserve further scrutiny.

TAS Recommendation	<b>[5-5] Request from outside vendors information on ways to improve the FPR, along with proposals to determine the factors that are contributing to high FPRs.</b>
IRS Response	IRS agrees to implement TAS recommendation in full by January 15, 2020.
IRS Action	The IRS continues exploring ways to improve the False Detection Rate (FDR), which TAS refers to as the False Positive Rate (FPR). We seek input from stakeholders within the IRS, outside vendors, partners in state governments, and the tax preparation industry. The IRS seeks to strike a balance between protecting revenue and improving the taxpayer experience, and will continue to work with and develop both internal and external partnerships.
TAS Response	This response communicates a commitment to continually evaluating the programs and how they can be improved in terms of protecting revenue and accuracy. However, the response lacks specificity, making it difficult to evaluate what the IRS has actually agreed to. Although the IRS is working with outside vendors, it is not clear that it is working with these vendors on what is an acceptable FPR and what factors may be contributing to such a high FPR. In fact, the IRS's refusal to set a target FPR and its acceptance of FPRs over 50 percent for the last three years for both IDT and non-IDT refund fraud seems to indicate that to an extent, the IRS is willing to accept higher FPRs as long as processing times for these returns are relatively quick. However, since two of the non-IDT refund fraud filters exclusively select returns where either the Additional Child Tax Credit (ACTC) or Earned Income Tax Credit (EITC) has been claimed on the return (and where there is either no third-party documentation to support the income reported on the return, or the third-party information does not match the income on the return) they are likely selecting returns filed by low income taxpayers, and a delay of even three weeks in receiving a refund could cause a financial hardship. In order to consider this recommendation as "agreed to," the IRS would need to provide more details, such as what vendors it is working with, what are the objectives, and what are the timeframes for meeting these objectives.

TAS Recommendation	<p><b>[5-6] Establish a maximum acceptable FPR goal within industry accepted standards and an actionable timeline to achieve that goal, based on the information and proposals received from outside vendors.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS processes over 150 million returns every year and IRS fraud filter selections have protected about \$12 billion per year over the last three years. Although we disagree with setting a target False Detection Rate (FDR) (which TAS refers to as the False Positive Rate (FPR)), we do look to improve selection efforts to reduce false detections. The IRS weighs the cost of lost government revenue, agency integrity, and the taxpayer burden associated with false positives and false negatives when configuring its fraud detection systems. Evolving cybercriminal schemes require an agile IRS anti-fraud strategy. The IRS' fraud detection strategy has resulted in fewer taxpayers requesting IDT victim assistance. By detecting fraud at the time of tax return submission, the IRS protects the legitimate taxpayer's account, making it easier for the taxpayer to submit their return and receive their refund.</p> <p>The IRS will continue to study the FDR and the factors that contribute to selections. We must minimize the burden of false detections while we protect taxpayers and government revenue from the risks posed by third-party data breaches and highly sophisticated cybercriminals.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>As stated a number of times before, the National Taxpayer Advocate fully agrees that protecting revenue is a critical component to effective tax administration. When addressing this key component, it is reasonable to have to balance a number of factors, including protecting revenue while mitigating the number of legitimate returns that are selected into the refund fraud program.</p> <p>Just as the IRS establishes revenue and selection targets, it should also include an FPR target in this analysis, rather than treating high FPRs as a mere consequence of the program that cannot be addressed or mitigated through adequate planning and design of the refund fraud program. An FPR target does not have to be an exact rate that indicates a success or failure, but rather is one factor to be considered when evaluating the refund fraud program's overall success and could be established in the form of a small range, rather than an exact percentage. Further, as circumstances change during filing season, there may be a reasonable explanation why an FPR does not fall within the established range. However, by failing to set a target range for FPRs that is based in sound reasoning, the IRS omits an important objective from the overall development and planning of the refund fraud program.</p>

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## IMPROPER EARNED INCOME TAX CREDIT PAYMENTS: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers

### PROBLEM

When the IRS allows a taxpayer's erroneous claim of the Earned Income Tax Credit (EITC), it makes an "improper payment." The IRS estimates that 25 percent of the EITC credits it allowed in fiscal year (FY) 2018 were improper payments (23.4 percent, when considering improper payments the IRS recovered). A principal cause of the EITC improper payment rate is the complexity of the rules for claiming EITC, yet the IRS does not provide a dedicated telephone help line available year-round for taxpayers to call with questions about EITC. Recent measures Congress adopted to reduce the improper payment rate (*e.g.*, legislation requiring submission of third-party income reports by January 31 and delaying EITC refunds until February 15) may be effective, but will not be reflected in the IRS's estimate for years. In the meantime, in attempting to address improper payments, the IRS may unnecessarily burden taxpayers by seeking expanded math error authority and imposing bans on claiming the credit.

### ANALYSIS

The improper payment estimate does not reflect the fact that for every dollar of EITC improper payments, 40 cents of EITC went unclaimed by taxpayers who appear to be eligible for the credit. EITC misreporting accounts for only about six percent of the gross tax gap, and compared to non-tax payment or benefit programs, the cost of administering the EITC program (around one percent of benefits delivered) is relatively low, while the EITC participation rate (79 percent) is relatively high. TAS studies show that sending tailored communications to those who appear to have claimed the credit in error may avert future erroneous claims.

### TAS RECOMMENDATIONS

- [6-1] Seek a permanent exemption from the requirement that the IRS include recovered EITC payments in the EITC improper payment estimate.
- [6-2] Collaborate with TAS to identify a method of identifying taxpayers who do not claim EITC but are eligible for the childless worker EITC, and automatically award the childless worker credit to those taxpayers.
- [6-3] Collaborate with TAS to identify the changes to Form 1040 that would be needed, and the data gathering techniques that could be employed, to award EITC to taxpayers who are eligible for EITC with respect to a qualifying child but do not claim it on their returns.
- [6-4] Collaborate with TAS Research in designing and conducting the planned study to compare prior EITC audit results to audit results of taxpayers who used affidavits to establish that they met the residency requirement.

- [6-5] Revise soft notices that are sent to taxpayers advising them they may have claimed EITC in error to explain the error the taxpayer appears to have made (*e.g.*, not meeting the residency requirement or the relationship requirement, misreporting income or deductions).
- [6-6] Establish a dedicated, year-round toll-free “help line” staffed by IRS personnel trained to respond to EITC and Child Tax Credit questions.
- [6-7] In soft notices to taxpayers advising them that they may have claimed EITC in error, include the dedicated telephone “help line.”

## IRS RESPONSE

Thank you for recognizing the importance of reducing improper payments and for outlining recommendations to improve our efforts in doing so without increasing taxpayer burden. As you are aware, we face a significant challenge in administering refundable credits such as the Earned Income Tax Credit (EITC). The refundability attracts fraud and other less egregious noncompliance, and the complexity of the eligibility criteria often leads to unintentional errors, both of which may result in improper payments.

In administering the EITC, we have two goals: increasing participation for the eligible population and reducing errors that lead to improper payments. As you mentioned in your report, the participation rate is high (roughly 80 percent, or four out of five people eligible for the EITC claim it), and the administrative costs are low (less than 1 percent of the credit paid). This is largely due to the reliance on taxpayers’ self-assessment of eligibility for EITC as part of our voluntary tax system, which often makes it difficult to prevent improper payments.

We continue to administer refundable credits through a balanced program which includes education, outreach, and compliance efforts. We employ several EITC educational tools. The EITC Assistant on IRS.gov is an interactive online tool that helps taxpayers determine if they’ve met the eligibility requirements for the EITC. The Form 886-H Toolkit is an online tool that helps taxpayers determine the correct documents needed if selected for an EITC audit. Our annual EITC Awareness Day promotes increased participation, decreased erroneous payments, and improved accuracy of filed returns through various media sources. Since resources are limited, we use a variety of treatments to address noncompliance. For example, when we identify a discrepancy between information provided by a taxpayer and existing third-party information, we may send an educational notice to allow the taxpayer to correct their information prior to any compliance activity. We appreciate TAS collaboration through the Audit Improvement Team to identify improvements to reduce errors, protect taxpayer rights, and reduce taxpayer burden. Additionally, since return preparers file more than half of all returns claiming the EITC, we have a robust return preparer strategy to identify and address preparer noncompliance through a progressive suite of treatments. By treating one preparer we are able to positively impact hundreds of taxpayers.

We will continue our research as part of our focus on underserved populations to address segments of non-claimants and identify potential actions that can be taken. We will continue to collaborate with TAS, as we share the same goal to provide the EITC to all who are eligible.

**TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE**

The National Taxpayer Advocate commends the IRS for recognizing that complexity of the law is a primary driver of erroneous EITC claims and for developing, sometimes with collaboration from TAS, online tools that help taxpayers determine whether they are eligible for the credit. However, as discussed below, correspondence with taxpayers would be more effective if it were more tailored: IRS letters should explain with greater specificity why the IRS believes a taxpayer claimed EITC in error. Moreover, as a TAS study shows, providing a telephone help line that allows taxpayers to speak to a live assistant improves compliance.

The National Taxpayer Advocate appreciates that measuring the improper payment rate presents some challenges that are difficult for the IRS to address, such as the lag time between the estimate and the earlier audits on which the estimate is based. However, the IRS could seek renewal of the exemption from the requirement that it exclude recovered amounts in the estimate. Excluding recovered amounts may be generally appropriate in calculating other agencies’ improper payment estimates, but is less suitable for the IRS, where the application for the benefit is made on a tax return and significant compliance activity occurs after issuance of refunds.

The National Taxpayer Advocate is encouraged that the IRS is willing to consider how to reach non-claimants. It is unfortunate that IRS databases so easily identify taxpayers who appear ineligible to claim EITC, yet those same databases do not reliably identify non-claimants who are eligible for the credit. The IRS should explore using other techniques or databases to obtain enough information that would allow it to systemically identify these taxpayers and automatically award the credit, especially the childless worker credit.

<b>TAS Recommendation</b>	<b>[6-1] Seek a permanent exemption from the requirement that the IRS include recovered EITC payments in the EITC improper payment estimate.</b>
<b>IRS Response</b>	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS does not plan to pursue a permanent exemption because the requirements related to recovered EITC payments are set by law and a permanent exemption from the requirements would require a legislative change. The Improper Payments Elimination and Recovery Improvement Act of 2013 directs the Office of Management and Budget (OMB) to provide guidance to agencies that: “require[s] agencies to include all identified improper payments in the reported estimate, regardless of whether the improper payment in question has been or is being recovered.” Pub. Law No. 112-248, § 3(b)(2)(D). Further, OMB cannot allow any exemptions to the requirements surrounding improper payments reporting unless they are specifically authorized by law.</p>
<b>IRS Action</b>	N/A
<b>TAS Response</b>	<p>Because the IRS does not appear to object to excluding recovered amounts from the improper payment estimate, the National Taxpayer Advocate is perplexed by the response. The Office of Management and Budget (OMB) has in fact exempted the IRS from the requirement to exclude recoveries in the improper payment rate in the past, and there have been no changes in the law that would affect OMB’s authority to do so. Thus, it is not clear why the IRS believes OMB cannot allow any exemptions unless they are specifically authorized. Rather than merely anticipating how OMB might respond to such a request, the IRS should request the exemption.</p>

TAS Recommendation	<p><b>[6-2] Collaborate with TAS to identify a method of identifying taxpayers who do not claim EITC but are eligible for the childless worker EITC, and automatically award the childless worker credit to those taxpayers.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>We agree with your thoughts on taxpayers eligible for the childless worker EITC. During the audit process, when the taxpayer responds that they are not eligible for the EITC with children, Correspondence Tax Examiners are required to consider and adjust taxpayer accounts for the childless worker credit without receiving a request from the taxpayer. The IRS procedures require examiners working an EITC audit to determine if the taxpayer meets the requirements. If so, they are instructed to send the taxpayer an audit report reflecting the appropriate childless worker EITC amount. This process cannot be automated due to the different legal requirements and the research required to determine eligibility.</p> <p>In February 2019, the IRS reconsidered previous proposals to eliminate the Computer Paragraph Notice 27 (CP 27), <i>EIC Potential for T/P Without Qualifying Children</i>, sent to taxpayers who appear to be eligible for the EITC without a qualifying child by implementing up-front systemic determination of EITC eligibility and awarding of the credit when a return is processed. However, without legislative and related policy changes, current processes do not allow for accurate determination of taxpayer eligibility for the credit at the time of filing, which may result in increasing EITC improper payments.<sup>1</sup></p>
TAS Response	<p>The National Taxpayer Advocate does not dispute that “current processes do not allow for accurate determination of taxpayer eligibility.” However, it is unclear what “legislative and related policy changes” would, in the IRS’s view, be needed before the childless worker credit could be accurately awarded automatically, at least for some taxpayers, and why the IRS is not willing to pursue those changes. The cited Treasury Inspector General for Tax Administration (TIGTA) report does not explain what the impediments may be. The IRS already gathers most of the information it needs to identify eligible taxpayers (e.g., income, filing status, Social Security number). To the extent it needs additional information (e.g., whether the taxpayer resided in the United States for more than half of the year), the IRS should explore how that information can be reliably obtained.</p> <p>The IRS has not implemented this recommendation.</p>

<sup>1</sup> See Treasury Inspector General for Tax Administration (TIGTA), *The Internal Revenue Service Should Consider Modifying the Form 1040 to Increase Earned Income Tax Credit Participation By Eligible Tax Filers*, Ref. No. 2018-IE-R004 (April 2, 2018).

TAS Recommendation	<p><b>[6-3] Collaborate with TAS to identify the changes to Form 1040 that would be needed, and the data gathering techniques that could be employed, to award EITC to taxpayers who are eligible for EITC with respect to a qualifying child but do not claim it on their returns.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>As part of our regular process, all forms are shared for comment and input as we consider changes. Internal stakeholders, such as Counsel, Treasury, and the Taxpayer Advocate Service (TAS), receive email circulations of draft forms and instructions early in the development cycle. Such circulations allow for a comment period, generally 30 days, to allow stakeholders to review and provide comments. In addition, Media &amp; Publications and TAS have designated points of contacts to receive, coordinate, assign, and track TAS’s comments and recommendations. Once internal comments have been considered, Media &amp; Publications posts draft forms and instructions to IRS.gov for outside stakeholders and the general public to review and comment. These external drafts are referred to as Early Releases, and they generally allow 30 days for the public to provide comments before releasing the final product to be used by taxpayers. Stakeholders are invited to provide recommendations to assist us in providing a better customer experience and to ensure we are consistent with tax legislation requirements. We will continue our ongoing research efforts to identify and address ways to increase participation in EITC of potentially eligible individuals.</p> <p>Additionally, we agree on the importance of educating and bringing awareness to those taxpayers who may be eligible for EITC. We will continue to hold and enhance our existing outreach efforts to increase participation. For example, we host annually an “EITC Awareness Day”, which is a nationwide effort led by the IRS to help taxpayers get more information about the EITC through traditional and social media channels and to promote use of the EITC Assistant on IRS.gov. Each year, the IRS uses its available communication resources to reach the broadest range of taxpayers.</p>
TAS Response	<p>On June 21, 2018, pursuant to the procedures the IRS describes above, TAS commented on the draft Form 1040, <i>U.S. Individual Income Tax Return</i>, as follows:</p> <p>There needs to be a column, as in the prior 1040, for taxpayers to indicate they are claiming EITC. Moreover, on April 2, 2018, TIGTA recommended that the IRS modify Form 1040 to make it easier for the IRS to identify taxpayers who are eligible for EITC, including those who do not have qualifying children. That way, the IRS “could automatically refund the EITC to some eligible taxpayers who did not claim the credit instead of sending notices.” Figure 6 in the TIGTA report shows additional minor modifications to the Form 1040 that would elicit most of the information currently requested on the reminder notices. See TIGTA Ref. No. 2018-IE-R004, <i>The Internal Revenue Service Should Consider Modifying the Form 1040 to Increase Earned Income Tax Credit Participation by Eligible Tax Filers</i>. For example, a box that says “check here if you lived in the US for more than half the year” and a box that says, with respect to each person for whom EITC is being claimed, “check here if this person lived with you for more than half the year” would elicit information the IRS could use to automatically issue EITC refunds where the taxpayer did not claim the credit.</p> <p>The IRS has not implemented this suggestion or sought to collaborate with TAS to identify ways to accomplish the recommendation.</p>

TAS Recommendation	<b>[6-4] Collaborate with TAS Research in designing and conducting the planned study to compare prior EITC audit results to audit results of taxpayers who used affidavits to establish that they met the residency requirement.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by November 30, 2020.
IRS Action	We appreciate the collaboration and involvement of the TAS, through the Audit Improvement Team, in reviewing audits involving the affidavits. The IRS will work with TAS Research to develop a data collection instrument that will be used to review the audits where the affidavits are applicable. In addition, IRS will work collaboratively with TAS to get input on conducting these reviews.
TAS Response	The National Taxpayer Advocate is pleased that the IRS continues to collaborate with TAS Research in evaluating the effect of accepting affidavits in EITC audits.

TAS Recommendation	<b>[6-5] Revise soft notices that are sent to taxpayers advising them they may have claimed EITC in error to explain the error the taxpayer appears to have made (e.g., not meeting the residency requirement or the relationship requirement, misreporting income or deductions).</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We agree on the importance of taxpayers understanding errors they may make in filing their tax returns. The IRS's most recent compliance study shows that income misreporting and qualifying child errors are the two most frequent errors with the largest dollar impact on overclaims. In an attempt to bring awareness to the issue and help educate our taxpayers, the IRS issued notices with language tailored to address qualifying child errors or Schedule C income errors. The language was revised to help taxpayers better understand questions regarding relationship to EIC qualifying children, age and residency tests, and Schedule C income tests for allowable income. We will continue to collaborate with impacted stakeholders, including TAS, to look for opportunities to refine our letters and notices to improve service to taxpayers.



The IRS does not identify the specific notices or letters it describes in the response. In any event, as the IRS notes, an IRS study showed that among known errors taxpayers made in claiming EITC, the largest amount of overclaims was caused by taxpayers claiming children who were not their qualifying children. The most frequent known error was income misreporting. In the past, the IRS sent taxpayers Letter 5621, *Help Us Confirm Your Relationship to the EIC Qualifying Children*, or Letter 5621-A, *Confirm Your Schedule C Income Used to Claim Earned Income Tax Credit*, when these errors appear to have been made. These letters gave taxpayers the general instruction to “make sure your children meet the criteria for claiming the Earned Income Tax Credit (EITC)” or “make sure the income and expenses you reported on your Schedule C or Schedule C-EZ are correct.” Both Letter 5621 and Letter 5621-A were designated as obsolete on May 29, 2019.

The IRS also issues CP 85-series notices, but these notices have similarly vague language and have not been revised since January 2018 (see Internal Revenue Manual (IRM) 21.5.10.4.2, *Exam Soft Notices CP 85A, CP 85B, CP 85C, CP 87A, CP 87B, CP 87C, and CP 87D* (Jan. 31, 2018)). For example, Notice CP 85B, which is sent to taxpayers who claimed a qualifying child for EITC that may not be correct, advises “We’re asking you to make sure that your child has met all three of the following requirements for age, relationship, and residency.” The notice does not inform the taxpayer that these requirements appear not to have been met, much less specify which of the three requirements may not have been met.

In contrast, the letters the National Taxpayer Advocate sent to taxpayers who appeared to have made an error in claiming EITC were tailored and salient. Among other things, they explained which error appeared to have been made.

Notice CP 85C, sent to taxpayer who filed a Schedule C (Form 1040), *Profit or Loss from Business*, with little or no expenses and thus may not have a business, advises “We need you to confirm the income and any expenses claimed on your Schedule C,” and “we need you to confirm your income because you claimed Earned Income Credit (EIC) on your [tax year] return.” The notice does not inform the taxpayer that the IRS believes the return to contain an error, or what aspect of Schedule C is causing concern.

We are unable to find recently updated or revised soft notices sent to taxpayers who may have erred in claiming EITC. From the information available, it appears the IRS has not implemented the recommendation.

TAS Recommendation	<p><b>[6-6] Establish a dedicated, year-round toll-free “help line” staffed by IRS personnel trained to respond to EITC and Child Tax Credit questions.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>The IRS currently staffs a year-round toll-free telephone line in order to answer questions on EITC correspondence audits, many of which contain an audit issue for the Child Tax Credit (CTC)/ Additional Child Tax Credit (ACTC). Our employees who answer these toll-free calls are trained and experienced on both issues, and best equipped to answer taxpayer telephone calls related to these potential audit issues.</p> <p>In addition, the IRS continues to offer taxpayers with EITC and CTC/ACTC related inquiries multiple options for obtaining assistance from IRS employees and volunteers versed in the tax law. Options include calling the IRS toll-free telephone line, visiting a Volunteer Income Tax Assistance or Tax Counseling for the Elderly site, or making an appointment to visit the local Taxpayer Assistance Center.</p> <p>We also employ several EITC educational tools, including the interactive EITC Assistant on IRS.gov that helps taxpayers determine if they’ve met the eligibility requirements for the EITC and the online Form 886-H Toolkit that helps taxpayers determine the correct documents needed if selected for an EITC audit. Our annual EITC Awareness Day promotes increased participation, decreased erroneous payments, and improved accuracy of filed returns through various media sources.</p>
TAS Response	<p>The year-round toll-free telephone line the IRS refers to above, while a useful resource, is provided only to taxpayers who are being audited. The other resources referenced above may be helpful to taxpayers who can access the internet, or who manage to meet with an IRS employee or volunteer face to face, but they do not address the needs of taxpayers seeking information about EITC or CTC from a dedicated telephone help line.</p> <p>A principal cause of error in claiming EITC is the complexity of the rules for claiming the credit. The IRS should provide telephone support not only to taxpayers whose returns have been selected for audit, but also to taxpayers seeking assistance in understanding the rules for claiming the credit. As TAS’s 2017 study demonstrates, providing a toll-free number to non-audited taxpayers who appear to not have met the residency requirement is effective in averting erroneous claims. It appears the IRS has not implemented the recommendation.</p>

TAS Recommendation	[6-7] In soft notices to taxpayers advising them that they may have claimed EITC in error, include the dedicated telephone “help line.”
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	When a taxpayer may have claimed the EITC in error, the IRS issues a notice explaining the error and steps the taxpayer can take if they agree with our conclusion or information they can provide if they disagree with our proposal. Each letter provides a toll-free telephone number for the taxpayer or authorized representative to call in order to resolve their account. Although this line is not solely dedicated to EITC questions, all employees are trained to answer these questions.
TAS Response	<p>The IRS does not specify which letters or notices it describes in its response. In any event, as noted above, the IRS, in the past, sent taxpayers Letter 5621, <i>Help Us Confirm Your Relationship to the EIC Qualifying Children</i>, and Letter 5621-A, <i>Confirm Your Schedule C Income Used to Claim Earned Income Tax Credit</i>. These letters provided a telephone number for taxpayers to call. However, as noted, these letters are no longer used. The CP 85B and 85C notices, discussed above, contain a phone number that taxpayers can call to receive automated options for checking on the status of a refund or an amended return, or for finding a specific tax topic online. There is no option to speak with an IRS assistor.</p> <p>We are unable to find recently updated or revised soft notices sent to taxpayers who may have erred in claiming EITC that might contain a different telephone number for taxpayers to call. From the information available, it appears the IRS has not implemented the recommendation.</p>

**MSP  
#7**

## **RETURN PREPARER OVERSIGHT: The IRS Lacks a Coordinated Approach to Its Oversight of Return Preparers and Does Not Analyze the Impact of Penalties Imposed on Preparers**

### **PROBLEM**

In 2018, more than half of the tax returns submitted by return preparers were from individuals who are unregulated by the IRS. It is a necessary part of the IRS's duties to ensure that preparers are competent and accountable, since return preparers play such a critical role in tax administration and in promoting tax compliance. The public needs a way to differentiate between professional, competent, and experienced preparers and their incompetent or unscrupulous counterparts.

### **ANALYSIS**

The IRS had started to implement a program to impose minimum competency requirements on the unenrolled tax preparation profession. However, in 2013, the District Court for the District of Columbia enjoined the IRS from regulating tax return preparers via testing and continuing education requirements. Although the IRS cannot mandate return preparers pass competency tests or undergo continuing education, there is still a need for the IRS to provide a certain level of oversight. Rather than designating one centralized Commissioner-level office to coordinate oversight of return preparers, the IRS has spread this responsibility across several organizations, including (1) the Return Preparer Office to oversee registration of preparers, (2) the Office of Professional Responsibility to interpret and apply Circular 230, (3) Wage and Investment's Return Integrity and Compliance Services function to develop a Refundable Credits Return Preparer Strategy, (4) Small Business/Self-Employed's Return Preparer Program, and (5) Criminal Investigation's Abusive Return Preparer Program.

In May 2018, the IRS convened a cross-functional team tasked with developing a coordinated servicewide return preparer strategy. (Representatives from TAS were not invited to this team.) The IRS to date has not delivered a comprehensive, coordinated strategy. Moreover, with respect to penalties, it has a no change rate of about 15 percent, and the IRS collects only about 15 percent of the penalties it assesses. Beyond preparer audits, the IRS does not have a strategic plan for using letters and soft notices to drive future preparer compliance, and where it does use such letters, it does not routinely measure the future compliance impact.

### **TAS RECOMMENDATIONS**

- [7-1] Invite representatives from TAS to the cross-functional team that was established to develop a coordinated strategy to provide effective oversight of return preparers.
- [7-2] Develop a comprehensive plan to communicate the coordinated return preparer strategy to Circular 230 preparers and unenrolled preparers.
- [7-3] Develop a community-based, grassroots communication strategy for educating vulnerable taxpayer populations about how to select a competent return preparer and the risk of return preparer fraud.

[7-4] Conduct analysis on the impact of penalty assessments and no change audits on preparers' behavior in subsequent years, and publish the findings.

[7-5] Revise letters and notices (including Appeals Letter 3808) that reference the Directory of Federal Tax Return Preparers to ensure that appropriate caveats are clearly articulated.

## IRS RESPONSE

Our goal at the IRS is to address preparer noncompliance as quickly as possible and in the most efficient and effective manner. We employ a multi-faceted and multi-functional approach to both support and provide oversight to preparers to ensure the accuracy of the returns they prepare. This includes, but is not limited to, preparer visits conducted before, during, and after filing season; correspondence outreach; preparer compliance examinations; and criminal investigations and injunctions.

We established a cross-functional team to develop a Service-wide approach to the return preparer strategy. The team includes representatives from the Wage & Investment Division (W&I), the Large Business & International Division (LB&I), Appeals, Counsel, Research, Criminal Investigation (CI), the Return Preparer Office, and the Taxpayer Advocate Service (TAS).

The team's focus is on improving program effectiveness through:

1. Improving, leveraging, and centralizing compliance activities;
2. Reducing opportunities for preparer misconduct and non-compliance;
3. Making a multi-year commitment to preparer-related research;
4. Continuing improvements in information technology and information sharing; and
5. Coordinating with external partners and stakeholder groups to establish a Service-wide communication and outreach strategy to engage both our internal and external partners.

This collaboration will include a comprehensive analysis of the current activity within each compliance organization to identify gaps and develop a unified Service-wide strategy. This strategy will allow us to leverage our limited resources and coordinate a full range of educational, civil, and criminal enforcement actions across all IRS functions. We will also establish program goals to support the Service-wide return preparer strategy and measures to track progress towards those goals.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate is encouraged by the IRS's response that it takes its responsibility to oversee return preparers seriously. IRS management seems to be in agreement that there is much it can do, in spite of the judicial rulings, to effect positive change in how return preparers are trained and how the taxpaying public perceives them. With the vast majority of taxpayers relying on paid preparers, it is important that taxpayers be able to have confidence in the competence and integrity of their tax professionals.

TAS Recommendation	<b>[7-1] Invite representatives from TAS to the cross-functional team that was established to develop a coordinated strategy to provide effective oversight of return preparers.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	A TAS representative was identified in February 2019 and attended two Service-wide Preparer Strategy team meetings held that month, while a second TAS representative was identified in March. Both representatives are currently participating in ongoing team meetings. As team members, these two representatives will assist in developing the Service-wide strategy and provide input from the Taxpayer Advocate perspective.
TAS Response	We are pleased that the IRS has so promptly adopted our recommendation. We expect that the representatives from TAS will provide a perspective that will help ensure taxpayer rights are protected and taxpayer burden minimized.

TAS Recommendation	<b>[7-2] Develop a comprehensive plan to communicate the coordinated return preparer strategy to Circular 230 preparers and unenrolled preparers.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The Service-wide Preparer Strategy includes an action item to develop a comprehensive communication and outreach strategy.
TAS Response	It is our understanding that the Servicewide Preparer Strategy team is tasked with developing a comprehensive communication and outreach strategy, one that will engage both internal and external stakeholders. The National Taxpayer Advocate is pleased that the IRS has committed to this action item and looks forward to being briefed on the comprehensive communication and outreach strategy once it is finalized. However, until this strategy is approved by IRS senior leadership, we do not believe this recommendation should be closed out as implemented.

TAS Recommendation	<p><b>[7-3] Develop a community-based, grassroots communication strategy for educating vulnerable taxpayer populations about how to select a competent return preparer and the risk of return preparer fraud.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by April 15, 2020.</p>
IRS Action	<p>Since 2014, the IRS has created multiple messages for the public regarding how to select a competent return preparer and the risks of return preparer fraud. The messages are centrally located at <a href="http://www.irs.gov/chooseataxpro">www.irs.gov/chooseataxpro</a>. These include news releases, tax tips, videos, and webpages. Some of our most recent offerings include:</p> <ul style="list-style-type: none"> <li>◆ News releases IR-2019-32, Choose tax preparers carefully, and IR-2019-09, Don't be a victim to a "ghost" tax return preparer.</li> <li>◆ Tax Tip 2019-06, Ten things for taxpayers to think about when choosing a tax preparer.</li> <li>◆ Videos entitled "Choose a Tax Preparer Wisely" and "How to Use the Tax Return Preparer Directory."</li> <li>◆ Web pages on "Understanding Tax Return Preparer Credentials and Qualifications" and the "Directory of Federal Tax Return Preparers with Credentials and Select Qualifications."</li> </ul> <p>The IRS widely distributes these messages to the media, national tax professional organizations, small business organizations, consumer groups, and state partners. The IRS will work to further expand the reach of these messages to vulnerable taxpayer populations for the next filing season.</p>
TAS Response	<p>The National Taxpayer Advocate appreciates that the IRS has developed content to host on the IRS.gov website. We are concerned that many taxpayers, especially those who may be most susceptible to being victimized by unscrupulous preparers, may not have access to broadband internet or may not be accustomed to going online to get information about taxes.</p> <p>We recommended that the IRS take a multi-faceted approach to outreach. To ensure it reaches the population in a manner that will be best received, the IRS may want to partner with volunteer organizations, consumer rights groups, local churches, and other community groups. The IRS should explore the feasibility of developing creative public service announcements for TV and radio, as well as for non-traditional social media outlets.</p> <p>We look forward to learning about the IRS's expanded approach, and appreciate the IRS committing to implement this recommendation by April 2020.</p>

TAS Recommendation	<b>[7-4] Conduct analysis on the impact of penalty assessments and no change audits on preparers' behavior in subsequent years, and publish the findings.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Due to the volume of preparers we engage with during our compliance processes, the monitoring of individual preparers' post audit and post penalty assessment behavior would be cost prohibitive. In addition, we cannot assume a change in a preparer's behavior is the result of an enforcement action. To know for certain the reason behind a change in a preparer's behavior would require examinations of the preparer's clients' returns. This would be burdensome to the preparer, their clients, and may not represent the most effective use of IRS resources. For this reason, from a cost-benefit perspective, we do not believe this is the best use of limited IRS resources. However, we do analyze data to identify non-compliant preparers and use that analysis in considering and evaluating preparer/promoter investigations and case selection.</p>
IRS Action	N/A
TAS Response	We understand IRS resource constraints. We feel it would be worthwhile to invest time and resources into a study on the impact of preparer penalties, in an attempt to learn whether these penalties have an impact at all on behavior. This information would leave the IRS better equipped to decide whether spending resources on assessing these penalties has a positive return on investment, given that only about 15 percent of assessed preparer penalties were actually collected in recent years.
TAS Recommendation	<b>[7-5] Revise letters and notices (including Appeals Letter 3808) that reference the Directory of Federal Tax Return Preparers to ensure that appropriate caveats are clearly articulated.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.



<p style="writing-mode: vertical-rl; transform: rotate(180deg);">IRS Action</p>	<p>In an effort to help taxpayers in responding to IRS correspondence, certain letters have been updated to include individuals and organizations that are independent from the IRS and which provide taxpayer assistance. These letters include references to Low Income Taxpayer Clinics as well as the Directory of Federal Tax Return Preparers (Directory). This searchable Directory is intended to help taxpayers by providing a listing of preparers in their area who currently hold professional credentials recognized by the IRS or who hold an Annual Filing Season Program Record of Completion.</p> <p>Tax return preparers have differing levels of skills, education, and expertise. The landing page for the Directory provides very specific definitions of what the various categories of preparers can do. These definitions were negotiated with the stakeholder community at length to ensure their accuracy and clarity. There is no one included in the Directory who does not have some representation rights.</p> <p>The Directory landing page also includes a link to information on “Understanding Tax Return Preparer Credentials and Qualifications,” which provides taxpayers with detailed descriptions of the different types of tax professionals, including licensing requirements and representation authority. We believe the information provided with the Directory is sufficient to allow taxpayers to make an informed decision. In addition, trying to include this granularity of detail regarding return preparer authorities within the letters themselves is not suitable for plain language notice writing and could lead to taxpayer confusion.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">TAS Response</p>	<p>We contended that it is misleading and potentially harmful for the IRS to reference the Directory of Federal Tax Return Preparers without explaining the potential limited representation authorities of such preparers. The IRS responded that there is a link located on the Directory landing page that contains a description of the different types of tax professionals. We find this response to be inadequate and in violation of the taxpayers’ <i>right to be informed</i> and <i>right to quality service</i>. To the extent that the IRS is able to identify which letters should be modified to include the explanatory language when referring to the Directory of Federal Tax Return Preparers, it should do so.</p>

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#8

## **CORRESPONDENCE EXAMINATION: The IRS's Correspondence Examination Procedures Burden Taxpayers and Are Not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance**

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### **PROBLEM**

IRS correspondence audits may involve complicated rules and procedures, or complicated fact situations, or both as in the case of the Earned Income Tax Credit (EITC). Taxpayers in correspondence exams may suffer greater burden because of the difficulty of sending and receiving correspondence (including having it considered at the right time); the lack of clarity in IRS correspondence; and the lack of a single employee assigned to the taxpayer's case. Correspondence examiners do not receive sufficient training on complex issues, and IRS correspondence exam measures do not adequately consider taxpayer needs and preferences. These problems are exacerbated when the audited taxpayer is low income or has limited English proficiency, or when there are other impediments that hinder communication during the audit.

### **ANALYSIS**

In fiscal year (FY) 2017, the IRS audited almost 1.1 million tax returns (including business and individual returns), approximately 0.5 percent of all returns received that year. During FY 2017, the IRS conducted approximately 71 percent of all audits (business and individual) by correspondence. For FY 2018 correspondence audits, the IRS took more than 65 days to respond to the majority of taxpayer replies in refundable credit cases. During FY 2018, Small Business/Self-Employed (SB/SE) division exam employees answered the exam phone only about 35 percent of the time. An examination is primarily an education vehicle, so the taxpayer learns the rules, corrects mistakes, and can comply in the future. In fact, the IRS gains about twice as much from the long-term effects of an audit than it does from the actual audit itself. Yet, a significant number of correspondence audits—about 42 percent—were closed with no personal contact in FY 2018. IRS correspondence and forms are inadequate to inform and educate taxpayers, and they fail to include contact information for the employee who reviewed the taxpayer's reply. The measures for correspondence exams are inadequate to determine whether the IRS is choosing the best cases to audit, educating the taxpayer, and increasing future compliance.

### **TAS RECOMMENDATIONS**

- [8-1]** Require at least one personal contact between an IRS employee and the taxpayer (this can be satisfied by an outgoing or incoming phone call) before closing a correspondence examination.
- [8-2]** Measure taxpayers' filing compliance (including filing a return, making an error on a return, and underreporting taxes on a return) following correspondence examinations and apply this data to guide audit selection based on the resulting impact on compliance.
- [8-3]** Continue to assign a single employee for a correspondence examination when the IRS receives a response from the taxpayer either by phone or correspondence, and expand on this right by retaining this employee as the single point of contact throughout the remainder of the exam.

- [8-4] Per RRA 98 § 3705(a), place on outgoing taxpayer correspondence the name and telephone number of the tax examiner who reviewed the taxpayer's correspondence where a tax examiner has reviewed and made a determination regarding that specific documentation.
- [8-5] Conduct surveys of taxpayers following correspondence examinations to gauge their understanding of the examination process and their resulting attitudes towards the IRS and towards filing and paying taxes.
- [8-6] Collect data regarding which forms of documentation taxpayers sent in a correspondence examination that were deemed insufficient and revise existing correspondence examination letters to better explain documentation requirements.
- [8-7] End the practice of using the combination letter and provide taxpayers with an initial contact prior to issuing the preliminary audit report.

## IRS RESPONSE

Correspondence Examination is a critical part of IRS' overall compliance approach to fair and balanced tax administration. We designed Correspondence Examination to work single-issue (non-complex) and single-year cases that can easily be resolved via documentation. Examinations are conducted by corresponding with the taxpayer, a taxpayer contact that is typically less burdensome on the taxpayer, rather than having a face-to-face meeting. This approach allows for broader geographic coverage and addresses noncompliance across a broad spectrum of the population.

Balanced coverage, which is improved through the correspondence examination program, is one way that we can better achieve fairness in treatment of taxpayers. In addition, the program focuses on implementing the IRS' strategy of reducing audit cycle time and improving audit coverage and strives to select case inventory that would produce a low no-change rate.

Examiners educate taxpayers on the tax law, recordkeeping requirements, and documentation necessary to substantiate what is claimed on the return. We continuously evaluate our Correspondence Examination processes and procedures, including our communications with taxpayers. We analyze data to help identify improvement opportunities with an eye toward enhancing the taxpayer's experience, promoting better and more productive interactions and exchanges of information, and decreasing case processing time. In December 2016, we launched a pilot in the Correspondence Examination program that uses an online suite of web-based secure communication tools that allow the IRS and the taxpayer to correspond digitally.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate recognizes that correspondence examinations play a role in the IRS's overall examination strategy; however, the Most Serious Problem details how the IRS's use of correspondence exams does not lead to balanced coverage or fairness in treatment among taxpayers. Specifically, the Most Serious Problem demonstrates how correspondence examinations disproportionately burden low income taxpayers, noting that 72 percent of the approximately 461,000 correspondence exams closed in fiscal year (FY) 2018 by the Wage and Investment Division involved the Earned Income Tax Credit (EITC). The IRS response conflates "single issue" with "non-complex," ignoring the inherent complexity in certain single issues such as the EITC. Further, the Most Serious Problem notes that the IRS is increasingly using correspondence exams for Schedule C (Form 1040),

*Profit or Loss From Business (Sole Proprietorship)*, exams and could potentially use correspondence exams for the new Internal Revenue Code (IRC) § 199A deduction. By focusing primarily on cycle time and no change rates, the IRS is ignoring other key metrics such as response rates, agreement rates, and subsequent compliance, which would allow the IRS to see whether a taxpayer was educated because of the audit. As explained in the Most Serious Problem, an examination is primarily an education vehicle.

TAS Recommendation	<p><b>[8-1] Require at least one personal contact between an IRS employee and the taxpayer (this can be satisfied by an outgoing or incoming phone call) before closing a correspondence examination.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The Correspondence Examination program was specifically designed as a mail-based workstream. Returns and issues are selected that are conducive to this type of audit. This workstream supplements other workstreams that necessitate a higher level of taxpayer contact. Current Correspondence Examination procedures in Internal Revenue Manual (IRM) 4.19.13.10.1 require employees to contact the taxpayer or authorized power of attorney by telephone when taxpayer information provided is insufficient and an audit report has been sent. Non-response cases are processed using the Automated Correspondence Examination system (ACE). Use of the system enables the IRS to process specified cases with no, or minimal, tax examiner involvement until a taxpayer reply is received. Because the ACE system will automatically process the case through creation, statutory notice, and closing process, there is no tax examiner involvement when a taxpayer fails to reply to the initial correspondence contact.</p> <p>For such no-reply cases, contact is made through letters and notices, since Correspondence Examination does not have the resources to contact every taxpayer by telephone. This correspondence provides the taxpayer with information on the audit issues and supporting documents needed to resolve the issues. In addition, taxpayers are provided options for obtaining more information about the audit process and applicable tax law. Taxpayers can call the Examination toll-free telephone line to secure information about their specific case and/or documentation that will resolve the taxpayer's issue(s).</p> <p>We understand that taxpayers with lower incomes or education levels, or with a language barrier, may have more difficulty understanding the tax laws. We appreciate the collaboration of the Taxpayer Advocate Service on the Audit Improvement Team focused on examinations involving the Earned Income Tax Credit (EITC). The team developed an online tool, the Form 886-H-EIC Toolkit, that helps a taxpayer determine the correct documents needed to resolve an audit. The Toolkit is tailored to the taxpayers' situations, based on their responses. This effort was implemented as a result of feedback received from tax preparers, Low Income Tax Clinic counselors, and taxpayers who shared concerns about identifying the documents needed to prove EITC eligibility.</p>
IRS Action	N/A
TAS Response	<p>First, the National Taxpayer Advocate would like to acknowledge the IRS's collaboration in creating the Form 886-H-EIC Toolkit, which provides a valuable resource for taxpayers. Notwithstanding this development, the Toolkit does not eliminate the need for personal contact. The Most Serious Problem discusses a TAS study showing the benefits of expanded, personal communication with taxpayers. Direct contact can help educate taxpayers about what they did wrong and how to avoid making the same mistakes in the future. Although the IRM instructs employees to make an outgoing call during a correspondence examination when taxpayer information is insufficient and an audit report has been sent, this may be too late in the process. Unless taxpayers know to request an extension, they only have 30 days to provide the correct information. Providing a personal contact earlier in the process, before the exam report is sent, may assist the taxpayer in providing the correct information the first time, or fixing it before the IRS goes through the process of issuing the audit report.</p>

TAS Recommendation	<p><b>[8-2] Measure taxpayers' filing compliance (including filing a return, making an error on a return, and underreporting taxes on a return) following correspondence examinations and apply this data to guide audit selection based on the resulting impact on compliance.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>Due to the large volume of taxpayers we examine in a given year, the monitoring of individual taxpayers' post-audit behavior would be cost prohibitive. In addition, we cannot assume a change in a taxpayer's behavior is a result of an examination. A taxpayer's behavior can change from year to year for a variety of reasons, including changes to their employment or other environmental factors. We also may not know whether a subsequently-filed return is accurate. To know for certain whether a return is accurate, or the reason for the behavioral change, would require a follow-up examination of the taxpayer. This would be burdensome to the taxpayer and may not represent the most effective use of IRS resources. For this reason, from a cost-benefit perspective, we do not believe this is the best use of limited IRS resources. However, we do analyze closed examination results for use in improving our audit selection process. We will continue to use aggregated examination data to find areas that need further taxpayer education, form or instruction changes, or outreach events.</p>
TAS Response	<p>The IRS's response provides a general description of how it uses aggregated examination data, but does not provide any details about whether it analyzes taxpayers' subsequent filing behavior after examinations. The IRS raises a valid point that monitoring the subsequent filing behavior of every taxpayer who underwent an exam might be cost prohibitive. However, the IRS could instead use samples of different taxpayers audited for different issues to determine how the exams might educate taxpayers or lead them to repeat the same mistakes. While the IRS is correct that a taxpayer's behavior can change from year to year based on several factors, the IRS could conduct an analysis and control for other factors so that it was comparing like taxpayers. The IRS could compare taxpayers' likelihood to make a specific mistake for taxpayers who were previously audited on an issue versus those who were not, controlling for things such as filing status, income, age, and other factors. A discrepancy between these two groups would suggest that the examination played a role in changing taxpayer behavior.</p> <p>It is surprising that the IRS is characterizing a follow-up examination as burdensome, given that it is common practice for the IRS to conduct related-year audits on taxpayers already under audit for another year. Finally, although conducting audits does use resources, the IRS should consider the cost benefits that would result from increasing voluntary compliance and better selecting taxpayers for audit.</p> <p>Based on the limited actions the IRS has committed to in its response, the National Taxpayer Advocate disagrees with the IRS's characterization of this response as "agreed to in part."</p>

TAS Recommendation	<p><b>[8-3] Continue to assign a single employee for a correspondence examination when the IRS receives a response from the taxpayer either by phone or correspondence, and expand on this right by retaining this employee as the single point of contact throughout the remainder of the exam.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>The Correspondence Examination program was specifically designed as a mail-based workstream. Returns and issues are selected that are conducive to this type of audit. When Correspondence Examination receives a response from a taxpayer or representative, it is assigned to one employee. This employee remains as the single point of contact. If additional responses are received on the case, those responses are generally reviewed by the same employee.</p> <p>Given the design of the program, employees do not have telephones able to receive direct external incoming calls. Instead, the program was designed for Correspondence Examination enterprise telephone calls to be answered corporately for all campus operations. When taxpayers call the Correspondence Examination toll-free line, their call is routed to the next available assister. The assister is experienced, has access to case history, and will work with the taxpayer toward resolution. A phone call alone does not constitute assignment to an employee. An employee is not assigned to the case until documentation is received from the taxpayer. However, if the taxpayer has responded to the initial contact letter with correspondence and later calls the toll-free line and is not satisfied at the end of the call, the taxpayer has the option to have the assigned tax examiner return their call.</p> <p>The program appropriately implements the direction in the IRS Restructuring and Reform Act of 1998 to develop procedures to the extent practicable and if advantageous to the taxpayer for one IRS employee to handle a taxpayer’s matter until it is resolved. Given the technology limitations, it is not practical to assign one employee to handle the taxpayer’s correspondence examination from beginning to end; however, upon receiving a written response, we are able to assign one employee to review. We disagree with the Recommendation’s characterization of this assignment procedure as a “right” to be expanded.</p>
TAS Response	<p>It is troubling that the IRS disagrees with “the Recommendation’s characterization of this assignment procedure as a ‘right’ to be expanded.” First, the ability to have a single employee assigned is most certainly a taxpayer right, provided by section 3705(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98). Second, the IRS’s implementation of this right should be expanded because the IRS’s current procedures only implement this right half-way. The IRS assigns a single employee as a point of contact after a taxpayer submits documentation during a correspondence exam. This misses taxpayers who call in prior to submitting documentation. The Most Serious Problem notes how many callers in correspondence exams are repeat callers; yet, these taxpayers must talk to a different employee each time. Furthermore, as the IRS implements programs using virtual service, taxpayers may share documentation during a video call, yet not receive the same benefit as a taxpayer who mails in documentation because the IRM only requires assigning an employee upon receiving mailed correspondence from the taxpayer. Even for taxpayers who have submitted documentation and been assigned to a single employee, this assignment is of little use if when they call to ask a question, they speak to an employee not familiar with their case.</p> <p>Although taxpayers who are not satisfied with the employee on the phone can request the assigned tax examiner return their call, this practice burdens the taxpayer and wastes IRS resources by having two contacts where one would likely suffice. The IRS’s reference to technology limitations appears disingenuous considering the IRS itself designed the system that makes it impossible for employees to receive direct, external, incoming calls. The National Taxpayer Advocate hopes the IRS will reconsider its policy and remove the technological limitations it has placed on the program.</p>

TAS Recommendation	<p><b>[8-4] Per RRA 98 § 3705(a), place on outgoing taxpayer correspondence the name and telephone number of the tax examiner who reviewed the taxpayer's correspondence where a tax examiner has reviewed and made a determination regarding that specific documentation.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>In compliance with section 3705(a) of the Restructuring and Reform Act of 1998, the Internal Revenue Manual provision addressing Correspondence Examination letters dictates that any letter sent in reply to taxpayer correspondence must identify the originating tax examiner for all subsequent contact and include a telephone number. <u>See</u> IRM 4.19.10.1.5.1(6). The toll-free telephone number is provided since tax examiners do not have telephones capable of receiving direct external incoming calls. Extensive training was provided to all examiners on all audit issues to effectively respond to telephone calls. The Correspondence Examination toll-free line allows taxpayers to reach an experienced assister at any campus for immediate assistance without having to wait for a return call from an individually-assigned examiner. If, at the end of the call, the taxpayer is not satisfied, they have the option to have the assigned tax examiner return their call.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>The IRS is ignoring the purpose of RRA 98 § 3705(a) by only providing a general toll-free number. RRA 98 § 3705(a) requires “the name, telephone number, and unique identifying number of an Internal Revenue Service employee the taxpayer may contact with respect to the correspondence...” (emphasis added). There is little point in providing a telephone number if it does not allow the taxpayer to reach the specific employee whom he or she “may contact with respect to the correspondence.” If the IRS is concerned that taxpayers would prefer to speak to any examiner to avoid the time waiting for the specific employee to return the call, then the IRS could have the employee’s voicemail message provide the general toll-free number for taxpayers to call who did not want to wait for a call back. Similar to the above response, the IRS is placing blame on self-imposed technology limitations.</p>
TAS Recommendation	<p><b>[8-5] Conduct surveys of taxpayers following correspondence examinations to gauge their understanding of the examination process and their resulting attitudes towards the IRS and towards filing and paying taxes.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>

IRS Action	<p>The IRS has conducted Customer Satisfaction (CSAT) survey analysis since the Restructuring and Reform Act of 1998. The Small Business/Self-Employed Division's (SB/SE) research function completes the analysis and reporting of CSAT survey results for functions in SB/SE on an annual basis.</p> <p>The CSAT survey questions are constructed in a manner to solicit feedback from the taxpayer to gauge their understanding of the examination process and their attitude and feelings toward the IRS. Taxpayers are asked to rate the overall way the IRS handled their audit and if our correspondence to them adequately explained the examination process. The taxpayer is also invited to provide any positive or negative feedback and comments regarding their experience.</p> <p>The survey results are reviewed and used to identify process improvement opportunities, prepare for program reviews, and identify training issues. In addition, we use the results to identify areas of poor communication within the examination process and revise letters as warranted, to increase clarity to the taxpayer. We review the survey questions annually for any necessary changes.</p> <p>The survey population is determined by the contractor from the total population of all closed cases with the expectation that a minimum of 193 taxpayers will be surveyed per campus. The data on all closed cases are sent to the survey contractor monthly. Surveying the entire correspondence exam population would be cost prohibitive.</p>
TAS Response	<p>The National Taxpayer Advocate disagrees with the IRS's characterization of this recommendation as implemented. The Most Serious Problem explains how the customer satisfaction surveys do not capture taxpayers' attitudes towards the IRS and filing and paying taxes. Open-ended questions that allow taxpayers to provide any additional comments will not capture statistically valid data regarding whether taxpayers have changed their attitudes towards the IRS and meeting their tax obligations. The National Taxpayer Advocate would welcome the opportunity to work with the IRS to draft additional questions that would help the IRS better determine the effects of correspondence exams on taxpayers.</p>

TAS Recommendation	<p><b>[8-6] Collect data regarding which forms of documentation taxpayers sent in a correspondence examination that were deemed insufficient and revise existing correspondence examination letters to better explain documentation requirements.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>Systemic data collection tools do not exist for this data. However, there are other internal processes that provide this type of information. Tax examiners are required to document the workpapers with the information the taxpayer provided. In addition, the responses to taxpayers explain why the information was insufficient and what additional information is needed. There are internal processes that provide feedback to program owners. For example, employees elevate documentation issues through their management chain and other employee feedback vehicles, such as the Servicewide Electronic Research Program (SERP) Feedback Tool.</p> <p>Program owners review the feedback received to determine if existing letters need to be revised and if the information document requests need to be clarified to provide clear guidance to taxpayers on acceptable documentation to support the issue under examination.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased the IRS has internal processes in place to provide information to program owners about what types of documentation are confusing for taxpayers or where the IRS could provide further guidance. Although systemic data collection tools are not available, the National Taxpayer Advocate hopes the IRS will highlight the importance of examiners providing this information to program owners through employee training and other messaging.</p>



TAS Recommendation	<b>[8-7] End the practice of using the combination letter and provide taxpayers with an initial contact prior to issuing the preliminary audit report.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS has previously acted to reduce the use of combination letters. We use combination letters on a small percentage of cases in correspondence examinations, and only when the IRS already has internal information that supports the issues for the examination. The taxpayer still has the opportunity to dispute the facts and provide supporting or correcting documentation.</p>
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed that the IRS continues to use combination letters, which send a message to taxpayers that the IRS has already made a determination before the examination begins. These letters infringe upon taxpayers' right to challenge the IRS's position and be heard. If the IRS only uses combination letters in a small percentage of cases, then it should not be overly burdensome for the IRS to discontinue the practice altogether.

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## FIELD EXAMINATION: The IRS's Field Examination Program Burdens Taxpayers and Yields High No Change Rates, Which Waste IRS Resources and May Discourage Voluntary Compliance

### PROBLEM

The primary objective in identifying tax returns for examination is to promote the highest degree of voluntary compliance. Yet the IRS does not know whether its field exams are promoting voluntary compliance because it does not have a measure to track future filing compliance post-audit. Instead, the IRS focuses primarily on the bottom line and the direct effects of a specific audit—measuring closures, cycle time, employee satisfaction, and quality scores. The IRS may also be selecting the wrong taxpayers and cases for field audit, given declining resources. High no change rates for field audits show that the IRS may be wasting resources and failing to drive future voluntary compliance. From a taxpayer's perspective, the field examination process is not working as intended because some taxpayers may not have access to all IRS employees making decisions about their issues, or do not know how to elevate an issue or a complaint. Others experience difficulty understanding the scope of the audit due to a lack of transparency or overly broad document requests. These shortcomings impair taxpayers' rights *to be informed* and *to quality service*.

### ANALYSIS

The IRS has conducted fewer field exams in recent years, with approximately 272,000 field exams in fiscal year (FY) 2010 and only about 156,000 field exams in FY 2018. Both operating divisions conducting field audits, Small Business/Self-Employed (SB/SE) and Large Business and International (LB&I), in FY 2018 employed only about 60 percent of the Revenue Agents they had in FY 2010, reflecting the IRS may need to be more discriminating in choosing cases. Yet SB/SE selects over half of its field audits based on a related-year audit, meaning instead of auditing a new taxpayer, it opens an audit on another tax year for a taxpayer already under audit. Although LB&I created the campaign program to be more nimble in identifying trends, currently campaigns only comprise about six percent of its audit work. Both SB/SE and LB&I track audit reconsiderations, but neither tracks how many of these reconsiderations are eventually appealed by the taxpayer. Thus, the IRS does not know when an examiner gets the answer wrong or when there are hazards of litigation, both of which should inform audit selection. Research shows that audits proposing no additional tax ("no change" audits) result in greater future noncompliance; yet field exams have unacceptably high no change rates—averaging 23 percent for SB/SE field audits and 32 percent for LB&I field audits from FY 2010 to FY 2018. No change audits negatively affect voluntary compliance: a recent study found Schedule C taxpayers reduced their reported income in the three years after a no change audit by about 37 percent. Finally, the field exam programs do not have a formal centralized system to track taxpayer complaints and requests to speak to a manager, so the IRS cannot track and analyze taxpayer concerns about the conduct of an audit.

## TAS RECOMMENDATIONS

- [9-1] Periodically survey taxpayers after field exams to determine the impact of the exam on the taxpayers' understanding of the audit process and audit adjustments, and attitudes towards the IRS and filing and paying taxes.
- [9-2] Periodically study taxpayers' filing behavior following field exams to determine whether the exams had an impact on whether the taxpayer filed, how much income the taxpayer reported, and whether the taxpayer repeated a mistake made on a previous return.
- [9-3] Require SB/SE to provide an examination plan similar to what LB&I requires for all audited taxpayers for all field examinations.
- [9-4] Notify taxpayers during an audit of any consultations with specialists and provide an opportunity for taxpayers to discuss with the specialist any technical conclusions that result from these consultations.
- [9-5] Track and report on the number of field examinations (including audit reconsiderations) that go to Appeals and the resulting adjustments.

## IRS RESPONSE

Revenue Agents within the Large Business and International (LB&I) Division serve corporations, subchapter S corporations, and partnerships with assets greater than \$10 million. These businesses typically employ large numbers of employees, deal with complicated issues involving tax law and accounting principles, and conduct business in an expanding global environment. Revenue Agents within the Small Business/Self-Employed (SB/SE) Division serve business taxpayers with assets of \$10 million and below, including sole proprietors filing a Schedule C with their individual returns, as well as other high-income individual returns.

The Field Examination program has responsibility for the taxpayer population with the most complex federal tax return issues. This requires a high level of skill by the examiner and warrants a field visit to the taxpayer's business to fully understand their operations. Field Examination employees assist taxpayers with meeting their tax responsibilities through education and enforcement when necessary.

We continue to focus on areas of known non-compliance in Field Examination. We have developed cross-functional teams for issues that require a Service-wide strategy for case selection and issue resolution. In SB/SE, we have created consolidated groups containing examiners with the experience and technical expertise to work these types of examinations.

As part of our normal examination process, our examiners educate taxpayers on the tax law, recordkeeping requirements, and documentation necessary to substantiate what is claimed on the return. Our procedures, letters, and document requests are tailored to the type of taxpayer we are interacting with, which is why there are differences between how Field Examination in LB&I and SB/SE conduct their business.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The Most Serious Problem points out numerous concerns with how the IRS conducts its field exam program, such as the high no change rate, the refusal to share an individual exam plan with all taxpayers, the lack of a mechanism for taxpayers to raise complaints, and the IRS's failure to track complaints. The IRS narrative only loosely addresses these problems, without providing any details as to what the IRS is doing to mitigate them or why the IRS believes they have addressed them. Without changing how the IRS chooses taxpayers for field exams and the way in which it conducts the exams and interacts with taxpayers, these problems will persist.

TAS Recommendation	<p><b>[9-1] Periodically survey taxpayers after field exams to determine the impact of the exam on the taxpayers' understanding of the audit process and audit adjustments, and attitudes towards the IRS and filing and paying taxes.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>The IRS has conducted Customer Satisfaction (CSAT) surveys since the Restructuring and Reform Act of 1998. LB&amp;I and SB/SE, alongside the Research, Applied Analytics, and Statistics (RAAS) function, periodically conduct post-filing burden surveys, customer satisfaction surveys, and other root-cause analyses related to taxpayer understanding of and engagement with IRS examination and issue resolution processes.</p> <p>The CSAT survey questions are designed to solicit feedback from the taxpayer to gauge their understanding of the examination process and their attitude and feelings toward the IRS. Taxpayers are asked to rate the overall way the IRS handled their audit and if our correspondence to them adequately explained the examination process. The taxpayer is also invited to provide any positive or negative feedback and comments regarding their experience.</p> <p>The survey results are reviewed and analyzed for trends and are shared with examination directors. Taxpayer feedback is taken into consideration and used to find ways to improve processes.</p> <p>Further, the IRS is engaged in discussions with other tax authorities, through the Organization of Economic Cooperation and Development and the Forum on Tax Administration, related to understanding taxpayer attitudes and behavior with an eye toward finding methods and processes that could be employed at the IRS.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased the IRS has engaged with other tax authorities to better understand how exams affect taxpayer attitudes and behaviors. This collaboration should allow the IRS to learn from other countries and apply best practices to its own field exam program. Notwithstanding this positive action by the IRS, the National Taxpayer Advocate does not agree that the IRS's actions address her recommendation. As explained in the Most Serious Problem, the field exam customer satisfaction surveys are more focused on how the taxpayer feels about a specific encounter and not how the taxpayer might alter their behavior in the future. The National Taxpayer Advocate would welcome the opportunity to work with the IRS to draft additional questions that would help the IRS better determine the effects of field exams on taxpayers.</p>

TAS Recommendation	<p><b>[9-2] Periodically study taxpayers' filing behavior following field exams to determine whether the exams had an impact on whether the taxpayer filed, how much income the taxpayer reported, and whether the taxpayer repeated a mistake made on a previous return.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>Due to the large volume of taxpayers we examine in a given year, the monitoring of individual taxpayers' post-audit behavior would be cost prohibitive. In addition, we cannot assume a change in a taxpayer's behavior is a result of an examination. A taxpayer's behavior can change from year to year for a variety of reasons, including changes to their employment, business operations, or other environmental factors. We also may not know whether a subsequently-filed return is accurate. To know for certain whether a return is accurate, or the reason for the behavioral change, would require a follow-up examination of the taxpayer. This would be burdensome to the taxpayer and may not represent the most effective use of IRS resources. For this reason, from a costbenefit perspective, we do not believe this is the best use of limited IRS resources. However, we do analyze closed examination results for use in improving our audit selection process. We will continue to use aggregated examination data to find areas that need further taxpayer education, form or instruction changes, or outreach events.</p> <p>In addition, LB&amp;I is collaborating with RAAS on a set of reporting tools and special studies looking at taxpayer filing and reporting responses to enforcement efforts. Outside researchers from Treasury as well as the academic community are also involved in some of these special studies. The IRS reviews their findings for relevant insights.</p>
TAS Response	<p>The National Taxpayer Advocate appreciates the IRS's collaboration with RAAS to better understand how enforcement actions, such as field exams, affect taxpayers' subsequent filing behavior. Still, the IRS misses an opportunity to study how its field exams of different types of taxpayers on different issues may affect their subsequent behavior. While the IRS is correct that a taxpayer's behavior can change from year to year based on several factors, the IRS could conduct an analysis and control for other factors so that it was comparing like taxpayers. The IRS could compare taxpayers' likelihood to make a specific mistake for taxpayers who were previously audited on an issue versus those who were not, controlling for things such as filing status, income, and other factors. A discrepancy between these two groups would suggest that the examination played a role in changing taxpayer behavior.</p> <p>It is surprising that the IRS is characterizing a follow-up examination as burdensome, given that it is common practice for the IRS to conduct related-year audits on taxpayers already under audit for another year. Finally, although conducting audits does use resources, the IRS should consider the cost benefits that would result from increasing voluntary compliance and better selecting taxpayers for audit.</p>

TAS Recommendation	<p><b>[9-3] Require SB/SE to provide an examination plan similar to what LB&amp;I requires for all audited taxpayers for all field examinations.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>SB/SE Revenue Agents provide taxpayers information similar to what is outlined in LB&amp;I's Internal Revenue Manual (IRM) 4.46.3.9.1, Elements of an Examination Plan, in a manner appropriate for the size and type of return under audit.</p> <p>IRM 4.10.2.8.1.2, Field Examination Initial Contact, requires SB/SE Revenue Agents to mail an initial contact letter to the taxpayer. Generally, SB/SE examiners initiate the examination by mailing Letter 2205-A to the taxpayer. The Revenue Agent is required to complete the "preliminary issues" section of the letter. The letter states, "The issues listed below are the preliminary items identified for examination. During the course of the examination, it may be necessary to add or reduce the list of items. If this should occur, I will advise you of the change." SB/SE's IRM provision also states, "Revenue agents must mail a detailed Form 4564, Information Document Request, with the confirmation letter listing all the information needed at the initial appointment." This IRM provision further references Lead Sheet 120-1, which is a checklist for Revenue Agents to follow with respect to initial taxpayer or representative contact that addresses the items a Revenue Agent should discuss with the taxpayer or representative during their initial conversation. One of the discussion items is "Issues to be examined (including the type of books and records available)."</p> <p>Additionally, IRM 4.10.2.8.2(1)(e) requires the SB/SE Revenue Agent to "Discuss the issues to be examined and inform the taxpayer or representative that the examination may be expanded to additional issues" during the Revenue Agent's initial telephone contact with the taxpayer or representative.</p> <p>IRM 4.10.3.3.8, Mutual Commitment Date, generally requires SB/SE Revenue Agents to discuss and establish a Mutual Commitment Date (MCD) for issuing the audit report with the taxpayer or representative at the conclusion of the first appointment. The MCD process establishes mutual responsibilities such as identifying and discussing potential areas of examination (including issues raised by the taxpayer); requesting, providing and reviewing pertinent information; keeping all parties advised of unavoidable delays; addressing all parties' questions and concerns raised during the audit; and keeping all parties fully informed about the adjustments being proposed as well as the progress of the audit.</p> <p>The information and expectations above exhibit SB/SE's requirement to share the "audit plan" with the taxpayer and representative and conduct the examination in a collaborative and communicative manner.</p>
IRS Action	N/A
TAS Response	<p>The IRS response details actions SB/SE takes to communicate with the taxpayer during the field exam, but these are not the equivalent of an individual exam plan. As explained in the Most Serious Problem, the exam plan allows LB&amp;I to share the relevant information with the taxpayer regarding scope, timeline, personnel involved, and expectations. The taxpayer also signs the plan, committing to achieving the timeline. As discussed in the Most Serious Problem, the Information Document Request (IDR) may not provide the same level of detail and is not shared and discussed with the taxpayer before being finalized. It is a request for documents, not a plan for conducting that audit that is agreed to by the taxpayer. The Most Serious Problem discusses complaints by practitioners about how the IDRs are so broad that they do not help the taxpayer understand the scope of the exam. An initial conversation does not fulfill a taxpayer's <i>right to be informed</i> in the same way a written exam plan does.</p>

TAS Recommendation	<p><b>[9-4] Notify taxpayers during an audit of any consultations with specialists and provide an opportunity for taxpayers to discuss with the specialist any technical conclusions that result from these consultations.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by December 31, 2019.</p>
IRS Action	<p>In May 2016, LB&amp;I launched the LB&amp;I Examination Process (LEP) outlined in IRM 4.46. An updated LEP IRM was published in December 2018. Updated training for managers and employees will be launched before the end of the third quarter of fiscal year 2019. The revised IRM and training clarify the roles and responsibilities of all parties to the examination and emphasize the principles of collaboration between the examination team and the taxpayer to ensure end-to-end accountability and to reinforce the importance of transparency. All issue team members, including assigned specialists, work collaboratively with the taxpayer. Each issue identified for examination will have a designated issue manager, who is the decision maker for that issue and is responsible for promoting communication, collaboration, and cooperation among LB&amp;I issue team members, consultants as appropriate, and with the taxpayer.</p> <p>SB/SE examiners utilize various tools and resources most conducive to their taxpayer population to assist with issue development. These resources provide the examiners with the background and knowledge to discuss technical issues with the taxpayer or representative. In the event a specialist is necessary to explain a technical issue, the examiner can coordinate a meeting with the taxpayer or representative and the specialist.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased to learn that LB&amp;I is updating its procedures to provide for one issue manager who is the decision maker for the issue. This will provide transparency and certainty to taxpayers. Although LB&amp;I states that an examiner will coordinate a meeting between a specialist and the taxpayer where necessary, experience has not shown this to always be the case. The National Taxpayer Advocate hopes LB&amp;I will update its guidance to examiners to further encourage examiners to provide this consultation when a taxpayer requests to speak to the specialist.</p>

TAS Recommendation	<b>[9-5] Track and report on the number of field examinations (including audit reconsiderations) that go to Appeals and the resulting adjustments.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The examination functions and Appeals are unlikely to benefit from tracking or reporting on the aggregate results of appealed cases because the resulting adjustments or outcomes are uniquely drawn from the facts and circumstances of each case. Therefore, tracking the results in the aggregate would not be informative to our processes or our examiners. We do receive Appeals Case Memoranda, which allow us to better understand Appeals' case resolution on individual cases and can inform our future work by providing examiners feedback on their technical positions.</p> <p>In addition, we do not support the calculation of dollar-based sustention rates. Appeals' mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer. A fair and impartial settlement reflects the probable result in the event of litigation or mutual concessions based on the relative strength of the opposing positions where there is substantial uncertainty of the result in the event of litigation, as outlined in Internal Revenue Manual (IRM) 8.6.4.1.</p>
IRS Action	N/A
TAS Response	<p>The National Taxpayer Advocate is disappointed the IRS will not agree to track the number of field exams that go to Appeals. Tracking which issues taxpayers appeal and which issues taxpayers ultimately succeed on should guide the IRS's audit selection process. While each case is based on specific facts and circumstances, tracking these cases would allow the IRS to identify trends that may indicate certain issues require further guidance to taxpayers or certain issues should receive a different enforcement approach. The fact that Appeals settles issues based on the hazards of litigation does not negate the usefulness of looking at the resulting adjustments. Less important is the amount of the adjustments and more important is which issues are settled, indicating that perhaps the taxpayer should or should not have been audited on that issue.</p>



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## OFFICE EXAMINATION: The IRS Does Not Know Whether Its Office Examination Program Increases Voluntary Compliance or Educates the Audited Taxpayers About How to Comply in the Future

### PROBLEM

Promoting voluntary compliance should be an underlying goal of the IRS examination process; however, failure to appropriately measure the outcomes of examinations and the scope of the office examination program may limit its effectiveness. Office exams typically examine a limited scope of issues, which provides a structure to the exam and helps the taxpayer focus specifically on how to better comply in the future. The IRS employee has an opportunity to educate the taxpayer in-person and ensure the taxpayer understands the law going forward. The face-to-face experience benefits both the taxpayer and the IRS—the taxpayer can, in real time, ask questions and explain his or her position to the IRS, and the IRS employee can immediately see if the taxpayer understands the current examination, next steps to be taken, and how to comply in the future. Compare this with the correspondence examination process where a taxpayer with limited understanding of the law may never speak to an IRS employee during the entire process.

### ANALYSIS

Office exams are generally scheduled at the office closest to the taxpayer's residence, if the office has the appropriate examination personnel on site. This constraint immediately limits which taxpayers may ever be selected for office exam. Selecting taxpayers for office exam based on where Tax Compliance Officers (TCOs) are located introduces selection bias into the office exam process and impacts the *right to quality service* and the *right to a fair and just tax system*. The employees who conduct office exams have declined precipitously. In fiscal year (FY) 2011, the IRS had 1,256 employees conducting office exams and in FY 2018, only 639, a decrease of 49 percent in only seven years. Since office exams have a higher agreed to rate than correspondence exams, they can serve as a more effective means to get to the right answer for the taxpayer as well as educating him or her about future compliance. If the IRS's goal is to promote voluntary compliance through the examination process, it needs to measure how taxpayers who undergo audits comply in future years. Currently the IRS relies on typical measures of cycle time, closure rates, quality scores, and employee satisfaction in evaluating the examination process. None of these measures address the impact of audits on voluntary compliance, whether the taxpayer understood why his or her tax was adjusted, or whether the examination concluded in the right result for the taxpayer—*i.e.*, what happens when a taxpayer appeals the results of the exam?

### TAS RECOMMENDATIONS

- [10-1] Develop measures to track the downstream compliance of audited taxpayers by type of exam.
- [10-2] Track results of audits that are appealed by the taxpayer by type of exam.
- [10-3] Add educating the taxpayer on future compliance to the quality attributes of an exam for field and office exam.
- [10-4] Increase the number of TCOs and put them in more locations throughout the United States.

[10-5] Expand the issues covered by office exam, develop pilot programs for office exams for issues such as charitable contributions, and track the customer satisfaction for these pilots versus taxpayers audited via correspondence exam for the same issues.

## IRS RESPONSE

Office Examination is an important piece of our compliance approach, along with the Correspondence Examination program and the Field Examination program. The Office Examination program has evolved over the years, although dwindling resources have created some challenges in executing the program's goals.

The purpose of Office Examination is to examine returns with more than one issue, and possibly multiple years, that require more documentation and analysis to substantiate items on the return than issues that can be addressed in a correspondence audit. This requires a higher level of skill by Tax Compliance Officer (TCO) examiners and warrants a face-to-face interaction with the taxpayer, but not necessarily at the taxpayer's place of business. Examiners are required to follow IRM 4.10.1.3, Communication, and IRM 4.10.7.5, Proposing Adjustments to the Taxpayer and/or Representative, which entails educating the taxpayer on the tax law, recordkeeping requirements, and documentation necessary to substantiate what is claimed on the return.

We continually evaluate all of our examination workstreams (i.e., Correspondence Examination, Office Examination, and Field Examination), to ensure we are utilizing our resources as efficiently and effectively as possible. We are currently reviewing the accounting education requirements for the TCO position in addition to evaluating the workload of the program and identifying areas where additional training is necessary.

We are always looking for ways to improve the taxpayer experience. In fiscal year 2018, we launched a pilot in the Office Examination program that uses an online suite of web-based secure communication tools and includes secure messaging. Secure messaging is not standard email, but a message box within a secure portal allowing the IRS and the taxpayer to correspond digitally. This provides an alternative for taxpayers who prefer to use these online options.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate agrees that Office Examination is an important part of the IRS Examination Program and would like to see the IRS use it effectively to bring taxpayers back into compliance and keep them in compliance going forward. A crucial step to keeping taxpayers in compliance in the future is ensuring that the taxpayer understands any errors that were made and how to avoid those errors in the future. After reviewing the Internal Revenue Manuals (IRMs) cited by the IRS above, while the National Taxpayer Advocate agrees that effective, continuous, courteous, and open communication is important, she does not see any components of the referenced IRMs specifically requiring the examiners to educate the taxpayer. While IRM 4.10.7.5, *Proposing Adjustments to the Taxpayer and/or Representative*, requires the examiner to discuss issues with the taxpayer, the National Taxpayer Advocate believes that explicitly adding an education of the taxpayer component to the exam process will help clarify and ensure taxpayers understand what to do going forward. In other words, you get what you measure.

TAS Recommendation	[10-1] <b>Develop measures to track the downstream compliance of audited taxpayers by type of exam.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Due to the large volume of taxpayers we examine in a given year, the monitoring of individual taxpayers' post-audit behavior would be cost prohibitive. In addition, we cannot assume a change in a taxpayer's behavior is a result of an examination. A taxpayer's behavior can change from year to year for a variety of reasons, including changes to their employment, business operations, or other environmental factors. We also may not know whether a subsequently-filed return is accurate. To know for certain whether a return is accurate, or the reason for the behavioral change, would require a follow up examination of the taxpayer. This would be burdensome to the taxpayer and may not represent the most effective use of IRS resources. For this reason, from a cost-benefit perspective, we do not believe this is the best use of limited IRS resources. However, we do analyze closed examination results for use in improving our audit selection process. We will continue to use aggregated examination data to find areas that need further taxpayer education, form or instruction changes, or outreach events.
TAS Response	The National Taxpayer Advocate is concerned that the IRS did not understand the purpose of this recommendation. While it may be true that a taxpayer's behavior could change in subsequent years for any number of reasons, it would seem logical that having undergone an exam in one year should have the goal of changing behavior in future years. The National Taxpayer Advocate continues to urge the IRS to develop measures to track the downstream compliance of audited taxpayers to gauge the effectiveness of its audit programs. The National Taxpayer Advocate does not agree that this recommendation was partially adopted.

TAS Recommendation	<b>[10-2] Track results of audits that are appealed by the taxpayer by type of exam.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The examination functions and Appeals are unlikely to benefit from tracking or reporting on the aggregate results of appealed cases because the resulting adjustments or outcomes are uniquely drawn from the facts and circumstances of each case. Therefore, tracking the results in the aggregate would not be informative to our processes or our examiners. We do receive Appeals Case Memoranda, which allow us to better understand Appeals' case resolution on individual cases and can inform our future work by providing examiners feedback on their technical positions.</p> <p>In addition, we do not support the calculation of dollar-based sustention rates. Appeals' mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer. A fair and impartial settlement reflects the probable result in the event of litigation or mutual concessions based on the relative strength of the opposing positions where there is substantial uncertainty of the result in the event of litigation, as outlined in Internal Revenue Manual (IRM) 8.6.4.1.</p>
IRS Action	N/A
TAS Response	The National Taxpayer Advocate believes the IRS did not fully understand the purpose of this recommendation. The National Taxpayer Advocate was trying to point out that the IRS should track if a certain type of exam is being appealed more frequently and with success on the part of the taxpayer. Such data could suggest to the IRS that it is not getting the right result at the exam level and allow the IRS to tweak its selection process or better educate examiners to help get to the right result at the exam level.

TAS Recommendation	<p><b>[10-3] Add educating the taxpayer on future compliance to the quality attributes of an exam for field and office exam.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full.</p>
IRS Action	<p>Office examiners are required to discuss the progress of the examination and proposed issues with the taxpayer or representative at frequent intervals throughout the examination. They are required to follow the IRM, including IRM 4.10.1.3, Communication, and IRM 4.10.7.5, Proposing Adjustments to the Taxpayer and/or Representative. The IRM also directs the examiner to provide the taxpayer with specific information to properly report their tax in subsequent years. For example, when applicable, a depreciation schedule or Passive Activity Loss worksheet is provided to the taxpayer to properly compute their tax liability in subsequent years (IRM 4.10.8.14, Issues Requiring Special Reports and Forms). Thus, in the Office Examination program, a high percentage of the oral and written communication between the taxpayer and the examiner serves to educate the taxpayer on their understanding of the tax law, improve their recordkeeping practices, and promote their future compliance.</p> <p>The following three quality attributes are used to measure adherence with these requirements:</p> <ul style="list-style-type: none"> <li>♦ Attribute 604, Meet and Deal, measures:             <ul style="list-style-type: none"> <li>♦ Effective communication skills (<i>i.e.</i>, listening, responding, and clarifying) to secure the taxpayer's cooperation during the course of the audit.</li> <li>♦ The use of tact to explain findings and conclusions.</li> <li>♦ Clear communication of tax law and accounting principles and practices.</li> <li>♦ If communication methods are appropriate to the listener and if the examiner listens to and considers the taxpayer's/representative's point of view.</li> </ul> </li> <li>♦ Attribute 617, Taxpayer/Power of Attorney (TP/POA) Rights and Notification, measures if the examiner advised the taxpayer or representative of all rights and kept the taxpayer or representative informed throughout the examination process. This includes ensuring all findings and conclusions reached have been discussed with the taxpayer or representative. The examiner's responsibilities relating to this quality attribute are found in IRM 4.10.1.2.1, Taxpayer Bill of Rights (TBOR).</li> <li>♦ Attribute 719, Report Writing and Tax Computation, measures if the examiner correctly determined or computed the proposed or actual assessment or abatement of tax using applicable report writing procedures. The report must present all the information necessary to ensure clear understanding of the adjustments and to demonstrate how the tax liability was computed. For most Office Examination reports, examiners include the standard explanations in IRM 4.10.10, Standard Paragraphs and Explanation of Adjustments, to provide plain language adjustment information to the taxpayer and enable the taxpayer to challenge the issue if desired. As an option, more in-depth lead sheets may be attached to the report to explain the issue(s).</li> </ul> <p>These quality attributes measure adherence to the IRM, and therefore, the protection of taxpayer rights.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased that the IRS understands the importance of effective communications in protecting taxpayer rights, however does not agree that this recommendation has been adopted in full. She urges the IRS to explicitly add educating the taxpayer on future compliance to the quality attributes of an exam. While advising the taxpayer of their rights, keeping them informed, and clear communication of tax law and accounting principles and practices all touch on the edges, explicitly measuring whether the examiner has educated the taxpayer on future compliance will ensure it happens.</p>

TAS Recommendation	<b>[10-4] Increase the number of TCOs and put them in more locations throughout the United States.</b>
IRS Response	IRS agrees with TAS recommendation but cannot implement it currently due to funding limitations.
IRS Action	Hiring is based on approval authority and funding. We plan to hire over 200 TCOs in over 80 locations in fiscal year 2019. However, attrition has outpaced hiring efforts and impacts our ability to increase the overall number of TCOs nationwide.
TAS Response	The National Taxpayer Advocate understands the impact of budget and the effects of attrition on the workforce. The National Taxpayer Advocate urges the IRS to continue to work with Congress to ensure that Congress understands the importance of face-to-face interactions with the IRS, including office exams, and the impact the loss of TCOs has on the ability of the IRS to carry out this function.

TAS Recommendation	<b>[10-5] Expand the issues covered by office exam, develop pilot programs for office exams for issues such as charitable contributions, and track the customer satisfaction for these pilots versus taxpayers audited via correspondence exam for the same issues.</b>
IRS Response	IRS does not agree to implement TAS recommendation.  Our Office Examination and Correspondence Examination programs serve very different yet critical functions for compliance. Office Examination works more complex issues that warrant a face-to-face interaction, and Correspondence Examination works single-issue cases that can easily be resolved through documentation. The issues currently covered by both TCOs in Office Examination and Tax Examiners in Correspondence Examination are selected appropriately according to their position descriptions and grade levels.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed that the IRS will not consider at least attempting a pilot on any issue to see if the IRS or the taxpayer receive better results via a different type of examination. Given the disparity of default rates between types of exam, it seems clear that while the IRS deems certain issues easy to resolve through documentation, these issues are often not being resolved with any participation on the part of the taxpayer.

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## POST-PROCESSING MATH ERROR AUTHORITY: The IRS Has Failed to Exercise Self-Restraint in Its Use of Math Error Authority, Thereby Harming Taxpayers

### PROBLEM

When a return appears to contain one of 17 types of errors (misleadingly called math errors), the IRS can summarily assess additional tax without first giving the taxpayer a notice of deficiency, which triggers the right to petition the Tax Court. This “math error authority” (MEA) can deprive taxpayers of benefits to which they are entitled and leave them with no realistic opportunity for judicial review. The taxpayer is best equipped to address the IRS’s questions immediately after filing. On April 10, 2018, however, the IRS concluded that it can use MEA after processing the return. It used this newfound post-processing MEA to reverse and recover refundable credits for students, children, and the working poor on 17,691 returns in fiscal year 2018—often nearly two years after the returns were filed. It improperly denied credits to 289 taxpayers and sent 113 taxpayers the wrong letters to explain why their credits were disallowed, according to the Treasury Inspector General for Tax Administration (TIGTA). TIGTA also said it wasted over \$400,000 doing manual reviews because it did not address the problem systemically and did not reject e-filed returns—a process that would have allowed taxpayers or their preparers to address the problem immediately. The National Taxpayer Advocate is concerned that the IRS may continue to use MEA and its new post-processing MEA in situations where it poses unacceptable risks to the taxpayer’s right *to pay no more than the correct amount of tax or to challenge the IRS’s position and be heard*, and wastes more IRS resources.

### ANALYSIS

MEA burdens taxpayers because (1) mismatches do not always mean the assessment is correct, (2) the IRS does not always try to resolve apparent discrepancies on its own, (3) confusing letters and shorter deadlines make it more difficult for taxpayers to respond timely as compared to the audit process, and (4) if they miss the deadlines, taxpayers generally lose access to the Tax Court. Post-processing MEA exacerbates these burdens because the longer the IRS waits to question the return, the less likely the taxpayer is to be able to (1) receive and understand the IRS’s letter, (2) discuss the issue with a preparer, (3) access underlying documentation, (4) recall and explain relevant facts, (5) return any refunds without suffering an economic hardship, and (6) learn how to avoid the problem before filing another return. Thus, if the IRS does not use MEA when processing the return, an audit is generally more appropriate. The National Taxpayer Advocate has recommended legislation that would limit MEA to situations least likely to burden taxpayers or waste IRS resources.

### TAS RECOMMENDATIONS

- [11-1] Limit the circumstances in which the IRS will use MEA (including post-processing MEA).
- [11-2] Voluntarily adopt the limits on the use of MEA recommended to Congress by the National Taxpayer Advocate in her 2015 annual report.
- [11-3] Require the IRS to alert taxpayers to any discrepancies as early as possible, for example, by rejecting an e-filed return, where permissible, rather than waiting to use MEA, or waiting even longer to use post-processing MEA.

## IRS RESPONSE

The IRS's statutory math error authority provides the IRS with a valuable tool to address mathematical or clerical errors on tax returns in appropriate cases. It allows the IRS the ability to adjust the tax return to reflect the correct tax liability without referring the case to Examination for an audit of the return, which is time-consuming for the taxpayer and resource-intensive for the agency. Over the years, Congress has incrementally expanded the authority to allow the IRS to automatically correct returns for additional types of mathematical or clerical errors, including instances in which the IRS receives reliable third-party information. This authority has enabled the IRS to effectively and efficiently adjust returns and prevent erroneous refunds from being issued. The IRS recognizes that taxpayer rights are an important consideration in the use of math error authority.

Congress authorized an exception to the restrictions on assessments for mathematical or clerical errors in section 6213(b)(1) of the Internal Revenue Code. In the absence of this exception or self-assessment by the taxpayer, the IRS is required to follow statutory deficiency procedures before any additional tax may be assessed. This exception authorizes the IRS to summarily assess additional tax when there is a mathematical or clerical error on a taxpayer's return. Section 6213(g)(2) defines seventeen specific types of errors that Congress determined to be mathematical or clerical errors for which the summary assessment authority exists. Like statutory deficiency procedures, math error authority may be exercised if the statute of limitations for assessments has not expired.

On April 10, 2018, Chief Counsel issued a memorandum titled, Section 6213 Math Error Assessment Authority. This memo addresses the IRS' ability to use math error assessment authority to correct the erroneous issuance of refundable credits identified by the Treasury Inspector General for Tax Administration (TIGTA) in a report titled, *Processes Do Not Maximize The Use Of Third-Party Income Documents To Identify Potentially Improper Refundable Credit Claims* (Ref. No. 2017-40-042), and issued July 17, 2017. Counsel concluded that section 6213 authorizes the IRS to use math error authority to correct the errors identified in the TIGTA report, even though the returns have already been processed and refunds have been issued. Accordingly, the IRS has discretion to use either math error authority or statutory deficiency procedures to assess the tax due.

The National Taxpayer Advocate (NTA) asks the IRS to adopt a policy statement that requires the IRS to alert taxpayers to any discrepancies on their tax returns as early as possible, for example by rejecting an e-filed return. The IRS currently uses business rules to reject electronically-filed returns in appropriate cases, and routinely considers whether new business rules should be adopted to enhance the efficiency of electronic return processing. We strive to notify taxpayers at the earliest opportunity when there is an issue with their tax return, allowing them time to correct math errors with the least amount of burden.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate agrees that math error authority (MEA) is a valuable tool in appropriate situations. An inappropriate use of MEA, however, can burden taxpayers, waste resources, and cause taxpayers to lose the opportunity to petition the Tax Court even in cases where their returns are accurate. Moreover, the IRS's new post-processing MEA exacerbates these problems because the longer the IRS waits to question the return, the less likely the taxpayer is to be able to: (1) receive and understand the IRS's letter, (2) discuss the issue with a preparer, (3) access underlying documentation, (4) recall and explain relevant facts, (5) return any refunds without suffering an economic hardship, and (6) learn how to avoid the problem before filing another return. Accordingly, the National Taxpayer



Advocate recommended that the IRS voluntarily adopt a policy statement or other guidance that says it will only use MEA in situations least likely to burden taxpayers or waste IRS resources. The IRS’s narrative does not address these problems, which were the focus of the report.

TAS Recommendation	<p><b>[11-1] Limit the circumstances in which the IRS will use MEA (including post-processing MEA).</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS is charged with using resources appropriated to administer the Internal Revenue Code. In most instances, when a math error is identified during the processing of a return, taxpayers are sent a notification when the situation is identified. By not utilizing existing math error authority, IRS would effectively delay the resolution of taxpayer errors in the processing of returns.</p> <p>The IRS will continue to evaluate the potential use of all math error authority provided by Congress and consider the context of how a taxpayer’s information is presented on the tax return and the reliability of the sources of other information when making a summary assessment. As highlighted in the NTA’s description of this issue, the IRS does not use the Federal Case Registry to deny the Earned Income Tax Credit (EITC) to any taxpayer because we have determined that the information in the Federal Case Registry is not reliable.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>The National Taxpayer Advocate is pleased that the IRS does not adjust a taxpayer’s return using MEA simply because the return does not match the relatively unreliable data found in the Federal Case Registry. Doing so would unnecessarily burden taxpayers, deprive them of benefits to which they are entitled, and waste IRS resources. For the very same reason, it would make sense for the IRS to adopt a policy statement that, in effect, pledges not to waste resources and unnecessarily burden taxpayers in the future.</p> <p>The IRS’s refusal to adopt such a common sense policy should make Congress think twice before expanding the IRS’s MEA. Moreover, the IRS’s failure to establish a policy on how it will use MEA or post-processing MEA leaves the IRS open to criticism by other stakeholders who might recommend that it use its MEA or post-processing MEA in an unproductive or potentially unconstitutional manner.</p> <p>In addition, the National Taxpayer Advocate disagrees with the portion of the IRS’s response which suggests that by not using existing math error authority, IRS would effectively delay the resolution of taxpayer errors in the processing of returns. As the report points out, returns subjected to the math error process are sometimes correct. In such cases, any IRS inquiry is a waste of resources and unnecessarily burdensome. For returns that are actually wrong, the IRS can reject those that contain certain defects. It can correspond with taxpayers about discrepancies. In appropriate situations it can and should use its regular MEA. It should generally avoid using post-processing MEA, however, because it delays resolution of errors, burdens taxpayers, and has fewer procedural protections than exams. By establishing a policy statement addressing when it is appropriate to use each of these tools, the IRS could demonstrate that it takes seriously its responsibility to uphold taxpayer rights and avoid wasting resources.</p>

TAS Recommendation	<b>[11-2] Voluntarily adopt the limits on the use of MEA recommended to Congress by the National Taxpayer Advocate in her 2015 annual report.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Math error authority provides the IRS with a valuable tool to address mathematical or clerical errors on tax returns in appropriate cases. Math error authority allows the IRS to effectively and efficiently adjust returns and prevent erroneous refunds from being issued. The IRS recognizes that taxpayer rights are an important consideration in the use of math error authority.</p>
IRS Action	N/A
TAS Response	<p>The National Taxpayer Advocate agrees with the IRS that MEA is a valuable tool. It can, however, be misused. For this reason, she recommended that the IRS only use MEA in the following situations:</p> <ol style="list-style-type: none"> <li>1. There is a mismatch between the return and unquestionably reliable data.</li> <li>2. The IRS's math error notice clearly describes the discrepancy and how taxpayers may contest the assessment.</li> <li>3. The IRS has researched the information in its possession (e.g., information provided on prior-year returns) that could reconcile the apparent discrepancy.</li> <li>4. The IRS does not have to analyze facts and circumstances or weigh the adequacy of information submitted by the taxpayer to determine if the return contains an error.</li> <li>5. The abatement rate for a particular issue or type of inconsistency is below a specified threshold for those taxpayers who respond.</li> <li>6. For any new data or criteria, the Department of Treasury, in conjunction with the National Taxpayer Advocate, has evaluated and publicly reported to Congress on the reliability of the data or criteria for purposes of assessing tax using math error procedures.</li> </ol> <p>The IRS could issue a policy statement adopting these common-sense limits. Doing so would minimize risks to the taxpayer's right to pay no more than the correct amount of tax or to challenge the IRS's position and be heard. It would also help prevent the IRS from wasting resources on incorrect assessments that generate unnecessary correspondence and taxpayer burden. It will be more difficult for the IRS to make the case that Congress should expand its MEA if it is unwilling to adopt such reasonable limits on how it will use its authority. Without such a policy statement, it may also be more difficult for the IRS to explain to certain stakeholders why it is not using MEA more aggressively. Moreover, the IRS response does not explain why it is opposed to these reasonable limits.</p>

TAS Recommendation	[11-3] <b>Require the IRS to alert taxpayers to any discrepancies as early as possible, for example, by rejecting an e-filed return, where permissible, rather than waiting to use MEA, or waiting even longer to use post-processing MEA.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We aim to inform taxpayers at the earliest opportunity when there is an issue with their tax return, allowing them time to correct math errors with the least amount of taxpayer burden. For example, the IRS currently uses business rules to reject electronically-filed returns in appropriate cases, and routinely considers whether new business rules should be adopted to enhance the efficiency of electronic return processing.
TAS Response	The National Taxpayer Advocate is pleased that the IRS agrees with her that in cases where a return is wrong, it should alert taxpayers to the discrepancy as early as possible, for example, by rejecting an e-filed return, where permissible, rather than waiting to use MEA, or waiting even longer to use post-processing MEA. She does not agree, however, that the IRS has implemented her recommendation to “adopt a policy statement (or similar guidance)” to this effect. Establishing such a policy would explain to new leaders at the IRS how they should exercise their authorities. It would also help the IRS resist calls from stakeholders who believe it should use MEA when it could have rejected returns at the outset, or that it should use post-processing MEA when it could have used MEA or deficiency procedures.

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## **MATH ERROR NOTICES: Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer Rights and Increasing Taxpayer Burden**

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### **PROBLEM**

Math error authority allows the IRS to summarily resolve mathematical (*e.g.*,  $2 + 2 = 5$ ) and clerical (*e.g.*, writing 12 for an entry on the return instead of 21, or leaving an entry blank) errors with taxpayers' tax returns that are obvious just by looking at the face of the return. However, the range of issues that fall under these definitions has steadily expanded and the IRS is using math error authority to summarily resolve more complex issues. Concerned with protecting taxpayer rights, Congress directed the IRS to provide taxpayers with an explanation when it makes an adjustment to taxpayers' returns. The IRS does this by sending taxpayers a math error notice. The explanation of the adjustment in the math error notice is critical to taxpayers' ability to challenge the adjustment and preserve their right to petition the U.S. Tax Court, before paying the tax, by timely requesting abatement. Despite the congressional directive, many math error notices remain confusing and lack clarity. This makes it difficult for taxpayers to determine what, specifically, the IRS corrected on their return and whether they should accept the adjustment or request a correction, as well as the consequences of inaction.

### **ANALYSIS**

While using math error authority is cheaper and faster than normal deficiency procedures, it does not afford taxpayers the same protections they would otherwise have. For example, math error notices do not give taxpayers the right to petition the U.S. Tax Court to challenge the IRS's decision. Taxpayers must request the IRS abate the change within a shorter timeframe than normal deficiency procedures (60 days versus 90 days) to retain their right to petition the Tax Court before paying the tax. These lesser protections and shortened timeframes make the clarity of math error notices especially important. In calendar years 2015-2017, the IRS issued approximately two million math error notices each year. However, the IRS does not track the abatement rates of math errors. Many math error notices lack clarity, only giving taxpayers short, generic explanations of the purported errors, without adequately directing taxpayers to the exact issue with their return or all of the steps they must take. Additionally, math error notices are designed like bills, framed to emphasize payment by taxpayers, without first explaining the math error issues or the rights taxpayers have to challenge the IRS's determination. The design of the notices deemphasizes, and in some cases omits, that taxpayers lose their right to make a prepayment petition to the Tax Court if they don't request the IRS abate the tax within 60 days of receiving the notice. A TAS study found that in a sample of cases, the IRS summarily denied tax benefits to taxpayers that many of them were entitled to, which further demonstrates the need for clarity and explicit notice of taxpayers' right to challenge the change to the return in case the IRS made a mistake. Instead of denying taxpayers benefits they are entitled to, the IRS should examine historical return data to summarily correct transposed digits or missing information, such as a dependent Taxpayer Identification Number, on the taxpayer's return if it would benefit the taxpayer.

## TAS RECOMMENDATIONS

- [12-1] Measure the abatement rates of its math errors and use the data to assess which math errors are most problematic and which notices need to be revised for clarity.
- [12-2] On all math error notices, cite to the actual line on the return that the IRS is changing, and the reason why the IRS is making the change (*e.g.*, “you claimed 6 dependents on line x, but multiplied the dependency exemption by 7 on line y”).
- [12-3] Emphasize the Taxpayer Bill of Rights, and specific taxpayer rights on math error notices by including the taxpayer’s *right to challenge the IRS and be heard*, and the *right to appeal*, the specific deadline date the taxpayer must respond by, and the loss of their right to make a prepayment petition of the IRS’s change to their return to the Tax Court, if the taxpayer does not respond by the date in the notice.
- [12-4] Further emphasize the steps that taxpayers may take (pay or file to petition) on the first page of its math error notices, so that taxpayers are clear on what their options are in response to notices. The section heading that discusses appeal options should be similarly as big and bold as the section heading discussing payment.
- [12-5] Place the explanation of the math error on the first page of the notice, not the third or fourth, so that taxpayers see and read the explanation before they read about the numerous payment options, which nudges them to pay and not question the purported error or if they should appeal. Page one should also include the deadline date to appeal, and what taxpayers lose if they do not appeal, as well as information about the TBOR, TAS, and LITCs.
- [12-6] Work directly with TAS on notice redesign to ensure notice clarity and adequate inclusion of taxpayer rights on math error notices.
- [12-7] Use internal data to make corrections to returns that benefit taxpayers, instead of burdening taxpayers with unnecessary math error assessments that are later abated.

## IRS RESPONSE

We continue to look for opportunities to simplify and improve the clarity of notices and other communications to taxpayers. The IRS has designed math error notices to ensure the taxpayer has all information needed to take appropriate actions regarding the adjustments made to their return. Although we cannot tailor all language to each individual taxpayer’s situation, we agree that notices should be clear and understandable to taxpayers.

The IRS issues many versions of math error notices to ensure taxpayers are informed of adjustments made to their returns. Additionally, we provide taxpayers with their rights as provided by law, including to administrative appeal and judicial review.

Thank you for acknowledging improvement to explanations on some math error notices. The IRS performs a yearly review of new notice explanation codes to ensure information is clearly communicated. We appreciate feedback from the Taxpayer Advocate Service (TAS) on all new and revised math error notices and explanation codes during development. Currently, the IRS is working with the Taxpayer Advocate Panel (TAP) to review math error notices CP10, CP11, CP13, and CP16. The TAP

identified similar issues to those addressed by the National Taxpayer Advocate, and we will work them concurrently.

In June 2019, the IRS will host a Taxpayer Correspondence Summit to bring business operating division representatives together to create a shared vision for the future state of taxpayer correspondence, including notice revisions. We welcome the partnership with TAS to share perspectives and concerns about taxpayer correspondence. The Summit will be the starting point to engage participants from business organizations that produce correspondence, respond to correspondence, or provide support for correspondence development and implementation.

In addition, the IRS will continue to collaborate cross-functionally as we improve taxpayer correspondence. The IRS welcomes any additional specific data driven analysis and information TAS can provide for notices.

### TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate appreciates the IRS's continued efforts to improve its notices. The National Taxpayer Advocate additionally commends the IRS on hosting the Taxpayer Correspondence Summit, and looks forward to seeing further improvements to IRS notices that will arise from the progress made at the Summit. As discussed in volume one, TAS plans to develop sample math error notices in fiscal year (FY) 2020, that will incorporate the National Taxpayer Advocate's recommendations and serve as an example to the IRS on how to implement them.

TAS Recommendation	<b>[12-1] Measure the abatement rates of its math errors and use the data to assess which math errors are most problematic and which notices need to be revised for clarity.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS can measure abatement rates and the associated dollar amounts but cannot systemically determine that those abatements occurred because of a math error.</p> <p>Measuring the abatement rates would involve identifying every math error related adjustment in our systems. There are two major transaction codes to identify an additional assessment or abatement, respectively. IRS employees input additional reason codes and source codes as applicable. There is no singular code (transaction, reason, or source code) that identifies assessment or abatement specific to math errors.</p> <p>The Internal Revenue Manual specifies the transaction codes and source codes for employees to use in resolving a math error. Thus, the IRS can identify if a taxpayer had a math error on the return and if there was a negative adjustment (abatement of tax) but, due to the subjective nature of reason and source codes, we cannot say with certainty that the abatement was related to a particular math error.</p>
IRS Action	N/A

TAS Response	<p>The National Taxpayer Advocate remains concerned that some math errors unnecessarily place burdens on taxpayers whose returns did not actually contain errors or who were entitled to tax benefits that the IRS summarily denied. As mentioned in the Most Serious Problem, a 2011 TAS study measured math error authority and dependent Taxpayer Identification Numbers (TINs). The study found that 55 percent of these types of errors were abated, and 56 percent of the abatements could have been identified by the IRS with internal data. In a sample of cases where taxpayers had a missing or incorrect dependent TIN math error and received no refund, 41 percent of the cases that received no adjustment could have been corrected, and all the refunds allowed, by the IRS examining its own records. Another 11 percent of these cases could have been at least partially corrected by historical data. This translates to more than 40,000 taxpayers who may have not received refunds that they were entitled to. These taxpayers lost an average of \$1,274.49.</p> <p>TAS understands there may be certain technical constraints, but measuring abatement rates of math errors could allow the IRS to proactively prevent issues like the one TAS found in its 2011 study from occurring. Thus, the National Taxpayer Advocate continues to recommend that the IRS do so.</p>
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TAS Recommendation	<p><b>[12-2] On all math error notices, cite to the actual line on the return that the IRS is changing, and the reason why the IRS is making the change (e.g., “you claimed 6 dependents on line x, but multiplied the dependency exemption by 7 on line y”).</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full.</p>
IRS Action	<p>Math error notices currently cite the recommended detail with tax return line number references in the “changes to your 20XX tax return” section.</p>
TAS Response	<p>The National Taxpayer Advocate appreciates the improvements to math error notices, which do include the line number on the return. The National Taxpayer Advocate’s recommendation was intended to advocate for including the line numbers at issue in the Taxpayer Notice Code (TPNC) explanation of the math error, such as the example given in her recommendation (“you claimed 6 dependents on line x, but multiplied the dependency exemption by 7 on line y”). The National Taxpayer Advocate believes that including the line numbers in the explanation will further benefit taxpayer understanding of the math error issue with their return.</p>

TAS Recommendation	<b>[12-3] Emphasize the Taxpayer Bill of Rights, and specific taxpayer rights on math error notices by including the taxpayer's <i>right to challenge the IRS and be heard</i>, and the <i>right to appeal</i>, the specific deadline date the taxpayer must respond by, and the loss of their right to make a prepayment petition of the IRS's change to their return to the Tax Court, if the taxpayer does not respond by the date in the notice.</b>
IRS Response	IRS agrees to implement TAS recommendation in full by February 1, 2021.
IRS Action	The IRS agrees it is important for taxpayers to understand their rights. Publication 1, Your Rights as a Taxpayer, is included with math error notices. We continually look for opportunities to improve the clarity of our letters and notices in order to improve the customer experience, and we are working with the Taxpayer Advocate to revise the language in our math error notices on the Taxpayer Bill of Rights (TBOR), Taxpayer Advocate Service (TAS), and Low Income Taxpayer Clinics (LITCs). We will take steps to emphasize the taxpayer's right to challenge the IRS and be heard and the right to appeal. We will also provide greater emphasis on response times and the right to make a prepayment petition with the U.S. Tax Court.
TAS Response	The National Taxpayer Advocate appreciates the IRS's agreement to implement the recommendation in full. TAS looks forward to working with the IRS to revise its language to help improve taxpayer understanding of their rights, necessary actions, options, and deadlines.

TAS Recommendation	<b>[12-4] Further emphasize the steps that taxpayers may take (pay or file to petition) on the first page of its math error notices, so that taxpayers are clear on what their options are in response to notices. The section heading that discusses appeal options should be similarly as big and bold as the section heading discussing payment.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by February 1, 2021.
IRS Action	The IRS agrees that taxpayers need clear information regarding their options. The IRS has designed math error notices to ensure the taxpayer has all information needed to take appropriate actions. With the current notice design there is insufficient space to display appeals process information on Page 1; however, the IRS will take steps to emphasize taxpayers' appeals options.
TAS Response	The National Taxpayer Advocate appreciates that the IRS will take steps to further emphasize taxpayers' appeals options. The National Taxpayer Advocate recognizes that there is limited space on the first page of the notice. In FY 2020, TAS will be designing sample notices, including a math error notice, that will be designed to include the recommended information on page one of the notice, including information on the taxpayer's right to appeal and deadline to exercise that right. This may act as a guide for possible future IRS redesign of its notices and for how to implement TAS's notice recommendations.



TAS Recommendation	<b>[12-5] Place the explanation of the math error on the first page of the notice, not the third or fourth, so that taxpayers see and read the explanation before they read about the numerous payment options, which nudges them to pay and not question the purported error or if they should appeal. Page one should also include the deadline date to appeal, and what taxpayers lose if they do not appeal, as well as information about the TBOR, TAS, and LITCs.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by February 1, 2021.
IRS Action	The IRS agrees the taxpayer should receive a detailed explanation of the math error earlier in the notice. With the current notice design there is insufficient space to display the detailed explanation on Page 1; however, the explanation can be moved to an earlier position in the notice. The IRS will ensure taxpayers have access to information on the appeal due date, Taxpayer Bill of Rights (TBOR), Taxpayer Advocate Service (TAS), and Low Income Taxpayer Clinics (LITCs).
TAS Response	The National Taxpayer Advocate appreciates that the IRS will consider moving the explanation of the math error(s) to an earlier position in the notice. The National Taxpayer Advocate recognizes that there is limited space on the first page of the notice. In FY 2020, TAS will be designing sample notices, including a math error notice, that will be designed to include the recommended information on page one of the notice, including the explanation of the error and information on TBOR, TAS, and LITCs. This may act as a guide for possible future IRS redesign of its notices and for how to implement TAS's notice recommendations.

TAS Recommendation	<b>[12-6] Work directly with TAS on notice redesign to ensure notice clarity and adequate inclusion of taxpayer rights on math error notices.</b>
IRS Response	IRS agrees to implement TAS recommendation in full by February 1, 2021.
IRS Action	The IRS agrees with the importance of the clarity and inclusion of taxpayer rights on all notices and letters. TAS currently participates in the review and feedback of all new and revised correspondence. IRS employees participate on the Taxpayer Advocacy Panel (TAP) to support recommendations for notice improvement. We are also working with TAP to revise math error notices and we are currently collaborating with the Taxpayer Advocate to revise the language in these notices on the Taxpayer Bill of Rights (TBOR), Taxpayer Advocate Service (TAS), and Low Income Taxpayer Clinics (LITCs). In addition, Publication 1, Your Rights as a Taxpayer, is included with math error notices to ensure the taxpayer is aware of appeal rights.
TAS Response	The National Taxpayer Advocate appreciates that the IRS participates on the TAP and collaborating with the National Taxpayer Advocate to revise the language of notices regarding TBOR, TAS, and LITCs. However, the National Taxpayer Advocate recommends that TAS be more involved in the initial notice design and redesign process, to advocate in the initial stages for what TAS believes will be the best ways to promote taxpayer rights and understanding. This would be an improvement over the current system where the IRS produces notices and the National Taxpayer Advocate then recommends changes, when it is more difficult to do than in the initial design and redesign process.

TAS Recommendation	<p><b>[12-7] Use internal data to make corrections to returns that benefit taxpayers, instead of burdening taxpayers with unnecessary math error assessments that are later abated.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>The IRS agrees with the importance of identifying opportunities to relieve taxpayer burden and does so within our statutory limits. The IRS currently has legislative authority to correct some clerical errors, commonly made by taxpayers, during the processing of the return. For example, we use the taxpayer's current year return to "fix" clerical errors, such as a document missing a Social Security number (SSN) by verifying the taxpayer's SSN from elsewhere on the return. We may also correct an invalid child's taxpayer identification number (TIN) on a Form 2441, Child and Dependent Care Expenses, by verifying the valid TIN from elsewhere on the return, such as from the Schedule EIC, Earned Income Credit. When these types of errors are corrected, taxpayers are notified of the change. However, if the IRS is unable to correct the error, the taxpayer is issued a math error notice that explains the identified error(s) and includes the amount of any resulting adjustment(s).</p>
TAS Response	<p>The National Taxpayer Advocate appreciates that the IRS fixes taxpayer returns in some cases where it may do so by looking elsewhere on the return. However, to further improve its ability to correct such errors before resorting to sending taxpayers math error notices, the National Taxpayer Advocate recommends the IRS look to prior-year historical return data (such as past dependent TINs) to attempt to fix taxpayer errors (such as an incorrect dependent TIN). The National Taxpayer Advocate believes that this will allow the IRS to correct some taxpayer returns that are currently sent through math error procedures, which will reduce burdens for both the IRS and taxpayers.</p>

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#13

## STATUTORY NOTICES OF DEFICIENCY: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making It Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution

### PROBLEM

The statutory notice of deficiency (SNOD) notifies the taxpayer there is a proposed additional tax due, identifying the type of tax, and period involved, and that the taxpayer has the right to bring suit in the United States Tax Court before assessment and payment. If the taxpayer does not petition the Tax Court, after the 90 days (or 150 days if the taxpayer resides outside the United States) expires, the IRS will assess the tax, send the taxpayer a tax bill, and start collection. The SNOD is the taxpayer's "ticket" to the Tax Court, the only pre-payment judicial forum where the taxpayer can appeal an IRS decision. However, data suggests that less than one percent of the taxpayers in 2017 who received a SNOD filed a petition with the Tax Court, not availing themselves of a fundamental taxpayer right—the *right to appeal an IRS decision in an independent forum*. These taxpayers may not be availing themselves of their rights, in part because of faulty design and poor presentation of information in the notices. The SNODs do not effectively communicate the information needed for taxpayers to understand their rights and the consequences for not exercising them, the relevant tax issues, or how to respond. Nor do notices sufficiently apply plain writing principles or incorporate behavioral research insights, as directed by the Plain Writing Act and Executive Order 13707. Additionally, the IRS continues to omit Local Taxpayer Advocate (LTA) information required by law on certain SNODs, thereby violating taxpayer rights.

### ANALYSIS

The SNOD is critical to many low income and middle income taxpayers because generally without it they would be required to pay the tax first and go to refund fora, such as federal district courts or the United States Court of Federal Claims, in order to challenge the tax adjustment. Approximately 69 percent of cases in Tax Court are brought by unrepresented taxpayers, and that percentage increases to 91 percent among cases where the deficiency for a tax year is \$50,000 or less and the taxpayer elects small tax case (S Case) procedures. In fiscal year (FY) 2017, the IRS issued more than 2.7 million of the four types of SNODs that are separately tracked (called the "3219 SNODs"). There were only about 27,000 docketed cases in Tax Court that year however, suggesting that less than one percent of taxpayers who received a SNOD filed a petition with the Tax Court. The IRS tracks the income level of taxpayers receiving three of the 3219 SNODS, excluding the SNODs issued to those who did not file a return. The majority of these three types of 3219 SNODs (called the Non-Automated Substitute for Return, or Non-ASFR SNODS) were issued to low income taxpayers. Nearly 59 percent of those receiving a Non-ASFR SNOD make less than \$50,000 per year. Yet low income taxpayers, who may be eligible for representation through Low Income Taxpayer Clinics (LITCs), are less likely to petition the Tax Court. In FY 2018, the median total positive income for individuals who *did not* petition the Tax Court in response to a SNOD issued after an audit was about \$24,000.

## TAS RECOMMENDATIONS

- [13-1]** Redesign the notices of deficiency, using plain language principles and behavioral science methods, to clearly convey the taxpayer's proposed tax increase, his or her right to challenge the IRS's determination before the Tax Court, and his or her ability to obtain TAS or LITC assistance.
- a) Collaborate with the TAS and stakeholders, especially the Taxpayer Advocacy Panel (TAP) and LITCs, in designing the SNOD.
  - b) Conduct a pilot of several SNODs, including current notices and rights-based prototypes, to measure: (1) the petition rate of each notice; (2) the TAS contact rate for each notice; (3) the IRS contact rate for each notice; and (4) the downstream consequences of each notice (*e.g.*, disposition of cases, such as whether the taxpayer settled, conceded, or prevailed in Tax Court and whether the taxpayer's deficiency decreased or the taxpayer requested an audit reconsideration).
- [13-2]** Develop and train IRS employees in best practices for assisting taxpayers who call the IRS in response to a SNOD, to include having IRS employees remind and guide taxpayers in filing Tax Court petitions.
- [13-3]** Facilitate the process for petitioning the Tax Court by including with the notice of deficiency the Tax Court website and telephone number, as well as a copy of IRS Publication 4134, *Low Income Taxpayer Clinic List*.
- [13-4]** Include the Local Taxpayer Advocate's contact information on the face of the notices, specifically on Letters 3219-C, 1753, 531-A, and 531-B.
- a) If the IRS is unable to update computer programming to provide the telephone number and address information of LTAs pursuant to IRC § 6212(a) during the current year, include Notice 1214,<sup>1</sup> listing all LTA office contact information, when mailing letters 3219-C, 1753, 531-A, and 531-B.
  - b) Develop a timeline to secure and allocate funding to implement the necessary IRS system upgrades to allow for the programming of LTA addresses and contact information on the face of letters 3219-C, 1753, 531-A, and 531-B, as required by law.

## IRS RESPONSE

The Statutory Notice of Deficiency (SNOD) is an important step in the IRS' examination process and is authorized under Internal Revenue Code (Code) section 6212(a). As prescribed, such notices shall include a notice to the taxpayer of their right to contact a local office of the Taxpayer Advocate and the location and phone number of the appropriate office.

Over the years, the IRS has evaluated the notices to include plain language principles. We recently updated several SNOD letters with plain language, which clearly indicates the proposed tax increase, the taxpayer's right to petition tax court, information on how to file a U.S. Tax Court petition, and information on how to obtain assistance from the Taxpayer Advocate Service (TAS). In addition, we've added information on the return preparer directory. In the event the taxpayer feels they need professional assistance, they can use the directory to identify and locate a return preparer.

<sup>1</sup> Notice 1214, *Helpful Contacts for your "Notice of Deficiency"* (Jan. 2018).

Some of the notices that were updated include the Automated Underreporter Program (AUR) SNOD, Notice 3219A; Correspondence Examination Program SNOD, Notice 3219; and the BMF Underreporter Program (BUR), Notice 3219B. In the process of updating these notices we collaborated with the IRS Office to Taxpayer Correspondence (OTC), Office of Chief Counsel (Counsel), and TAS.

The IRS continually seeks to improve taxpayer correspondence to ensure all correspondence complies with the Plain Writing Act of 2010. TAS provides feedback on all new and revised taxpayer correspondence products in development, including statutory notices of deficiency. Often, comments from TAS are incorporated into the final version. The IRS recently worked with TAS to include specific Local Taxpayer Advocate (LTA) contact information on many statutory notices. However, it was not possible to add customized LTA addresses for all letters due to programming issues. We appreciate the acknowledgement from the National Taxpayer Advocate and the alternate recommendations on this issue.

In 2019, the IRS will host a Taxpayer Correspondence Summit to bring business operating division representatives together to create a shared vision for the future state of taxpayer correspondence including notice revisions. We welcome the partnership with TAS to share perspectives and concerns about taxpayer correspondence. The Summit will be the starting point to engage participants from business organizations that produce correspondence, respond to correspondence, or provide support for correspondence development and implementation. In addition, the IRS will continue to collaborate cross-functionally as we improve taxpayer correspondence. The IRS welcomes any additional specific data driven analysis and information TAS can provide on problematic notices.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate appreciates the IRS's efforts and commitment to continue to collaborate with our office and stakeholders to improve the content and design of statutory notices of deficiency. As detailed in the Annual Report, it's critical that the IRS use plain language principles and behavioral science methods in redesigning notices of deficiency, to clearly convey the taxpayer's proposed tax increase, as well as his or her right to challenge the IRS's determination before the Tax Court and obtain TAS or LITC assistance in responding to the notice. Considering the statutory notice of deficiency is the taxpayer's "ticket" to the Tax Court, which is the only pre-payment judicial forum where the taxpayer can appeal an IRS decision, it's incumbent upon the IRS to ensure taxpayers avail themselves of this fundamental taxpayer right—the *right to appeal an IRS decision in an independent forum*.

The IRS has made significant strides in evaluating the notices with an eye towards including plain language principles. The National Taxpayer Advocate applauds the IRS for adding information on the return preparer directory and recently updating several SNOD letters with plain language, indicating the proposed tax increase, the taxpayer's right to petition tax court, information on how to file a U.S. Tax Court petition, and information on how to obtain assistance from the Taxpayer Advocate Service (TAS).

We appreciate the IRS's willingness to include specific Local Taxpayer Advocate (LTA) contact information on many statutory notices, despite the programming barriers in adding customized LTA addresses for all letters. TAS will continue to push the IRS to develop a timeline to secure and allocate funding to implement the necessary IRS system upgrades to allow for the programming of LTA addresses and contact information on the face of computer-generated letters, as required by law.

The National Taxpayer Advocate is pleased the IRS will host a Taxpayer Correspondence Summit in 2019, bringing business operating division representatives together to create a shared vision for the future state of taxpayer correspondence, including notice revisions. We look forward to working with the IRS on this action.

TAS Recommendation	<p><b>[13-1] Redesign the notices of deficiency, using plain language principles and behavioral science methods, to clearly convey the taxpayer's proposed tax increase, his or her right to challenge the IRS's determination before the Tax Court, and his or her ability to obtain TAS or LITC assistance.</b></p> <p>a) Collaborate with the TAS and stakeholders, especially the TAP and LITCs, in designing the SNOD.</p> <p>b) Conduct a pilot of several SNODs, including current notices and rights-based prototypes, to measure: (1) the petition rate of each notice; (2) the TAS contact rate for each notice; (3) the IRS contact rate for each notice; and (4) the downstream consequences of each notice (e.g., disposition of cases, such as whether the taxpayer settled, conceded, or prevailed in Tax Court and whether the taxpayer's deficiency decreased or the taxpayer requested an audit reconsideration).</p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>a) The IRS collaborates with TAS and other stakeholders to secure feedback during the revision and creation of statutory notices as part of the regular stakeholder review process.</p> <p>We revised Letter 3219 (Correspondence Exam), Notice 3219A (AUR), Letter 531 (Field Examination), Letter 1753 (Tax-Exempt), and Letter 531-A/B in collaboration with TAS, Counsel, and the OTC. The revised notices include plain language principles, clearly indicate the proposed tax increase and taxpayer's right to petition tax court, and provide information on how to file a U.S. Tax Court petition and how to obtain assistance from TAS.</p> <p>We revised Letter 3219-B (BMF Underreporter) using plain language principles and the notice includes the closest local TAS office and phone number based on the taxpayer's zip code.</p> <p>b) Our Collection Operating Unit has been working on an in-depth notice redesign program for certain balance due notices. This redesign has included various organizations across the IRS as well as private contractors. Based on the success of that effort, the SB/SE Examination Operating Unit will consider whether such an effort is appropriate for SNOD notices based on cost-benefit considerations. Regardless, letters are reviewed on a regular basis and updated as necessary to continuously provide clear guidance and information.</p>
TAS Response	<p>The National Taxpayer Advocate is pleased that the IRS agrees a focus on redesigning notices of deficiency, using plain language principles and behavioral science methods, is a priority and appreciates the IRS's efforts in collaborating with TAS, Counsel, and the OTC in revising several notices. However, the IRS should expand on those efforts to include outside stakeholders, such as the Taxpayer Advocacy Panel (TAP) and LITCs, which would produce a better-informed notice redesign. The data confirms that less than one percent of taxpayers who received a statutory notice of deficiency filed a petition with the Tax Court. The National Taxpayer Advocate is concerned that the lack of taxpayers' responses to SNODs may be, in part, due to faulty design and poor presentation of information in the notices, making it difficult for taxpayers to understand critical information and exercise their <i>right to appeal an IRS decision in an independent forum</i>. Even more alarming is that the majority of those notices of deficiency are issued to low income taxpayers, who are less likely to petition the Tax Court, as illustrated in the Annual Report. The IRS should investigate new, and different, approaches in reaching this low income population. By all accounts, the IRS can improve upon the "regular stakeholder-review process" it describes above by doing so.</p>

TAS Recommendation	<b>[13-2] Develop and train IRS employees in best practices for assisting taxpayers who call the IRS in response to a SNOD, to include having IRS employees remind and guide taxpayers in filing Tax Court petitions.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>Examination employees are trained on how to respond to taxpayers regarding questions received about a SNOD and the process to file a petition. Employees do not assist with the actual preparation of a petition.</p> <ul style="list-style-type: none"> <li>◆ The Enterprise Learning Management System (ELMS) Course# 12256, Exam Toll-Free Telephone Assistors Guide, provides guidance for employees responding to taxpayer questions on information contained in a SNOD and how to assist taxpayers on how to file a U.S. Tax Court petition.</li> <li>◆ For Field operations, contact procedures are outlined in Internal Revenue Manual (IRM) 4.8.9.20.3, Taxpayer Contact.</li> </ul>
TAS Response	The National Taxpayer Advocate is pleased the IRS provides an ELMS course focused on guiding employees responding to taxpayer questions on information contained in a SNOD and how to assist taxpayers on how to file a U.S. Tax Court petition. However, the course should be mandatory for telephone assistors. Because it is critical that taxpayers dispute the assessed tax within 90 days of receiving the notice in order to challenge the tax in an independent judicial forum, it's incumbent upon these telephone assistors to communicate that information to taxpayers, particularly because the telephone assistors may be the only IRS employee the taxpayer speaks with before the 90 days expire.
TAS Recommendation	<b>[13-3] Facilitate the process for petitioning the Tax Court by including with the notice of deficiency the Tax Court website and telephone number, as well as a copy of IRS Publication 4134, <i>Low Income Taxpayer Clinic List</i>.</b>
IRS Response	IRS agrees to implement TAS recommendation in full by January 31, 2020.

IRS Action	<p>We agree with this recommendation and have already updated a number of notices as follows. The recent redesign of the Letter 3219 (Correspondence Examination) and Letter 3219-B (BMF Underreporter) includes the U.S. Tax Court website and telephone number. Publication 3498-A sent with the Letter 3219 provides information on Low Income Tax Clinics (LITCs) and refers taxpayers to the LITC website and IRS Publication 4134. The BMF Underreporter taxpayers do not meet the criteria for LITC assistance.</p> <p>The revised Letter 531 (Field Examination) includes the U.S. Tax Court website and telephone number. Information regarding the LITCs is in the letter, including the web address for LITCs, reference to Publication 4134, LITC List, and a web address to link to LITCs on the Taxpayer Advocate's webpage.</p> <p>The revised notices relating to tax-exempt organizations and employee plans (Letters 531-A, 531-B, and 1753) also include the U.S. Tax Court website and telephone number. We will update these notices to cite or enclose Publication 4134 where appropriate.</p> <p>The IRS will add the U.S. Tax Court's website and phone number to any statutory notices not yet updated. A copy of the four-page IRS Publication 4134 will be included with each notice.</p>
TAS Response	<p>We commend the IRS for its dedication in providing excellent service and delivering the best service possible to taxpayers, particularly those who may be trying to get back on their feet and respond to notices of deficiency. The National Taxpayer Advocate greatly appreciates the IRS's commitment to update notices to cite or enclose Publication 4134, where appropriate, and to add the U.S. Tax Court's website and phone number to any statutory notices not yet updated. We also appreciate the IRS's agreement to implement this recommendation, to include providing a copy of the four-page IRS Publication 4134 with each notice.</p>
TAS Recommendation	<p><b>[13-4] Include the Local Taxpayer Advocate's contact information on the face of the notices, specifically on Letters 3219-C, 1753, 531-A, and 531-B.</b></p> <p>a) <b>If the IRS is unable to update computer programming to provide the telephone number and address information of LTAs pursuant to IRC § 6212(a) during the current year, include Notice 1214,<sup>2</sup> listing all LTA office contact information, when mailing letters 3219-C, 1753, 531-A, and 531-B.</b></p> <p>b) <b>Develop a timeline to secure and allocate funding to implement the necessary IRS system upgrades to allow for the programming of LTA addresses and contact information on the face of letters 3219-C, 1753, 531-A, and 531-B, as required by law.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by January 30, 2020.</p>
IRS Action	<p>a) Revisions of Letters 531-A, 531-B, 1753 were recently sent to publishing. The revised letters say, "Find the location and phone number of your local Taxpayer Advocate at <a href="http://www.taxpayeradvocate.irs.gov/contact-us">www.taxpayeradvocate.irs.gov/contact-us</a> or call TAS at 877-777- 4778." Letters 1753 and 3219-C include Notice 1214.</p> <p>b) In 2018, the IRS added LTA addresses based on the taxpayer's ZIP code to many statutory notices. The IRS has submitted a request for programming in order to add the LTA addresses to the letter 3219-C and is awaiting approved funding to complete the request, which would be contingent on significant upgrades to the system. For the other letters, we are working to identify a technological solution and will develop a timeline depending on the systemic requirements.</p>

<sup>2</sup> Notice 1214, *Helpful Contacts for your "Notice of Deficiency"* (Jan. 2018).



## TAS Response

In the twenty years since Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), codified at 26 U.S.C. § 6212(a), the National Taxpayer Advocate has continued to raise this issue, and TAS has worked extensively with the IRS to ensure the service updates its notices with the required LTA information. While the National Taxpayer Advocate appreciates the IRS's efforts to include Notice 1214, which contains LTA contact information for each state, by its own admission, the IRS is still not able to include the Notice 1214 with every SNOD.

We also appreciate that the IRS has submitted a request for programming to add LTA addresses to the letter 3219-C. Understanding the budget constraints in making upgrades to the system, the National Taxpayer Advocate applauds the IRS's commitment to work on identifying a technological solution and developing a timeline for programming, particularly in light of the IRS's previous claims that doing so was impossible.

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## **COLLECTION DUE PROCESS NOTICES: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review**

### **PROBLEM**

Collection Due Process (CDP) rights provide taxpayers with an independent review by the IRS Office of Appeals of the decision to file a Notice of Federal Tax Lien (NFTL) or the IRS's proposal to undertake a levy action, which can be appealed to Tax Court. The IRS communicates these important rights during two critical times. The IRS communicates the right to request a CDP administrative hearing with the intent to levy notice or the NFTL. Following the CDP hearing, the IRS communicates its determination to the taxpayer via a notice of determination. Perhaps because the notices provide confusing instructions regarding the due date to file a response, the response rate for CDP notices ranges from one percent to over ten percent, depending on income and type. Moreover, CDP notices emphasize collection actions and under-emphasize the statutory due process protections afforded by the hearings, leading unrepresented taxpayers to not avail themselves of important taxpayer rights.

### **ANALYSIS**

The National Taxpayer Advocate and other stakeholders have highlighted specific problems with the way in which the CDP notices do not fully inform taxpayers. First, the design and wording in CDP notices underemphasize the importance of CDP rights. They do not explain what a hearing is, why a taxpayer would want to request one, and what an equivalent hearing is. Second, the notices do not clearly mention important information, such as a deadline by which to file a hearing request. Last, the notice of determination lacks a specific date by which to file a petition in Tax Court and does not explain why the notice is salient to taxpayers.

Applying principles of behavioral science help us understand how these notices should be improved. Taxpayers are more likely to read material if it is salient to them. Providing a full explanation on the importance of CDP rights and what they are losing if they do not request a hearing may prompt taxpayers to exercise their rights. Moreover, providing them with information about the availability of a Low Income Taxpayer Clinic (LITC) for representation may overcome the barrier posed by self-representation. Last, plain language includes more than just simple wording. It includes structuring the notice so that it is easy to read and setting apart important information to guide the reader. This means that things such as a filing deadline should appear early in the notice and in bold font. With improved notices, perhaps the CDP response rates will increase.

## TAS RECOMMENDATIONS

- [14-1] Include the exact date on the Notices of Determination by which the taxpayer must file a petition in Tax Court.
- [14-2] Work with TAS to redesign the CDP notices so that they reflect the principles of visual cognition and processing of complex information. This will include changes such as:
  - a) Putting clear explanations about the importance of these hearings in terms relating to taxpayer rights and protections;
  - b) Highlighting deadlines early in the notices and in bold font; and
  - c) Including references to TAS and the LITC program.
- [14-3] Work with TAS to explore methods of more accurate notification of the due date for CDP hearing requests with respect to lien filings.

## IRS RESPONSE

In July 1998, Congress enacted Internal Revenue Code (Code) sections 6320 and 6330 to require the IRS to provide taxpayers with notice of, and an opportunity for, a Collection Due Process (CDP) hearing after a Notice of Federal Tax Lien (NFTL) is filed and before a notice of levy is issued. In January 1999, in accordance with the legislation, the IRS implemented letters to fulfill the new requirements—Letter 3172, the CDP notice of the NFTL filing, and Letter 1058 or Letter LT11, the CDP notice of the intent to levy.

From their implementation, the CDP notices have satisfied the statutory content requirements by including items such as the amount of the unpaid tax, the right of the taxpayer to a fair hearing, and the time frame for the taxpayer to request a CDP hearing. Through their 20 year history, the CDP notices have been revised several times with the concurrence of the Taxpayer Advocate Service (TAS) to enhance their clarity and incorporate modifications to the law. Similarly, we recently made changes to the Notice of Determination based on concerns raised by TAS.

The IRS strives to produce letters and notices that clearly inform taxpayers of their rights and responsibilities. To that end, the IRS is always receptive to suggestions for improvement. However, any changes must not detract from the purpose of the particular letter. The purpose of the CDP notices is to inform taxpayers of their CDP rights with regard to the potential levy or filed NFTL. Other information that may be included in collection letters, regardless of its inherent value, may obscure the importance of the CDP opportunity. To keep the taxpayer aware of other valuable information, instructional publications are included with the CDP notices.

The IRS is currently working with TAS and other stakeholders to evaluate the LT11 CDP notice and the most effective way to convey the letter's information, particularly the placement of the response due date. Similar revisions are also under consideration for Letter 1058. The current version of Letter 3172, which was developed with the Office of Taxpayer Correspondence and approved by TAS prior to publication, indicates in bold the date for the taxpayer to exercise their rights and clearly sets forth the address for submitting the CDP request.

There are many significant factors that influence the CDP request rate. Most notably, the CDP notices are generally sent after numerous other notices and verbal warnings of the possible collection actions.

Additionally, the issuance of CDP notices does not preclude taxpayers from other collection alternatives. The Code does not require the IRS to solicit CDP requests from taxpayers but rather to timely provide taxpayers the information necessary for them to exercise their rights. IRS policies and procedures promote consistency with the statutory requirements so that all taxpayers are treated the same and have equal opportunities.

### TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

TAS agrees that the CDP notices, with the enclosed publications, meet legal requirements as spelled out in the tax code. However, the tax code does not stipulate how the information is to be communicated to taxpayers. That is up to the IRS to decide. The National Taxpayer Advocate, practitioners, taxpayers, and even the U.S. Tax Court, have expressed various concerns over the current content of these notices. If the notices are not salient to taxpayers or do not clearly communicate with the taxpayers, it is understandable that the response rate to CDP notices will continue to be low. TAS is not saying that the IRS should be soliciting CDP requests from taxpayers, but the CDP notices should be written with sufficient clarity to allow taxpayers to make truly informed decisions.

In general, the design and wording in the notices underemphasize the importance of CDP rights. The notices do inform the taxpayers of the right to request a CDP hearing. However, this information does not appear until the second page of Letter LT 11. Letter 1058 includes the information halfway down the first page. Moreover, the notices do not explain what a hearing is, why a taxpayer would want one, and what an equivalent hearing is. While this information is not required by the tax code, the importance of a CDP hearing makes little sense to a taxpayer without knowing more about the hearing or why he or she would want one. Last, the notice of determination lacks a specific date by which the taxpayer must file a petition in U.S. Tax Court.

TAS Recommendation	[14-1] Include the exact date on the Notices of Determination by which the taxpayer must file a petition in Tax Court.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Appeals recently revised Letter 3193, Notice of Determination, to reduce potential confusion about how to calculate the petition deadline. We initiated the change in response to stakeholder feedback, including concerns raised by some tax practitioners and the National Taxpayer Advocate. After considering a number of options, we determined that the most efficient and effective approach would be to use the same language that is used in other Appeals letters to explain the deadline. We are unaware of any taxpayer complaints related to the language in the revised letter.

TAS Response	<p>The current version of Letter 3193 reads “If you want to dispute this determination in court, you must file a petition with the United States Tax Court within 30 days from the date of this letter.” TAS acknowledges that this is an improvement from the previous version, which read “If you want to dispute this determination in court, you must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter.” However, the revised language may still confuse taxpayers. For instance, what does the term “within” mean to the non-expert taxpayer? Is the date of the letter day one or day zero? The best way to protect taxpayer rights is to include a specific date by which taxpayers must file their petition in Tax Court.</p> <p>Unlike a notice of deficiency, which legally requires a specific date by which the taxpayer must file his or her petition in Tax Court, the IRS is not required to include a specific date in a notice of determination. However, the process for including a date on the notice of deficiency is included in Internal Revenue Manual (IRM) 8.20.6.8.4, which Appeals employees follow. It is unclear from the IRS response why this process could not apply to the notice of determination given that it will eliminate a lot of uncertainty for taxpayers.</p>
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TAS Recommendation	<p><b>[14-2] Work with TAS to redesign the CDP notices so that they reflect the principles of visual cognition and processing of complex information. This will include changes such as:</b></p> <ul style="list-style-type: none"> <li><b>a) Putting clear explanations about the importance of these hearings in terms relating to taxpayer rights and protections;</b></li> <li><b>b) Highlighting deadlines early in the notices and in bold font; and</b></li> <li><b>c) Including references to TAS and the LITC program.</b></li> </ul>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by August 31, 2019.</p>
IRS Action	<p>The IRS will work with TAS to ensure the notices clearly explain the importance of Collection Due Process (CDP) hearings and emphasize deadlines. We are revising the LT11 CDP notice and plan to pilot multiple versions of the new notice in the future. TAS is participating in that process. One version to be tested will use the National Taxpayer Advocate’s suggested taxpayer rights framework. While the precise content of notices will vary, the most effective way to show the due date and other key information will be addressed in the revisions. Similar revisions will be considered for Letter 1058. No revision is planned for Letter 3172, as it was recently redesigned to comply with plain-language standards and to highlight key response information.</p>
TAS Response	<p>TAS was not included in the process to develop the notices for the LT 11 pilot. We did offer responses once the notices were provided for review. As far as TAS is aware, no TAS notices were included with the study. The pilot notices do include a specific date by which the taxpayer must request a CDP hearing. However, the emphasis of these notices is nonetheless on collection. The IRS’s taxpayer education focuses on timely payment and methods of payment, not on the right to request a CDP hearing. If taxpayers do not find this information to be salient to them, they may not continue to the second page to find out about their CDP rights. Last, the use of plain language entails more than just simple word choice. It encompasses notice design and the placement of material. For instance, a notice dedicated to educating taxpayers on their CDP rights should include CDP information up front and in bold font.</p>

TAS Recommendation	<b>[14-3] Work with TAS to explore methods of more accurate notification of the due date for CDP hearing requests with respect to lien filings.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Code section 6320(a)(2) requires that the CDP notice be provided to the taxpayer not more than five business days after the filing of the notice of lien. An NFTL is considered filed on the date the recording office receives the NFTL. The practice of adding three business days to the mailing date of the NFTLs to calculate the receipt (filing) of the NFTLs is the same standard equally applied to the thousands of various recording offices. The practice ensures fair treatment for all taxpayers as it provides consistent calculations for CDP hearing request deadlines.</p>
IRS Action	N/A
TAS Response	<p>The process adopted by the IRS may ensure consistent treatment among taxpayers but it does not ensure fair treatment. As the Most Serious Problem points out, the IRS considers the NFTL to be filed on the date it should be received by the recording office. There is no way to know when the recording office receives the NFTL until it is received. Untold circumstances could delay the receipt of an NFTL. Since the filing date is critical to the timeframe for requesting a CDP hearing, the taxpayer could have a longer period of time to request a CDP hearing than the NFTL letter indicates, but he or she would not know it.</p>

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## **ECONOMIC HARDSHIP: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process**

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### **PROBLEM**

Economic hardship, as defined in Treasury regulations and the Internal Revenue Manual, occurs when an individual is “unable to pay his or her reasonable basic living expenses.” Although Congress requires the IRS to halt some collection actions, like a levy, if a taxpayer is in economic hardship, the IRS is not proactive in identifying these taxpayers throughout the collection process. This means that the IRS does not have a method to alert collection employees that a taxpayer may be at risk of economic hardship and, when responding to taxpayer inquiries, to ask questions about the taxpayer’s finances to determine an appropriate collection action or alternative. As a result, taxpayers may be lured into entering installment agreements (IAs) they cannot afford, violating their *right to be informed*, *right to quality service*, and *right to a fair and just tax system*.

### **ANALYSIS**

The IRS routinely undertakes collection treatments without performing the financial analysis required to make a hardship determination. For example, taxpayers need not submit any financial information to qualify for streamlined IAs and may enter into them online without interacting with an IRS employee. Many anxious or intimidated taxpayers seeking to resolve their liabilities as quickly as possible may be unaware the IRS is required to halt collection action if they are in economic hardship, and thus agree to make tax payments they cannot afford. Over the last six years, taxpayers whose cases were assigned to the IRS’s Automated Collection System (ACS) entered into nearly 4.3 million IAs. About 84 percent of those IAs were streamlined. TAS estimates that about 40 percent of taxpayers who entered into a streamlined IA within ACS in fiscal year (FY) 2018 had incomes at or below their Allowable Living Expenses (ALEs), the standards the IRS uses in determining ability to pay a tax liability. In other words, four out of every ten taxpayers who agreed to streamlined IAs in ACS could have been eligible for collection alternatives, such as offers in compromise (OICs) or “currently not collectible - hardship” (CNC-Hardship) status, if they had known or been asked to explain their financial circumstances. The default rate within ACS for streamlined IAs of taxpayers whose income was at or below their ALEs in FY 2018 was about 39 percent.

The TAS Research function has developed an automated algorithm that we believe can identify taxpayers with incomes below their ALEs with a high degree of accuracy. The IRS could apply this formula by automation to the accounts of all taxpayers who owe back taxes, and then place a marker on the accounts of taxpayers whom the screen identifies as having incomes below their ALEs. While this marker would not automatically close a case as CNC-Hardship, it could be used to create a warning for telephone assistants responding to taxpayers calls and for taxpayers entering into IAs online. The IRS could also use this algorithm to screen out these taxpayers from automated collection treatments such as the Federal Payment Levy Program, selection for referral to Private Collection Agencies (PCAs), or passport certification unless and until the IRS has made a direct personal contact with the taxpayer to verify the information.

## TAS RECOMMENDATIONS

- [15-1] Develop and utilize an algorithm to compare a taxpayer's financial information to ALEs during Inventory Delivery System (IDS) case scoring and as a template made available to Revenue Officers and telephone assistors responding to taxpayer inquiries.
- [15-2] Apply this algorithm before sending any cases to PCAs, and exclude any case involving a taxpayer at risk of economic hardship from potentially collectible inventory.
- [15-3] Route cases identified as at risk of economic hardship to a specific group within ACS and send those taxpayers a specific written notification to educate them on collection alternatives and additional assistance available, including TAS and Low Income Taxpayer Clinics (LITCs).
- [15-4] Create a new help line dedicated to responding to taxpayers at risk of economic hardship and helping them determine the most appropriate collection alternative, including OICs.
- [15-5] Partner with TAS and LITCs to develop issue-focused training for IRS employees who interact with taxpayers at risk of economic hardship.

## IRS RESPONSE

We have implemented a number of safeguards over the years to ensure that taxpayers who are experiencing economic hardship are appropriately addressed during the collection process, including through the use of allowable living expense standards to ensure consistent treatment and opportunities to challenge the appropriateness of a proposed collection action. The IRS Collection Operating Unit ensures its employees have the knowledge and tools to efficiently and effectively assist all taxpayers. Training and procedural guidelines in the Internal Revenue Manual (IRM) provide employees information on how to determine a taxpayer's ability to pay, enabling appropriate decision making to resolve cases.

Economic hardship occurs when a taxpayer is unable to pay reasonable basic living expenses. Collection employees receive training to address situations where a taxpayer is experiencing economic hardship, and all Automated Collection System (ACS) and Field Collection employees are empowered to assist these taxpayers when contact is made. Routing cases involving economic hardship to a specific group of employees would create inefficiencies and delay the proper resolution of these cases.

The IRS cannot reliably determine economic hardship based solely on information available in IRS and third-party databases, which is often incomplete. An accurate determination of a taxpayer's ability to pay generally requires the taxpayer to submit financial information along with supporting documentation. IRS's financial analysis procedures vary based on case characteristics, but generally a Collection Information Statement (CIS) is secured from the taxpayer along with other documentation.

Each case is analyzed individually under guidelines that are applied uniformly. These guidelines provide a comprehensive structure for making an appropriate collection determination, balancing the needs of the taxpayer against their obligation to pay tax and, at the same time, fostering public confidence that all taxpayers are being held to the same standard of compliance. Any attempt to proactively identify taxpayers likely to be in economic hardship based on an incomplete set of facts would lead to flawed results.



Prior to 2007, the published Allowable Living Expense (ALE) tables included the exact living expense figures, so the living expense amounts increased or decreased from year to year. In 2007, at the suggestion of the National Taxpayer Advocate and following the completion of a research study of the ALE standards, the IRS removed income-based ranges for the ALE standards and came to an agreement that the ALE tables would not show decreases in amounts from year to year. That change created higher allowances for most expenses for lower-income taxpayers, resulting in a Currently Not Collectible determination for most taxpayers who are below the poverty threshold. In 2014, there were concerns about the accuracy of the ALE figures. IRS agreed to look at this issue and work with TAS to address these concerns. In January 2016, SBSE Collection Policy and TAS came to an agreement that ALE standards could reflect some decreases in amounts from year to year when indicated. However, the amounts of any decreases are limited from one year to the next; even if the data reflects a significant decrease, the ALE standard is reduced by no more than 10% of the prior year published amount.

### TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate commends the IRS on their past efforts on this issue and their willingness to work with the Taxpayer Advocate Service in trying to implement more safeguards for taxpayers who are experiencing economic hardship. While it is true that the IRS and TAS agreed to limit decreases to the ALE standards to ten percent, the IRS was also going to update their instructions to Collection personnel to consider allowing the non-decreased ALE amount, when appropriate. Unfortunately, the IRS subsequently decided not to update its ALE guidance to its employees, instead choosing to rely on other instructions regarding deviations from ALE standards. Nevertheless, the IRS has misunderstood our recommendations. In its response to our recommendations, the IRS stated that “[t]he IRS cannot reliably determine economic hardship based solely on information available in IRS and third-party databases, which is often incomplete.” It is true the IRS cannot conclusively reach a determination about whether a taxpayer faces economic hardship based on its internal data alone. But that is not what we are recommending. Rather, we are recommending that the IRS systemically place a marker on the accounts of all taxpayers whom its filter identifies as having incomes below their ALEs and no detectable assets. The marker would signal that a taxpayer is at risk of economic hardship and therefore additional information should be requested. Specifically, the marker would alert IRS assistors speaking with taxpayers over the phone that they should verify the taxpayer’s ability to pay before placing them in streamlined IAs. Under this approach, the IRS would be using data to proactively protect financially struggling taxpayers from further financial harm.

Similarly, the indicator could be used to warn taxpayers who are attempting to enter into streamlined IAs online about collection alternatives if they are able to substantiate financial hardship. Perhaps a pop-up message could suggest the taxpayer seeks an alternative collection option, such as Currently Not Collectible-Hardship (CNC-Hardship) or an OIC. Moreover, the indicator would alert IRS assistors speaking with taxpayers over the phone of the need to verify their ability to pay before placing them in streamlined IAs that are likely to default. In fact, the IRS could program its systems so when an assistor keys in the Social Security number of a taxpayer with an economic hardship risk indicator, a screen is generated with the income information, projected family size, and appropriate ALEs. This way, the assistor can engage with the taxpayers and simply run through some high-level information to verify its accuracy. This approach uses data to proactively protect the taxpayers’ *rights to privacy* and *a fair and just tax system*.

The IRS further states in its response that “[a]ny attempt to proactively identify taxpayers likely to be in economic hardship based on an incomplete set of facts would lead to flawed results.” However, we

disagree and believe this further misses the point of the recommendation. An indicator would serve as a starting point to engage taxpayers and verify the financial status of taxpayers who may face economic hardship. The indicator would not constitute a final determination of the taxpayers' financial status or ability to pay.

The National Taxpayer Advocate hopes that the IRS will reconsider and work with TAS on addressing these recommendations in the near future.

TAS Recommendation	<b>[15-1] Develop and utilize an algorithm to compare a taxpayer's financial information to ALEs during Inventory Delivery System (IDS) case scoring and as a template made available to Revenue Officers and telephone assistors responding to taxpayer inquiries.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>A comparison of taxpayer income to allowable living expense (ALE) standards would not yield a useful indicator of financial condition. The ALE standards represent an average of all taxpayers; a given taxpayer may spend more or less or not incur the expense at all. A taxpayer's financial condition can only be evaluated by looking at their individual facts and circumstances.</p>
IRS Action	N/A
TAS Response	<p>We agree that a taxpayer's financial condition can only be verified by looking at their individual facts and circumstances. That is why we are recommending a systemic indicator as a starting point to engage this population of vulnerable taxpayers and verify their financial status.</p> <p>The IRS could use the TAS algorithm (or one similar to it) to apply a marker during case scoring to route the case to the appropriate group. For example, flagging potential economic hardship cases early on during Inventory Delivery System (IDS) scoring would allow the IRS to better use resources in later stages of the collection process and prevent economic harm to taxpayers who are at risk of economic hardship. The IRS could program their systems so when an assistor keys in the Social Security number of a taxpayer with an economic hardship risk indicator, a screen is generated with the income information, projected family size, and appropriate ALEs. This way, the assistor can simply run through some high-level information to verify its accuracy. This indicator would prompt the IRS employee to ask a few more detailed questions in order to ascertain the taxpayer's ability to pay and identify more appropriate collection alternatives, including Currently Not Collectible (CNC) status.</p>

TAS Recommendation	<p><b>[15-2] Apply this algorithm before sending any cases to PCAs, and exclude any case involving a taxpayer at risk of economic hardship from potentially collectible inventory.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>A comparison of taxpayer income to allowable living expense (ALE) standards would not yield a useful indicator of financial condition. The ALE standards represent an average of what all taxpayers spend; a given taxpayer may spend more or less or not incur the expense at all. A taxpayer's financial condition can only be evaluated by looking at their individual facts and circumstances. Further, there is no authorization in the statute to exclude cases from private debt collection based on such an indicator.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>We agree that a taxpayer's financial condition can only be evaluated by looking at their individual facts and circumstances. The IRS could use the TAS algorithm to apply a marker during case scoring and route the case to the appropriate group that would properly assist and engage those taxpayers who are at risk of economic hardship. For example, flagging potential economic hardship cases during IDS scoring and before routing the cases to be worked would allow the IRS to better use resources in later stages of the collection process and prevent economic harm to taxpayers who are at risk of economic hardship. Many anxious or intimidated taxpayers seeking to resolve their liabilities as quickly as possible may be unaware the IRS is required to halt collection actions if they are in economic hardship and thus agree to make tax payments they cannot afford.</p> <p>Pursuing this category of taxpayers through private debt collection without first proactively identifying and engaging the taxpayers wastes resources and creates later rework for IRS employees due to the likelihood of taxpayers' inability to pay. It also goes against the intent of Congress, which is to avoid putting taxpayers into economic hardship. For example, see Internal Revenue Code (IRC) § 6343(a)(1)(D), which requires the IRS to release a levy if it is determined that the levy is creating an economic hardship for the taxpayer.</p>
TAS Recommendation	<p><b>[15-3] Route cases identified as at risk of economic hardship to a specific group within ACS and send those taxpayers a specific written notification to educate them on collection alternatives and additional assistance available, including TAS and LITCs.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>A taxpayer's financial condition cannot be adequately pre-evaluated to perform this routing. Moreover, all ACS employees are already empowered to assist taxpayers facing economic hardship. Publication 594, <i>The IRS Collection Process</i>, is enclosed with Letter 1058 and the campus generated CP Notices 504, 523, and LT11. It includes a section titled "Options if you can't pay in full now" with information on installment payment agreements, Offers in Compromise, and Currently Not Collectible determinations. It also includes a section on "If you have questions or need help" as well as providing information on both the Taxpayer Advocate Service and Low Income Taxpayer Clinics.</p>
IRS Action	<p>N/A</p>

TAS Response	<p>The IRS's response does not go far enough to address the issue. There is more work to be done in terms of educating vulnerable taxpayers. As we explained in the Most Serious Problem, 40 percent of taxpayers who entered into a streamlined IA in ACS in fiscal year (FY) 2018 had incomes at or below their ALEs. These taxpayers agreed to pay their tax debts while, even by the IRS's own standards, they could not pay for their basic living expenses.</p> <p>While we are mindful of the IRS's concern for resources, the IRS has never quantified the amount of employee time expended upon undoing the downstream effects of unnecessary and unwarranted collection actions. We believe there would be significant resource savings if the IRS used this indicator to prioritize the cases that were most likely to have collection potential and applied its resources to that population. After creating this indicator, if the IRS wanted to attempt some collection against taxpayers with this indicator, then it should first attempt to engage the taxpayers and verify their financial information.</p>
TAS Recommendation	<p><b>[15-4] Create a new help line dedicated to responding to taxpayers at risk of economic hardship and helping them determine the most appropriate collection alternative, including OICs.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>A taxpayer's financial condition cannot be adequately pre-evaluated to perform this routing. Moreover, all ACS employees are already empowered to assist taxpayers facing economic hardship.</p>
IRS Action	N/A
TAS Response	<p>The IRS needs to do more to educate these vulnerable taxpayers. Notices directed at this population should include clear information about collection alternatives. Telephone assistors responding to taxpayers' calls, or taxpayers entering into IAs online, could receive prompting to inquire about their financial situation. When there is no indication beforehand to prompt the assistors to verify the taxpayers' financial status, we see that many of these taxpayers are still entering streamlined installment agreements without having their financial situation evaluated. These taxpayers often do not know all the collection alternatives available to them and must rely on self-help tools available online.</p>

TAS Recommendation	[15-5] Partner with TAS and LITCs to develop issue-focused training for IRS employees who interact with taxpayers at risk of economic hardship.
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>TAS reviews and provides input on the training materials used by our Collection employees. All ACS employees and Field Collection Revenue Officers are already trained to assist taxpayers facing economic hardship.</p>
IRS Action	N/A
TAS Response	The National Taxpayer Advocate has written extensively about the gap in training at the IRS. In the context of economic hardship issues, we believe that the training is not enough. Issue-focused training is needed for employees who interact with taxpayers at risk of economic hardship. The IRS should work with TAS in this arena because more work is needed; and these are the taxpayers TAS works with on a daily basis.

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## FIELD COLLECTION: The IRS Has Not Appropriately Staffed and Trained Its Field Collection Function to Minimize Taxpayer Burden and Ensure Taxpayer Rights Are Protected

### PROBLEM

Field Collection works cases that have not been resolved through the notice stream or through the Automated Collection System (ACS). In general, to resolve cases, Revenue Officers can file a lien, issue a levy, seize assets, recommend suits to foreclose on a federal tax lien or reduce the tax debt to judgment. Notwithstanding their responsibility to collect tax, Revenue Officers must adhere to taxpayers' *right to privacy* and *right to a fair and just tax system*, and they have the responsibility to educate the taxpayer in order to avert future noncompliance. The current state of Field Collection has impaired the ability of Revenue Officers to fulfill their mission in accord with the Taxpayer Bill of Rights. The National Taxpayer Advocate has the following concerns: (1) Revenue Officers are not as accessible to taxpayers, and are less able to assess economic conditions on the ground; (2) IRS procedures do not provide for early intervention by Revenue Officers; (3) Revenue Officers are not given the appropriate tools to effectively collect revenue; and (4) IRS metrics for evaluating the effectiveness of Field Collection are incomplete.

### ANALYSIS

The Field Collection function is the final depot in the collection roadmap. The function relies on Revenue Officers to work all tax accounts that were not resolved in the notice stream and the ACS. Aspects of a Revenue Officer's responsibilities include education, research and investigation, and appropriate enforcement. Because they are expected to engage in personal contact with taxpayers, it is important for Revenue Officers to maintain a geographic presence in the communities in which they serve. In recent conversations TAS held with stakeholder groups, practitioners voiced concern about the difficulty in not only arranging face-to-face meetings, but even in reaching Revenue Officers via phone or having them return calls.

By the time a Revenue Officer makes contact, taxpayers may be unable to pay the debt in full because the debt has grown so large as a result of accrued penalties and interest, or because the taxpayer's financial condition has deteriorated over time. Thus, it is imperative that a Revenue Officer quickly receive delinquent accounts, so that face-to-face contact with the taxpayer can be made, assisting with a resolution of the liability before the liability grows significantly or additional liabilities accrue. The National Taxpayer Advocate has advocated for the benefits of early intervention; it is an effective measure in promoting tax compliance and closing the noncompliance gap on employment taxes.

The IRS has slashed three-quarters of its training budget from fiscal year (FY) 2010 to FY 2017, and is moving away from face-to-face training in favor of virtual learning. In FY 2018, there were at least eight times as many virtual training sessions as there were in-person training sessions.

## TAS RECOMMENDATIONS

- [16-1] Formally evaluate the impact on taxpayers of hoteling Revenue Officers—for example, is there any quantifiable harm to taxpayers due to the lag time in responding to taxpayer or practitioner calls or appointments, or in posting payments and tax returns, installment agreements, and offers in compromise (OICs)?
- [16-2] Implement lessons from the “Fresh Inventory” pilot to modify its case selection and assignment methodologies for Revenue Officers to focus on early intervention that educate taxpayers on compliance, resolve cases timely, and promote future voluntary compliance.
- [16-3] Implement the Early Interaction Initiative to ensure business taxpayers are in compliance with and educated on the federal tax deposit requirements for employment taxes.
- [16-4] Issue a policy for a “Revenue Officer of the day” in all field offices, except offices with only one Revenue Officer, so every taxpayer, wherever they are located in the country, receives the same quality service. Such a policy would help ensure that payments and tax returns are posted timely, correspondence and questions are responded to timely, and face-to-face meetings are available.
- [16-5] Promote taxpayers’ future compliance by Revenue Officers conducting and participating in outreach events that provide information on policy and procedures of Field Collection and the role of Revenue Officers in the collection of taxes and voluntary tax compliance.
- [16-6] Establish a quality measurement system that measures (using a statistically valid sample) the future voluntary compliance impact of Field Collection actions, including if those actions resulted in undue harm or burden to taxpayers.
- [16-7] Grant Revenue Officers the authority to work OIC cases.

## IRS RESPONSE

Field Collection is responsible for protecting the revenue and the interests of the government through direct collection and enforcement activity with taxpayers and/or their representatives and helping taxpayers understand and comply with all applicable tax laws. Revenue Officers working in Field Collection are assigned cases involving more complex financial circumstances that generally require working away from the office to uncover or view taxpayer assets and perform other investigative techniques.

Over the last several years, our Field Collection resources have dwindled due to budget constraints. The IRS recognizes the negative impact caused by these significant losses and fully supports the need for additional personnel as well as reducing burden throughout the collection process. We have received funding approval to hire 750 Revenue Officers in Fiscal Year (FY) 2019, which is our most significant hiring for this position in the past ten years.

Despite these challenges, Field Collection put meaningful and actionable focus on protecting the rights of taxpayers. More than half of Field Collection’s assigned cases involve businesses. Since 2015, we continue to place increased priority on early intervention with these important customers (who account for over 70% of the revenue secured by the IRS) through expansion of the Federal Tax Deposit Alert program. This program ensures business taxpayers understand the potential consequences of

non-compliance before enforcement action is necessary. Data appear to show positive compliance impacts from this effort. In March 2019 our employees made Employer Educational Visits to over 100 business customers to further augment these proactive efforts. In FY 2019, Field Collection leaders and experts will participate in a number of National Tax Forums, practitioner events, and business industry conferences to further assist taxpayers and practitioners in understanding their federal tax responsibilities.

We deliver comprehensive training to new Revenue Officers as well as continuing professional education to seasoned Revenue Officers on topics such as taxpayer rights, how to conduct civil investigations, and how to take enforcement actions. Between November 2016 and December 2018, we delivered advanced technical training and formal workshops to enhance existing Revenue Officers' skills. For new Revenue Officers, we delivered three classroom training sessions during their first year on the job that gradually introduced them to more and more complex topics and actions. Offers in Compromise are worked by specially-trained offer specialists and examiners to ensure consistency and efficiency in that program. We use a quality review process to ensure our employees are taking the right actions at the right time and use the results to uncover additional training needs.

Leadership communications and operational reviews place emphasis on the importance of helping taxpayers understand the collection process and how to remain compliant in the future. They stress keeping taxpayers informed of the status of their cases, avoiding unnecessary delays, and giving them “finality” when their case is resolved.

### TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate appreciates the difficult challenges faced by Field Collection in an environment where their Revenue Officers staffing has declined significantly in recent years. It is encouraging that the IRS has approved funding to hire up to 750 additional Revenue Officers in FY 2019. This makes it even more critical that Field Collection develop the appropriate tools and content for the on-boarding and training of these new hires. The IRS has a tremendous opportunity this year to lay the groundwork in establishing a culture where cycle time and closures are not the central focus for its Revenue Officers—they should instead strive to deliver the right treatment at the right time, and be given the flexibility to do so.

TAS Recommendation	<b>[16-1] Formally evaluate the impact on taxpayers of hoteling Revenue Officers—for example, is there any quantifiable harm to taxpayers due to the lag time in responding to taxpayer or practitioner calls or appointments, or in posting payments and tax returns, installment agreements, and OICs?</b>
IRS Response	IRS does not agree to implement TAS recommendation.  Revenue Officers are available by appointment and can be reached by cell phone. Additionally, Revenue Officers have the ability to forward calls received on their business line to their laptop computer. Requirements for timely and courteous service are the same regardless of where the Revenue Officer is working on a given day.
IRS Action	N/A



TAS Response	<p>We do not question the value derived by the government in allowing its employees to participate in hoteling arrangements. However, the IRS needs to acknowledge that there are trade-offs in taxpayer service that accompany the decision to allow hoteling. In our discussion, we provided examples of when a taxpayer may be negatively impacted when a Revenue Officer is teleworking (e.g., reduced ability to accommodate walk-in or last-minute appointments). We are disappointed that the IRS will not agree to even assess the impact of such arrangements.</p>
TAS Recommendation	<p><b>[16-2] Implement lessons from the “Fresh Inventory” pilot to modify its case selection and assignment methodologies for Revenue Officers to focus on early intervention that educate taxpayers on compliance, resolve cases timely, and promote future voluntary compliance.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The Fresh Inventory Pilot was one of three case assignment studies undertaken simultaneously under the umbrella of the Field Inventory Process Improvement Team (FIPIT) project. The hypothesis of the Fresh Inventory pilot was that early intervention and cases with more current modules would lead to improved cycle time and yield with no negative impact on quality or customer satisfaction. The other tests were the Virtual and Flex Inventory Pilots. The Virtual pilot tested whether Revenue Officers could, in some situations (disasters or inventory imbalances), work cases “virtually” in another geographic location without negatively impacting quality or business results. The Flex Inventory pilot hypothesized that Revenue Officers could resolve more cases if they had increased flexibility in inventory and casework management.</p> <p>Because the Fresh Inventory Pilot Project limited the case assignment methodology to one simple factor, it is not compatible with the very complex assignment and delivery processes developed and implemented over a number of years in the Collection Operation. We are continuing to review the results and analysis of the FIPIT pilots to leverage the information in exploring diverse alternatives to assigning cases to Revenue Officers.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>From our perspective, the Fresh Inventory pilot was a resounding success—cases in this pilot generally had a higher number of full pay cases and a lower number of Currently Not Collectible closures. The pilot groups also closed substantially more cases per Revenue Officer. Yet, the IRS response seems to imply that Field Collection is satisfied with the status quo—that it does not want to adopt changes to its case assignment methodology. The IRS should expand the FIPIT to cover the current case assignment process to make the results more relevant and use the existing results to inform its current work processes.</p>

TAS Recommendation	<b>[16-3] Implement the Early Interaction Initiative to ensure business taxpayers are in compliance with and educated on the federal tax deposit requirements for employment taxes.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We began implementing recommendations from the Early Interaction Initiative project in 2017, including expanded Federal Tax Deposit Alert treatment segments and expanded issuance of soft letters. We continue to collaborate with the IRS Information Technology (IT) function to find ways to incorporate learnings from the Early Interaction Initiative into systemic processes.
TAS Response	The National Taxpayer Advocate is pleased that Field Collection has begun implementing recommendations from the Early Interaction Initiative. We ask that the IRS not consider this recommendation as “implemented” until the recommendations are fully adopted, including working with IT to overcome any systems challenges.

TAS Recommendation	<b>[16-4] Issue a policy for a “Revenue Officer of the day” in all field offices, except offices with only one Revenue Officer, so every taxpayer, wherever they are located in the country, receives the same quality service. Such a policy would help ensure that payments and tax returns are posted timely, correspondence and questions are responded to timely, and face-to-face meetings are available.</b>
IRS Response	IRS does not agree to implement TAS recommendation.  Being treated with respect and avoiding needless delay is important in every customer interaction, and taxpayers have a right to have timely communications and access to their assigned Revenue Officer, whether contact is made in the field or through a scheduled appointment in the IRS office. Field Collection can appropriately serve taxpayers without requiring a policy of “Revenue Officer of the day” in every office. Revenue Officers are available by appointment and by cell phone. Revenue Officers and Group Managers coordinate daily to ensure payments and tax returns are posted timely.
IRS Action	N/A
TAS Response	The IRS seems to discount the value in allowing taxpayers the ability to walk in or make last-minute appointments to meet with a Revenue Officer. We propose that the value of designating a “Revenue Officer of the day” be included in the formal evaluation of the benefits and costs of hoteling that we urged the IRS to conduct in Recommendation 1.

TAS Recommendation	<b>[16-5] Promote taxpayers' future compliance by Revenue Officers conducting and participating in outreach events that provide information on policy and procedures of Field Collection and the role of Revenue Officers in the collection of taxes and voluntary tax compliance.</b>
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Field Collection leaders and experts regularly participate in outreach events, including National Tax Forums, practitioner events, and business industry conferences, to increase understanding of a comprehensive list of topics relating to the Collection process. We also provide educational talking points and other background to the IRS Communications and Liaison organization to leverage their resources.
TAS Response	The National Taxpayer Advocate is pleased to learn that Field Collection leadership participate in National Tax Forums and other outreach events. In addition, we recommend that ALL Revenue Officers participate in outreach events. We believe the IRS will benefit from having Revenue Officers regularly interact with members of their local community.

TAS Recommendation	<b>[16-6] Establish a quality measurement system that measures (using a statistically valid sample) the future voluntary compliance impact of Field Collection actions, including if those actions resulted in undue harm or burden to taxpayers.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Our current quality review process measures actions that potentially could result in undue harm or burden to the taxpayer. Changes to a taxpayer's compliance behavior in the years after a case was worked by Field Collection may be attributed to many external factors. We are continuing to study potential methods to accurately measure the impact of specific compliance efforts on reducing recidivism. For instance, the IRS Research, Applied Analytics, and Statistics (RAAS) organization is performing analysis on the impact of our Federal Tax Deposit Alerts. In FY 2019, RAAS is working with Field Collection to measure the impact of pairing Revenue Officers when performing certain specialized taxpayer interviews versus interviews by a single Revenue Officer.</p>
IRS Action	N/A
TAS Response	Establishing a perfect measurement of quality is an elusive goal for many organizations. The response above appears that Field Collection is open to improving its quality measures. We are pleased with Field Collection's efforts to continually review and improve its quality measures.

TAS Recommendation	<b>[16-7] Grant Revenue Officers the authority to work OIC cases.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>IRS centralized the Offer-In-Compromise (OIC) process in 2001 to provide more control and consistency in processing OICs. The recent realignment of the Collection program within the Small Business/Self-Employed Division further centralized the offer program under one Executive. In contrast, decentralizing the process would significantly increase training costs, decrease the effectiveness of specialized training, increase the chance that a taxpayer's offer is processed by an employee with limited exposure to the offer program, require revenue officers to reprioritize their work to ensure that offer decisions are made within the statutorily mandated 24-month period, and generally increase the risk that there will be inconsistencies in OIC processing.</p>
IRS Action	N/A
TAS Response	While we see some benefits of allowing Revenue Officers to work OIC cases instead of passing them along to OIC specialists who will not be well-versed in the taxpayers' particular set of circumstances, we recognize there are some drawbacks as outlined by the IRS in its response.

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## IRS'S AUTOMATED COLLECTION SYSTEM (ACS): ACS Lacks a Taxpayer-Centered Approach, Resulting in a Challenging Taxpayer Experience and Generating Less Than Optimal Collection Outcomes for the IRS

### PROBLEM

The Automated Collection System (ACS) is a major IRS automated collection inventory system used to send notices demanding payment, and to issue notices of federal tax lien (NFTLs) and levies. ACS employees also answer taxpayer telephone calls to resolve balance due accounts and delinquencies. In recent years, ACS has drifted away from its philosophy of understanding the cause of the tax debt, considering collection alternatives, and ensuring that these collection alternatives enable future voluntary compliance. Instead, ACS today primarily focuses on collecting the tax owed without securing or discussing the facts surrounding the taxpayer's particular situation.

### ANALYSIS

At the end of fiscal year (FY) 2018, ACS had about \$47 billion placed in its inventory and it collected about \$3.5 billion of that amount during the same time period, and about \$4.3 billion was collected through installment agreements (IAs), for a total collection of nearly \$8 billion. However, ACS transferred \$13.6 billion to the queue, an electronic holding area for accounts that will not be worked immediately. Additionally, \$3.2 billion was collected through refund offsets (*i.e.*, without any action by an ACS employee or any interaction with the taxpayer).

ACS is actively trying to avoid person-to-person interaction with taxpayers. For example, it stopped issuing a letter previously sent to taxpayers systemically, LT16: *Request for Taxpayer to Contact ACS*, in order to decrease the number of taxpayers calling ACS, which in turn would help improve the ACS level of service (LOS)—63 percent for filing season (FS) 2018. Moreover, ACS notices proposed in redesign studies omit the name and phone number of an individual ACS employee, and any focus on taxpayer rights.

ACS heavily relies on streamlined IAs: about \$3.1 billion (71 percent) of the total \$4.3 billion of its FY 2018 IA collections were collected pursuant to streamlined IAs. Streamlined IAs do not require financial analysis, and taxpayers often agree to payments they cannot afford. Taxpayers in ACS whose income did not exceed their ALEs defaulted on their streamlined IAs 39 percent of the time in FY 2018. ACS does not prioritize working defaulted IA cases, thereby missing an opportunity to quickly engage a taxpayer who has previously shown initiative to resolve their tax debt.

In 2009, the Tax Court held, in *Vinatieri v. Commissioner*,<sup>1</sup> that when the IRS sustains even a proposed levy on a taxpayer it knows is in economic hardship, it abuses its discretion. Ten years later, ACS employees continue to take action that is inconsistent with the *Vinatieri* decision.

1 *Vinatieri v. Comm'r*, 133 T.C. 392 (2009).

## TAS RECOMMENDATIONS

- [17-1] Assign one ACS employee to a taxpayer's case, provide this employee's contact information on each notice that is sent to the taxpayer, and assign the case to an ACS employee who is located in the same geographic region as the taxpayer.
- [17-2] Send out monthly notice reminders to taxpayers regarding their tax liabilities and accrued penalties and interest.
- [17-3] Revise ACS notices using a Taxpayer Bill of Rights framework that conspicuously informs taxpayers of the rights impacted by a given notice.
- [17-4] Apply an indicator to cases in which the taxpayer is likely experiencing economic hardship and route these cases to a separate Economic Hardship Shelter excluded from assignment to private collection agencies.
- [17-5] Revise ACS's Internal Revenue Manual and scripts to instruct employees when a taxpayer has an economic hardship indicator placed on their account, to consider all possible avenues for resolution, including Partial Payment Installment Agreements, offers in compromise, or placement into Currently Not Collectible hardship status.
- [17-6] Conduct a research study to determine if IRS's modeling scores and collection potential calculator are truly identifying the cases that are most likely to be resolved.
- [17-7] Reorder ACS protocols to give high priority to cases where a taxpayer has defaulted on a prior installment agreement.

## IRS RESPONSE

The Automated Collection System (ACS) was created to provide taxpayers with the opportunity to resolve delinquent tax obligations with a single telephone contact. ACS provides employees with the capability to take a wide range of actions to resolve cases in an efficient and equitable manner that is in the best interest of both the taxpayer and the Service.

ACS is set up to assist taxpayers as quickly as possible by sending them to the first available Collection Representative (CR), no matter where the assister is located geographically in the country (as opposed to waiting for a particular assister to become available). This allows approximately 1,800 to 2,000 full time equivalents in ACS to answer 8 to 14 million taxpayer calls per year. If we were to assign a single employee to each case, we could not answer the same number of calls, further frustrating taxpayers with longer hold times and less responsive service.

Similarly, the inventory prioritization system used by ACS employs statistical models designed to identify the next best case to be worked. We conduct an annual review to determine if any updates to our inventory delivery system models are required.

In 2010, we updated our guidance to our employees on levies and economic hardship based on the judicial Vinatieri decision. We provided training to our ACS employees on this issue on several occasions, most recently in continuing professional education courses in 2015 and 2017. We will continue to remind our employees of these procedures.

To improve service to taxpayers, we have begun to leverage technology to create alternative ways of providing services. Self-service options, such as the online payment agreement application and the offer-in-compromise prequalifier tool, are an alternative method for providing taxpayers with the quality services that they have a right to expect. Self-service options are often available outside of normal business hours, provide quicker resolutions than telephonic or mail options, and can be less intrusive for the taxpayer. For example, in certain situations, we offer streamlined installment agreements, allowing taxpayers to arrange a payment agreement online without providing financial documentation or talking with an IRS employee. Many taxpayers appreciate and want these self-service options. For those who cannot access or do not want self-service options, we continue to have ACS employees available.

### TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate recognizes that ACS receives a voluminous number of calls from taxpayers each and every day, and agrees that part of good customer service is ensuring that a taxpayer can reach an ACS assistor quickly. However, good customer service is also providing taxpayers with a single point of contact when they call ACS who resides in the same geographic location as the taxpayer, thereby ensuring the assistor is familiar with the economic conditions and circumstances affecting the taxpayer's particular region. Although this would undoubtedly have an effect on ACS case management and inventory balancing, it could also make these optional selections, rather than restructuring the entire ACS group. Some taxpayers will prefer to speak with one assistor throughout their communications with the IRS regarding their issue, while others will simply want to speak to the next available assistor. The option should be available, and the choice should be left up to the taxpayer.

Despite the IRS's revision to their procedures in 2010 to reflect the holding in *Vinatieri* and subsequent training on these issues, ACS assistors still get the guidance wrong. The IRS's statement that it will "continue to remind its employees of these procedures" is insufficient, especially in light of the fact that the IRS's prior efforts to train their employees have, to a certain extent, been unsuccessful. Failing to inform taxpayers of the holding in *Vinatieri* and to abide by it compromises taxpayer's *right to be informed* and *right to a fair and just tax system*.

In no way does the National Taxpayer Advocate imply that leveraging technology to offer self-service options is an inappropriate strategy to employ or doesn't offer benefits when compared to more traditional modes of customer service. However, what the Most Serious Problem emphasizes is that it is inappropriate to highlight solely self-service options in notices or to bury the ACS toll-free number in the notice to essentially force taxpayers to move toward self-service options for the purpose of improving the level of service (LOS) on ACS's toll-free lines. This leaves taxpayers who either aren't able to use self-service options or who prefer to call ACS struggling to track down ACS's contact information.

Although the National Taxpayer Advocate understands the significant challenge facing ACS to respond to and assist millions of taxpayers every year, it is important that it seriously considers a variety of different approaches that may ultimately provide better service options to taxpayers while improving the efficiency of ACS. These options and strategies should always be constructed within the framework of the Taxpayer Bill of Rights, especially the *right to quality service*, *to be informed*, and *to a fair and just tax system*.

TAS Recommendation	<b>[17-1] Assign one ACS employee to a taxpayer's case, provide this employee's contact information on each notice that is sent to the taxpayer, and assign the case to an ACS employee who is located in the same geographic region as the taxpayer.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>If implemented, this recommendation would result in overall lower service to taxpayers. ACS uses a "first available" method of routing incoming calls. This method allows approximately 1,800 to 2,000 full time equivalents in ACS to answer 8 to 14 million taxpayer calls per year. If we were to assign a single employee to each case, we could not answer as many calls, reducing our ability to provide service to these taxpayers.</p>
IRS Action	N/A
TAS Response	We understand the need to consider how implementation of this recommendation would affect ACS's ability to answer calls or to answer calls in a timely fashion. However, these options, ( <i>i.e.</i> , speaking to an assistor in the same geographic region as the taxpayer, and having the same assistor address his or her issues to finality) could be presented to the taxpayer with the understanding that they could result in a longer hold time. Also, the taxpayer could be given the option of leaving a message with the specific assistor who would return their call within 24 hours. These options would mitigate the effect on ACS assistors' availability to answer calls while providing more customer service options to the taxpayer.
TAS Recommendation	<b>[17-2] Send out monthly notice reminders to taxpayers regarding their tax liabilities and accrued penalties and interest.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Monthly notices are sent to taxpayers that have an installment agreement. Taxpayers currently are provided with two to four notices when they have a balance due, including the Collection Due Process (CDP) notice, consistent with the statutory requirements. Additionally, reminder notices are sent yearly. The recommendation to provide monthly or quarterly notices to taxpayers is cost prohibitive and is not an effective use of our limited resources. While the study TAS referenced does show that sending a letter multiple times increases case resolutions, it does so with diminishing returns. Instead, we are working on an in-depth notice redesign program for certain balance due notices that will include behavioral insights to improve the effectiveness of notices we send.</p>
IRS Action	N/A



TAS Response	<p>The National Taxpayer Advocate is pleased that ACS is redesigning a number of its notices to consider behavioral insights. However, as illustrated by the Notice of Federal Tax Lien (NFTL) study, these notices would likely yield better results if they were sent out on a more regular and frequent basis, rather than the sporadic notice schedule that is currently used, where months can go by without the taxpayer hearing from the IRS.<sup>2</sup> Additionally, this would keep taxpayers better informed as to how penalties and interest continue to increase their tax liabilities, thereby more properly observing a taxpayer’s <i>right to be informed</i>.</p>
TAS Recommendation	<p><b>[17-3] Revise ACS notices using a Taxpayer Bill of Rights framework that conspicuously informs taxpayers of the rights impacted by a given notice.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by March 31, 2021.</p>
IRS Action	<p>The Collection Operating Unit has been working on an in-depth notice redesign program for certain general balance due notices as well as for notices used specifically by ACS. Since the project’s inception in August 2015, this redesign effort has included TAS personnel. Other IRS organizations, such as the Office of Chief Counsel, Information Technology (IT), On-Line Services, and Research, Applied Analytics, and Statistics (RAAS), have been deeply involved. We have also worked in coordination with private contractors. The CP14 and LT16 letters have been redeveloped and the LT11 and CP501/503 are currently in development. Collection is working with TAS on a notice that uses the Taxpayer Bill of Rights framework and intends to test that notice along with the others being developed. We must account for IT Unified Work Request processes in estimating our implementation date.</p>
TAS Response	<p>A careful redesign of ACS notices is an important first step toward providing taxpayers with more information about their tax issue and their rights surrounding that issue while presenting it in a manner that is easy to understand and grabs the taxpayer’s attention. The National Taxpayer Advocate understands there are a number of competing priorities in redesigning these notices, but the first priority should be to design the notice in a taxpayer rights framework that clearly informs the taxpayer of the rights impacted by the particular notice. If the taxpayer is totally unaware of what rights are being impacted after reading the notice, then the value of the notice is miniscule at best.</p>

2 National Taxpayer Advocate 2018 Annual Report to Congress 258 (Research Study: *Further Analyses of “Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution”*).

TAS Recommendation	<b>[17-4] Apply an indicator to cases in which the taxpayer is likely experiencing economic hardship and route these cases to a separate Economic Hardship Shelter excluded from assignment to private collection agencies.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The likelihood that a taxpayer is experiencing economic hardship cannot be determined without taxpayer contact. A comparison of taxpayer income to allowable living expense (ALE) standards would not yield a useful indicator of financial condition. The ALE standards represent an <i>average</i> of what all taxpayers spend; a given taxpayer may spend more or less or not incur the expense at all. A taxpayer's financial condition can only be evaluated by looking at their individual facts and circumstances. Further, there is no authorization in the statute to exclude cases from private debt collection based on such an indicator.</p>
IRS Action	N/A
TAS Response	<p>The IRS's statement that "The likelihood that a taxpayer is experiencing economic hardship cannot be determined without taxpayer contact" is very dubious. Recently, TAS Research staff analyzed the financial circumstances of taxpayers assigned to the Automated Collection System (ACS) over the last five years. Three multiples of federal poverty levels were applied to that same population base to determine if a percentage of federal poverty level (computed on adjusted gross income) would be a reasonable proxy for allowable living expenses (ALE),<sup>3</sup> which are guidelines that "establish the minimum a taxpayer and family needs to live."<sup>4</sup></p> <p>This research showed that over a five-year period, applying 250 percent of the federal poverty level (FPL) consistently excluded about 85 percent of taxpayers that the ALE analysis predicted could not pay IRS debts without incurring economic hardship.<sup>5</sup> The bottom line is that the IRS has sufficient data in-house to determine if a taxpayer's adjusted gross income is at or below 250 percent of the federal poverty level, which has shown to be a very reliable proxy for economic hardship. In fact, it is this threshold that the IRS currently uses to exclude taxpayers from the Federal Payment Levy Program (FPLP).<sup>6</sup></p> <p>The IRS's rejection of the implementation of this indicator to be used by ACS employees is a failure to adhere to the Taxpayer Bill of Rights, which was codified by Congress in Internal Revenue Code (IRC) § 7803(a), and is a particular infringement on a taxpayer's <i>right to a fair and just tax system</i> and the taxpayer's <i>right to privacy</i>.<sup>7</sup></p>

3 Nina E. Olson, *The IRS is Not Doing Enough to Protect Taxpayers Facing Economic Hardship*, NTA BLOG (May 24, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship?category=Tax%20News>. Approximately ten percent of this population could not be analyzed because these taxpayers did not file recent tax returns and therefore their adjusted gross income (AGI) could not be determined.

4 Internal Revenue Manual (IRM) 5.15.1.8 (6), *Allowable Expense Overview* (Aug. 29, 2018). Allowable expenses include transportation expenses, which may consist of ownership expenses (loan or lease payments) and operating expenses (maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls). The IRS may allow additional amounts for basic living expenses if the taxpayer substantiates the need to deviate from the standards.

5 For a more in depth discussion of what TAS analysis showed, see Nina E. Olson, *The IRS Is Not Doing Enough to Protect Taxpayers Facing Economic Hardship*, NTA BLOG (May 24, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship?category=Tax%20News>.

6 See IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (June 23, 2014).

7 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights).

TAS Recommendation	<p><b>[17-5] Revise ACS's Internal Revenue Manual and scripts to instruct employees when a taxpayer has an economic hardship indicator placed on their account, to consider all possible avenues for resolution, including Partial Payment Installment Agreements, offers in compromise, or placement into Currently Not Collectible hardship status.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Internal Revenue Manual (IRM) 5.19.1 already allows employees to address economic hardship when it is brought to their attention. Employees have a suite of account resolution options open to them when working with taxpayers. There would be no new or special process to follow based on the presence or absence of this proposed indicator.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>As discussed in the previous response, the IRS has the data available to proactively place an economic hardship indicator on a taxpayer's account. This indicator would allow the ACS employee to open up a discussion about the taxpayer's financial circumstances and what type of collection alternative may be most appropriate for their situation. The current approach in ACS is to first discuss full payment or payment arrangements with little or no discussion of the taxpayer's particular financial circumstances.</p> <p>As discussed in the Most Serious Problem, solely focusing on full payment or establishing a payment arrangement to satisfy the outstanding tax liability with little regard to financial circumstances results in taxpayers entering into payment arrangements they cannot afford and will likely later default on.<sup>8</sup> The IRS's failure to use the data it has to create an economic hardship indicator which would in turn allow the ACS assistor to have a more meaningful conversation with the taxpayer about their particular circumstances and what collection options may best suit them, will ultimately result in burdening taxpayers, wasting IRS resources, and creating rework for IRS and Taxpayer Advocate Service employees.</p>
TAS Recommendation	<p><b>[17-6] Conduct a research study to determine if IRS's modeling scores and collection potential calculator are truly identifying the cases that are most likely to be resolved.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>
IRS Action	<p>ACS Systems and Inventory, in conjunction with the Strategic Analysis and Modeling (SAM) group, looks at possible changes or adjustments to models to determine if any updates are needed to ensure that the system runs properly and identifies the best cases to be worked and resolved. The SAM group conducts annual reviews of cases modeled by the Inventory Delivery System to evaluate how well the models are performing at predicting a variety of case outcomes and taxpayer behavior. In addition, we are working towards incorporating model scores in the analysis of recent notice redesign randomized control trials.</p>

<sup>8</sup> National Taxpayer Advocate 2018 Annual Report to Congress 256 (Most Serious Problem: *IRS's Automated Collection System (ACS): ACS Lacks a Taxpayer-Centered Approach, Resulting in a Challenging Taxpayer Experience and Generating Less Than Optimal Collection Outcomes for the IRS*).

TAS Response	<p>The National Taxpayer Advocate is pleased that the IRS conducts annual reviews on its case selection models to determine if those models are accurately predicting the outcomes of the cases, thereby identifying what models may need to be modified going forward. However, the Inventory Delivery System is a system used to prioritize cases for all stages of collection, including which cases are assigned to ACS or the field. TAS's recommendation is that an analysis is conducted specifically on ACS inventory, how it is prioritized, and whether that prioritization has proven to be effective. Thus, the IRS's current annual review fails to exclusively focus on ACS inventory and whether or not it is applying its resources to the most productive cases.</p>
TAS Recommendation	<p><b>[17-7] Reorder ACS protocols to give high priority to cases where a taxpayer has defaulted on a prior installment agreement.</b></p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>ACS Systems and Inventory annually looks at its prioritization process to make decisions on whether it is feasible to adjust the order of taxpayer accounts. Detailed analysis is conducted to make a determination as to whether changes should be made. This analysis includes looking at accounts, such as defaulted installment agreements, to determine if they need to be moved up in priority to be worked by Collection representatives.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>Taxpayers who have defaulted on an installment agreement are taxpayers with whom the IRS has previously made contact and who have taken a significant step to resolving their tax debt (<i>i.e.</i>, entering into an installment agreement and beginning regular payments on the liability). This is a good indicator that these are taxpayers who want to resolve their tax situation but who may have encountered unexpected circumstances that have impacted their ability to continue with monthly payments, such as sudden medical emergencies, changes in employment status, or unforeseen expenses. It seems logical that the sooner ACS contacts these taxpayers after the default, the more likely it is that they can find out what caused the default and how they can help the taxpayers enter into some other arrangements that will better meet their current financial circumstances. Allowing these types of cases to linger in ACS inventory is a missed opportunity for the IRS to re-engage taxpayers who have previously expressed the desire to address their tax issues, and harms taxpayers by allowing penalties and interest to accrue, making the liability larger and diminishing the likelihood of achieving a satisfactory resolution.</p>

**MSP  
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## **OFFER IN COMPROMISE: Policy Changes Made by the IRS to the Offer in Compromise Program Make It More Difficult for Taxpayers to Submit Acceptable Offers**

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### **PROBLEM**

This year, the National Taxpayer Advocate studied business offers in compromise (OICs) out of concern that the IRS is not doing enough to help business taxpayers file successful OICs. Additionally, the IRS made changes that create barriers to all taxpayers from submitting successful OICs. First, not every state has an OIC Specialist, creating a situation where circumstances unique to a particular area are not always known by the employee reviewing the OIC. Also, the IRS now returns OICs as not processable when submitted by taxpayers who have not filed all necessary tax returns, instead of holding on to them for a period as leverage for the taxpayer to cure the filing defects. In conjunction, the IRS now keeps the payments sent with OICs it returns for lack of filing compliance. Taxpayers may face additional difficulties because OICs returned in error are no longer subject to the 24-month acceptance period in IRC § 7122(f) and, processing time is so long, some taxpayers lose two years of refunds as part of their OIC agreement. All of these obstacles could explain why the acceptance rate for individual OICs is at just 44 percent while business OICs have an even lower acceptance rate of 24 percent.

### **ANALYSIS**

In 2018, TAS Research reviewed business OICs and determined that the IRS is losing revenue collection opportunities because of inflated reasonable collection potential (RCP) calculations. In about 40 percent of the business OICs that were not accepted, the OIC amounts offered were much higher than the amounts ultimately collected. Additionally, in fiscal year (FY) 2017, the IRS returned 2,767 individual OICs because of unfiled returns. Of those returned OICs, approximately 34 percent resubmitted an OIC. The IRS returned 561 business OICs because of unfiled returns in FY 2017. Of those returned OICs, approximately 47 percent resubmitted OICs. These numbers indicate that, if the IRS worked with taxpayers to perfect OICs prior to rejection, it might obtain even more returns and would not impose an additional Tax Increase Prevention and Reconciliation Act (TIPRA) payment on these taxpayers.

### **TAS RECOMMENDATIONS**

- [18-1]** Have at least one OIC Specialist in each state to ensure a more even geographic presence for OIC analysis.
- [18-2]** Change its policy for deeming OICs not processable if the taxpayer is not current with his or her filing requirement and reinstate the requirement to retain the OIC and contact taxpayers to obtain missing returns within a specified period of time.
- [18-3]** Reconsider its determination that OICs returned or withdrawn in error are not subject to the 24-month deemed acceptance period in IRC § 7122(f).
- [18-4]** Limit the number of refunds that can be offset while an OIC is pending to one refund only.
- [18-5]** Conduct a study to analyze the OIC amount offered and collected amounts to understand why the IRS is rejecting OICs that have an offered amount greater than the dollars collected. For

instance, the IRS should look at how it is applying the Allowable Living Expense standards and where the taxpayer is obtaining the payment for the OIC.

## IRS RESPONSE

We appreciate the National Taxpayer Advocate's (NTA) acknowledgement of our efforts to make Offer in Compromise (OIC) a more visible collection tool. In addition to the outreach efforts mentioned in the NTA's report, we made available a Frequently Asked Questions (FAQ) page and an online "pre-qualifier tool" at IRS.gov, which taxpayers and tax professionals can use to determine if an OIC is a viable option for them. There has been a 10-percentage point increase in the OIC acceptance rate from FY10 to FY18.<sup>1</sup>

The OIC program reviews and revises procedures and policies on a regular basis. Revisions to the process have included requiring taxpayers to be in filing compliance when submitting an offer. The revised policy allows the Service to concentrate on the offer investigation and not delay the potential offer acceptance waiting for a tax return to post. It also allows the Service to focus our limited staff on offers from taxpayers who are in full filing compliance upon submission of their offer.

Under section 7122 of the Internal Revenue Code, taxpayers are required to include a user fee and a non-refundable initial payment as a condition of submitting an OIC application. This means that if a taxpayer files an OIC application before having filed all required tax returns, they will get their user fee back, but any required initial payment will not be returned. It will be applied to reduce their balance owed as required by law.

Reasonable collection potential is a complex and nuanced topic. It is the policy of the Service to accept an OIC when it is unlikely the tax liability can be collected in full and the amount offered reasonably reflects collection potential. We are reviewing the future collection results in cases where an OIC was rejected and we will consider changes to the program based on the findings.

OICs are worked by offer examiners and offer specialists, and not by revenue officers. The Service centralized the OIC process in 2001 to provide more control and consistency in processing OICs. Decentralizing the process would significantly increase training costs, decrease the effectiveness of specialized training, and generally increase the risk of inconsistencies in OIC processing.

For purposes of the two-year deemed acceptance rule, the IRS program does not distinguish between rejections, returns, and withdrawals. When the IRS returns an offer, or it is withdrawn, the deemed acceptance provisions no longer apply, even where the initial decision is later determined to have been in error.

## TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

TAS appreciates that all of the decisions the IRS has made come from a standpoint of conserving resources and focusing on OICs that successfully enter the OIC program. However, the OIC program offers many benefits to both the IRS and taxpayers. It is in the best interest of the IRS to make the OIC program as user-friendly as possible. The policies highlighted in the Most Serious Problem (MSP) may be saving time or other resources at the expense of taxpayers who want to submit a successful OIC.

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<sup>1</sup> Acceptance rate as a percentage of processable dispositions.

TAS Recommendation	<b>[18-1] Have at least one OIC Specialist in each state to ensure a more even geographic presence for OIC analysis.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Positioning an offer specialist in each state would not add value. Research can be completed online when unique situations are identified. In addition, the Internal Revenue Manual (IRM) provides for a Form 2209, <i>Courtesy Investigation</i>, to be issued requesting assistance from another area if local expertise is required.</p>
IRS Action	N/A
TAS Response	Having a specialist readily available in each state may allow for on-demand assistance tailored to the OIC process when needed and not just when an employee thinks it is needed.

TAS Recommendation	<b>[18-2] Change its policy for deeming OICs not processable if the taxpayer is not current with his or her filing requirement and reinstate the requirement to retain the OIC and contact taxpayers to obtain missing returns within a specified period of time.</b>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The policy to require taxpayers to have filed all delinquent tax returns prior to submitting an OIC helps to prevent frivolous offer filings, puts the taxpayer in good standing for the required offer investigation, and allows us to focus our resources on cases that are ready to be worked. We have clearly communicated this policy in the Form 656, <i>Offer in Compromise</i>, the Form 656-Booklet instructions, and the OIC home page on IRS.gov. Additionally, the Form 656 requires taxpayers to certify they have filed all returns or are not required to file.</p> <p>Contrary to the statement in the report, we have evaluated the relative costs of working resubmissions versus holding offers open while waiting for the taxpayer to meet their filing requirement. Although there are costs associated with the resubmission of returned offers once the taxpayer is current on their filing requirement, it costs far less to immediately return the offer than to hold it open. In FY 2017, the percentage of offers resubmitted after being returned was 34% (947) for IMF taxpayers and 47% (266) for BMF taxpayers.</p>
IRS Action	N/A
TAS Response	While it is laudable that the IRS has communicated these changes to the public, the very nature of the changes makes it more difficult for taxpayers to submit a successful OIC. The IRS is also squandering an opportunity to improve filing compliance. Once a taxpayer leaves the OIC program, he or she may determine that it is too much of a burden to return to it, and the IRS could have used that interaction to get the taxpayer current on filing obligations. It is true that 47 percent of the Business Master File (BMF) taxpayers who had an OIC returned for failure to file all returns resubmitted OICs. However, that means that over half did not reenter the OIC program. This number represents many lost opportunities to encourage successful OICs and future filing compliance.

TAS Recommendation	<b>[18-3] Reconsider its determination that OICs returned or withdrawn in error are not subject to the 24-month deemed acceptance period in IRC § 7122(f).</b>
IRS Response	IRS does not agree to implement TAS recommendation.  The deemed acceptance rules do not apply if the IRS rejects the offer, the IRS returns the offer as non-processable or no longer processable, or the offer is withdrawn within the 24-month period, even if it is later determined that the initial decision was in error.
IRS Action	N/A
TAS Response	In an email dated April 27, 2018, IRS Counsel stated that OICs returned in error are not subject to the 24-month deemed acceptance period in Internal Revenue Code (IRC) § 7122(f). It is true that the legal guidance Counsel relied on does not differentiate between OICs being returned in error or not. However, the IRS could allow an exception for OICs returned due to IRS error. Such an exception would further congressional intent to make the OIC program less burdensome for taxpayers.

TAS Recommendation	<b>[18-4] Limit the number of refunds that can be offset while an OIC is pending to one refund only.</b>
IRS Response	IRS does not agree to implement TAS recommendation.  Failing to exercise the IRS's right to offset refunds while an OIC is pending would treat these taxpayers differently from other taxpayers who did not file an OIC. Disparate treatment could encourage abuse of the program.
IRS Action	N/A
TAS Response	As the MSP showed, taxpayers within the OIC program will have different experiences depending on when in the calendar year they submit their OIC, particularly if their OIC goes to Appeals. The taxpayers who agree to have their refund offset as part of the OIC program should not be compared to taxpayers who are not in the OIC program. Instead, all taxpayers within the OIC program should be treated similarly, regardless of when their OIC is received. This problem disproportionately affects low income taxpayers who rely on their refunds.



TAS Recommendation	<p><b>[18-5] Conduct a study to analyze the OIC amount offered and collected amounts to understand why the IRS is rejecting OICs that have an offered amount greater than the dollars collected. For instance, the IRS should look at how it is applying the Allowable Living Expense standards and where the taxpayer is obtaining the payment for the OIC.</b></p>
IRS Response	<p>IRS agrees to implement TAS recommendation in part by October 31, 2019.</p>
IRS Action	<p>Reasonable collection potential is a complex and nuanced topic. It is the policy of the Service to accept an OIC when it is unlikely the tax liability can be collected in full and the amount offered reasonably reflects collection potential. We are reviewing the future collection results in cases where an OIC was rejected, and we will consider changes to the program based on the findings.</p>
TAS Response	<p>TAS is pleased to hear that the IRS is reviewing future collection results in cases where an OIC is rejected. However, we are not familiar with the parameters or nature of the review. We look forward to the IRS sharing its results when available.</p>

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## PRIVATE DEBT COLLECTION: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates

### PROBLEM

The IRS implemented its current Private Debt Collection (PDC) initiative in April 2017. As of September 13, 2018, about \$5.7 billion in debts of more than 600,000 taxpayers were in the hands of private collection agencies (PCAs). As of September 30, 2018, more than 400,000 taxpayers' debts were in Private Collection Agency (PCA) inventory with no installment agreement (IA) or payment for more than three months after assignment, and had been in PCA inventory for 244 days on average. Thus, PCA inventory is fast becoming a substitute of the IRS collection queue.

PDC program revenues in fiscal year (FY) 2018 surpassed program costs, but this surplus was achieved, to a significant extent, by collecting from financially vulnerable taxpayers. According to IRS databases that contain information from tax returns filed by taxpayers and reports of income filed by third parties:

- 40 percent of taxpayers who entered into IAs while their debts were assigned to PCAs had incomes at or below their allowable living expenses (ALEs);
- 44 percent of taxpayers who made payments while their debts were assigned to PCAs (a group that includes recipients of Social Security Disability Insurance (SSDI) income) had incomes at or below 250 percent of the federal poverty level;
- 37 percent of taxpayers who entered into IAs while their debts were assigned to PCAs defaulted, a frequency that rises to 44 percent when defaulted IAs that PCAs do not report to the IRS as required are taken into account, while the overall default rate for streamlined IAs for taxpayers whose debts are not assigned to PCAs is 19 percent; and
- 34 percent of the amount paid that was attributable to PCA activity was made by taxpayers whose incomes were at or below their ALEs.

The PDC program revenues for fiscal year (FY) 2018, \$75 million, are not at the level Congress expected for FY 2018 (\$470 million) or even the level expected for FY 2017 (\$374 million). Moreover, IRS collection activity with respect to taxpayers whose debts were assigned to PCAs actually generated more dollars for the public fisc in FY 2018 (\$37.4 million) than did PCA activity (\$25.8 million).

### ANALYSIS

Internal Revenue Code § 7122(d) requires the IRS to develop ALE guidelines; if the ALE standards exceed a taxpayer's income, the IRS believes the taxpayer is unable to pay his or her necessary living expenses. For taxpayers whose debts are assigned to PCAs, the congressionally-mandated ALE guidelines for analyzing their ability to pay and evaluating collection alternatives are disregarded because PCAs do not collect financial information from taxpayers. In addition to assigning the liabilities of taxpayers who did not dispute their liability, by the end of FY 2018, the IRS had assigned over 150,000 more complex cases, involving assessments: based on substitutes for returns; pursuant to the Automated Underreporter (AUR) computer matching system; or where the taxpayer did not respond, or stopped responding, to IRS inquiries pursuant to an audit. These types of cases are subject to reconsideration

and have an increased risk that all or part of the liability may not be owed, so that abatement would be appropriate, including penalty abatement.

## TAS RECOMMENDATIONS

- [19-1] Exclude from assignment to PCAs the debts of taxpayers whose incomes are at or below their allowable living expenses.
- [19-2] Work with the Social Security Administration to identify recipients of Social Security Disability Insurance and Supplemental Security Income and exclude those taxpayers' debts from assignment to PCAs.
- [19-3] Revise PDC procedures to require IRS review of all PCA cases in which the taxpayer made more than one payment that did not fully pay the liability and was not made pursuant to an IA, to determine whether the PCA requested more than one payment from a taxpayer who can make payments, but cannot fully pay the liability within the Collection Statute Expiration Date (CSED) and if so:
  - a) Recall the case from the PCA;
  - b) Impose a penalty on the PCA for requesting more than one such payment without returning the case to the IRS; and
  - c) Assign an IRS employee to work the case.
- [19-4] Revise PDC procedures to:
  - a) Require PCAs to return to the IRS cases in which the taxpayer entered into an installment agreement but made no payments for 120 days thereafter; and
  - b) Assign an IRS employee to work the case.
- [19-5] Revise PDC procedures to require PCAs to return to the IRS cases in which the taxpayer did not enter into an IA and did not make any payments within six months of assignment to the PCA.

## IRS RESPONSE

The Fixing America's Surface Transportation (FAST) Act, enacted in December 2015, requires the IRS to enter into qualified collection contracts for the collection of inactive tax receivables. The IRS has been actively assigning cases to private collection agencies (PCAs) since April 2017 to collect on tax debts that the IRS is not actively pursuing. Since that time (through December 13, 2018), the Private Debt Collection (PDC) program has assigned over 1.1 million cases to PCAs and recovered over \$130 million in overdue tax debts for the government. The current PDC program has already proven itself to be significantly more effective in the first two years as compared to the prior iterations.

We agree with the National Taxpayer Advocate that the IRS must ensure the PDC program operates in accordance with the law and respects taxpayers' rights. The law is very specific about the types of cases that are excluded from the program. Neither the statute nor the Conference Report accompanying its enactment contemplates the exclusion of taxpayers whose incomes are at or below allowable living expense levels. Accounts the IRS identifies as "currently not collectible" due to hardship circumstances are not assigned to Private Collection Agencies (PCAs). The PCAs offer payment arrangements to taxpayers in a manner consistent with IRS installment agreement procedures for similarly-situated

taxpayers who call the IRS. As is the practice within the IRS, a taxpayer's proposal to pay is accepted without questioning the ability to pay, if the case meets certain criteria.

Although the statute does not exclude taxpayers receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) from the program, the PCA will return any account to the IRS when, during discussion with the taxpayer, they give any indication of receipt of SSDI or SSI, or when the taxpayer, for any reason, states they are unable to pay. Additionally, the IRS has taken steps to systemically exclude SSDI recipients from PCA inventory by submitting a Unified Work Request through our Information Technology (IT) function in January 2019.

As the result of a Treasury Inspector General for Tax Administration (TIGTA) audit of the program, the IRS has agreed to revise its policy regarding PCA account retention. The new policy will include criteria as to when the PCAs should return cases and include a specific retention period when a taxpayer is not in a current payment arrangement. In addition, taxpayers will be allowed to make payments outside of a structured payment arrangement within the retention period, which will replace the current policy on making only one voluntary payment prior to returning the case to the IRS.

### TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The IRS asserts that the current PDC initiative is more effective than prior iterations, but even if that is true, the fact remains that more than a third of the payments attributable to PCA activity that ultimately make their way to the Treasury General Fund come from taxpayers who cannot pay their basic living expenses. IRS data demonstrates that taxpayers frequently make payments and enter into installment agreements they cannot afford. The National Taxpayer Advocate believes the effectiveness of the PDC program is undermined by the burden the program places on vulnerable taxpayers.

The National Taxpayer Advocate welcomes the IRS's decision to impose some parameters on how PCAs retain unproductive or unresolved inventory. TAS will be very interested in the details of the new procedures, such as the length of the retention period and how the IRS will ensure the procedures are followed. The National Taxpayer Advocate is also pleased that the IRS will seek to systemically exclude SSDI recipients from the program. TAS is willing to assist the IRS in entering into a data sharing agreement with the Social Security Administration (SSA) that would allow the IRS to identify SSI recipients and exclude them from the PDC program as well.

<b>TAS Recommendation</b>	<b>[19-1] Exclude from assignment to PCAs the debts of taxpayers whose incomes are at or below their allowable living expenses.</b>
<b>IRS Response</b>	<p>IRS does not agree to implement TAS recommendation.</p> <p>Congress defined the debts that must be collected under qualified tax collection contracts in Internal Revenue Code (Code) section 6306(c) and those that may not be collected under such contracts in Code section 6306(d). The law does not exclude taxpayers whose incomes are at or below allowable living expenses. Therefore, the IRS will not implement this exclusion. There are procedures in place for PCAs to return accounts where the taxpayer states they are unable to pay.</p>

IRS Action	N/A
TAS Response	The National Taxpayer Advocate recognizes that the IRS is required to outsource the collection of some tax debt. Internal Revenue Code (IRC) § 6306 specifies the accounts that are required to be assigned to private collection agencies, and also provides for some exclusions. The IRS states that it does not have the statutory authority to exclude from the program taxpayers whose incomes are below their ALEs, yet it already excludes taxpayers whose accounts are in Currently Not Collectible (CNC) status and proposes to exclude those who are SSDI recipients, categories of taxpayers that are not among the statutory exclusions. Thus, it appears the IRS could exclude other categories of taxpayers from the PDC program but declines to do so, despite data that show how the program burdens taxpayers who are likely in economic hardship.
TAS Recommendation	<b>[19-2] Work with the Social Security Administration to identify recipients of Social Security Disability Insurance and Supplemental Security Income and exclude those taxpayers' debts from assignment to PCAs.</b>
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS only receives SSDI benefit information via Form 1099-SSA. In January 2019, a Unified Work Request was submitted to our IT function to allow us to identify and systemically exclude SSDI recipients from PCA inventory. SSI is not reported to the IRS and the Social Security Administration (SSA) has indicated they cannot provide such information. The IRS has provided PCAs with guidelines for returning cases where a taxpayer receives income from SSI or SSDI payments.
TAS Response	The National Taxpayer Advocate applauds the IRS for honoring its 2017 commitment to exclude SSDI taxpayers from the PDC program. The SSA is able to identify SSI recipients, and TAS is willing to assist the IRS in entering into a data sharing agreement with the SSA to obtain that information.

TAS Recommendation	<p><b>[19-3] Revise PDC procedures to require IRS review of all PCA cases in which the taxpayer made more than one payment that did not fully pay the liability and was not made pursuant to an IA, to determine whether the PCA requested more than one payment from a taxpayer who can make payments, but cannot fully pay the liability within the Collection Statute Expiration Date (CSED) and if so:</b></p> <ul style="list-style-type: none"> <li>a) Recall the case from the PCA;</li> <li>b) Impose a penalty on the PCA for requesting more than one such payment without returning the case to the IRS; and</li> <li>c) Assign an IRS employee to work the case.</li> </ul>
IRS Response	IRS agrees to implement TAS recommendation in part by October 1, 2019.
IRS Action	As the result of a TIGTA audit of the program, the IRS has agreed to revise its policy regarding PCA account retention. The new policy will include criteria as to when the PCAs should return cases and include a specific retention period when a taxpayer is not in a current payment arrangement. In addition, taxpayers will be allowed to make payments outside of a structured payment arrangement within the retention period, which will replace the policy on making only one voluntary payment.
TAS Response	The National Taxpayer Advocate welcomes a revision in the IRS's policy regarding PCA account retention, depending on details, such as the length of the retention period. However, she remains concerned about allowing PCAs to solicit payments that do not resolve the liability. She also remains concerned about the IRS's current practice of not working cases that are returned by PCAs.

TAS Recommendation	<p><b>[19-4] Revise PDC procedures to:</b></p> <ul style="list-style-type: none"> <li>a) Require PCAs to return to the IRS cases in which the taxpayer entered into an installment agreement but made no payments for 120 days thereafter; and</li> <li>b) Assign an IRS employee to work the case.</li> </ul>
IRS Response	IRS agrees to implement TAS recommendation in part by October 1, 2019.
IRS Action	As with Recommendation #19-3, the IRS has agreed to revise its policy regarding PCA account retention, as the result of a TIGTA audit of the program. The new policy will include criteria as to when the PCAs should return cases and include a specific retention period when a taxpayer is not in a current payment arrangement. In addition, taxpayers will be allowed to make payments outside of a structured payment arrangement within the retention period, which will replace the policy on making only one voluntary payment.
TAS Response	The National Taxpayer Advocate welcomes a revision in the IRS's policy regarding PCA account retention, depending on details, such as the length of the retention period. However, she remains concerned about allowing PCAs to solicit payments that do not resolve the liability. She also remains concerned about the IRS's current practice of not working cases that are returned by PCAs.

TAS Recommendation	[19-5] <b>Revise PDC procedures to require PCAs to return to the IRS cases in which the taxpayer did not enter into an IA and did not make any payments within six months of assignment to the PCA.</b>
IRS Response	IRS agrees to implement TAS recommendation in part by October 1, 2019.
IRS Action	As above, the IRS has agreed to revise its policy regarding PCA account retention, as the result of a TIGTA audit of the program. The new policy will include criteria as to when the PCAs should return cases and include a specific retention period when a taxpayer is not in a current payment arrangement. In addition, taxpayers will be allowed to make payments outside of a structured payment arrangement within the retention period, which will replace the policy on making only one voluntary payment.
TAS Response	The National Taxpayer Advocate welcomes a revision in the IRS's policy regarding PCA account retention, depending on details, such as the length of the retention period. However, she remains concerned about allowing PCAs to solicit payments that do not resolve the liability. She also remains concerned about the IRS's current practice of not working cases that are returned by PCAs.

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## PRE-TRIAL SETTLEMENTS IN THE U.S. TAX COURT: Insufficient Access to Available *Pro Bono* Assistance Resources Impedes Unrepresented Taxpayers From Reaching a Pre-Trial Settlement and Achieving a Favorable Outcome

### PROBLEM

Taxpayers unable to afford representation to defend against a potential IRS assessment or collection action may believe there are only two courses of action: do nothing, or proceed unrepresented. When it comes to civil justice problems involving money or housing, poor households are twice as likely to do nothing than moderate-income households, according to legal scholars. For over 20 years, Tax Court judges have steadfastly supported programs to bring together unrepresented litigants and representatives offering *pro bono* assistance. Despite broad-based institutional support for these programs, and high rates of same-day resolution for attendees, taxpayer participation rates remain inconsistent. The National Taxpayer Advocate is concerned efforts to provide unrepresented petitioners access to free, competent advice are being undercut and underused because of ineffective outreach and lack of consistent guidance between the IRS Chief Counsel and *pro bono* representatives which undermine the taxpayers' *rights to be informed, to retain representation, and to a fair and just tax system*, and increases the burden on the Tax Court.

### ANALYSIS

The U.S. Tax Court is the only prepayment judicial forum for taxpayers to resolve their disputes with the IRS. More than 80 percent of cases in Tax Court are brought by unrepresented taxpayers, and that percentage increases to almost 94 percent among cases where the deficiency for a tax year is \$50,000 or less and the taxpayer elects small tax case (S Case) procedures. We identified the following challenges affecting unrepresented taxpayers' ability to consult with *pro bono* counsel and resolve cases pre-trial: confidentiality restrictions that limit communication with unrepresented taxpayers about *Pro Bono* Day and other pre-trial resolution events by local Low Income Taxpayer Clinics (LITCs) and TAS; limited availability of easily accessible but private meeting spaces for taxpayers experiencing difficulties with security and building access, and *pro bono* resolution events scheduled outside of regular business hours; insufficient staffing and unavailability of interpreter services at *Pro Bono* Days and other pretrial resolution events; and inadequate coordination of events reducing opportunities to offer one-stop resolution options for unrepresented petitioners. When unrepresented taxpayers have better access to *pro bono* assistance, it eases burden on the Tax Court and IRS Counsel, and can help taxpayers avoid procedural errors and achieve a better outcome in their case.

### TAS RECOMMENDATIONS

- [20-1] Adopt alternative methods for communicating with unrepresented Tax Court petitioners, including working with the Tax Court to modify the petition form to allow taxpayers to consent to direct contacts from local LITCs and TAS.
- [20-2] Hold more events to encourage pre-trial resolution in easily accessible but private locations and schedule the events outside of regular business hours as necessary.



- [20-3] Provide staffing at *Pro Bono* Days and other pre-trial resolution events that can provide interpreting services.
- [20-4] Develop one-stop resolution options for *pro se* petitioners at *Pro Bono* Days and other pre-trial resolution events to include representatives from Appeals, Collection, and TAS, along with inviting local LITC or Bar Association volunteers or staff and assigning counsel attorneys from the same locality.

**IRS RESPONSE**

This MSP highlights the need for early resolution of cases filed in the Tax Court by unrepresented taxpayers. The Office of Chief Counsel (Counsel) is committed to resolving appropriate cases quickly and without the need for a trial. Counsel has partnered with Low Income Tax Clinics (LITCs) and the American Bar Association (ABA) to provide representation to unrepresented Tax Court petitioners earlier in their litigation through Settlement/Pro Bono Days, and has held dozens of these events over the last few years. Counsel welcomes and encourages early involvement by LITCs and pro bono practitioners and will continue to work with them to make Settlement/Pro Bono Days even more successful.

**TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE**

The National Taxpayer Advocate commends Counsel’s efforts to partner with LITCs and the ABA to provide opportunities for unrepresented Tax Court petitioners to benefit from the assistance of *pro bono* practitioners to encourage resolution of their issues without the need for a trial. The Tax Court’s recent rule change to allow limited scope representation demonstrates the Court’s commitment to making it easier for unrepresented petitioners to access *pro bono* assistance. Collaboration between IRS Counsel and TAS will provide critical support to that mission.

TAS Recommendation	[20-1] <b>Adopt alternative methods for communicating with unrepresented Tax Court petitioners, including working with the Tax Court to modify the petition form to allow taxpayers to consent to direct contacts from local LITCs and TAS.</b>
IRS Response	Counsel agrees to implement TAS recommendation in part.

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">IRS Action</p>	<p>Our attorneys and paralegals effectively communicate with pro se petitioners through regular pre-trial discussions or during Settlement/Pro Bono Days. We use all means of communication, including telephone, mail, fax, Virtual Service Delivery, and WebEx. Email has not been adopted as an alternate form of communication since it is prohibited for security and confidentiality reasons. IRM 1.10.3.2.1(7).</p> <p>Unrepresented taxpayers receive LITC contact information with the notice of deficiency, the Answer, and the <i>Branerton</i> letter, as well as when trial-related documents, such as the Stipulation of Facts and Pre-Trial Memorandum, are sent to petitioners. Counsel has suggested to the Tax Court that it consider modifying the standard petition form to allow petitioners to consent to direct contacts from local LITC attorneys. We do not think that it would be appropriate to amend the form petition to provide direct contact for Taxpayer Advocate Service (TAS). While TAS serves a valuable purpose outside of litigation, TAS should not be involved in the matter once a petition has been filed. <u>See</u> IRM 13.1.10.10.1(4) (“TAS employees shall not provide any information or guidance to the taxpayer or the taxpayer’s counsel (or other authorized representative) concerning the pending litigation”). Based on past experience with Settlement/Pro Bono Day events, Counsel employees, LITC representatives, pro bono volunteer attorneys have demonstrated a commitment to making these events successful and providing taxpayers an opportunity to fully resolve their docketed cases.</p> <p>Moreover, as part of the partnership with the ABA, Counsel is exploring efforts to further improve the success of Settlement/Pro Bono Days. We continue to look at the data we have accumulated of past successful Settlement/Pro Bono Days in an effort to increase taxpayer participation and optimize successful outcomes for taxpayers.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">TAS Response</p>	<p>The National Taxpayer Advocate commends Counsel’s efforts to use multiple communication methods to communicate with unrepresented Tax Court petitioners and urging the Tax Court to consider modifying the standard petition form to allow petitioners to consent to direct contacts from local LITC attorneys. The National Taxpayer Advocate acknowledges that TAS should not intervene in a matter petitioned for Tax Court review, however, inviting TAS to participate in Settlement/Pro Bono Day events provides additional opportunities for holistic relief for taxpayers with issues before the court to address issues relating to tax years not before the court in a face-to-face environment.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">TAS Recommendation</p>	<p><b>[20-2] Hold more events to encourage pre-trial resolution in easily accessible but private locations and schedule the events outside of regular business hours as necessary.</b></p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">IRS Response</p>	<p>Counsel agrees to implement TAS recommendation in part.</p>

IRS Action	<p>Counsel agrees that pre-trial resolution should be encouraged and strives to reach such a resolution in all appropriate cases. For example, our attorneys and paralegals are encouraged to reach out to unrepresented taxpayers even before the Answer is filed in an effort to resolve those cases as early as possible.</p> <p>As noted, Counsel is committed to increasing the number and effectiveness of Settlement/<i>Pro Bono</i> Days this fiscal year and in the future. To ensure these events reach a maximum number of unrepresented petitioners, we understand they must be at a convenient location and time and private, and petitioners must feel comfortable participating. We have not seen any difference in results between the use of government or non-government space and many of our offices are in commercial buildings. Counsel does schedule events on weekday evenings and on Saturdays, which are staffed by volunteer Counsel and IRS employees. There are generally far more employee volunteers present than are needed to work with the small number of petitioners who attend. Through our partnership with LITCs and the ABA we will continue to explore ways of improving participation, including through the use of technology (such as WebEx) at the request and convenience of unrepresented taxpayers.</p>
TAS Response	<p>The National Taxpayer Advocate commends Counsel’s efforts to hold more Settlement/<i>Pro Bono</i> Day events and to recruit volunteers to allow the events to be held outside of normal business hours. The National Taxpayer Advocate also recognizes the value of support from IRS leadership for this program. Commissioner Rettig’s in-person attendance at a recent settlement day in Washington, D.C., received media coverage and helped to increase public awareness of Settlement/<i>Pro Bono</i> Days. The National Taxpayer Advocate recommends that Counsel continue to pursue new methods for raising awareness to increase taxpayer attendance at the events.</p>

TAS Recommendation	<p><b>[20-3] Provide staffing at <i>Pro Bono</i> Days and other pre-trial resolution events that can provide interpreting services.</b></p>
IRS Response	<p>Counsel does not agree to implement TAS recommendation.</p> <p>Counsel is sensitive to the fact that some unrepresented taxpayers may need or benefit from the presence of a translator. Counsel attorneys have access to the Lionbridge telephonic interpreter service, which provides interpreter services if needed during Settlement/<i>Pro Bono</i> Days. Additionally, SB/SE Division Counsel maintains a list of employees who are fluent in a variety of languages and dialects and who can be contacted if translation services are needed. We have found these options to be adequate.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>The National Taxpayer Advocate commends Counsel’s acknowledgement of the need for interpretation services during Settlement/<i>Pro Bono</i> Day events. Over the phone interpreters may be satisfactory, however, if Counsel is aware in advance of an event that potential attendees live in non-English speaking communities, Counsel should seek out the assistance of local organizations that can provide in-person translation.</p>

TAS Recommendation	<p><b>[20-4] Develop one-stop resolution options for <i>pro se</i> petitioners at <i>Pro Bono</i> Days and other pre-trial resolution events to include representatives from Appeals, Collection, and TAS, along with inviting local LITC or Bar Association volunteers or staff and assigning counsel attorneys from the same locality.</b></p>
IRS Response	<p>Counsel does not agree to implement TAS recommendation.</p> <p>Given that the cases at issue are docketed in the Tax Court, Settlement/<i>Pro Bono</i> Days are organized and staffed by Chief Counsel with the specific goal of resolving pending cases early and efficiently. These events usually include IRS employees from Appeals, Examination, and Collection, as appropriate, to provide taxpayers a one-stop resolution in their docketed case. The insertion of non-docketed tax years in the Settlement/<i>Pro Bono</i> Days run by Counsel may have the opposite result of thwarting resolution of the docketed case efficiently and would not be in the best interest of the parties. It would be more effective for taxpayers to resolve their administrative issues using the IRS's existing processes. Indeed, Settlement/<i>Pro Bono</i> Days have contributed to the resolution of petitioners' other tax problems since some LITCs and <i>Pro Bono</i> attorneys continue their representation to resolve problems administratively.</p> <p>TAS can help facilitate successful Settlement/<i>Pro Bono</i> Days by encouraging LITCs and <i>Pro Bono</i> programs to work together with Counsel to organize, host, and learn from these events. However, TAS should not participate in matters relating to litigation, including Settlement/<i>Pro Bono</i> Days. Once a taxpayer becomes involved in litigation with the government, TAS employees have no jurisdiction over the issue(s) involved in the litigation. I.R.C. § 7803(b); IRM 13.1.10.10.1(4). Counsel has sporadically organized "Problem Solving Days," providing a "one-stop shop" approach for taxpayers with various tax issues, but these events are typically not focused on cases pending in the Tax Court. Lastly, Appeals and Chief Counsel leadership meet regularly with LITC representatives to get their feedback and learn how we can improve the case resolution process for all taxpayers.</p>
IRS Action	N/A
TAS Response	<p>Counsel acknowledges that some LITCs and <i>Pro Bono</i> attorneys continue their representation beyond Settlement/<i>Pro Bono</i> Days to help resolve the petitioners' other tax problems. Given the unique opportunity to seamlessly communicate with employees from Appeals, Examination, and Collection, the National Taxpayer Advocate maintains that Counsel should encourage taxpayers attending a Settlement/<i>Pro Bono</i> Day event to resolve as many outstanding issues as possible, and not limit assistance to the tax periods addressed in the Tax Court petition.</p>



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