

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

February 10, 2023

Report Number: 2023-15-010

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

HIGHLIGHTS: Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

Final Audit Report issued on February 10, 2023

Report Number 2023-15-010

Why TIGTA Did This Audit

On July 1, 2019, Congress enacted the Taxpayer First Act (TFA) to improve taxpayer service, while ensuring that the IRS continues to enforce tax laws in a fair and impartial manner. Section 1001, *Establishment of IRS Independent Office of Appeals*, strengthens taxpayer rights by codifying the existence of the IRS Independent Office of Appeals (hereafter referred to as Appeals).

This audit was initiated to evaluate the actions taken by Appeals to implement and comply with Section 1001 of the TFA.

Impact on Tax Administration

Appeals is an independent function within the IRS whose role is to resolve tax controversies in a fair and impartial basis without litigation.

Section 1001 of the TFA emphasizes the independence of Appeals by changing its name to the "IRS Independent Office of Appeals." The law makes the appeals process generally available to all taxpayers and provides certain taxpayers access to the nonprivileged portions of their case files regarding disputed issues.

What TIGTA Found

The IRS has taken action to implement TFA provisions related to Appeals; most notably, they created a new process to provide specified taxpayers with case file access. However, some improvements are still needed. For example, although some IRS forms, letters, publications, and notices had been updated to reflect the name change to the "IRS Independent Office of Appeals," Appeals personnel did not maintain a list of what documents required an update, whether the update was completed, and the planned date for updating the documents.



Although Appeals had updated more than 150 forms, publications, and letters sent to taxpayers, TIGTA found many had not been updated to reflect the name change to the "IRS Independent Office of Appeals."

TIGTA identified 31 IRS forms, letters, publications, notices, websites, and social media that were not updated with Appeals' new name.

In addition, TIGTA determined that 66 of the 127 sampled cases from the Appeals Centralized Database System did not have the proper case coding or history documentation to indicate whether the taxpayer met the Internal Revenue Code (I.R.C.) § 7803(e)(7) case file access rights requirements, and whether specified taxpayers requested a copy of their case file. TIGTA also identified 23 of the 127 sampled cases where the specified taxpayers were potentially not informed of their I.R.C. case file access rights. In a separate sample, TIGTA determined that 16 of the 92 sampled Appeals case files were provided to the specified taxpayer less than 10 calendar days before their Appeals conference.

Further, the IRS has not established procedures for cases denied appeals for reasons other than being designated for litigation in the Business Operating Divisions. Because there is not a clear definition of what constitutes a case being denied an appeal and no mechanism to track the denials, the IRS could be denying taxpayer appeals and not tracking them, which would result in the IRS not fully complying with I.R.C. § 7803(e)(5).

Finally, improvements are needed to ensure that Office of Chief Counsel attorneys assigned to provide legal assistance and advice on Appeals cases had no prior involvement and are not involved in preparing the cases for litigation, to the extent practicable.

What TIGTA Recommended

TIGTA made five recommendations to the Chief, Appeals, and the Chief Counsel to include establishing new and reinforcing existing policies to improve compliance with Section 1001 of the TFA. Chief Counsel disagreed with two of the five recommendations, stating that information related to the requesting function is contained in the legal file and prior guidance covers the TFA requirement for obtaining legal advice. However, the IRS does not have the ability to globally identify which cases requesting legal assistance or advice came from Appeals, and the prior guidance does not specifically state it meets the TFA requirement. IRS management also disagreed with two of the three outcome measures, stating that there are instances when those situations may not be met. However, our outcomes excluded those instances.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

February 10, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed (Audit # 202210506)

This report presents the results of our review to evaluate the actions taken by the Internal Revenue Service Independent Office of Appeals to implement and comply with Section 1001 of the Taxpayer First Act. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Administering Tax Law Changes*.

Management's complete response to the draft report is included as Appendix III. If you have any questions, please contact me or Bryce Kisler, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

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Background

The Taxpayer First Act (TFA),¹ enacted July 1, 2019, is the first major Internal Revenue Service (IRS) reform law since the IRS Restructuring and Reform Act of 1998.² The TFA was passed by Congress to improve service to taxpayers, continue the IRS’s enforcement of the tax laws in a fair and impartial manner, and train IRS employees to deliver a world-class customer experience. The TFA consists of 45 provisions, including specific mandates to improve the taxpayer experience.

Section (§) 1001 of the TFA specifically addresses the IRS Independent Office of Appeals (hereafter referred to as Appeals) which has occupied a unique place in tax administration since its inception in 1927. Its role has been to independently resolve tax controversies without litigation; however, until the passing of the TFA, Appeals had existed primarily as a function of administrative policy. Figure 1 summarizes the impact of the TFA on the Appeals process.

Figure 1: TFA § 1001 – Establishment of the IRS Independent Office of Appeals

The TFA strengthens taxpayer rights by codifying the existence of the Appeals office and making the Appeals process generally available to all taxpayers.



Section 1001 of the TFA revised Internal Revenue Code (I.R.C.) § 7803(e) as follows:

- ✓ Renames the Office of Appeals to the “IRS Independent Office of Appeals.”
- ✓ Requires that a “Chief of Appeals,” appointed by the IRS Commissioner, head Appeals.
- ✓ Codifies Appeals’ mission to resolve tax controversies without litigation on an impartial basis.
- ✓ Makes the appeals process generally available to all taxpayers.
- ✓ Requires a written notice to be issued when a taxpayer requests an appeal as a result of receiving a notice of deficiency under I.R.C. § 6212 and that request is denied, explaining the reasons for denial and how to appeal the decision. This information is to be reported to Congress annually.
- ✓ Ensures legal assistance and advice provided by the Office of Chief Counsel is provided by staff who were not previously involved in the case, to the extent practicable, and who are not involved in preparing the case for litigation.
- ✓ Requires that access to the nonprivileged portions of taxpayer case files is provided upon request by specified taxpayers no later than 10 days prior to their Appeals conference.

Source: TFA § 1001.

With over 1,400 employees, Appeals’ mission is to enhance public confidence in the integrity and efficiency of the IRS by promoting a consistent application and interpretation of (and

¹ Pub. L. No. 116-25, 133 Stat. 981 (codified in scattered sections of 26 U.S.C.).

² Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.).

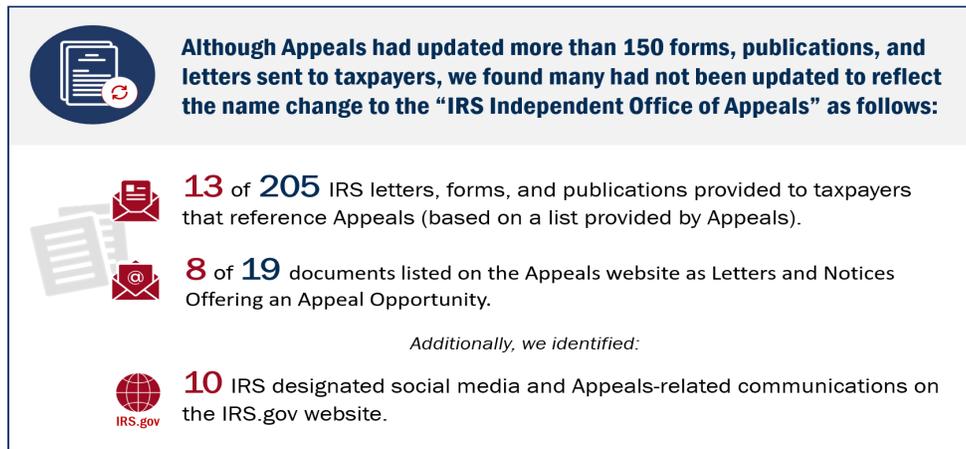
voluntary compliance with) the Federal tax laws. In Fiscal Year (FY) 2021, Appeals received more than 72,000 cases which largely consisted of collection due process hearing, examination, penalty appeals, and offer in compromise cases.³ Appeals is separate and independent from the IRS's Examination and Collection functions that make tax assessments and initiate collection actions. By codifying what was historically Appeals' core work and values, Congress demonstrated the importance of Appeals' independent role in tax administration.

Results of Review

The IRS Independent Office of Appeals Name Change Is Not Consistently Reflected on External Facing Communications

We identified 31 documents and websites that may introduce taxpayers to Appeals that had not been updated to reflect the name change to the "IRS Independent Office of Appeals," as noted in Figure 2.

Figure 2: Documents, Websites, and Social Media Were Not Always Revised to Reflect the "IRS Independent Office of Appeals" Name



Source: Treasury Inspector General for Tax Administration (TIGTA) review of various documents and websites.

Appeals views the TFA provision establishing the "Independent Office of Appeals" as more than a mere name change. Appeals believed that it was an important opportunity to reinforce the longstanding independence principles that have characterized the IRS's administrative appeals function since its inception. According to Appeals management, the IRS prioritized external-

³ A collection due process hearing provides the taxpayer with an opportunity to appeal IRS collection actions early in the collection process in response to a notice of Federal tax lien or a notice of intent to levy. An examination case in Appeals involves issues in dispute by the taxpayer relating to income; employment, excise, estate, and gift taxes; or tax-exempt status. A penalty appeals case is one in which the taxpayer requests abatement of a civil penalty that was assessed before the taxpayer was given an opportunity to dispute the penalty. An offer in compromise is an agreement between a taxpayer and the Federal Government that settles a tax liability for payment of less than the full amount owed.

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

facing communications when updating materials to reflect the new name. The IRS uses more than 6,000 forms, letters, publications, notices, *etc.* to communicate with taxpayers, which may contain information related to Appeals. We requested documentation of the actions taken by Appeals to ensure that these documents were updated with Appeals' new name to reflect the independence of the office as required by the Internal Revenue Code (I.R.C.).

Although Appeals updated more than 150 of the 6,000 forms, publications, and letters sent to taxpayers, Appeals management stated they did not maintain a Service-wide list of what additional documents require an update, whether the update was completed, and the planned date for updating the documents. By not updating the Appeals name to the IRS Independent Office of Appeals on taxpayer facing documents and information, taxpayers may be led to believe that their appeal is not being heard by an independent function within the IRS.

Appeals management agreed with all 31 exceptions and explained that the instances identified by TIGTA were the result of an oversight. We were also informed that some of the staff who were working on updating these documents were no longer working with Appeals, which may have been a contributing factor as to why these documents were not updated. During our fieldwork, Appeals began updating some of the documents identified by TIGTA as requiring an update with the IRS Independent Office of Appeals name change.

Recommendation 1: The Chief, Appeals, should establish a process with the appropriate Business Operating Divisions (BOD) to identify, track, and update forms, letters, publications, notices, websites, and social media that still require the new IRS Independent Office of Appeals name.

Management's Response: IRS management agreed with this recommendation. Appeals is working with the IRS BODs and will establish a process to identify, track, and update those materials still requiring the new IRS Independent Office of Appeals name.

Improvements Are Needed to Ensure That Taxpayers Are Provided Access to Their Compliance Case Files

We found that Appeals personnel were not always notifying taxpayers of their I.R.C. § 7803(e)(7) case file access rights or documenting their case management system with the specific coding or history narrative as directed by internal guidance. Further, when case files were sent, they were not always provided to the taxpayer more than 10 calendar days before the Appeals conference.

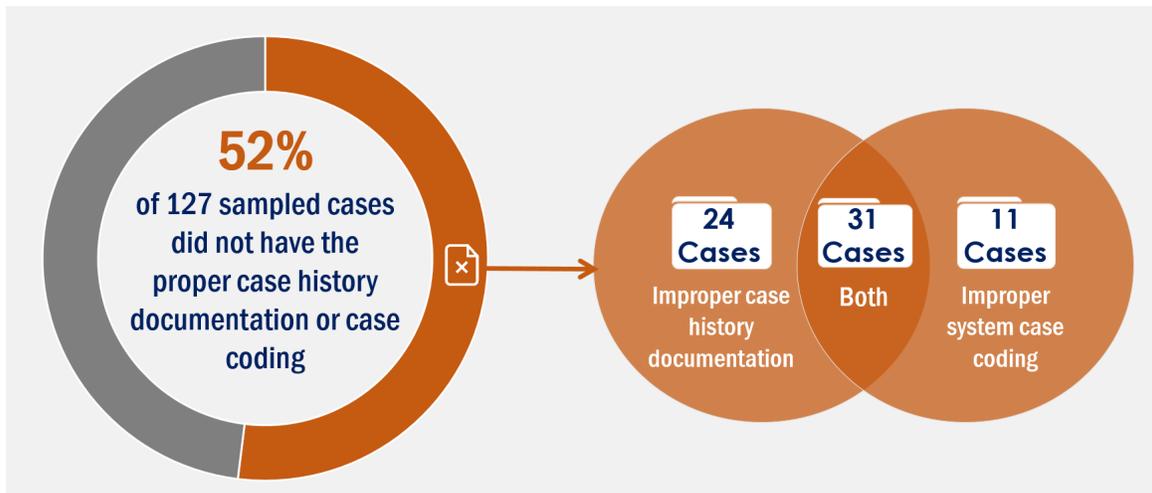
I.R.C. § 7803(e)(7) requires Appeals, within one year of enactment, to provide "specified" taxpayers access to the nonprivileged portion of their case files at least 10 calendar days prior to their conference with Appeals. Taxpayers can waive the 10-day deadline. This requirement applies only to documents related to the disputed issues and does not include access to documents the taxpayer previously provided to the IRS. The term "specified taxpayer" means individual taxpayers whose adjusted gross income does not exceed \$400,000 or other taxpayers whose gross receipts do not exceed \$5 million for the taxpayer year at issue. To meet this requirement in the midst of the COVID-19 pandemic, Appeals developed and implemented a new process to provide case file access prior to the statutory effective date (July 1, 2020). In

addition, although not explicitly required by the I.R.C., Appeals' internal guidance requires that they notify specified taxpayers of this right.

The Appeals Centralized Database System (ACDS) is not always documented with the appropriate case coding or history narrative, and some taxpayers were potentially not being informed of their I.R.C. case file access rights

We determined that 66 (52 percent) of the 127 sampled cases did not have the proper case coding or history documentation in the ACDS to indicate whether the taxpayer met the I.R.C. case file access rights requirements and requested a copy of their case file. We selected a stratified statistical random sample of 127 of the 72,216 Appeals cases received in FY 2021 to evaluate the ACDS documentation related to I.R.C. case file access rights.⁴ Figure 3 provides a breakdown of these errors.

Figure 3: Case Files Missing Documentation or Proper Case Coding in the ACDS Indicating Whether the Taxpayer Met the I.R.C. Case File Access Rights Requirements



Source: TIGTA review of Appeals case tracking system documentation for a stratified statistical random sample of 127 case files.

Appeals created a new process to provide specified taxpayers with case file access that included developing guidance and establishing ACDS case coding requirements. ACDS documentation should indicate whether or not the taxpayer met the I.R.C. case file access rights requirements, was informed of these rights, how the specified taxpayer requested to receive their case file, and that the case file was provided to the specified taxpayer at least 10 calendar days prior to the Appeals conference or that the taxpayer waived this right. Based on our sample results, we estimate that Appeals personnel did not maintain proper documentation related to I.R.C. case file access rights in 35,143 of the 72,216 cases received in FY 2021.⁵

⁴ The ACDS is used by Appeals to track case receipts, record case time, document case actions, and monitor the progress of the Appeals workload.

⁵ Our sample was selected using a 95 percent confidence interval, a 10 percent error rate, and a ± 6 percent precision factor. When projecting the results of our stratified statistical random sample, we are 95 percent confident that the actual total is between 28,338 and 41,948 taxpayer cases.

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Further, in 43 of the 66 exception cases, the ACDS history did not document that Appeals informed the specified taxpayers of their I.R.C. case file access rights. We requested additional documentation from Appeals to determine if this was simply a documentation issue and that the specified taxpayers were indeed informed of their case file rights. Although Appeals provided us with additional documentation on 20 of the 43 cases, there are still 23 (18 percent) of the 127 cases sampled where the specified taxpayers were potentially not informed of their I.R.C. case file access rights.⁶ Based on our sample results, we estimate that Appeals personnel potentially did not inform specified taxpayers of their I.R.C. case file access rights on 15,197 of the 72,216 cases received in FY 2021.⁷

Appeals personnel refer to Appeals Policy Memorandum AP-08-0620-0008 dated June 17, 2020, that details what specific case coding and case history documentation is required in the ACDS when processing a request for a case file under the I.R.C. Appeals also developed specific case coding to be used when an Appeals conference has been scheduled for a specified taxpayer and if the taxpayer requests a copy of their case file. Further, Appeals personnel are required to document in the case history whether or not the taxpayer meets the specified taxpayer criteria and whether the specified taxpayer was notified of their right to the case file.

By not properly documenting the ACDS history, Appeals management does not have accurate information as to how many specified taxpayers requested a copy of their case files. As a result, Appeals management does not know if these taxpayers were properly informed of their I.R.C. case file access rights.

Appeals management agreed with all of the exception cases. Although Appeals has developed guidance that provides direction on documenting the ACDS and informing specified taxpayers of their I.R.C. case file access rights, the guidance is not always being followed. Appeals management indicated that these errors may be attributable to this being a new requirement and process, as it was implemented July 1, 2020, the statutory effective date.

Specified taxpayers are not always provided access to their case files 10 calendar days prior to their Appeals conference

We selected a stratified statistical random sample of 92 of the 1,642 Appeals cases received in FY 2021 where the case coding in the ACDS indicated that the specified taxpayer requested access to their case file. We determined that 16 (17 percent) of the 92 sampled case files were provided to the specified taxpayer less than 10 calendar days prior to their Appeals conference. In nine of these 16 cases, the specified taxpayer was provided their case file after their Appeals conference.

When a specified taxpayer requests a copy of their case file, the I.R.C. specifically requires that Appeals sends the case file to the taxpayer at least 10 calendar days prior to their Appeals conference, unless waived by the taxpayer. Although Appeals has developed a policy memorandum that directs Appeals personnel to ensure these requirements are met, this guidance is not always followed. Based on our sample results, we estimate that in 286 of the

⁶ For the 20 cases, Appeals provided copies of the Appeals initial contact letters showing I.R.C. case file access rights were given.

⁷ Our sample was selected using a 95 percent confidence interval, a 10 percent error rate, and a ± 6 percent precision factor. When projecting the results of our stratified statistical random sample, we are 95 percent confident that the actual total is between 9,548 and 20,845 taxpayer cases.

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1,642 taxpayer cases, the Appeals conference was held less than 10 calendar days from when the specified taxpayer received their case file.⁸ By not giving specified taxpayers 10 calendar days to review their case files prior to their Appeals conference, taxpayers may not have enough time to review their files and adequately prepare for the Appeals conference. Appeals management indicated that these errors may be attributable to this being a new requirement and process, as it was implemented July 1, 2020, the statutory effective date.

Recommendation 2: The Chief, Appeals, should re-emphasize the requirements for Appeals personnel to 1) input the proper ACDS coding and documentation in their case history related to the I.R.C. case file access rights, and 2) provide the case file to the specified taxpayer at least 10 calendar days before the date of the Appeals conference or document in the case history if the taxpayer waives this right.

Management's Response: IRS management agreed with this recommendation. Appeals will re-emphasize the internal guidance requiring Appeals personnel to document whether a taxpayer is a specified taxpayer eligible for case file access and, if so, when the taxpayer was notified and if they requested access. Appeals will also re-emphasize the requirement to provide the case file to the specified taxpayer at least 10 calendar days before the Appeals conference or document in the case history if the taxpayer waives this right.

Procedures Have Not Been Fully Implemented for All Denied Case Referrals to the IRS Independent Office of Appeals

We reviewed the Internal Revenue Manual⁹ and interviewed Appeals, Office of Chief Counsel, and BOD personnel pertaining to denied case referrals and determined that additional guidance is needed to ensure that all denied case referrals are processed in accordance with the I.R.C. requirements. Currently, guidance exists only for cases that are designated for litigation.¹⁰ There is no specific guidance for cases that have not been designated for litigation and are denied appeals under I.R.C. § 7803(e)(5).

I.R.C. § 7803(e)(5) requires that for any taxpayer that is in receipt of a notice of deficiency authorized under I.R.C. § 6212 and requests referral to the IRS Independent Office of Appeals and the request is denied, the IRS Commissioner needs to provide the taxpayer a written notice,¹¹ and submit a written report to Congress on an annual basis which includes the number of requests which were denied and the reasons (described by category) that the requests were denied.¹² Although the IRS has explained that taxpayers denied appeals under I.R.C. § 7803(e)(5)

⁸ Our sample was selected using a 95 percent confidence interval, a 10 percent error rate, and a ± 6 percent precision factor. When projecting the results of our stratified statistical random sample, we are 95 percent confident that the actual total is between 161 and 410 taxpayer cases.

⁹ Internal Revenue Manual 4.8.9.23, *Protests, Correspondence and Waivers Received After Issuance of Notice of Deficiency* (Oct. 13, 2020).

¹⁰ Cases are designated for litigation in the interest of sound tax administration to establish judicial precedent, conserve resources, or reduce litigation costs for the IRS and taxpayers.

¹¹ This written notice is to provide a detailed description of the facts, the basis for the decision to deny the request, and a detailed explanation of how the basis of such decision applies to such facts and describes the procedures for protesting the decision to deny the request.

¹² I.R.C. § 7803(e)(5)(B).

is not a common occurrence, there could be taxpayers who may have been denied an appeal without being provided with the written notice required to support the denial, which could result in the IRS being noncompliant with I.R.C. § 7803(e)(5).

Procedures for designated for litigation cases denied Appeals have been implemented

The IRS has established procedures for cases denied appeals that are designated for litigation. By designating a case for litigation, the IRS bypasses the issuance of the 30-day letter that provides taxpayers their appeal rights and goes straight to the issuance of the notice of deficiency. Designating a case for litigation could occur in the BODs and in the Office of Chief Counsel.

- For cases under the Office of Chief Counsel's jurisdiction, designating a case for litigation requires the approval of the Chief Counsel.
- For cases under a BOD's jurisdiction, designating a case for litigation requires agreement from the respective BOD Commissioner who coordinates with the Office of Chief Counsel for final approval.

Taxpayer cases that are designated for litigation and meet the requirements of I.R.C. § 7803(e)(5) are provided with a written notice detailing the facts of the case, the reason for the denial, and protest rights. According to an IRS official, this situation occurs infrequently. Between October 1, 2019, and September 30, 2021, the IRS designated [REDACTED]

Procedures for other cases denied appeals need to be developed and implemented

The IRS has not established procedures for cases denied appeals for reasons other than being designated for litigation in the BODs. For cases other than those designated for litigation, Internal Revenue Manual 4.8.9.23 states that if the taxpayer is denied an appeal, then follow the requirements in I.R.C. § 7803(e)(5). However, the guidance does not clearly explain what constitutes a denial of an appeal or the procedures for handling these cases.

With regard to the annual reporting requirement for taxpayers denied appeals under I.R.C. § 7803(e)(5), the current process only identifies cases designated for litigation and there is a possibility that the BODs are not identifying additional cases that may fall under this provision. Because there is not a clear definition of what constitutes a case being denied an appeal and no mechanism to track the denials in the BODs, the IRS could be denying taxpayer appeals and not tracking them, which would result in the IRS not fully complying with I.R.C. § 7803(e)(5). As a result, taxpayers may not be informed of the reason their appeal was denied.

Recommendation 3: The Chief Counsel should coordinate with the BOD Commissioners on cases other than those the IRS has designated for litigation to develop and implement: 1) guidance that clearly defines matters for which Appeals consideration has been denied and is required to follow I.R.C. § 7803(e)(5), 2) a process for obtaining approval to deny a taxpayer's appeal under I.R.C. § 7803(e)(5) as well as a mechanism to track these types of cases, and 3) procedures to respond to a taxpayer's protest of a denied appeal under I.R.C. § 7803(e)(5).

Management's Response: IRS management agreed with this recommendation. Chief Counsel will coordinate with the BOD Commissioners to evaluate the need for and develop guidance and procedures to comply with Section 7803(e)(5).

Improvements Are Needed to Ensure That Legal Assistance and Advice on Appeals Cases Is Provided by Office of Chief Counsel Staff Who Have Had No Involvement in the Case

The Office of Chief Counsel does not have a process in place to consistently track Appeals' requests for legal assistance and advice to confirm compliance with the TFA. Section 1001, *Establishment of IRS Independent Office of Appeals*, states in part that legal assistance and advice is provided to Appeals by the Office of Chief Counsel staff, to the extent practicable, who were not involved in the case and are not involved in preparing such case for litigation. This provision of the TFA was codified as I.R.C. § 7803(e)(6)(B). The decision of assigning an attorney to address requests for legal assistance or advice received from Appeals is made by management in the Office of Chief Counsel.

Improvements are needed to ensure that Office of Chief Counsel attorneys assigned to provide legal assistance and advice on Appeals cases have had no prior involvement and are not involved in preparing the case for litigation, to the extent practicable. We requested the total population of cases where Appeals requested Office of Chief Counsel legal assistance or advice from October 1, 2020, through September 30, 2021. The Office of Chief Counsel was unable to provide this information because its systems are not capable of tracking all of the requests received from Appeals. More specifically, the Office of Chief Counsel explained that collection and non-collection cases are tracked on two different systems:

1. Counsel Automated Systems Environment - Management Information System (General Litigation) tracks collection cases.
2. Counsel Automated Systems Environment - Management Information System (Technical Management Information System) tracks non-collection cases.

The Counsel Automated Systems Environment - Management Information System (General Litigation) has the capability of tracking requests for legal assistance and advice; however, there is no requirement for Office of Chief Counsel staff to complete the relevant fields. Further, the Counsel Automated Systems Environment - Management Information System (Technical Management Information System) does not have the fields necessary to track the requests for advice from Appeals. Therefore, we cannot determine whether or not legal assistance and advice was provided to Appeals by Office of Chief Counsel staff who were not currently or previously involved in the case.

In addition, during discussions with Office of Chief Counsel senior staff, we were informed that procedures pertaining to "ex parte" regulations would be used to meet this statute.¹³ However, the "ex parte" guidance has not been updated to include the TFA requirements. There is

¹³ An "ex parte" communication is a communication between an Appeals employee and employees of other IRS functions without the taxpayer being given an opportunity to participate in the communication.

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

currently no written guidance that mentions the TFA requirements and what procedures are required to maintain compliance with the statute.

Because the Office of Chief Counsel does not have the ability to track all of the requests for legal assistance and advice requested by Appeals, we are unable to determine whether it is compliant with I.R.C. § 7803(e)(6)(B). In addition, attorneys who are providing advice or legal assistance to Appeals who also provided assistance with the development of the case in compliance or are preparing the case for litigation could create the appearance that Appeals independence is compromised.

The Chief Counsel should:

Recommendation 4: Establish a process to track and document requests for legal assistance and advice on Appeals cases to include whether the attorneys assigned have had no prior involvement and are not involved in preparing the case for litigation, to the extent practicable. In addition, if the attorney providing legal assistance or advice on an Appeals case has had prior involvement or is preparing the case for litigation, ensure that the reason for that attorney's involvement is clearly documented.

Management's Response: IRS management disagreed with this recommendation. The IRS stated that it is able to track assignments using existing systems (Counsel Automated Systems Environment - Management Information System). This system records the attorney and reviewer assigned to provide advice and can be used to help determine whether an attorney had prior involvement. Information relating to the requesting function and advice provided is contained in the legal file.

Office of Audit Comment: Although the IRS stated in its response that the information related to the requesting function and advice provided is contained in the legal file, the IRS does not have the ability to globally identify which cases requesting legal assistance or advice came from Appeals. If Chief Counsel does not establish a process to track and document requests for legal assistance, it cannot confirm that all attorneys assigned to Appeals cases are independent in accordance with the TFA.

Recommendation 5: Update internal guidance to address how the Office of Chief Counsel plans to comply with the requirements of I.R.C. § 7803(e)(6)(B).

Management's Response: IRS management disagreed with this recommendation. The IRS stated in its response that although existing guidance does not explicitly reference Section 7803(e)(6)(B), the provisions already existing in Revenue Procedure 2012-18, governing ex parte communications between Appeals and other IRS employees, address how Chief Counsel will comply with Section 7803(e)(6)(B). The revenue procedure provides sufficient internal guidance with respect to Chief Counsel's responsibilities to provide unbiased legal advice to Appeals in a manner that promotes Appeals' independence and complies with ex parte communication requirements and the requirements of Section 7803(e)(6).

Office of Audit Comment: As stated in the IRS's response, the existing guidance does not explicitly state that the provisions already existing in Revenue Procedure 2012-18 are sufficient to meet the requirements of I.R.C.

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§ 7803(e)(6)(B). By specifically updating internal guidance stating that the procedures in Revenue Procedure 2012-18 meet the TFA requirements, IRS personnel would be assured that by following this guidance the requirements of the TFA are met.

Guidance Is Still Needed to Clarify the Provision Requiring That the Appeals Process Be Generally Available to All Taxpayers

I.R.C. § 7803(e)(4) requires that the Appeals process shall *generally* be available to all taxpayers. The Office of Chief Counsel is in the process of developing published guidance with plans to issue a regulation that will provide guidance on the availability of the Appeals process to taxpayers. The planned regulation was still in development as of the end of our fieldwork. However, on September 13, 2022, the IRS issued a notice of proposed rulemaking and a notice of public hearing on proposed rulemaking with a public hearing scheduled for November, 29, 2022, on this matter.

The IRS Commissioner Appointed the Chief, IRS Independent Office of Appeals

I.R.C. § 7803(e)(2) requires Appeals be under the supervision and direction of the Chief, IRS Independent Office of Appeals, who is appointed by and will report directly to the IRS Commissioner. The Chief of Appeals was appointed by the IRS Commissioner in May 2020.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to evaluate the actions taken by the IRS Independent Office of Appeals to implement and comply with Section 1001 of the TFA. To accomplish our objective, we:

- Determined whether Appeals and the BODs have updated forms, letters, publications, notices, websites, and social media to reflect the name change to the IRS Independent Office of Appeals.
- Determined what actions were taken to ensure that the Appeals process is generally available to all taxpayers.
- Determined what actions were taken to ensure that the IRS is providing taxpayers a written notice when a taxpayer is denied a request to an appeal as a result of receiving a notice of deficiency and how that information is reported.
- Determined what actions were taken to ensure that, to the extent practicable, legal assistance and advice is provided to Appeals by Office of Chief Counsel staff who were not involved in the case and were not involved in preparing such case for litigation.
- Determined whether Appeals is properly providing specified taxpayers access to the non-privileged portions of their case file 10 calendar days prior to their Appeals conference.
 - Selected a stratified statistical random sample of 127 of the 72,216 Appeals cases received in FY 2021 based on a 95 percent confidence interval, a 10 percent error rate, and a ± 6 percent precision factor and stratified based on the various combinations of I.R.C. case file access coding in the ACDS.¹ We reviewed a stratified statistical random sample in order to project the results to the population. This sample was used to determine whether Appeals personnel properly input the applicable ACDS coding and case history to document compliance with the I.R.C.
 - Selected a stratified statistical random sample of 92 of the 1,642 Appeals cases received in FY 2021 based on a 95 percent confidence interval, a 10 percent error rate, and a ± 6 percent precision factor and stratified based on the case coding in the ACDS that indicated the taxpayer requested access to their case file. We reviewed a stratified statistical random sample in order to project the results to the population. This sample was used to determine whether the Appeals conference was held more than 10 calendar days after the taxpayer received the case file.

Performance of This Review

This review was performed with information obtained from the Appeals office in Washington, D.C., during the period October 2021 through September 2022. We conducted this performance audit in accordance with generally accepted government auditing standards.

¹ TIGTA's contract statistician assisted with developing the sampling plans and projections.

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Bryce Kisler, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Glen J. Rhoades, Director; Melinda H. Dowdy, Audit Manager; Joseph P. Smith, Lead Auditor; and Eleina M. Monroe, Senior Program Analyst.

Validity and Reliability of Data From Computer-Based Systems

For this review, we relied on data obtained from the ACDS. This file is maintained at TIGTA's Data Center Warehouse.² Before relying on the data, we evaluated the sufficiency and reliability of the data to ensure that the data field descriptions were accurately stated. In addition, we assessed the appropriateness of data within the requested fields and obtained population totals by observing Appeals personnel query the database. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the Appeals policies and procedures for 1) updating their name to the IRS Independent Office of Appeals, and 2) whether taxpayers who requested a copy of their compliance file had 10 calendar days for review prior to their Appeals conference. We evaluated these controls by reviewing various forms, letters, publications, notices, websites, and social media. We also selected two stratified statistical random samples and reviewed the ACDS coding and case histories for accuracy.

² A TIGTA repository of IRS data.

Appendix II

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 35,143 taxpayer cases that did not have the proper ACDS coding or history documentation regarding the I.R.C. case file access rights (see Recommendation 2).

Methodology Used to Measure the Reported Benefit:

We reviewed a stratified statistical random sample of 127 taxpayer cases Appeals received in FY 2021 to determine whether Appeals personnel properly input the ACDS coding and history documentation regarding the taxpayer's I.R.C. case file access rights. We identified 66 cases that did not have the proper ACDS coding or history documentation to indicate whether or not the taxpayer met the I.R.C. case file access rights requirements, were informed of these rights, requested a copy of their case file, and how the taxpayer requested to receive the case file. We estimated that 48.66 percent of the taxpayer cases received in FY 2021 (35,143 taxpayer cases) did not have the correct ACDS coding and history documentation regarding I.R.C. case file access rights.¹ TIGTA's contract statistician calculated these error rate projections and applied them over the total population size of 72,216 taxpayer cases received in FY 2021. Figure 1 shows how we estimated the number of case files missing documentation or proper case coding.

¹ Our sample was selected using a 95 percent confidence interval, a 10 percent error rate, and a ± 6 percent precision factor. When projecting the results of our stratified statistical random sample, we are 95 percent confident that the actual total is between 28,338 and 41,948 taxpayer cases.

Figure 1: Estimated Number of Case Files Missing Documentation or Proper Case Coding

Strata Based on Case Coding ²	Population of Cases Received	Sample Size	Documentation Errors	Error Percentage in Sample	Estimated Number of Errors in Population
No Case Coding Input	33,759	47	28	59.57%	20,112
Taxpayer Notified of I.R.C. Case File Access Rights	35,629	50	19	38.00%	13,539
Taxpayer Notified of I.R.C. Case File Access Rights and Requested Case File	1,302	10	0	0.00%	0
No Case Coding for Informing Taxpayer of I.R.C. Case File Access Rights or Taxpayer Requesting Case File	1,186	10	10	100.00%	1,186
Taxpayer Requested Case File, but No Case Coding for Taxpayer Notified of I.R.C. Case File Access Rights	340	10	9	90.00%	306
Total	72,216	127	66	N/A	35,143

Source: TIGTA's contract statistician's projections based on audit results.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 15,197 taxpayers were not informed of their I.R.C. case file access rights (see Recommendation 2).

Methodology Used to Measure the Reported Benefit:

We reviewed a stratified statistical random sample of 127 taxpayer cases Appeals received in FY 2021 to determine whether Appeals personnel informed taxpayers of their I.R.C. case file access rights. We identified 23 cases where the ACDS history was not documented that the taxpayer was informed of their I.R.C. case file access rights.³ We estimated that 21.04 percent of the taxpayers eligible to receive their cases in FY 2021 (15,197 taxpayers) were not informed of their I.R.C. case file access rights.⁴ TIGTA's contract statistician calculated these error rate projections and applied them over the total population size of 72,216 taxpayer cases received in

² The five strata are based on the various ways the ACDS coding was input on cases received in FY 2021.

³ All 23 taxpayers are also included in the 66 cases reported in the prior outcome measure for reliability of information.

⁴ Our sample was selected using a 95 percent confidence interval, a 10 percent error rate, and a ±6 percent precision factor. When projecting the results of our stratified statistical random sample, we are 95 percent confident that the actual total is between 9,548 and 20,845 taxpayer cases.

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

FY 2021. Figure 2 shows how we estimated the number of taxpayers that were not informed of their I.R.C. case file access rights.

Figure 2: Estimated Number of Taxpayers Not Informed of Their I.R.C. Case File Access Rights

Strata Based on Case Coding	Population of Cases Received	Sample Size	Documentation Errors	Error Percentage in Sample	Estimated Number of Errors in Population
No Case Coding Input	33,759	47	*1*	***1**	***1**
Taxpayer Notified of I.R.C. Case File Access Rights	35,629	50	*1*	***1**	***1**
Taxpayer Notified of I.R.C. Case File Access Rights and Requested Case File	1,302	10	*1*	***1**	**1**
No Case Coding for Informing Taxpayer of I.R.C. Case File Access Rights or Taxpayer Requesting Case File	1,186	10	*1*	***1**	**1**
Taxpayer Requested Case File, but No Case Coding for Taxpayer Notified of I.R.C. Case File Access Rights	340	10	*1*	***1**	**1**
Total	72,216	127	23	N/A	15,197

Source: TIGTA's contract statistician's projections based on audit results.

Management's Response: IRS management disagreed with this outcome. Although Appeals agrees that Appeals personnel did not input the proper ACDS coding and documentation for up to 15,197 taxpayers related to case file access rights, they are concerned the outcome measure overstates the impact to taxpayer rights and entitlements. Not every taxpayer is a specified taxpayer eligible for case file access.

Office of Audit Comment: TIGTA reviewed a statistical sample of 127 cases and identified 23 in which Appeals personnel did not document the case file to indicate that the taxpayers were specified taxpayers eligible for case file access and Appeals agreed. All 23 cases involved specified taxpayers that were eligible for case file access. Therefore, the projection accurately reflects the potential impact to taxpayer rights and entitlements.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 286 taxpayers had their Appeals conference less than 10 calendar days after receiving their case file (see Recommendation 2).

Methodology Used to Measure the Reported Benefit:

We reviewed a stratified statistical random sample of 92 taxpayer cases Appeals received in FY 2021 to determine whether the Appeals conference was held more than 10 calendar days after the taxpayer received their case file. We identified 16 cases where the Appeals conference with the taxpayer was held less than 10 calendar days of the taxpayer receiving their case file. I.R.C. § 7803(e)(7) requires that the Appeals conference be held at least 10 calendar days after the taxpayer receives their case file. We estimated that 17.39 percent of the taxpayer cases received in FY 2021 (286 taxpayer cases) had the Appeals conference within 10 calendar days of the taxpayer receiving their case file.⁵ TIGTA’s contract statistician calculated these error rate projections and applied them over the total population size of 1,642 taxpayer cases received in FY 2021. Figure 3 shows how we estimated the number of taxpayers who had their Appeals conference less than 10 calendar days after receiving their case file.

Figure 3: Estimated Number of Taxpayers Who Had Their Appeals Conference Less Than 10 Calendar Days After Receiving Their Case File

Strata Based on Case Coding	Population of Cases Received	Sample Size	Documentation Errors	Error Percentage in Sample	Estimated Number of Errors in Population
Taxpayer Notified of I.R.C. Case File Access Rights	1,302	73	12	16.44%	214
Taxpayer Requested Case File, but No Case Coding for Taxpayer Notified of I.R.C. Case File Access Rights	340	19	4	21.05%	72
Total	1,642	92	16	N/A	286

Source: TIGTA’s contract statistician’s projections based on audit results.

Management’s Response: IRS management disagreed with this outcome. Although Appeals acknowledges that up to 286 taxpayers received their case file less than 10 calendar days before their Appeals conference, some of these taxpayers may have waived their right to receive their case file in that timeframe.

Office of Audit Comment: TIGTA reviewed a statistical sample of 92 cases and identified 16 in which the taxpayer had their Appeals conference less than 10 calendar days after receiving their case file. None of the 16 cases had documentation that the taxpayer waived the 10 calendar day requirement. The sample projection and outcome is based on the 16 cases identified in the sample and Appeals agreed. Therefore, the projection accurately reflects the potential impact to taxpayer rights and entitlements.

⁵ Our sample was selected using a 95 percent confidence interval, a 10 percent error rate, and a ±6 percent precision factor. When projecting the results of our stratified statistical random sample, we are 95 percent confident that the actual total is between 161 and 410 taxpayer cases.

Appendix III

Management's Response to the Draft Report



CHIEF, INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

January 17, 2023

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT
Andrew J.
FROM: Andrew J. Keyso, Jr. Keyso Jr. Digitally signed by Andrew
J. Keyso Jr.
Date: 2023.01.17 17:19:34
-05'00'
Chief, IRS Independent Office of Appeals

SUBJECT: Draft Report – Fiscal Year 2022 – Review of IRS's
Implementation of the Taxpayer First Act (Audit #202210506)

Thank you for the opportunity to review and comment on the draft report on the IRS's Implementation of the Taxpayer First Act (TFA) provisions regarding the IRS Independent Office of Appeals (Appeals). We approached implementation of the Taxpayer First Act as an important opportunity to reinforce the longstanding independence principles that have characterized the IRS's administrative appeals function since its inception.

Specifically, Appeals conducted a series of mandatory all-employee training sessions focused on the TFA that reemphasized Appeals' role as impartial arbiters who listen to taxpayers and seek to resolve cases without litigation. These sessions focused on independence, access to independent IRS Chief Counsel advice, and providing specified taxpayers with access to the administrative case file for the issues in their pending appeal. Appeals incorporated these themes into our mandatory new hire training as well. In addition, Appeals developed recruiting materials for use in attracting more applicants from private industry, law firms, and public accounting based on the theory that an Appeals that is independent of IRS Compliance should have a workforce with a diversity of professional backgrounds. We also created a "Practitioner Perspectives" training series for Appeals Officers in which tax practitioners participate with Appeals panelists to discuss best practices for working cases in Appeals. These sessions are intended to promote awareness among Appeals Officers of the importance of impartiality and the value of a positive taxpayer experience.

Appeals is proud to have created a new process for providing specified taxpayers with case file access well within the one-year implementation period provided in the TFA, while in the midst of the COVID-19 pandemic. To do so, we hired and trained redaction specialists, acquired specialized software and technology, and delivered mandatory training to all Appeals employees on the TFA case file access provisions and the new procedures.

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

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In developing this process, Appeals construed the statute in a taxpayer-favorable manner. For example, we felt it was important to proactively notify specified taxpayers of their option to request the nonprivileged portion of their case file, though the statute does not require notification. In addition, once requested, Appeals sends taxpayers the case file directly through electronic secure messaging, secure email, or, if the taxpayer prefers, by fax, flash drive, or in hard copy, rather than setting up access to the file through a reading room or similar arrangement. If a dispute involves multiple tax periods, Appeals decided that any one period meeting the criteria would make the taxpayer eligible for case file access for all tax periods in dispute. We think this taxpayer-favorable implementation of the statute demonstrates that Appeals understands the importance Congress placed on taxpayer access to case files.

We appreciate your recommendations on how the IRS can continue our efforts to implement this important legislation. Our specific responses to your recommendations are attached. If you have any questions, please contact me or have a member of your staff contact Chris Larsen, Acting Director, Case and Operations Support at (202) 317-4081.

Attachment

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

1

Attachment

Recommendation 1:

The Chief, Appeals, should establish a process with the appropriate Business Operating Divisions (BOD) to identify, track, and update forms, letters, publications, notices, websites, and social media that still require the new IRS Independent Office of Appeals name.

Proposed Corrective Action:

The IRS Independent Office of Appeals agrees with this recommendation. Appeals updated more than 150 forms, publications, and letters sent to taxpayers with the new name. Appeals prioritized updates to external-facing materials to underscore to taxpayers and representatives that their appeal is being heard by an independent function within the IRS. Appeals is working with the IRS Business Operating Divisions (BODs) to update their applicable documents with the new name. Appeals will establish a process to identify, track, and update those materials still requiring the new IRS name.

Implementation Date: October 15, 2023

Responsible Official: Director, Case and Operations Support, IRS Independent Office of Appeals

Recommendation 2:

The Chief, Appeals, should re-emphasize the requirements for Appeals personnel to 1) input the proper ACDS coding and documentation in their case history related to the I.R.C. case file access rights, and 2) provide the case file to the specified taxpayer at least 10 calendar days before the date of the Appeals conference or document in the case history if the taxpayer waives this right.

Proposed Corrective Action:

The IRS Independent Office of Appeals agrees with this recommendation. Appeals will re-emphasize the internal guidance requiring Appeals personnel to document whether a taxpayer is a specified taxpayer eligible for case file access and, if so, when the taxpayer was notified and if they requested access. Appeals will also re-emphasize the requirement to provide the case file to the specified taxpayer at least 10 calendar days before the date of the Appeals conference or document in the case history if the taxpayer waives this right.

Implementation Date: June 15, 2023

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

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Responsible Official: Director, Case and Operations Support, IRS Independent Office of Appeals

Recommendation 3:

The Chief Counsel should coordinate with the BOD Commissioners on cases other than those the IRS has designated for litigation to develop and implement: 1) guidance that clearly defines matters for which Appeals consideration has been denied and is required to follow I.R.C. § 7803(e)(5), 2) a process for obtaining approval to deny a taxpayer's appeal under I.R.C. § 7803(e)(5) as well as a mechanism to track these types of cases, and 3) procedures to respond to a taxpayer's protest of a denied appeal under I.R.C. § 7803(e)(5).

Proposed Corrective Action:

Chief Counsel agrees with this recommendation. Chief Counsel will coordinate with the BOD Commissioners to evaluate the need for guidance and procedures to comply with section 7803(e)(5) and will be available to assist in the development of guidance and procedures.

Implementation Date: December 15, 2024

Responsible Official: Deputy Associate Chief Counsel, Procedure and Administration

Recommendation 4:

The Chief Counsel should establish a process to track and document requests for legal assistance and advice on Appeals cases to include whether the attorneys assigned have had no prior involvement and are not involved in preparing the case for litigation, to the extent practicable. In addition, if the attorney providing legal assistance or advice on an Appeals case has had prior involvement or is preparing the case for litigation, ensure that the reason for that attorney's involvement is clearly documented.

Proposed Corrective Action:

Chief Counsel disagrees with this recommendation. Chief Counsel is able to track assignments using existing systems (CASEMIS). That system records the attorney and reviewer assigned to provide advice and can be used to help determine whether an attorney had prior involvement. Information relating to the requesting function and advice provided is contained in the legal file.

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

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Recommendation 5:

The Chief Counsel should update internal guidance to address how the Office of Chief Counsel plans to comply with the requirements of I.R.C. § 7803(e)(6)(B).

Proposed Corrective Action:

Chief Counsel disagrees with this recommendation. Although existing guidance does not explicitly reference section 7803(e)(6)(B), the provisions already existing in Rev. Proc. 2012-18, governing ex parte communications between Appeals and other IRS employees, address how Counsel will comply with section 7803(e)(6)(B). The revenue procedure provides sufficient internal guidance with respect to Counsel's responsibilities to provide unbiased legal advice to Appeals in a manner that promotes Appeals' independence and complies with ex parte communication requirements and the requirements of section 7803(e)(6).

Outcome Measure 1:

Reliability of Information – Potential; 35,143 taxpayer cases that did not have the proper ACDS coding or history documentation regarding the I.R.C. case file access rights.

Response:

The IRS Independent Office of Appeals agrees with this outcome measure.

Outcome Measure 2:

Taxpayer Rights and Entitlements – Potential; 15,197 taxpayers were not informed of their I.R.C. case file access rights.

Response:

The IRS Independent Office of Appeals agrees that Appeals personnel did not input the proper ACDS coding and documentation for up to 15,197 taxpayers indicating whether the taxpayer was a specified taxpayer entitled to I.R.C. case file access rights. However, we are concerned the outcome measure overstates the impact to taxpayer rights and entitlements. Not every taxpayer is a specified taxpayer eligible for case file access.

Outcome Measure 3:

Taxpayer Rights and Entitlements – Potential; 286 taxpayers had their Appeals conference less than 10 calendar days after receiving their case file.

Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed

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Response:

The IRS Independent Office of Appeals acknowledges that up to 286 taxpayers received their case file less than 10 days before their Appeals conference, but some of these taxpayers may have waived their right to receive their case file in that timeframe.

Abbreviations

ACDS	Appeals Centralized Database System
BOD	Business Operating Division
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
TFA	Taxpayer First Act
TIGTA	Treasury Inspector General for Tax Administration



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www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

Information you provide is confidential, and you may remain anonymous.