

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



The Information Collected by Online Providers and Shared With Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS

September 17, 2024

Report Number: 2024-400-062

HIGHLIGHTS: The Information Collected by Online Providers and Shared With Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS

Final Audit Report issued on September 17, 2024

Report Number 2024-400-062

Why TIGTA Did This Audit

This audit was initiated as a follow-up to a prior TIGTA report that raised concerns over the consistency of suitability checks performed for participation in the Authorized e-file [electronically file] Provider, Acceptance Agent, and Enrolled Agent Programs.

The overall objective was to review the IRS's process for determining the eligibility of applicants seeking, and continuing, participation in the Authorized e-file Provider Program. Additionally, this audit assessed the IRS's processes for ensuring that online providers are following the guidance for the use and disclosure of taxpayer tax return information.

Impact on Tax Administration

The IRS partners with tax professionals and other entities that assist taxpayers in meeting their tax obligations. Before accepting these individuals, the IRS conducts suitability checks, *e.g.*, background and tax compliance checks, to ensure that reputable individuals are participating in the Authorized e-file Provider, *i.e.*, online providers, Acceptance Agent, and Enrolled Agent Programs. Allowing unsuitable individuals into these programs would increase the risk to taxpayers.

Additionally, tax software companies may not use or disclose tax return information except as specifically permitted or where the taxpayer provides consent.

What TIGTA Found

According to Treasury Regulation § 301.7216-3, tax return information may not be used or disclosed except as specifically permitted or when the taxpayer provides consent. Our review of four tax software companies found that the providers requested taxpayer consent for the disclosure and use of tax return information, used the required format, and met requirements for electronic signatures. However, the consent statements did not clearly identify the intended purpose of the disclosure and specific recipient(s) of the tax return information. TIGTA noted that Revenue Procedure 2013-14, while supplemental to the Treasury Regulation, did not include these requirements.

The guidance for obtaining taxpayer consent to use or disclose taxpayer information does not specifically address the use of pixels, *i.e.*, third-party code used to track information on a website. Additionally, the IRS does not have awareness of the full scope of information that an online provider routinely collects, beyond what is filed with the IRS, or shared with third parties. This is because the IRS does not have a process in place to ensure that online providers' taxpayer consent statements comply with the requirements in Revenue Procedure 2013-14 or Treasury Regulation Section 301.7216-3.

Finally, the IRS has taken actions to address the previously reported deficiencies with the suitability check processes and procedures. For example, the IRS:

- Updated procedures to ensure consistency with initial and continuous suitability checks.
- Established a consistent adjudication process for applicants with a criminal history.
- Modified procedures to systemically create cases requiring research and resolution for tax compliance issues.
- Modified procedures to accept only electronic fingerprint cards.

What TIGTA Recommended

TIGTA recommended that the IRS update a revenue procedure to include language that consent statements must identify the purpose of disclosure and specific recipient(s); evaluate whether any updates are needed to the guidance regarding data sharing practices, *e.g.*, the use of pixels; and identify and implement potential solutions that will ensure that online providers comply with the regulatory requirements of taxpayer consent statements. The IRS agreed with all three recommendations and plans to discuss the revenue procedure with Treasury; identify the most appropriate communication mechanism to raise awareness about data sharing practices; and explore and identify potential solutions to ensure that Authorized e-file Providers comply with taxpayer consent statement requirements.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

September 17, 2024

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in cursive script, reading "Danny R. Verneuille".

FROM: Danny R. Verneuille
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – The Information Collected by Online Providers and Shared With Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS (Audit No.: 202340018)

This report presents the results of our review of the Internal Revenue Service's (IRS) process for determining the eligibility of applicants seeking, and continuing, participation in the Authorized e-file [electronically file] Provider Program. Additionally, this audit assessed the IRS's processes for ensuring that online providers are following the guidance for the use and disclosure of taxpayer tax return information. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenges of *Taxpayer Service* and *Protection of Taxpayer Data and IRS Resources*.

Management's complete response to the draft report is included as Appendix II. If you have any questions, please contact me or Diana M. Tengesdal, Assistant Inspector General for Audit (Returns Processing and Account Services).

Table of Contents

<u>Background</u>	Page 1
<u>Results of Review</u>	Page 3
<u>Online Provider Consent Statements Do Not Clearly Inform Taxpayers of the Purpose and Use of Disclosed Tax Return Information</u>	Page 3
<u>Recommendations 1 and 2:</u>	Page 5
<u>Recommendation 3:</u>	Page 6
<u>Actions Have Been Taken to Address Previously Reported Deficiencies With the Suitability Check Processes and Procedures</u>	Page 6
Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 9
<u>Appendix II – Management’s Response to the Draft Report</u>	Page 11
<u>Appendix III – Glossary of Terms</u>	Page 15
<u>Appendix IV – Abbreviations</u>	Page.17

Background

The Internal Revenue Service (IRS) partners with tax professionals and other entities that assist taxpayers in meeting their tax obligations. Tax professionals and other entities can apply to one or more of the following programs:

- Authorized e-file [electronically file] Provider Program – A program within the Electronic Products and Services Support function that enables taxpayers to e-file tax returns via an Authorized IRS e-file Provider. This program includes electronic return originators, software developers, transmitters, and online providers. Participants are not required to renew their application if there are no changes to the individual or entity. The program uses the External Services Authorization Management system to receive applications and record the results of suitability checks.¹
- Acceptance Agent Program – A program within the Submission Processing function that authorizes an individual or entity to assist resident and nonresident alien individuals and other foreign persons to obtain an Individual Taxpayer Identification Number from the IRS. Participants are required to renew with the program every four years. The program previously used the Real-Time System for application data; however, in January 2024, the program started using the same system as the Authorized e-file Provider Program to receive applications and record the results of suitability checks.
- Enrolled Agent Program – A program within the Return Preparer Office function that allows an individual to represent taxpayers before the IRS as an enrolled agent, *e.g.*, attorneys and certified public accountants. Participants are required to renew with the program every three years. The E-Trak system used by the Enrolled Agent Program maintains application data and information on the enrolled agents.

The IRS conducts suitability checks on the application for participation and on a continuous or periodic basis, *e.g.*, upon renewal to the program, to ensure that reputable individuals are participating in these programs. The continuous suitability checks are conducted on an ongoing basis using a systemic process that includes tax accounts and criminal records checks. Allowing unsuitable individuals into these programs would increase the risk to the taxpayer. The information reviewed as part of the suitability checks may include:



Criminal background/record check – This involves an authorized IRS vendor obtaining and sending the applicant’s fingerprints to the Federal Bureau of Investigation to identify any criminal history or incarcerations.²

¹ See Appendix III for glossary of terms.

² The IRS conducts criminal background checks on participants in the Enrolled Agent Program using various internal and external systems, *e.g.*, E-Trak and Public Access to Court Electronic Records.

The Information Collected by Online Providers and Shared With Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS



Tax compliance check – This involves reviewing the applicant’s tax account on the IRS’s Master File to verify that the applicant filed all personal and business tax returns, paid all taxes owed, and has not been assessed a fraud penalty by the IRS.



Citizenship check – This involves researching citizenship information provided by the Social Security Administration to ensure that the applicant is a U.S. citizen or a resident alien lawfully admitted for permanent residence in the United States.



Professional licensing check – This involves researching a licensing authority’s website to verify that the applicant has an active professional status, such as verifying that a certified public accountant is licensed to practice or an attorney is in good standing in their State or jurisdiction.

Applicants that fail the initial suitability check are notified of their denial and provided the date when they may reapply and that they may reapply sooner if they resolve the suitability issues. If the continuous suitability check identifies a potential issue, a case is automatically generated in the External Services Authorization Management system for review by the IRS.

Concerns raised relating to data sharing practices

On February 2, 2023, the Treasury Inspector General for Tax Administration (TIGTA) received a congressional letter from Representatives Adam Schiff, Judy Chu, and Raja Krishnamoorthi raising concerns about the data sharing practices of online tax filing companies.³ Their letter included information from a media organization indicating that, “...U.S. companies providing online tax filing services...have been sending taxpayers’ identities and financial information to [a third party] through a pixel present on their websites.” The alleged data sharing used a pixel to capture an individual’s entries on the online tax filing companies’ website, which then sent data entered for the preparation of online tax returns to a third party to focus marketing and advertisement efforts to each user. On September 9, 2023, we responded to the congressional inquiry providing information on data sharing policies and taxpayer consent statements.⁴

Additionally, on July 11, 2023, TIGTA received a letter from Senators Elizabeth Warren, Ron Wyden, Richard Blumenthal, Tammy Duckworth, Benard Sanders, Sheldon Whitehouse, and Katie Porter to inform us of the results of their investigation and concerns over the potentially illegal sharing of taxpayers’ information and request that we investigate this matter and prosecute those who violated the law. Further, several of the same Senators sent another letter on May 21, 2024, reiterating their concerns and request for an investigation into the data sharing practices of the major tax preparation companies.⁵ We acknowledged the congressional letters on November 20, 2023, and June 17, 2024, respectfully, advising that we share similar concerns. We considered these concerns when developing the scope of our review. We also

³ Letter from Congress of the United States to The Honorable J. Russell George, Inspector General, TIGTA (Feb. 2023).

⁴ Letter from TIGTA, Audit No 2023N11.CR04, *Investigation of Tax Preparers Sharing Taxpayer Information With Facebook*, signed by Heather Hill, Acting Inspector General (Sept. 2023).

⁵ Letters from Congress of the United States to the Honorable Daniel Werfel, Commissioner, IRS; Honorable Lina Kahn, Chair Federal Trade Commission; Honorable Merrick Garland, Attorney General, U.S. Department of Justice; and Heather M. Hill, Acting Inspector General, TIGTA (July 2023 and May 2024).

advised that we were conducting a separate review to follow up on the IRS's efforts to improve the Free File Program.⁶ This review focuses on additional taxpayer safeguards, as well as actions the IRS has taken to improve testing and monitoring of compliance with the Free File Program's participation requirements.

Results of Review

Online Provider Consent Statements Do Not Clearly Inform Taxpayers of the Purpose and Use of Disclosed Tax Return Information

According to Treasury Regulation § 301.7216-3, *Disclosure or use permitted only with the taxpayer's consent*, tax return information may not be used or disclosed except as specifically permitted or when the taxpayer provides consent. Our review of four tax software companies found that the providers requested taxpayer consent for the disclosure and use of tax return information.⁷ The taxpayer consent statements used the required format and met requirements for electronic signatures.⁸ However, the consent statements did not comply with the requirements of Treasury Regulation § 301.7216. Specifically, the consent statements did not clearly identify the intended purpose of the disclosure and the specific recipient(s) of the tax return information. For example, the consent statement for software Company A includes the following:

you authorize Company A to disclose to Company B all your tax return information (excluding Social Security Numbers) ...so that after you file, Company B can provide products and services tailored to or that may interest you...

This statement does not clearly identify the intended purpose of the disclosure. The consent statement goes on to say:

Company B may use service providers and business partners to accomplish these tasks.

While the consent statement specifically identifies Company B, it does not specify the names of the providers and partners used by Company B. Instead, the specific names of the providers and partners are provided in the tax software company's privacy or user agreements. Our review found that three of the four tax software companies identified specific companies in their privacy or user agreements, but not in their consent statement. The remaining company did not identify any specific third parties in the privacy agreement or consent statement. Instead, the third parties were referenced in generalities, *e.g.*, nonaffiliated third parties, marketing arrangements, and service providers. We shared our assessment of the taxpayer consent

⁶ TIGTA, Audit No. 202340028, *Free File Program Follow-Up Review*.

⁷ We reviewed consent statements, privacy agreements, and user agreements available from September 2023 to April 2024. These documents can be updated at any time by the tax software company.

⁸ We judgmentally selected four tax software companies. A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

The Information Collected by Online Providers and Shared With Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS

statements with the IRS on June 5, 2024, and the IRS confirmed that these statements do not fully comply with the requirements of Treasury Regulation § 301.7216-3.

The privacy or user agreements can also disclose the specific type of tools used to collect the taxpayer's data, *i.e.*, pixel, and the third parties that use the collected data. As a result, taxpayers must review the privacy agreement, user agreement, and taxpayer consent statements collectively to understand what they are allowing the software company to do with their personal tax information. These documents are scattered throughout the process making it difficult to understand the taxpayer consent statement fully and accurately.

Moreover, Revenue Procedure 2013-14 requires online providers to comply with Treasury Regulation § 301.7216-3. However, our review found that the requirements established in the Treasury Regulation to identify the purpose of disclosure and specific recipient(s) are not repeated in the Revenue Procedure. This may have contributed to the lack of the specific details in the consent statements themselves. When we asked IRS management why Revenue Procedure 2013-14 did not repeat these requirements, management stated that Revenue Procedure 2013-14 is supplemental to the requirements provided in Treasury Regulation § 301.7216-3 and the two should be followed in conjunction with each other.

Guidance for obtaining taxpayer consent to use or disclose taxpayer information does not specifically address the use of pixels

Internal Revenue Code (I.R.C.) § 7216 was originally enacted in 1971. Treasury Regulation § 301.7216-3, which is part of a series of regulations that provide guidance under I.R.C. § 7216, gives instructions to tax return preparers on how to comply with the I.R.C.'s requirements, was supplemented in 2013 by Revenue Procedure 2013-14. Revenue Procedure 2013-14 outlines the requirements for the format and content of taxpayer consent to use and disclose tax return information. It also provides specific requirements for electronic signatures when a taxpayer executes an electronic consent to use or disclose the taxpayer's tax return information. I.R.C. § 7216, Treasury Regulation § 301.7216, and Revenue Procedure 2013-14 do not specifically address the use of pixels when taxpayer consent is provided. When we discussed our concern with IRS management, they stated that such disclosure is addressed by Treasury Regulation § 301.7216-1(b)(5). That regulation defines disclosure as "the act of making tax return information known to any person, in any manner whatever." However, given the concerns raised, increasing awareness around the use of pixel technologies may help educate taxpayers to understand how their information may be used and disclosed and deter companies from using such technology without appropriate taxpayer consent.

The full scope of tax information disclosed to third parties through an online provider website, including disclosures with taxpayer consent, is unknown to the IRS

Upon acceptance into the Authorized e-file Provider Program, the IRS informs tax return preparers and other providers of their obligations to safeguard taxpayer data. This guidance is included as part of Letter 5880C, *E-file Application Program Acceptance*, which includes references to various publications including Publication 3112, *IRS e-file Application and Participation*, and Publication 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*. IRS management stated that it is the responsibility of the Authorized e-file

The Information Collected by Online Providers and Shared With Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS

Provider to ensure that they are meeting the requirements of protecting taxpayer data and complying with the program requirements, *e.g.*, taxpayer consent statement requirements.

When a taxpayer uses an online provider's website to complete their tax return, all information that is collected during the process, which includes the information necessary for completing the tax returns, occurs at the online provider's website. The information collected is protected under I.R.C. § 7216 because it is furnished for the preparation of a tax return. When the taxpayer completes entering their information and authorizes the filing of their tax return, the online provider transmits the tax return to the IRS. However, the online provider is not required to provide any details regarding the information that is collected beyond what is included with the tax return, the extent to which any data are shared with third parties, and whether taxpayers provide consent or non-consent to share their data with third parties.

When we discussed these concerns with IRS management, management stated that they do not have a process in place to ensure that online providers' taxpayer consent statements are compliant with the requirements in Revenue Procedure 2013-14 or Treasury Regulation § 301.7216-3. Additionally, the IRS does not have awareness of the full scope of information that an online provider routinely collects, beyond what is filed with the IRS, or shared with third parties. When asked why, management stated that through an agreement between the IRS's Criminal Investigation and TIGTA's Office of Investigations, TIGTA's Office of Investigations has investigative responsibility over potential violations of I.R.C. § 7216. However, this will only address those instances when a violation rises to the level warranting a criminal investigation and does not address whether a company is complying with the IRS's regulations for taxpayer consent statements. The IRS noted that it has a process to refer allegations of violations of I.R.C. § 7216 to TIGTA's Office of Investigations.

Congress has delegated the responsibility of administering the tax laws to the IRS. As a result, the IRS is responsible for establishing processes and controls to ensure compliance with the provisions of the I.R.C. This includes the responsibility to ensure that Authorized e-file Providers meet all requirements to safeguard taxpayer data.

The Chief, Taxpayer Services, should:

Recommendation 1: Update Revenue Procedure 2013-14 to include the language found in the Treasury Regulation § 301.7216-3 that the consent statement must identify the purpose of disclosure and specific recipient(s).

Management's Response: IRS management agreed with the recommendation and will discuss with the Department of the Treasury as part of the process of developing the Department of the Treasury's Office of Tax Policy and the IRS's Priority Guidance Plan. However, the IRS cannot ensure that the item will be selected for the plan or that the Department of the Treasury will approve the project.

Recommendation 2: Evaluate whether any clarifications or updates to Revenue Procedure 2013-14 or Treasury Regulation § 301.7216-3 are needed to address concerns or raise awareness of data sharing practices with tax software companies that use pixels.

Management's Response: IRS management agreed with the spirit of the recommendation; however, it is important to note that the guidance cited is intended for tax return preparers and not taxpayers. Further, the IRS also agrees with the importance

of clear, reliable, and timely communications of pixel data-sharing practices and will, in collaboration with the tax software companies, identify the most appropriate communication mechanism.

Recommendation 3: Identify and implement potential solutions that will ensure that Authorized e-file Providers comply with the regulatory requirements of taxpayer consent statements. This can include, for example, sample reviews of tax software companies' taxpayer consent statements or creating a data element to track if taxpayers are consenting to sharing their information with third parties.

Management's Response: IRS management agreed with the recommendation and will explore and identify potential solutions, including those examples provided in the recommendation, and evaluate their effectiveness in consideration of the IRS's regulatory authority and ability to implement an effective process. IRS management will also document their findings, conclusions, and determination of further actions to be taken.

Office of Audit Comment: In their response, management reiterated that investigative responsibilities over allegations of unauthorized disclosure are assigned to TIGTA's Office of Investigations. We agree; however, we believe that the IRS has responsibilities to take measures that provide protection against unauthorized disclosure of taxpayers' information. We also believe this can be accomplished by enforcing compliance with the regulatory requirements of taxpayer consent statements.

Actions Have Been Taken to Address Previously Reported Deficiencies With the Suitability Check Processes and Procedures

In November 2019, we reported that improvements were needed to ensure that consistent suitability checks are performed for participation in the Authorized e-file Provider, Acceptance Agent, and Enrolled Agent Programs.⁹ We made 10 recommendations to IRS management, and they agreed to take actions to address the concerns we identified. The recommendations related to:

- Inconsistencies with initial and continuous suitability checks and the adjudication process for applicants with a criminal history.
- Concerns with the timeliness to resolve tax compliance issues and duplicate submission of fingerprint cards.
- Lack of continuous criminal background checks.

Updates were made to ensure consistency with initial and continuous suitability checks

We followed up on the corrective actions the IRS took to address the previously reported concerns. For example, the IRS previously completed criminal background checks for only those applicants who disclosed on their Enrolled Agent application that they committed a tax crime or had a felony conviction. Whereas the Acceptance Agent and Authorized e-file Provider

⁹ TIGTA, Report No. 2020-40-005, *Improvements Are Needed to Ensure That Consistent Suitability Checks Are Performed for Participation in Internal Revenue Service Programs* (Nov. 2019).

**The Information Collected by Online Providers and Shared With
Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS**

Programs required a criminal background check for all applications. In September 2020, the IRS updated its procedures to require all applicants, including those with a professional license, to have a criminal background check for the Authorized e-file Provider, Acceptance Agent, and Enrolled Agent Programs.

Additionally, we previously reported that suitability checks varied depending upon the program because these programs are overseen by different functional areas within the IRS. In January 2024, the IRS began using the External Services Authorization Management system to collect applicant information and perform both initial and continuous suitability checks for the Acceptance Agent Program. This is the same system used by the Authorized e-file Provider Program, resulting in consistent suitability checks being performed on these programs. IRS management did not implement continuous suitability checks for the Enrolled Agent Program because the program requires a three-year renewal process and there is minimal risk that individuals are unsuitable participants. Our analysis of the participants in the Enrolled Agent Program determined that most enrolled agents participate in the IRS Authorized e-file Provider or the Acceptance Agent Programs. In effect, enrolled agents are subject to continuous suitability checks through those programs. Figure 1 provides a summary of the types of suitability checks for each program as of May 2024.

Figure 1: IRS Programs and Their Suitability Checks

Role	Initial Suitability Check ¹⁰	Continuous Suitability Check
Authorized e-file Provider/ Acceptance Agent	<ul style="list-style-type: none"> • Tax compliance • IRS Criminal Investigation activity • Identity theft • Deceased • Penalty assessment • Offer in compromise • Potentially dangerous taxpayer • Not collectible account • Prisoner identification • Social Security Number cross-reference • Background check • Citizenship • Specifically designated nationals 	<ul style="list-style-type: none"> • Tax compliance • IRS Criminal Investigation activity • Identity theft • Deceased • Penalty assessment • Offer in compromise • Potentially dangerous taxpayer • Not collectible account • Prisoner identification • Specifically designated nationals
Enrolled Agent	<ul style="list-style-type: none"> • Tax compliance • Criminal background • Professional credentials • Prisoner identification 	<ul style="list-style-type: none"> • Not applicable for the Enrolled Agent Program

Source: TIGTA review of the programs' suitability checks.

¹⁰ This also includes renewal suitability checks for the Acceptance Agent Program.

Consistent adjudication processes established for applicants with a criminal history

In July 2020, the IRS revised the decision matrices to ensure that the adjudication process for the Enrolled Agent, Acceptance Agent, and Authorized e-file Provider Programs was consistent. For example, the IRS revised the decision matrices for the Authorized e-file Provider Program to reduce weapons charges to a moderate risk, which now matches the decision matrices for both the Acceptance Agent and Enrolled Agent Programs. Moreover, in October 2019, and before we publicly issued our previous report, the IRS updated the adjudication procedures to include specific language in the letters sent to applicants when they are denied from a program because of their criminal background.

Timeliness to resolve tax compliance issues

In January 2020, the IRS modified its procedures to systemically create cases requiring research and resolution for tax compliance issues, eliminating the need to manually monitor its inventory report to assign cases. Our review of the revised inventory report confirmed that cases were being generated systemically, thus making the process more accurate and efficient.

Use of electronic fingerprint cards required

Previously, we identified some instances where applicants submitted paper fingerprint cards using their identification information, but the fingerprints on the card matched the fingerprints submitted by another individual, *i.e.*, a duplicate fingerprint card. In September 2022, the IRS modified its process to accept only electronic fingerprint cards. This allows the IRS and Federal Bureau of Investigation to identify and reject duplicate fingerprint submissions during the application process.

In addition, the electronic fingerprint card process allows the IRS to participate in the Federal Bureau of Investigation's Records of Arrests and Prosecutions (RAP) Back Program. This Program allows the IRS to obtain continuous criminal background checks on applicants in the Authorized e-file Provider Program. For example, if the Federal Bureau of Investigation RAP Back Program determines an e-file participant is involved in criminal activity, the IRS is informed immediately of the activity so it can take the appropriate action. This addresses our prior concern that the IRS's fingerprinting process was not compatible with the Federal Bureau of Investigation's RAP Back Program. The IRS noted that it currently does not have legal authority for the Acceptance Agent Program to participate in the RAP Back Program, but it is pursuing a legislative proposal to obtain this authority.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective was to review the IRS's process for determining the eligibility of applicants seeking, and continuing, participation in the Authorized e-file Provider Program. Additionally, we assessed the IRS's processes for ensuring that online providers are following the guidance for the use and disclosure of taxpayer tax return information. To accomplish our objective, we:

- Determined if the IRS was following procedures when reviewing applicants for the Authorized e-file Provider Program to ensure that applicants meet the requirements to participate in the program.
- Determined if the IRS adequately addressed the corrective actions implemented based upon the prior review.¹
- Determined how the IRS ensures that tax preparation companies follow legislation and guidance related to sharing taxpayer data. We judgmentally selected four online tax preparation out of 25 tax software companies that allowed taxpayers to use a website to e-file their tax returns during Processing Year 2023.² We reviewed their taxpayer consent statements, user agreements, and privacy agreements. The four tax preparation companies were selected due to their high volume of electronic tax returns submitted through a website and their presence in news publications about their data sharing policies. These documents were reviewed at a specific point in time and may not be consistent with the documents currently on these websites.

Performance of This Review

This review was performed with information obtained from the Customer Account Services function in Atlanta, Georgia, and the Office of the Chief Counsel in Washington, D.C., during the period July 2023 through May 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. 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 Diana M. Tengesdal, Assistant Inspector General for Audit (Returns Processing and Account Services); Darryl J. Roth, Director; Jonathan W. Lloyd, Audit Manager; Tracy L. Winfield, Lead Auditor; and Dallin West, Auditor.

Data Validation Methodology

We performed tests to assess the reliability of data obtained from the IRS's E-Trak System and the External Services Authorization Management system. We evaluated the data reliability by

¹ TIGTA, Report No. 2020-40-005, *Improvements Are Needed to Ensure That Consistent Suitability Checks Are Performed for Participation in Internal Revenue Service Programs* (Nov. 2019).

² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

comparing the two data extracts to identify common records. Then, we compared our results to the IRS analysis completed because of the prior report recommendations. We evaluated the data by: (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. 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: policies and procedures outlined in the Internal Revenue Manual associated with the processing of Authorized e-file Provider Program applications and suitability checks; I.R.C. sections governing the sharing of taxpayer data; and treasury regulations and revenue procedures providing guidance on requirements to use and disclose taxpayer data. We evaluated these controls by reviewing the requirements of the Authorized e-file Provider, Acceptance Agent, and Enrolled Agent Programs; reviewing IRS guidance; holding discussions with IRS management; and reviewing online tax preparation software companies' taxpayer consent statements, user agreements, and privacy agreements.

Appendix II

Management's Response to the Draft Report



CHIEF
TAXPAYER SERVICES

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

September 12, 2024

MEMORANDUM FOR DANNY R. VERNEUILLE
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Dietra D. Grant Dietra D. Grant Digitally signed by Dietra D. Grant
Date: 2024.09.12 10:24:17 -04'00'
Deputy Chief, Taxpayer Services Division

SUBJECT: Draft Audit Report – The Information Collected by Online
Providers and Shared with Third Parties Is Not Clearly Disclosed
to Taxpayers and Is Unknown to the IRS (Audit No.: 202340018)

Thank you for the opportunity to review and provide comments on the subject draft report. The Authorized e-file Program is an essential partnership with tax professionals and other entities that assist taxpayers in meeting their tax obligations. The protection of taxpayer information is a top priority for IRS. We diligently work with tax professionals and strive to improve our processes to maintain the public's trust.

As stated in the draft report, the Treasury Inspector General for Tax Administration (TIGTA) received a congressional letter expressing concerns about the data sharing practices of online tax filing companies. For background, Internal Revenue Code § 7216 prohibits any person who is engaged in the preparation of tax returns from disclosing any information in connection with the preparation of the return. As an exception, Treasury Regulation § 301.7216-3 sets out conditions under which a taxpayer may consent to a tax return preparer disclosing to another person the taxpayer's tax return information. Therefore, if the conditions of a valid consent are met, a tax return preparer may provide the tax return information of the consenting taxpayer to another person. We are, however, unable to comment on the allegations presented in the congressional letter.

The administration and enforcement of the Internal Revenue Code is a task filled with unique challenges. The discovery and pursuit of unauthorized disclosure under Internal Revenue Code § 7216 is no exception. The IRS partners with over 360,000 authorized e-file providers, each of which is permitted to create a consent to use and a consent to disclose agreement with taxpayers. These agreements are subject to change the moment a provider wishes to modify what information is shared or with whom they intend to share the information. To ensure that providers comply with the regulatory

**The Information Collected by Online Providers and Shared With
Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS**

2

requirements, as TIGTA recommends, substantial resources would be needed to initially review and continually monitor hundreds of thousands of taxpayer consent statements. As a remedy, consent statements have always been required to provide TIGTA's email and phone number so that taxpayers can easily contact authorities. Lastly, Memorandums of Understanding clarify the investigative responsibilities of government agencies to ensure that there are no gaps in law enforcement. The investigative responsibility over allegations of unauthorized disclosure of information, that was furnished to tax preparers to prepare a return, is assigned to TIGTA's Office of Investigations.

Our responses to your specific recommendations are enclosed. If you have any questions, please contact me, or a member of your staff may contact Joseph Dianto, Director, Customer Account Services, at 470-639-3504.

Attachment

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Attachment

Recommendations

The Chief, Taxpayer Services, should:

RECOMMENDATION 1

Update Revenue Procedure 2013-14 to include the language found in the Treasury Regulation § 301.7216-3 that the consent statement must identify the purpose of disclosure and specific recipient(s).

CORRECTIVE ACTION

We agree. We will discuss Treasury Inspector General for Tax Administration's recommendation with Treasury as part of the process of developing the Priority Guidance Plan. However, we cannot ensure that the item will be selected for the plan or that Treasury will approve the project.

IMPLEMENTATION DATE

July 15, 2025

RESPONSIBLE OFFICIAL

Director, Customer Account Services, Taxpayer Services Division

CORRECTIVE ACTION MONITORING PLAN

We will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 2

Evaluate whether any clarifications or updates to Revenue Procedure 2013-14 or Treasury Regulation § 301.7216-3 are needed to address concerns or raise awareness of data sharing practices with tax software companies that use pixels.

CORRECTIVE ACTION

We agree with the spirit of the recommendation; however, it is important to note that the guidance cited is intended for tax return preparers and not taxpayers. Further, we also agree with the importance of clear, reliable, and timely communications of pixel data-sharing practices and will, in collaboration with the tax software companies, identify the most appropriate communication mechanism.

IMPLEMENTATION DATE

October 15, 2025

RESPONSIBLE OFFICIAL

Director, Electronic Products and Services Support, Customer Account Services, Taxpayer Services Division

CORRECTIVE ACTION MONITORING PLAN

We will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 3

Identify and implement potential solutions that will ensure that Authorized e-file Providers comply with the regulatory requirements of taxpayer consent statements. This can include, for example, sample reviews of tax software companies' taxpayer consent statements or creating a data element to track if taxpayers are consenting to sharing their information with third parties.

CORRECTIVE ACTION

We will explore and identify potential solutions, including those examples provided in the recommendation, and evaluate their effectiveness in consideration of our regulatory authority and ability to implement an effective process. We will document our findings, conclusions, and determination of further actions to be taken.

IMPLEMENTATION DATE

October 15, 2025

RESPONSIBLE OFFICIAL

Director, Electronic Products and Services Support, Customer Account Services,
Taxpayer Services Division

CORRECTIVE ACTION MONITORING PLAN

We will monitor this corrective action as part of our internal management control system.

Appendix III

Glossary of Terms

Term	Definition
Deceased Check	A suitability check that reviews a tax account for a date of death on the IRS's Master File.
E-Trak	An IRS database used to capture data from the Enrolled Agent Program on enrollment and renewal applications.
External Services Authorization Management System	Manages the application process and suitability checks for the Authorized e-file Provider and Acceptance Agent Programs.
Identity Theft Check	A suitability check that reviews a tax account for activity where a taxpayer's Social Security Number was used without their permission impacting tax administration.
Individual Taxpayer Identification Number	Issued by the IRS to individuals who are required to have a Taxpayer Identification Number for Federal tax purposes but do not have and are not eligible to receive a Social Security Number.
Internal Revenue Code	The body of law that codifies all Federal tax laws. These laws constitute Title 26 of the U.S. Code, which is a consolidation and codification by subject matter of the general and permanent laws of the United States.
Internal Revenue Manual	Primary source of instructions to employees relating to the administration and operation of the IRS. The Manual contains the directions employees need to carry out their operational responsibilities.
Master File	The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.
Nonresident Alien	An individual who is neither a U.S. citizen nor a U.S. resident for Federal tax purposes.
Not Collectible Account	A suitability check that reviews tax accounts to identify taxpayers who cannot pay their tax debts or may have reported their account currently not collectible.
Offer in Compromise Check	A suitability check that reviews tax accounts for accounts that have an offer in compromise, <i>i.e.</i> , a settlement agreement with the IRS to pay less than the amount owed for a tax liability.
Penalty Assessment Check	A suitability check that reviews tax accounts for various penalties including not timely filing tax returns, filing inaccurate tax returns, and failure to timely pay taxes.
Pixel	Third-party code on a website that collects a user's clicks or entries on a website.

**The Information Collected by Online Providers and Shared With
Third Parties Is Not Clearly Disclosed to Taxpayers and Is Unknown to the IRS**

Term	Definition
Potentially Dangerous Taxpayer Check	A suitability check that looks for evidence that a taxpayer has physically assaulted, intimidated, threatened, advocated violence, or is affiliated with groups that advocate such violence against the IRS, former employees, contractors, or IRS employee family members.
Priority Guidance Plan	The Department of the Treasury's Office of Tax Policy and the IRS use the Priority Guidance Plan each year to identify and prioritize tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.
Prisoner Check	A suitability check that reviews information that the IRS has to determine if a taxpayer is a prisoner.
Public Access to Court Electronic Records	A web-based system for public access to U.S. district, appellate, and bankruptcy court case information. Only Federal Court cases can be found on the system.
Real-Time System	A web-based application used by Individual Taxpayer Identification Number tax examiners to process, assign, and record applicant submissions from people with tax consequences who do not have and are not eligible for a Social Security Number. Tax examiners review all applicants and attached documents and then input the information into the system.
Resident	An individual physically present in the United States for a certain number of days or admitted for lawful permanent residence in the United States. A U.S. resident reports worldwide taxable income and is entitled to the same deductions, exclusions, and other credits under the same rules as a U.S. citizen.
Social Security Number	A nine-digit number issued to an individual by the Social Security Administration. The IRS uses this number to process tax documents and tax returns.
Social Security Number Cross-Reference Check	A suitability check that reviews IRS records for related Social Security Numbers to a number in review status.

Appendix IV

Abbreviations

e-file	Electronically file
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
RAP	Records of Arrests and Prosecutions
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

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