



*Preparer Tax Identification Numbers
Are Not Revoked for Unsuitable
Tax Return Preparers*

August 27, 2015

Reference Number: 2015-40-075

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.

Redaction Legend:

2 = Risk Circumvention of Agency regulation or Statute

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HIGHLIGHTS

PREPARER TAX IDENTIFICATION NUMBERS ARE NOT REVOKED FOR UNSUITABLE TAX RETURN PREPARERS

Highlights

Final Report issued on August 27, 2015

Highlights of Reference Number: 2015-40-075 to the Internal Revenue Service Deputy Commissioner for Services and Enforcement.

IMPACT ON TAXPAYERS

Effective September 2010, the IRS issued regulations requiring preparers to register for a Preparer Tax Identification Number (PTIN) to be used to sign all tax returns prepared. This number allows the IRS to administer its preparer program and match preparers to the tax returns they submit to the IRS. As of April 1, 2015, more than 696,000 individuals were assigned an active PTIN for Calendar Year 2015.

WHY TIGTA DID THE AUDIT

This audit was initiated to evaluate the effectiveness of the IRS's processes to ensure that paid tax return preparers meet the requirements to obtain and renew a PTIN and that preparers participating in the Annual Filing Season Program met the program's requirements.

WHAT TIGTA FOUND

Our review identified that the Return Preparer Office (RPO) has established processes and procedures to ensure that individuals assigned a PTIN were at least 18 years of age, were not using identifying information associated with a deceased individual, and correctly reported professional credentials.

In addition, the RPO ensured that individuals participating in the new Annual Filing Season Program met educational requirements and consented to be subject to the duties and restrictions of practicing before the IRS under Treasury Department Circular 230. This voluntary program was initiated in an effort to ensure that unlicensed tax return preparers have

a basic competency level and adhere to professional standards.

However, the RPO does not revoke PTINs from tax return preparers who are not compliant with their tax filing and payment obligations. In January 2015, the RPO identified 19,496 preparers with PTINs who were potentially noncompliant with these obligations. These preparers had over \$367 million in tax due as of January 26, 2015. In addition, the RPO identified 3,055 preparers who failed to file required tax returns for one or more tax years and eight tax return preparers who failed to file required tax returns for five years.

Our review of PTIN holders as of September 30, 2014, identified 3,001 preparers who self reported a felony conviction on their application; 87 reported a crime related to Federal tax matters. Lastly, processes do not ensure that PTINs assigned to prisoners or individuals barred from preparing tax returns are revoked. Specifically, the RPO did not revoke the PTINs assigned to 65 of 445 confirmed prisoners and 15 of 87 individuals who the IRS identified as barred from preparing tax returns.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS 1) complete tax compliance checks by timely issuing inquiry letters to preparers after identifying noncompliance with Federal tax laws and take appropriate actions to revoke PTINs when warranted, 2) assess all self-reported felony convictions and revoke PTINs when warranted, 3) ensure that review processes are followed to revoke PTINs for incarcerated and enjoined tax return preparers, and 4) complete the prisoner check quarterly and revoke prisoners' PTINs as warranted.

The IRS agreed with three recommendations and partially agreed with another. In response to the second recommendation, the IRS stated that it plans to continue assessing self-reported felony convictions of enrolled agents and Annual Filing Season Program applicants. TIGTA believes that the IRS should assess the self-reported felony convictions of all tax return preparers who disclose this information on their PTIN application and revoke PTINs when warranted.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 27, 2015

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT**

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Preparer Tax Identification Numbers Are Not
Revoked for Unsuitable Tax Return Preparers (Audit # 201440010)

This report presents the results of our review to evaluate the effectiveness of the Internal Revenue Service's processes to ensure that paid tax return preparers meet the requirements to obtain and renew a Preparer Tax Identification Number and that preparers participating in the Annual Filing Season Program met the program's qualification requirements. This audit was included in the Treasury Inspector General for Tax Administration's Fiscal Year 2014 Annual Audit Plan and addresses the major management challenge of Providing Quality Taxpayer Service Operations.

Management's complete response to the draft report is included in Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Russell Martin, Assistant Inspector General for Audit (Returns Processing and Account Services).



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Abbreviations

AFSP	Annual Filing Season Program
CY	Calendar Year
IRS	Internal Revenue Service
PTIN	Preparer Tax Identification Number
RPO	Return Preparer Office
TIGTA	Treasury Inspector General for Tax Administration
TPPS	Tax Professional PTIN System



Preparer Tax Identification Numbers Are Not Revoked for Unsuitable Tax Return Preparers

Background

In September 2010, regulations were issued requiring paid tax return preparers to register for a Preparer Tax Identification Number (PTIN) to be used to sign all tax returns prepared. In August 2011, regulations also became effective authorizing the Secretary of the Treasury to regulate the practice of tax return preparers before the Department of the Treasury. These regulations are included in Treasury Department Circular 230, *Regulations Governing Practice before the Internal Revenue Service*,¹ and establish a new category of practitioner – the registered tax return preparer (hereafter referred to as registered preparer). The regulations included testing and continuing education for the return preparers in an effort to ensure that preparers met a minimum level of competency and adhere to professional standards. Registered preparers were permitted to represent taxpayers before the Internal Revenue Service (IRS) during an examination with respect to tax returns and claims for refund that the registered preparer prepared and signed. The regulations prohibited an individual who was not a registered preparer or licensed professional, such as an attorney or certified public accountant, from preparing tax returns for compensation.

In January 2013, the U.S. District Court for the District of Columbia found the portion of Circular 230 regulating registered preparers practicing before the IRS was invalid.² In response, the IRS ceased implementation of competency testing and continuing education requirements. In February 2013, the court modified its injunction against the IRS and made clear that the IRS was not required to suspend its PTIN program and, as such, paid tax return preparers must register and obtain a PTIN and use it to sign all returns they prepare, both paper and electronic.

Tax return preparer population

As of April 1, 2015, more than 696,000 individuals were assigned an active PTIN for Calendar Year (CY) 2015. Preparers who are assigned a PTIN can be self-employed or may work for accounting firms, tax preparation services, or law firms and include:

- **Licensed Professionals.**³ Professionals who include attorneys and certified public accountants who are regulated by State licensing authorities, register with State agencies, and must meet the licensing authorities' continuing professional education requirements. There are 239,919 registered licensed professionals.

¹ Department of the Treasury, Treasury Department Circular No. 230 (Rev. 6-2014), *Regulations Governing Practice before the Internal Revenue Service* (June 2014).

² Loving v. I.R.S., 917 F. Supp. 2d 67 (D.D.C. 2013).

³ Some tax return preparers have multiple professional credentials.



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- **Enrolled Agents.** Professionals who pass an IRS examination or present evidence of qualifying experience, such as a former IRS employee, and who have been issued an enrollment card. Enrolled agents are the only taxpayer representatives who receive their right to represent taxpayers before the IRS from the Federal Government. There are 49,895 registered enrolled agents.
- **Unlicensed Tax Return Preparers.** Individuals who do not have a professional credential and are not an enrolled agent. There are 406,593 active unlicensed tax return preparers. These individuals represent 58 percent of the active PTIN holders.

Process to apply for a PTIN

Anyone who for compensation prepares, or assists in preparing, all or substantially all of any Federal tax return, claim for refund, or other tax form must have a valid PTIN before preparing tax returns. An individual can apply for or renew a PTIN by submitting Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application*,⁴ by mail or online via the IRS website (www.irs.gov). The Tax Professional PTIN System (TPPS) is the online system individuals use to apply for or annually renew PTINs. The applicant enters the required data into the online Form W-12, which includes personal information (*e.g.*, name, Social Security Number, address) as well as information regarding his or her business, past felony convictions, Federal tax compliance, and professional credentials. The applicant signs the application under penalties of perjury; false or misleading information on the application could result in criminal penalties or PTIN revocation.

The IRS created a special helpdesk hotline number for PTIN holders to call for assistance. The HelpDesk employees handle a multitude of preparer questions, including those as simple as how to apply for a PTIN or how to log in to a PTIN account. Employees also assist preparers who have complex PTIN account issues that require the employee to authenticate the caller. The HelpDesk received 342,481 calls from PTIN holders between January 2014 and February 2015.

Process to verify that individuals applying for or renewing a PTIN meet requirements

The IRS's Return Preparer Office (RPO) was created in CY 2010 to improve taxpayer compliance by providing comprehensive oversight and support to tax professionals. The RPO is responsible for verifying that individuals applying for or renewing a PTIN meet requirements. After an application is processed by the IRS, the RPO issues a PTIN to the tax return preparer. After the PTIN is issued or renewed, the RPO Suitability function performs suitability and other checks to determine if the PTIN holder should retain the PTIN. The Suitability function does not automatically revoke a PTIN if a preparer in the TPPS is matched to someone on a list of potentially unsuitable preparers. Research is conducted and, in some cases, attempts are made to

⁴ Appendix IV provides an example of a PTIN application.



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contact the preparer to verify information. The RPO uses judgment in deciding whether to revoke a PTIN or take other actions. Thus, a fully completed suitability check includes the IRS matching the preparers in the TPPS to lists of individuals who may be unsuitable for the PTIN program, researching and contacting the preparer, and using judgment to decide which action to take on each case.

The IRS assigns or allows an individual to renew a PTIN prior to performing suitability checks so that tax return preparers can continue to prepare tax returns while the suitability checks are being completed. The suitability checks may require additional research, which could prolong the process. The IRS does not want to prevent tax return preparers from completing tax returns during this process. Figure 1 lists the suitability, validation, and verification checks the IRS conducts for each type of preparer assigned a PTIN.

Figure 1: PTIN Applicant Suitability, Validation, and Verification Checks

	Licensed Professionals	Enrolled Agents	Unlicensed Preparers Participating in the AFSP	Unlicensed Preparers Not Participating in the AFSP
Suitability Checks				
Background ⁵	N/A	x	N/A	N/A
Professional Credential	x	x	N/A	N/A
Prisoner Match	x	x	x	x
Validation Checks				
Age (18 or older)	x	x	x	x
Valid Social Security Number	x	x	x	x
Other Verifications				
Deceased Match ⁶	x	x	x	x
Continuing Education	N/A		x	N/A
Permanently Enjoined List ⁷	x	x	x	x

Source: TIGTA analysis of the RPO processes. The AFSP is the Annual Filing Season Program.

⁵ Check performed at the time of application into the enrolled agent program; not part of the PTIN application.

⁶ Performed monthly to deactivate the PTINs of deceased preparers.

⁷ The court may enjoin an individual from preparing tax returns if the tax return preparer has continually or repeatedly: (1) engaged in conduct subject to penalties under Internal Revenue Code sections 6694 and 6695, (2) engaged in conduct subject to criminal penalties, (3) misrepresented his or her eligibility to practice before the IRS or his or her experience and education as an income tax return preparer, (4) guaranteed the payment of a tax refund or the allowance of a tax credit, or (5) conducted other fraudulent or deceptive actions that substantially interfere with the proper administration of Internal Revenue laws.



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Voluntary Annual Filing Season Program

In June 2014, the IRS announced the Annual Filing Season Program and its commitment to work to ensure that unlicensed tax return preparers have a basic competency level and adhere to professional standards. This program is voluntary and encourages tax return preparers to participate in continuing education courses. Under the program, tax return preparers who lack a professional credential or license can elect to complete continuing education courses to increase their knowledge of laws relevant to Federal tax returns. Participants must successfully complete a required 18 hours of continuing education⁸ during the calendar year prior to the year for which a Record of Completion is sought. The continuing education must include a six-hour refresher course containing a comprehension test. In addition, preparers who meet program requirements are permitted to represent taxpayers during an examination of a tax return that they prepared and signed.

Beginning in October 2014, the IRS issued AFSP Records of Completion to participants who voluntarily completed the required IRS-approved continuing education courses and consented to be subject to the duties and restrictions relating to practice before the IRS under Circular 230 (Subpart B and Section 10.51). These include:

- Furnishing information to the IRS upon request unless the information is privileged.
- Advising clients if they did not comply with the Internal Revenue laws of the United States or made any errors on or omissions from any tax return, document, affidavit, or paper that the client submitted or executed under those laws.
- Exercising due diligence when preparing tax returns, including determining the correctness of oral or written representations made to the IRS.
- Charging reasonable fees for work completed for any matter before the IRS.
- Being subject to sanctions for incompetent and disreputable conduct such as: conviction of any criminal offense under the Federal tax laws, giving false or misleading information to the Department of the Treasury, or willfully failing to file a Federal tax return.

As an additional incentive for unlicensed preparers to participate in the AFSP, the IRS, in January 2015, posted a public listing of licensed professionals, enrolled agents, and the preparers who met the AFSP requirements on its website. This listing, called the *Directory of Federal Tax Return Preparers with Credentials and Select Qualifications*, provides taxpayers with a way to identify tax return preparers who met IRS qualification requirements. AFSP participants' Record of Completion and inclusion in the public directory are effective for the applicable calendar year for which they are issued.

⁸ For the 2015 Filing Season, the program required 11 hours of continuing education.



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This review was performed at the RPO in Mesa, Arizona; Washington, D.C.; Atlanta, Georgia; Overland Park, Kansas; New Carrollton, Maryland; Chesterfield, Missouri; and Nashville, Tennessee, during the period July 2014 through March 2015. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

Our review identified that the RPO has established processes and procedures to ensure that individuals assigned a PTIN met the following requirements:

- **Age.** Individuals assigned a PTIN are required to be at least 18 years of age. Our match of all PTIN holders in the TPPS as of November 30, 2014, to the National Account Profile⁹ confirmed that all PTIN holders were at least 18 years of age as required.
- **Deceased.** The tax return preparer's identifying information used to apply must not be associated with an individual who is deceased. Our match of all PTIN holders to the National Account Profile confirmed that the RPO correctly identified all deceased PTIN holders and changed their status in the TPPS to deceased.
- **Professional Credentials.** The RPO confirms self-reported preparer credentials with State licensing authorities. Our review of a statistically valid sample of 73 PTIN holders who self-identified a professional credential found that preparers' self-identified professional credentials in the TPPS are accurate.
- **Completion of educational courses and consent to adhere to Circular 230 to participate in the AFSP.** The RPO ensured that individuals completed the required educational courses and consented to Circular 230 duties and restrictions prior to issuing an AFSP Record of Completion. For all preparers issued an AFSP Record of Completion, we verified that a record of consent was obtained and recorded in the TPPS and that the preparer met the training requirements.

In addition, our review of preparers included in the January and March 2015 *Directory of Federal Tax Return Preparers with Credentials and Select Qualifications* confirmed the accuracy of the listing. For example, we found that the listing did not include preparers who were deceased or enjoined.

However, we found that the RPO did not revoke PTINs of tax return preparers who were not compliant with their tax filing and payment obligations. The RPO also did not assess the suitability of individuals who self-reported a felony conviction on their PTIN application unless the preparer wanted to participate in the AFSP. Finally, PTINs were not always revoked for individuals in prison or individuals who were enjoined from preparing tax returns.

⁹ The National Account Profile is a compilation of selected entity data from the IRS Master File, which is the database that stores various taxpayer information. The National Account Profile includes all valid and invalid taxpayer entity information



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Preparer Tax Identification Numbers Are Not Revoked for Preparers Who Are Not Compliant With Tax Return Filings and Payments

The RPO did not complete tax compliance checks on tax return preparers in CY 2014 and CY 2015 and revoke PTINs for noncompliance with tax laws. While the RPO identified potentially noncompliant tax return preparers by matching the TPPS against IRS systems in both years, inquiry letters were not sent to preparers in CY 2014, and as of June 22, 2015, letters had not been sent to preparers identified in CY 2015. For example, in January 2015, the RPO identified 19,496 preparers with PTINs that were potentially noncompliant with tax filings and payments. These preparers have over \$367.6 million in total taxes due as of January 26, 2015. The RPO also identified 3,055 preparers who failed to file required tax returns for one (2,374 preparers) or more (681 preparers) tax years; eight tax return preparers who failed to file required tax returns for five years, and one tax return preparer who failed to file required tax returns for six years. While the RPO has a process to identify noncompliant return preparers, no actions were taken by the RPO to resolve these cases. Figure 2 provides a stratification of noncompliant preparers by the aggregate amount of tax due.¹⁰

Figure 2: IRS Breakdown of Return Preparers by the Amount of Tax Owed

Category of Tax Compliance – Aggregate Tax Due:	Preparers¹¹	Total Balances Due
Greater Than \$5 Million	3	\$20,629,621
Between \$1 Million and \$5 Million	23	\$32,402,122
Between \$500,000 and \$1 Million	55	\$38,829,470
Between \$250,000 and \$500,000	132	\$44,468,887
Between \$100,000 and \$250,000	480	\$72,577,395
Between \$50,000 and \$100,000	714	\$49,869,257
Between \$25,000 and \$50,000	1,145	\$40,616,698
Between \$10,000 and \$25,000	2,077	\$32,526,459
Between \$1,000 and \$10,000	9,269	\$33,851,104
Less Than \$1,000	2,543	\$1,830,352
Totals	16,441	\$367,601,365

Source: RPO personal tax compliance analysis.

¹⁰ An aggregate assessed balance is the total amount of taxes owed for all tax years.

¹¹ Population includes unlicensed return preparers, credentialed return preparers, and AFSP participants.



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The IRS established tax compliance as a suitability requirement in its Notice 2011-6; 2011-1 C.B. 315, *Implementation of Rules Governing Tax Return Preparers*, issued in December 2010. The notice states:

Until further guidance is issued, the IRS, in accordance with the authority to provide exceptions to the PTIN rules under section 1.6109-2 (h), will permit any individual eighteen years or older to pay the applicable user fee and obtain a PTIN permitting the individual to prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund for compensation if: the individual passes the requisite tax compliance check and suitability check (when available).

In CY 2012, the RPO worked with the IRS Information Technology organization to match PTIN holders included in the TPPS to the IRS Master File¹² and Tax Delinquency Investigation¹³ file to identify preparers who are noncompliant with tax filing and payment requirements. The RPO Suitability function also established criteria to determine that a preparer passes the tax compliance check if the following three requirements are met:

- Filed all required tax returns for both personal and business taxes.
- *****2*****
- Filed all tax returns and resolved any resulting balance due issues by fully paying the amount due or meeting a qualifying exception. *****2*****

For those preparers who do not pass the three requirements, the RPO can send an inquiry letter to the preparer. For example, if a preparer who is a licensed professional does not pass the above three requirements, then the suitability analysts can send the preparer one of the following letters:¹⁴

- **Letter 4911**, *Please take steps to resolve your tax compliance issues*. This letter informs the PTIN holder that “Failure to comply with these requirements may result in escalation of your case and/or possible revocation of your PTIN.” After 45 days, an analysis is done to determine if the PTIN holder has become compliant.
- **Letter 4912**, *We are proposing to escalate your tax compliance case to the Office of Professional Responsibility*. If no response is received to Letter 4911, this letter is sent to

¹² The IRS database that maintains transactions or records of individual and business tax accounts.
¹³ This status indicates that a taxpayer has one or more unfiled tax returns.
¹⁴ The RPO has not developed a letter that can be issued to unlicensed tax return preparers who are potentially noncompliant with tax laws.



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the PTIN holder. The PTIN holder is allowed another 45 days before additional research is done to determine tax compliance status.

- **Letter 5284**, *We referred your tax non-compliance case to the Office of Professional Responsibility (OPR)*, is sent to the PTIN holder to alert him or her that the tax noncompliance matter has been referred to the Office of Professional Responsibility.

An IRS Chief Counsel memo clarifies that assignment of PTINs can be based on tax compliance checks

Federal tax compliance is the only specific suitability check identified for tax return preparers. In May 2011, IRS Chief Counsel issued a memorandum to the Director of the RPO stating that “[n]either section 6109 nor the PTIN regulations provide specific suitability requirements to be satisfied before an individual receives a PTIN *other than* a Federal tax compliance check.” This memorandum also indicates that the IRS has the authority, under both Internal Revenue Code section 6109 and its general tax administration powers under Internal Revenue Code section 7803, to deny PTINs to certain individuals or classes of individuals when the issuance of PTINs to those individuals or classes of individuals would be inconsistent with the sound administration of Internal Revenue laws. However, the IRS assigns or allows an individual to renew a PTIN prior to performing suitability checks to avoid delays for the tax return preparers and to promote the use of PTINs by tax return preparers. After the PTIN is issued or renewed, the RPO Suitability function performs suitability and other checks to determine if the PTIN holder should retain the PTIN. This process was developed to allow tax return preparers to continue to prepare tax returns while the suitability checks are being completed.

A Treasury regulation grants the IRS authority to conduct tax compliance checks

Treasury Regulation Section 1.6109-2(f) grants the IRS the authority to conduct tax compliance checks for tax return preparers, stating that the IRS may conduct a Federal tax compliance check on a tax return preparer who applies for or renews a PTIN or other prescribed identifying number. The IRS’s decision to not fully complete tax compliance checks and revoke PTINs as warranted allows some preparers to maintain their PTIN even though they are not in compliance with Internal Revenue laws.

At the time of our audit, RPO management had not initiated actions relative to those preparers they identify as having tax compliance delinquencies. *****7*****
*****7*****¹⁵ *****. After the *Loving* decision was upheld¹⁶ by the U.S. Court of Appeals for the District of Columbia Circuit in

¹⁵ *Loving*, 917 F. Supp. 2d 67.

¹⁶ The Court of Appeals agreed with the lower court’s decision that the IRS did not have the authority to regulate tax return preparers and require them to pass an initial certification exam, pay annual fees, and complete at least 15 hours of continuing education courses each year.



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February 2014,¹⁷ management proceeded with caution and decided to not issue inquiry letters to noncompliant preparers and to not revoke the PTINs as warranted. *****7*****
*****7*****
*****7*****.

This IRS decision to allow preparers who are not compliant with Federal tax laws to prepare tax returns presents a significant level of risk. These tax return preparers can negatively affect taxpayers as well as tax revenue if the tax returns they prepare are incorrect or fraudulent.

RPO officials informed us at the end of our audit that, for preparers identified as having tax compliance delinquencies, it plans to issue Letter 4911 to preparers with professional credentials and to all noncredentialed preparers participating in the AFSP before the end of Fiscal Year 2015. The RPO does not plan to send letters to the noncredentialed preparers who are not participating in the AFSP.

Recommendation

Recommendation 1: The Director, RPO, should ensure that tax compliance checks are complete by timely issuing inquiry letters to preparers after identifying noncompliance with Federal tax laws and that appropriate actions are taken to revoke PTINs when warranted.

Management's Response: The IRS agreed with this recommendation. The RPO conducts weekly tax checks on all PTIN holders in the TPPS. Consistent with the IRS's existing procedures to send letters following the end of the filing season, the IRS began sending letters on June 17, 2015, to credentialed preparers (practitioners governed by Circular 230 guidelines) and preparers participating in the AFSP who were noncompliant with their tax obligations. The RPO will continue sending inquiry letters annually after each filing season.

Preparer Self-Reported Felony Convictions Are Not Evaluated

Our review of tax return preparers assigned a PTIN as of September 30, 2014, identified 3,001 preparers in the TPPS who self-reported a felony conviction on their application. The descriptions of the type of felony convictions detailed by these applicants include convictions for preparing false tax returns, drug possession, and mortgage fraud. Of the 3,001 preparers, 235 were licensed professionals.

The IRS requires preparers to disclose a felony conviction on their initial and renewal PTIN applications. Figure 3 below provides an excerpt from Form W-12 where applicants are asked about past felony convictions.

¹⁷ Loving v. I.R.S., 742 F.3d 1013 (U.S. App. D.C).



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on their PTIN applications and revoke PTINs when warranted. Only 64 of the 3,001 PTIN holders who self-reported a felony conviction were enrolled agents, and only 179 participated in the Annual Filing Season Program. Thus, the RPO will not assess the self-reported felony convictions of 2,758 preparers who may be unsuitable for the PTIN program.

Processes Do Not Ensure That Preparer Tax Identification Numbers Assigned to Prisoners and Enjoined Tax Return Preparers Are Revoked

The RPO did not revoke PTINs assigned to 65 (15 percent) of 445 confirmed prisoners identified as part of its January 2014 prisoner suitability check. In addition, PTINs were not revoked for 15 (17 percent) of 87 individuals identified as being permanently enjoined (barred) from preparing tax returns. These individuals were barred by a court-ordered injunction requested by the IRS.

To identify PTIN holders who are incarcerated, the RPO compares a file compiled by the IRS's Wage and Investment Division listing individuals incarcerated in State and Federal prison systems to the preparers included in the TPPS and forwards all matches to the Suitability function for further review. The Suitability function's review includes mailing two letters to the preparers:

- **Letter 5130, *Notice of Proposed Revocation*.** This letter notifies tax preparers who are currently incarcerated of a proposed revocation of their PTIN unless further information is provided to overturn this decision within 30 days of receiving the letter. This letter provides the tax return preparer 30 days to respond. In addition to the 30-day response period, the IRS provides an additional 15-day grace period for mailing in a response.
- **Letter 5131, *Notice of Revocation*.** If there is no response to Letter 5130, the RPO sends Letter 5131 notifying the tax preparer of the revocation of their PTIN. The IRS allows the tax return preparer 30 days to provide additional information to overturn this decision before the PTIN is revoked. The IRS also allows an additional 15-day grace period for responding to this notice of revocation letter.

When the Suitability function confirms that a PTIN holder is incarcerated, IRS policy requires the PTIN to be revoked. The process to revoke the PTIN held by an enjoined preparer also involves the RPO's Suitability function. Specifically, the Suitability function receives the list of enjoined preparers from the IRS Office of Professional Responsibility. The Suitability function employees are then required to revoke the PTINs of these enjoined preparers.



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Because processes and procedures were not always followed, there were prisoners and enjoined preparers whose PTINs were not revoked

The RPO established two reviews of Suitability function employees' work to ensure that they complete all required PTIN revocation actions. The first review is to ensure that employees follow procedures when documenting actions taken on a case. For example, the lead analyst will review an employee's suitability log for appropriate entries. The second review is to ensure that employees update the TPPS with the final determinations documented in the suitability log and revoke the PTIN when warranted. The RPO is not conducting this second review.

Because the second review was not performed, 65 prisoners and 15 enjoined preparers retained their PTIN. In addition, seven prisoners and three enjoined preparers continued to prepare tax returns in CYs 2014 and 2015. Figure 4 identifies the number of returns they filed.

Figure 4: Tax Returns Prepared by Prisoners and Enjoined Preparers

	Refund Returns Prepared	Refunds Claimed	Refunds Issued
Enjoined (3)	4	\$5,334	\$5,163
Incarcerated (7)	137	\$415,213	\$355,773
Total	141	\$420,547	\$360,936

Source: TIGTA analysis of tax returns prepared by incarcerated and enjoined tax return preparers.

The infrequency of the prisoner match reduces the RPO's ability to identify all incarcerated tax return preparers

The RPO performs its prisoner check once a year between December and February. This allows prisoners to obtain and use a PTIN after the annual match, without detection, until the RPO performs its next annual check. For example, if the IRS completes its prisoner match in January 2015 and a PTIN application from an incarcerated tax return preparer is received in February 2015, the IRS will grant the PTIN but not identify this preparer as a prisoner until its next annual prisoner check in January 2016. This can result in a prisoner using a PTIN in both the 2015 and 2016 Filing Seasons before the IRS completes its research and revokes the PTIN.

Our comparison of the January 2014 prisoner file to the TPPS, as of November 30, 2014, identified six prisoners who obtained a PTIN after the RPO's prisoner check on February 1, 2014. Five of the six prisoners prepared 829 tax returns during the 2014 Filing Season, with refunds totaling over \$2.5 million.¹⁸ Figure 5 provides the number of tax returns they prepared in CY 2014.

¹⁸ These returns were filed by five prisoners who were not identified by the RPO.



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Figure 5: Number of Tax Returns Filed by Prisoners Who Obtained a PTIN After the IRS's CY 2014 Prisoner Check

PTIN	PTIN Issue Date	Release Date	Number of Tax Returns Prepared Prior to Release Date	Total Refund Amounts	Refunds Issued
1	2/20/2014	8/7/2017	20	\$50,911	\$20,508
2	1/24/2014	9/26/2015	456	\$1,360,114	\$321,437
3	1/27/2014	5/29/2015	83	\$469,646	\$78,376
4	1/24/2014	6/30/2014	90	\$392,191	\$346,066
5	2/1/2014	1/31/2015	180	\$239,060	\$55,637
Total			829	\$2,511,922	\$822,024

Source: TIGTA analysis of tax returns prepared by incarcerated tax return preparers

RPO management stated that its decision to complete the prisoner match only once a year was made after its first prisoner match in CY 2012. This match identified only 50 potentially incarcerated PTIN holders. The RPO completed research to verify the incarceration status of these tax return preparers and concluded that the risk of prisoners obtaining a PTIN was low. In addition, management stated that increasing the frequency of the prisoner check would require more resources.

Recommendations

The Director, RPO, should:

Recommendation 3: Ensure that review processes are performed and employees complete required actions in the TPPS to revoke PTINs for incarcerated and enjoined tax return preparers.

Management's Response: The IRS agreed with this recommendation. The 80 PTINs found to be unrevoked in the TPPS was the result of one employee's failure to take all appropriate closing actions following the determination to revoke. The IRS has implemented additional quality controls, conducted refresher training for the employees, performed quality reviews of employee work products, and completed managerial reviews of the TPPS revocation process.



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Recommendation 4: Ensure that the prisoner check is completed quarterly and prisoners' PTINs are revoked as warranted.

Management's Response: The IRS agreed with this recommendation. Procedures were implemented to begin conducting quarterly checks of new PTIN applicants with the annual prisoner list on July 22, 2015.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to evaluate the effectiveness of the IRS's processes to ensure that paid tax return preparers meet the requirements to obtain and renew a PTIN and that preparers participating in the Annual Filing Season Program met the program's qualification requirements. To accomplish our objective, we:

- I. Assessed the IRS's processes to ensure that all paid tax return preparers comply with requirements to obtain and renew a PTIN for CY 2014 and that adequate actions are taken to address any failure to comply with the requirements.
 - A. Evaluated the IRS's actions to identify PTIN holders who match the Prisoner File,¹ resolve any prisoner matches, and revoke the PTIN of those who are in prison.
 - B. Evaluated the implementation of the tax compliance checks to determine whether actions were sufficient to ensure that preparers with tax compliance issues are identified as such on the TPPS.
 - C. Interviewed RPO management and determined actions taken or planned for conducting background checks on all PTIN holders.
 - D. Evaluated the implementation of the felony conviction checks to determine whether actions are sufficient to ensure that preparers with felony convictions are prevented from obtaining or renewing a PTIN in accordance with the RPO decision matrix.
 - E. Evaluated the implementation of the professional credential checks to determine whether processes were sufficient to ensure that appropriate actions are taken against preparers who falsely self-identified as having a professional credential. We selected and reviewed a statistically valid sample of 73 PTIN holders from a population of 379,609 PTIN holders with an active status that self-identified as having a professional credential as of November 30, 2014. We relied on TIGTA's contract statistician to verify our sampling methods. We selected our sample using a 95 percent confidence level, a ± 5 percent precision, and a 5 percent estimated error rate.
 - F. Determined how often the list of active PTIN holders is compared to the Office of Professional Responsibility listing of preparers permanently enjoined from preparing

¹ A file compiled by the IRS's Wage and Investment Division listing individuals incarcerated in State and Federal prison systems.



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- tax returns and whether the RPO properly identified the preparers with issues and revoked the PTIN in accordance with IRS policy.
- G. Conducted data analysis of the TPPS to verify that the database does not include records of PTIN holders meeting the following criteria: under the age of 18 years or deceased.
 - H. Determined whether the IRS's controls adequately ensure that individuals who fail suitability, validation, or other program requirements have their PTINs revoked in accordance with RPO policy and are prevented from registering or renewing a PTIN, as required.
- II. Assessed the processes in place or planned to ensure that preparers participating in the AFSP met the Record of Completion requirements for the 2015 Filing Season.
- A. Assessed the actions planned or taken to ensure that individuals meeting the ineligibility conditions listed in Revenue Procedure 14-42, *Annual Filing Season Program*, are determined ineligible to participate in the AFSP during the 2015 Filing Season and beyond.
 - B. Evaluated the process to record the continuing education credits and test results data in the TPPS and the issuance of the Record of Completion.
 - C. Evaluated the processes to build, update, and ensure the accuracy of the searchable public directory of preparers on IRS.gov.
 - D. Identified the processes to implement the requirement to obtain AFSP participants' consent to the duties and restrictions relating to practice before the IRS.

Validity and reliability of data from computer-based systems

Data used in this audit were validated by selecting independent samples of the PTIN File on the TIGTA Data Center Warehouse to the TPPS. We validated the data in the 2014 Prisoner File and the National Account Profile² obtained from the TIGTA Data Center Warehouse by: 1) reviewing the data for obvious errors in accuracy and completeness and 2) selecting a judgmental sample of cases from each extract to verify that the data elements extracted matched the taxpayer account information on the Integrated Data Retrieval System.³ We determined that the data were valid and reliable for the purposes of this report.

² The National Account Profile is a compilation of selected entity data from the IRS Master File, which is the database that stores various taxpayer information. The National Account Profile includes all valid and invalid taxpayer entity information.

³ IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.



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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 IRS's policies, procedures, and guidelines used by the RPO to issue PTINs and determine preparer suitability. We evaluated these controls by interviewing management and employees, analyzing data, and reviewing policies and procedures.



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Appendix II

Major Contributors to This Report

Russell P. Martin, Assistant Inspector General for Audit (Returns Processing and Account Services)
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Jackie Forbus, Lead Auditor
Lynn Faulkner, Senior Auditor
Jerome Antoine, Auditor
Edgar Moon, Auditor



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Operations Support OS
Director, Return Preparer Office SE:RPO
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Director, Office of Audit Coordination OS:PPAC:AC
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Management & Program Analyst, Return Preparer Office SE:RPO



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Appendix IV

*Form W-12, IRS Paid Preparer Tax Identification
Number (PTIN) Application and Renewal*

<p>Form W-12 (Rev. October 2014) Department of the Treasury Internal Revenue Service</p>	<p>IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal</p> <p>► Information about Form W-12 and its separate instructions is available at www.irs.gov/w12.</p>	<p>OMB No. 1545-2190</p>
<p>1 Name and PTIN (Print in ink or Type)</p>	<p>First name _____ Middle name _____ Last name _____</p> <p><input type="checkbox"/> Initial application <input type="checkbox"/> Renewal application (Enter PTIN: P _____)</p>	
<p>2 Year of Application/Renewal</p>	<p>If you checked the Initial application box and are applying for a PTIN between Oct. 1 and Dec. 31, indicate below whether you want your PTIN to be valid for the current calendar year or the next calendar year.</p> <p><input type="checkbox"/> Current calendar year <input type="checkbox"/> Next calendar year</p> <p>If you checked the Renewal application box <u>and</u> also need to renew for a previous calendar year, indicate the year below and see the line 2 instructions for additional guidance.</p> <p>Prior year(s): _____ (YYYY)</p>	
<p>3 SSN and Date of Birth</p>	<p>SSN _____ Date of birth (month, day, year) _____</p> <p style="text-align: center;">- - / /</p>	
<p>4 Personal Mailing Address and Phone Number</p>	<p>Street address. Use a P.O. box number only if the post office does not deliver mail to your street address.</p> <p>City or town, state/province, and, if outside U.S., country. Include ZIP or postal code where appropriate. Do not abbreviate name of country.</p> <p style="text-align: right;">Phone Number () -</p>	
<p>5a Business Mailing Address and Phone Number</p>	<p>Business address (if different than line 4 information above)</p> <p>Business city or town, state/province, and, if outside U.S., country. Include ZIP or postal code where appropriate. Do not abbreviate name of country.</p> <p>Domestic business phone number International business phone number</p> <p>() - EXT. +</p>	
<p>5b Business Name and Website Address</p>	<p>Enter the business name and website address (optional).</p>	
<p>6 Email Address</p>	<p>Enter the email address that should be used to contact you.</p>	
<p>7 Past Felony Convictions</p>	<p>Have you been convicted of a felony in the past 10 years? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If "Yes," list the date and the type of felony conviction(s).</p>	
<p>For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 55469F Form W-12 (Rev. 10-2014)</p>		



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Appendix V

Management's Response to the Draft Report


RETURN PREPARER OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 5, 2015

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: *for* Carol A. Campbell *Lester B. Benoit*
Director, Return Preparer Office

SUBJECT: Draft Audit Report - Preparer Tax Identification Numbers Are Not Revoked for Unsuitable Tax Return Preparers (Audit # 201440010)

Thank you for undertaking this review to evaluate the effectiveness of the IRS' processes to ensure paid tax return preparers meet the requirements to obtain and renew a preparer tax identification number (PTIN), and that preparers participating in the Annual Filing Season Program meet program qualification requirements. We appreciate your assistance in identifying program improvement opportunities.

Since 2010, when the IRS issued regulations requiring preparers to obtain a PTIN, the Return Preparer Office (RPO) has made significant progress establishing effective processes to manage a preparer population that annually averages approximately 700,000 active PTIN holders. As part of our commitment to maintaining a robust preparer program, we initiated the Annual Filing Season Program in June 2014 and successfully launched it in time for the 2015 filing season.

We appreciate TIGTA's recognition that the majority of PTIN processes and procedures are consistent with program requirements; requirements for participation in the Annual Filing Season Program are being adhered to, and listings in our first Directory of Federal Tax Return Preparers with Credentials and Select Qualifications are accurate.

Given that more than 700,000 preparers have active PTINs, 44,000 preparers participated in the Annual Filing Season Program and more than 300,000 preparers are listed in the new Directory, this is not a small undertaking. Ensuring that program requirements are met and that the information in our systems is accurate requires a significant investment of time and resources, and confirmation that we are doing well with these efforts is gratifying.



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We are also appreciative of your identification of both a process failure and a process improvement as it relates to the prisoner population. We confirmed, as noted in your report, that 65 prisoners and 15 enjoined preparers whose PTINs should have been revoked retained active PTINs. This error has been corrected and the 80 PTINs have been revoked. We determined that the error was attributable to one employee who had an incomplete understanding of our procedures and did not take the appropriate closing actions in assigned cases. We have therefore implemented additional quality controls, conducted refresher training for all employees, performed quality reviews of employee work product, and completed managerial reviews of the revocation process.

Additionally, based on your recommendation, we have instituted a quarterly match of all new PTIN applicants with the annual prisoner list. Even though you identified only six prisoners who obtained PTINs after our annual match was completed, we determined that the resource commitment involved in completing quarterly reviews is not so significant as to preclude adopting this recommendation.

With respect to tax noncompliance issues, we must point out that securing delinquent tax returns and collecting unpaid taxes from delinquent return preparers as with all taxpayers, is the responsibility of the Wage and Investment and Small Business/Self-Employed Divisions. Any RPO process would be supplemental and secondary. Additionally, 97% of all active PTIN holders are compliant with their federal tax obligations. Less than 3% of paid preparers have potentially delinquent accounts. While we completely agree that return preparers should be compliant with their personal tax obligations, there is nothing in your audit linking return preparers who have delinquent personal tax obligations to incorrect or fraudulently prepared tax returns, nor do we have information to support this.

The RPO sends tax noncompliance inquiry letters to preparers who are Circular 230 practitioners and preparers participating in the Annual Filing Season Program. See Treasury Department Circular No. 230 and Revenue Procedure 2014-42, respectively. There is both authority to address willful noncompliance and regulatory or procedural authority for taking specific actions against noncompliant preparers under these provisions. The provisions also define the notice requirements for any actions, as well as provide an opportunity and the timeframe to be heard before any adverse action is taken. As you point out, section 1.6109-2(f) of the Treasury Regulation allows tax compliance checks for PTIN holders. It does not, however, provide that tax compliance is a condition for obtaining a PTIN. While we believe the grant of authority under the statute is broad enough to encompass revocation, we are also cognizant of the fact that revocation is not specifically addressed in the current regulation, nor are any requirements for revocation delineated. Furthermore, aspects of this issue are currently being litigated in district court.



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Circular 230 and Rev. Proc. 2014-42 clearly define when and how sanctions (censure, suspension, disbarment, revocation) may be imposed if a preparer is determined to be noncompliant with tax obligations. See section 7 of Revenue Procedure 2014-42 and sections 10.50 and 10.51(a)(7) of Circular 230. Allocating resources to develop or assist in the development of cases where there are clear grants of authority and defined procedures for addressing tax compliance issues has been determined to be the best use of limited resources. The RPO inquiries are limited to several thousand contacts per year. In 2015, there were approximately 4,000 contacts. All preparer compliance cases that do not involve Circular 230 practitioners or Annual Filing Season Program participants continue to be addressed by the Wage and Investment and Small Business/Self-Employed Divisions.

Also using the authority under Circular 230 and Revenue Procedure 2014-42, we have procedures to assess self-reported felonies for Enrolled Agents and Annual Filing Season Program participants. At this juncture, we are finding a great deal of variance in what preparers self-report. We have found that preparers report charging incidents rather than convictions, misdemeanors rather than felonies and many incidents that occurred outside of the requested reporting window. On a random sample of 500 new Enrolled Agent applicants, we conducted an internal criminal background check pilot in 2014 that included applicants with self-reported convictions and others reporting no convictions. In the sample, (0.4 percent) applicants, two required referrals for additional consideration. We may expand the pilot to a larger sample going forward, but in the interim, we will continue with our procedures to assess felonies reported by Enrolled Agents and Annual Filing Season Program participants.

Regarding your inference that revoking PTINs acquired by incarcerated individuals is inconsistent with a determination not to revoke PTINs for preparers who are potentially tax noncompliant, we disagree. As a matter of policy, the IRS has decided to deny PTINs to prisoners. There is no need for judgment or discretion in the decision to remove a PTIN from an incarcerated preparer, just confirmation of prisoner status. Any decision on tax compliance, and whether a lack of compliance can/should result in a loss of livelihood for a tax return preparer, cannot be devoid of any consideration of the facts and circumstances of the case. Sound tax administration does not require the suspension of all judgment or discretion in determining how to address any taxpayer delinquency. Tax return preparers are not excepted.

Other specific comments on your recommendations are attached. If you have any questions, please contact me, or a member of your staff may contact Karen Hunter-Thomas, Director, RPO Strategy and Finance at (703) 414-2121.

Attachment



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Attachment

The Deputy Commissioner for Services and Enforcement should:

Recommendation 1

Complete tax compliance checks by timely issuing inquiry letters to preparers after identifying noncompliance with Federal tax laws, and take appropriate actions to revoke PTINs when warranted.

Corrective Action:

We agree with this recommendation. The RPO conducts weekly tax checks on all PTIN holders in the Tax Professional PTIN System (TPPS). Consistent with our existing procedures to send letters following the end of the filing season, we began sending letters on June 17, 2015, to credentialed preparers (practitioners governed by Circular 230 guidelines) and preparers participating in the Annual Filing Season Program who were noncompliant with their tax obligations. The RPO will continue sending inquiry letters annually after each filing season.

Note: The Wage & Investment (W&I) and Small Business/Self-Employed (SB/SE) Divisions of the IRS are responsible for collection and enforcement efforts regarding all individual taxpayers including tax professionals (credentialed and non-credentialed). The RPO inquiry letters supplement the many ongoing compliance programs in these divisions.

Implementation Date:

Completed

Responsible Official:

Director, Return Preparer Office

Corrective Action Monitoring Plan

The IRS will monitor this corrective action as part of our internal management system.

Recommendation 2

Assess all self-reported felony convictions and revoke PTINs when warranted.

Corrective Action:

We partially agree with this recommendation. We will continue to assess the self-reported felony convictions of Enrolled Agent and Annual Filing Season Program applicants and take appropriate action when warranted.

Implementation Date:

Ongoing



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Responsible Official:

Director, Return Preparer Office

Corrective Action Monitoring Plan

The IRS will monitor this corrective action as part of our internal management system.

Recommendation 3

Ensure that review processes are performed and employees complete required actions in the TPPS to revoke PTINs for incarcerated and enjoined tax return preparers.

Corrective Action

We agree with this recommendation. The eighty PTINs found to be unrevoked in TPPS was the result of one employee's failure to take all appropriate closing actions following the determination to revoke. We have implemented additional quality controls, conducted refresher training for the employees, performed quality reviews of employee work product and completed managerial reviews of the TPPS revocation process.

Implementation Date

Completed

Responsible Official

Director, Return Preparer Office

Corrective Action Monitoring Plan

The IRS will monitor this corrective action as part of our internal management system.

Recommendation 4

Complete the prisoner check quarterly and revoke prisoners' PTINs as warranted.

Corrective Action

We agree with this recommendation. Procedures were implemented to begin conducting quarterly checks of new PTIN applicants with the annual prisoner list on July 22, 2015.

Implementation Date

Completed

Responsible Official

Director, Return Preparer Office

Corrective Action Monitoring Plan

The IRS will monitor this corrective action as part of our internal management system.