

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## Review of the Independent Office of Appeals Collection Due Process Program

August 21, 2020

Reference Number: 2020-10-054

[TIGTACommunications@tigta.treas.gov](mailto:TIGTACommunications@tigta.treas.gov) | [www.treasury.gov/tigta](http://www.treasury.gov/tigta) | 202-622-6500

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# HIGHLIGHTS: Review of the Independent Office of Appeals Collection Due Process Program



Final Audit Report issued on August 21, 2020  
Reference Number 2020-10-054

## Why TIGTA Did This Audit

This audit was initiated because TIGTA is statutorily required to determine whether the IRS complied with the required procedures under 26 United States Code Sections 6320 and 6330 when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy.

## Impact on Taxpayers

The Collection Due Process hearing provisions are designed to give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the Notice of Federal Tax Lien that has been filed is warranted and appropriate. An effective process is necessary to ensure that statutory requirements are met and taxpayers' rights are protected.

## What TIGTA Found

The IRS Independent Office of Appeals (Appeals) properly informed taxpayers that Collection Due Process and Equivalent Hearings were conducted by an impartial hearing officer with no prior involvement with the tax or tax periods covered by the hearing. However, TIGTA identified some hearing processing errors that were similar to errors identified in prior reports. Specifically, Appeals misclassified Collection Due Process or Equivalent Hearing cases, the Collection function did not timely forward misdirected Equivalent Hearing cases to the correct location, and taxpayer accounts had Collection Statute Expiration Date (CSED) errors due to incorrectly input CSED suspension start and stop dates.

Appeals did not always classify taxpayer requests properly, and as a result, some taxpayers received the wrong type of hearing. TIGTA reviewed a statistically valid stratified sample of 140 cases and identified 14 taxpayer cases that were misclassified. Based on the same stratified sample, TIGTA determined that the Collection function did not timely process the hearing requests for an additional four taxpayers. When taxpayers mail or fax their hearing request to the wrong Collection function location, Collection function procedures require employees to fax the taxpayer's request to the appropriate Collection function personnel at the correct location on the same day. While Appeals provided taxpayers with the correct hearing type in these cases, the Collection function did not follow procedures. As a result, the IRS may not have adequately protected the taxpayers' rights due to the untimely processing of the misdirected hearing requests.

In addition, TIGTA continued to identify errors related to the determination of the CSED on taxpayer accounts. TIGTA identified 12 taxpayer cases that had an incorrect CSED. For six taxpayer cases, the IRS incorrectly extended the time period, allowing the IRS additional time to collect delinquent taxes. For the remaining six taxpayer cases, the IRS incorrectly decreased the time to collect the delinquent taxes.

## What TIGTA Recommended

TIGTA recommended that the Chief, Independent Office of Appeals, require the applicable Appeals technical employees to complete available training on determining the timeliness of Collection Due Process and Equivalent Hearing requests and issue additional interim guidance to provide clarity around what constitutes a timely filed Collection Due Process request. TIGTA also recommended that the Chief, Independent Office of Appeals, update the inaccurate CSEDs for the 12 taxpayer accounts that TIGTA identified with CSED errors.

IRS management agreed with these recommendations and plans to take appropriate corrective actions.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**U.S. DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

August 21, 2020

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Review of the Independent Office of Appeals  
Collection Due Process Program (Audit # 202010017)

This report presents the result of our review to determine whether the Internal Revenue Service complied with 26 United States Code Sections 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy. This audit is included in our Fiscal Year 2020 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



## Review of the Independent Office of Appeals Collection Due Process Program

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## Review of the Independent Office of Appeals Collection Due Process Program

### Background

Per the Internal Revenue Code (I.R.C.), if any person liable to pay any tax assessments neglects or refuses to pay the unpaid tax after notice and demand, the Internal Revenue Service (IRS) has the authority to attach a claim to a taxpayer's assets (lien) by filing a Notice of Federal Tax Lien (NFTL).<sup>1</sup> Along with the filing of an NFTL, the IRS is required to notify the taxpayer of the filing of a lien as well as the taxpayer's right to request a hearing.<sup>2</sup> The IRS accomplishes this by sending the taxpayer a Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under I.R.C. 6320*.

The IRS also has the authority to levy a taxpayer's property to satisfy a tax liability.<sup>3</sup> By law, under most circumstances, no levy may be made on any property or right to property of any person unless the IRS has notified such person in writing of his or her right to a hearing before such levy is made.<sup>4</sup> Such notice shall be required only once for the taxable period to which the unpaid tax applies.<sup>5</sup> The IRS notifies the taxpayer of its intent to levy by sending the taxpayer a Letter 11 or Letter 1058, *Final Notice – Notice of Intent to Levy and Notice of Your Right to a Hearing*.

In January 1996, Congress amended the I.R.C. to modify collection activity provisions that allowed taxpayers additional rights under lien and levy actions by the IRS.<sup>6</sup> Congress subsequently enacted the IRS Restructuring and Reform Act of 1998,<sup>7</sup> which gave taxpayers the right to a hearing with the IRS Independent Office of Appeals (Appeals) under I.R.C. Collection Due Process (CDP) provisions. Appeals is independent of other IRS offices, and its mission is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the Federal Government and the taxpayer.

The CDP hearing provisions were designed to give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the NFTL that has been filed



The CDP hearing provisions were designed to give taxpayers an opportunity for an independent review to ensure that the proposed levy action or the NFTL that has been filed is warranted and appropriate.

is warranted and appropriate. An effective process is necessary to ensure that statutory requirements are met and taxpayers' rights are protected. Taxpayers have 30 calendar days from the date on the Notice of Intent to Levy to request a levy hearing. The IRS notifies

<sup>1</sup> The I.R.C. is the body of law that codifies all Federal tax laws, including income, estate, gift, excise, alcohol, tobacco, and employment taxes. These laws constitute Title 26 of the United States Code (U.S.C.). The U.S.C. is a consolidation and codification by subject matter of the general and permanent laws of the United States.

<sup>2</sup> The NFTL is a public notification filed with designated State and local jurisdictions. The purpose of filing the NFTL publicly is to inform certain third parties and establish the Government's right of priority against taxpayer creditors.

<sup>3</sup> 26 U.S.C. § 6331.

<sup>4</sup> 26 U.S.C. § 6330(f). Under certain circumstances, the IRS will not notify the taxpayer before the levy is made or suspend levy actions during a CDP or Equivalent Hearing. Exceptions may involve tax collection in jeopardy situations, State income tax levies, Federal contractor levies, or disqualified employment tax levies.

<sup>5</sup> 26 U.S.C. § 6330.

<sup>6</sup> Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

<sup>7</sup> Pub. L. No. 105-206, 112 Stat. 685.



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taxpayers by certified letter that an NFTL has been filed. Taxpayers then have five business days and 30 calendar days to request a CDP lien hearing.

Taxpayers who timely request a CDP hearing are generally granted a hearing.<sup>8</sup> When a CDP hearing request is received, the IRS suspends the 10-year period it has to collect the taxes owed until the date the Appeals determination becomes final. If the taxpayer does not agree with Appeals' determination from the CDP hearing, he or she may petition the U.S. Tax Court to request judicial review of the determination. In addition, if the taxpayer timely requests a CDP hearing, levy actions on the assessments that are the subject of the CDP notice must be suspended during the appeal period and while any court proceedings are pending, unless an exception applies.

Taxpayers who do not timely request a CDP hearing within the allotted time frames may be entitled to an Equivalent Hearing with Appeals, but only if specifically requested. Late-filed CDP requests will not automatically be processed as Equivalent Hearings. The taxpayer must request an Equivalent Hearing within one year of the issuance of the Notice of Intent to Levy and one year plus five business days after the estimated filing date of the NFTL. If the taxpayer request for a CDP hearing is not timely and he or she requests an Equivalent Hearing, the law does not prohibit the levying of a taxpayer's property, the collection statute is not suspended, and the taxpayer generally cannot petition the U.S. Tax Court if he or she disagrees with Appeals' decision.<sup>9</sup>

### Processing taxpayers' requests for a CDP or Equivalent Hearing

The Notice of Intent to Levy or the Lien Notice informs the taxpayer of his or her legal right to appeal the intended levy or filed NFTL by requesting a CDP hearing.<sup>10</sup> Taxpayers wishing to request a hearing are instructed to complete Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, and send their request to the Small Business/Self-Employed Division's Collection function office that initiated the compliance action, *i.e.*, the directed address shown on the CDP Notices. Taxpayers are not to send their hearing requests directly to Appeals.

After a hearing request is received, Collection function office employees can continue to work with the taxpayer to resolve his or her issues for up to 90 calendar days. If the Collection function office employee cannot resolve the taxpayer's concerns, the Collection function will send the hearing request to Appeals. However, the Collection function office can refer a hearing request to Appeals immediately if it believes resolution of the taxpayer's concerns is unlikely or when directed by the taxpayer to do so.

Upon receipt in Appeals, the hearing request is assigned to an Appeals hearing Settlement Officer (hereafter referred to as the hearing officer). Appeals will then issue a contact letter acknowledging receipt of the request for the CDP or Equivalent Hearing, which provides the

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<sup>8</sup> A hearing request may not always be granted. For example, if the entire CDP request is frivolous or reflects a desire to delay, the taxpayer is not entitled to a hearing.

<sup>9</sup> The taxpayer is not entitled to seek judicial review of Appeals' decision in an Equivalent Hearing case unless he or she raises the specific issue of spousal relief under I.R.C. § 6015 or abatement of interest under I.R.C. § 6404(h) or questions the timeliness of the request for a CDP hearing.

<sup>10</sup> See Appendix III.



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taxpayer the opportunity to discuss with Appeals the reasons for disagreement with the collection action or to discuss alternatives to the collection action.<sup>11</sup>

At the conclusion of a CDP or Equivalent Hearing, Appeals will generally issue a closing letter to the taxpayer stating whether the disputed lien or levy action is sustained.<sup>12</sup> For CDP hearings, the closing letter is known as a Notice of Determination Letter. For Equivalent Hearings, the closing letter is known as a Decision Letter. Appeals will issue additional closing letters based on different hearing resolutions.<sup>13</sup>

The Treasury Inspector General for Tax Administration (TIGTA) is required to determine annually whether the IRS complied with legal guidelines and procedures for the filing of an NFTL or a Notice of Intent to Levy and the right of the taxpayer to appeal these actions.<sup>14</sup> This is our twentieth annual audit of taxpayer appeal rights.<sup>15</sup>

## Results of Review

### Appeals Generally Complied With Collection Due Process Requirements

Our review of a statistically valid stratified sample of 140 of the 26,635 CDP and Equivalent Hearing cases closed in Fiscal Year (FY) 2019 found that Appeals properly informed taxpayers that CDP and Equivalent Hearings were conducted by an impartial hearing officer with no prior involvement with the tax or tax periods covered by the hearing.<sup>16</sup> However, we identified 30 hearing processing errors in the 140 sampled cases similar to what we have identified in prior reports. Specifically, we found that:

- Appeals did not properly classify taxpayers' hearing requests.
- The Collection function did not timely forward misdirected hearing requests to the IRS office and address as directed on the CDP Notice.
- The Collection Statute Expiration Dates (CSED) on the taxpayers' accounts were not correct.

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<sup>11</sup> Letter 4837, *Substantive Contact Uniform Acknowledgement Letter*, includes significant information on the impartiality status of the hearing officer.

<sup>12</sup> If the taxpayer withdraws his or her request for a hearing and a contact letter has not been issued, Appeals will not issue a closing letter.

<sup>13</sup> See Appendix IV for details on Appeals closing letters.

<sup>14</sup> 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv).

<sup>15</sup> See Appendix V.

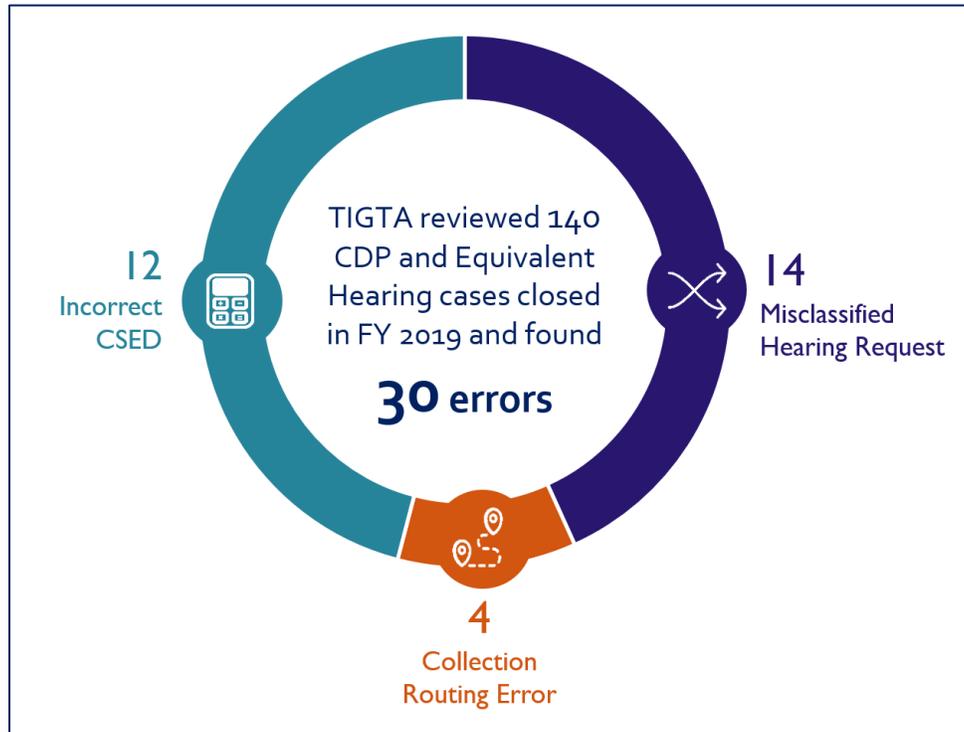
<sup>16</sup> See Appendix I for details on our sampling methodology.



## Review of the Independent Office of Appeals Collection Due Process Program

Figure 1 provides a summary of the errors we identified.

**Figure 1: Summary of Errors Identified**



Source: TIGTA review of 140 CDP and Equivalent Hearing cases closed in FY 2019.

Based on our sample results, we estimate that Appeals misclassified 1,857 CDP or Equivalent Hearing cases, the Collection function did not timely forward 224 misdirected Equivalent Hearing cases to the correct location, and 2,821 taxpayer accounts had incorrect CSED suspensions during FY 2019.<sup>17</sup>

### Some taxpayers did not receive the appropriate type of hearing

During our review, we determined that the IRS misclassified 14 of the 140 CDP and Equivalent Hearing cases in our sample. By comparison, we identified nine misclassified CDP and Equivalent Hearing cases in our prior year review.<sup>18</sup> Taxpayers who wish to have a CDP hearing must submit their request to the IRS within 30 calendar days of the date of the Notice of Intent to Levy or not more than five business days plus 30 calendar days from the date indicated in the Lien Notice. Taxpayers who do not timely submit their CDP hearing request may be granted an Equivalent Hearing if their request is received within the one-year period commencing the day after the date of the CDP Levy Notice and/or within the one-year period commencing the day after the end of the five-business-day period following the date indicated in the CDP Lien Notice.<sup>19</sup> As a result of the misclassifications we identified, taxpayers did not receive the hearings to which they were entitled or incorrectly received a hearing when they should not have. Based on our sample results, we estimate that 1,857 of 26,635 taxpayer cases closed in

<sup>17</sup> See Appendix II.

<sup>18</sup> TIGTA, Ref. No. 2019-10-058, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2019).

<sup>19</sup> See Appendix III.



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FY 2019 were misclassified by Appeals and, as a result, taxpayers did not receive the type of hearing to which they were entitled.<sup>20</sup>

- In seven misclassified cases, taxpayers were entitled to a CDP or Equivalent Hearing based on their hearing requests being timely received by the IRS but did not receive the correct type of hearing or any hearing at all. Appeals incorrectly provided four of these taxpayers an Equivalent Hearing rather than an appropriate CDP hearing. Taxpayers have the right to petition the U.S. Tax Court if they disagree with Appeals' decision on a CDP hearing, which is not afforded to those taxpayers who are granted an Equivalent Hearing. In three CDP or Equivalent hearing cases, Appeals did not provide a hearing for all of the appropriate tax periods to which the taxpayers were entitled.
- In seven misclassified cases, taxpayers received hearings to which they were not entitled. For three misclassified CDP cases, the taxpayers received a CDP hearing when the taxpayer request for a hearing was premature or filed late.<sup>21</sup> Taxpayers who are incorrectly granted a CDP hearing may be incorrectly advised of the right to petition the U.S. Tax Court if he or she disagrees with Appeals' determination as a result of the hearing. For four taxpayers, Appeals provided Equivalent Hearings the taxpayers were not entitled to because either the taxpayer did not request the Equivalent Hearing or the request was filed late.

Appeals management agreed with all of the errors we identified. Appeals management stated that taxpayer cases were mainly misclassified due to the variable facts and circumstances of each case and incorrect judgment on the part of hearing officers. In previous reviews, we recommended that Appeals management provide refresher training, review previously identified misclassified cases, and determine if there are process improvements or additional training areas that can be emphasized to ensure that taxpayer CDP and Equivalent Hearing cases are classified correctly.<sup>22</sup> In September 2013, Appeals developed a refresher course on the topic of determining timeliness of CDP and Equivalent Hearing requests. The training class is available to Appeals technical employees who work CDP cases but is not currently required.

**Recommendation 1:** The Chief, Independent Office of Appeals, should a) require the applicable Appeals technical employees to complete available training on determining the timeliness of CDP and Equivalent Hearing requests and b) issue additional interim guidance, along with the Small Business/Self-Employed Division Collection function, to provide clarity around what constitutes a timely filed CDP request.

**Management's Response:** The IRS Independent Office of Appeals agreed with this recommendation. Appeals management will ensure that Appeals technical employees complete the available training on determining the timeliness of CDP and Equivalent Hearing requests. Appeals and Small Business/Self-Employed Division management have collaborated to develop interim guidance to provide clarity about what constitutes a timely filed CDP request.

<sup>20</sup> Our sample was selected using a 90 percent confidence interval, 10 percent error rate, and  $\pm 6$  percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total is between 781 and 2,934 taxpayers.

<sup>21</sup> Appeals may release jurisdiction of a CDP hearing request as premature if the hearing request is not processable or the Collection function issued the CDP notice erroneously.

<sup>22</sup> TIGTA, Ref. No. 2012-10-077, *Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist* (July 2012).



## Review of the Independent Office of Appeals Collection Due Process Program

### **The Collection function did not always timely forward misdirected taxpayer hearing requests as required**

Our review of 140 closed CDP and Equivalent Hearing cases identified four cases in which taxpayers were not granted a CDP hearing because they sent their hearing request to the wrong location and Collection function personnel did not timely forward the misdirected hearing requests to the correct Collection function office. The written request for a CDP hearing must be sent to the IRS office and address as directed on the CDP notice.<sup>23</sup> However, taxpayers do not always send their request to the address on the lien or levy notices. As a result, due to the untimely processing of some misdirected hearing requests, the IRS may not always adequately protect the taxpayers' rights. To help ensure that taxpayers' rights are protected, Collection function guidance requires Collection function employees to fax a misdirected hearing request to the correct Collection function location on the day it is received.

Although these hearing requests were not timely received at the directed notice address, Appeals did provide taxpayers with the correct hearing type in these cases. In each case, the hearing request was received in the correct location after the period for timely requesting a CDP hearing had lapsed. Therefore, the taxpayers were provided an Equivalent Hearing. However, had Collection function personnel timely forwarded these taxpayers' requests to the correct location, the requests would likely have been received before the CDP filing deadline, thus entitling the taxpayers to a CDP hearing. Based on the results of our sample, we estimate that 224 of 26,635 taxpayer cases closed in FY 2019 may not have been granted a CDP hearing because Collection function personnel did not timely route the misdirected taxpayer's request to the proper location as required.<sup>24</sup>

In last year's review, TIGTA recommended that the Director, Collection, should take action to provide reasonable assurance that Collection function personnel forward misdirected CDP and Equivalent Hearing requests to the correct location on the same day the requests are received. The IRS agreed with this recommendation and, in December 2019, the Collection function revised the Internal Revenue Manual to state that misdirected CDP requests must be forwarded to the correct location within one business day of receipt. Additionally, in FY 2020, IRS Chief Counsel established new guidelines for IRS handling of misdirected CDP hearing requests.<sup>25</sup> Because these actions were taken after the time period covered by this review, we are not making any additional recommendations at this time and will review this issue during next year's audit.

### **The CSED was not always computed correctly**

We continued to identify errors related to the determination of the CSED on taxpayer accounts. We found that 12 of the 140 cases reviewed had an incorrect CSED. In comparison, we identified eight taxpayer accounts with CSED errors in our prior year review. The CSED is the expiration of the time period established by law to collect taxes.<sup>26</sup> The CSED is normally 10 years from the date of the tax assessment. Once a tax liability is assessed, the statute of

<sup>23</sup> 26 C.F.R. §§ 301.6320 and 301.6330.

<sup>24</sup> Our sample was selected using a 90 percent confidence interval, 10 percent error rate, and  $\pm 6$  percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total is between 45 and 402 taxpayers.

<sup>25</sup> Office of Chief Counsel IRS Memo Posts-11308-18 (December 12, 2019).

<sup>26</sup> 26 U.S.C. § 6502 (a)(1).



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limitations for collection begins to run. The expiration of the collection statute ends the Federal Government's right to pursue collection of a liability. When a request for a CDP hearing is timely received, the IRS suspends the CSED from the receipt date of the CDP hearing request until the date the Appeals determination is made final or the date the IRS receives the taxpayer's withdrawal request.<sup>27</sup> For this review, we identified:

- Six CDP and Equivalent Hearing cases for which the CSED was incorrectly extended. As a result, the IRS has more time to collect delinquent taxes than it was authorized. Based on our sample results, we estimate that the IRS may have incorrectly extended the CSED for 1,679 of 26,635 CDP and Equivalent Hearing cases closed in FY 2019.<sup>28</sup>
- Six CDP and Equivalent Hearing cases for which the CSED was incorrectly shortened. As a result, the IRS has less time to collect any outstanding balance from the taxpayer than it was authorized. Based on our sample results, we estimate that the IRS may have incorrectly reduced the CSED for 1,142 of 26,635 CDP and Equivalent Hearing cases closed in FY 2019.<sup>29</sup>

The suspension of the CSED is systemically controlled by transaction codes on the Integrated Data Retrieval System (IDRS).<sup>30</sup> One code is entered to start the suspension, and another code is entered to stop the suspension and restart the statute period. Generally, the code to suspend the collection statute along with the date the suspension should begin is input by the Collection function. However, in certain instances, Appeals personnel are responsible for inputting the suspension code and start date. Upon completion of the CDP hearing, Appeals is responsible for entering the code to remove the suspension of the statute period, along with the hearing completion date. The IDRS will systemically recalculate the CSED based on the dates entered for the two codes (which generally reflect the length of the Appeals hearing or the exhaustion of any rights to appeal following judicial review).

Appeals management agreed with all of the errors we identified. Appeals stated that Appeals and Collection function personnel did not always enter the correct date to start or stop the suspension of the collection statute.

**Recommendation 2:** The Chief, Independent Office of Appeals, should update the inaccurate suspension start or stop dates for the 12 taxpayer accounts that we identified with CSED errors.

**Management's Response:** The IRS Independent Office of Appeals agreed with this recommendation. Appeals management has reviewed the 12 taxpayer accounts and will initiate the necessary corrective actions.

<sup>27</sup> After Appeals issues a Notice of Determination for the CDP hearing, the taxpayer may choose to petition the U.S. Tax Court to contest the IRS and/or Appeals determination. The Appeals CDP hearing remains open until the Tax Court Judge enters a final decision.

<sup>28</sup> Our sample was selected using a 90 percent confidence interval, 10 percent error rate, and  $\pm 6$  percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total is between 518 and 2,839 taxpayers.

<sup>29</sup> Our sample was selected using a 90 percent confidence interval, 10 percent error rate, and  $\pm 6$  percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual total is between 218 and 2,065 taxpayers.

<sup>30</sup> IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.



## Review of the Independent Office of Appeals Collection Due Process Program

# Appendix I

## Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with 26 United States Code (U.S.C.) Sections (§§) 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy. To accomplish this objective, we:

- Determined whether any new procedures specific to CDP and Equivalent Hearings have been developed since TIGTA's prior statutory review.
- Selected a stratified random sample of 140 of 26,635 CDP and Equivalent Hearings that were closed during FY 2019 in the Appeals Centralized Database System.<sup>1</sup>
- Used the following criteria for the sample: a 90 percent confidence level, a  $\pm 6$  percent precision rate, and a 10 percent error rate.<sup>2</sup> Our sample strata are based on the type and location of the CDP and Equivalent Hearing closed case files. We randomly selected and reviewed:
  - 46 of the 14,946 CDP hearing cases filed at an IRS campus.<sup>3</sup>
  - 24 of the 7,776 CDP hearing cases filed at a Federal Records Center.<sup>4</sup>
  - 45 of the 2,491 Equivalent Hearing cases filed at an IRS campus.
  - 25 of the 1,422 Equivalent Hearing cases filed at a Federal Records Center.
- Determined whether Appeals CDP and Equivalent Hearing cases were classified correctly by reviewing the case files for the 140 sample cases we selected.
- Determined whether the CSED was calculated correctly on the taxpayer's account on the IDRS based on the type of hearing granted for the 140 sample cases we selected.
- Determined whether Appeals was in compliance with 26 U.S.C. §§ 6320 (b) and (c) and 6330 (b) and (c) by reviewing the case files for the 140 sample cases we selected for evidence that Appeals documented that the taxpayer was provided with an impartial hearing officer or waived this requirement.

<sup>1</sup> The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process. Appeals closed a total of 26,655 CDP and Equivalent Hearing cases in FY 2019. We used a closed case total of 26,635 CDP and Equivalent Hearing cases for stratified sampling. Per the Appeals Centralized Database System, 17,437 closed CDP and Equivalent Hearing cases were returned to campuses, and 9,198 CDP and Equivalent Hearing cases were returned to Collection function revenue officers and refiled at a Federal Records Center. A total of 20 closed CDP and Equivalent Hearing cases were returned to IRS Examination function and Exempt Organizations function employees and were not included in our sampling methodology due to materiality.

<sup>2</sup> A contract statistician assisted with developing the sampling plans and projections.

<sup>3</sup> The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.

<sup>4</sup> The National Archives and Records Administration operates a system of Federal Records Centers for the economical storage of, and access to, noncurrent records of the Federal Government.



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### Performance of This Review

This review was performed with information obtained from the Appeals offices in Los Angeles, California; San Francisco, California; Washington, D.C.; and Holtsville, New York, and the Collection function office in Lanham-Seabrook, Maryland, during the period October 2019 through May 2020. 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 Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Troy D. Paterson, Director; Melinda H. Dowdy, Audit Manager; Lindsay M. Steward, Acting Audit Manager; Zachary P. Orrico, Acting Audit Manager; and Mark A. Judson, Lead Auditor.

### Validity and Reliability of Data From Computer-Based Systems

During this review, we relied on data obtained from the Appeals Centralized Database System. This file is maintained at TIGTA's Data Center Warehouse.<sup>5</sup> Before relying on the data, we evaluated the sufficiency and reliability of the data to ensure that the data field descriptions were accurately stated. In addition, we assessed the appropriateness of data within the requested fields and compared population totals to information obtained from Appeals officials. We determined that the data were sufficiently reliable for the purposes of this report.

### Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the policies and procedures in the CDP Program and the IRS policies and procedures for a) classifying CDP and Equivalent Hearing taxpayer cases, b) ensuring that hearing officers met the criteria specified in 26 U.S.C. §§ 6320 and 6330, and c) reviewing applicable computer codes on the IDRS for CDP and Equivalent Hearing taxpayer cases. We evaluated these controls by selecting a statistical stratified sample of CDP and Equivalent Hearing taxpayer cases, reviewing closed case file documentation, and discussing potential exceptions with Appeals officials.

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<sup>5</sup> A secured centralized storage of IRS database files used to maintain critical historical data that have been extracted from operational data storage and transformed into formats accessible to TIGTA employees.



## Appendix II

### Outcome Measures

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

#### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 1,857 taxpayers who did not receive the correct type of hearing to which they were entitled because Appeals misclassified their hearing request (see Recommendation 1).

#### **Methodology Used to Measure the Reported Benefit:**

We reviewed a statistically valid stratified sample of 140 CDP and Equivalent Hearing cases closed during FY 2019. Based on our review, we identified 14 CDP and Equivalent Hearing case files that contained a request that was misclassified by Appeals. For the 14 cases, the taxpayers did not receive the hearings to which they were entitled or incorrectly received a hearing when they should not have. We estimate that 6.97 percent of the taxpayer cases closed in FY 2019 (1,857 taxpayer cases) may have contained misclassified CDP and Equivalent Hearing requests. The TIGTA statistician calculated these error rate projections and applied them over the total population size of 26,635 closed CDP and Equivalent Hearing cases. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 781 taxpayers and 2,934 taxpayers and that the true exception rate is between 2.93 percent and 11.02 percent.

#### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 224 taxpayers whose requests for a CDP or Equivalent Hearing were not timely forwarded to the correct Collection function location (see Page 6).

#### **Methodology Used to Measure the Reported Benefit:**

We reviewed a statistically valid stratified sample of 140 CDP and Equivalent Hearing cases closed during FY 2019. We identified four misdirected CDP or Equivalent Hearing requests that were not timely forwarded to the correct Collection function location. Based on the results of our review, we estimate that 0.84 percent of taxpayer cases closed in FY 2019 (224 taxpayer cases) were misdirected and not timely forwarded to the correct Collection function location. The TIGTA statistician calculated these error rate projections and applied them over the total population size of 26,635 closed CDP and Equivalent Hearing cases. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 45 taxpayers and 402 taxpayers and that the true exception rate is between 0.17 percent and 1.57 percent.



## Review of the Independent Office of Appeals Collection Due Process Program

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### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 1,679 taxpayers who had an incorrect CSED posted to their accounts, incorrectly extending the amount of time the IRS has to legally collect delinquent taxes (see Recommendation 2).

### **Methodology Used to Measure the Reported Benefit:**

We reviewed a statistically valid stratified sample of 140 CDP and Equivalent Hearing cases closed during FY 2019. We identified six CDP and Equivalent Hearing cases for which the IRS incorrectly computed the CSED, allowing the IRS additional time to legally collect delinquent taxes. We estimate that 6.30 percent of the taxpayer cases closed in FY 2019 (1,679 taxpayer cases) had an incorrect CSED posted to taxpayer records. The TIGTA statistician calculated these error rate projections and applied them over the total population size of 26,635 closed CDP and Equivalent Hearing cases. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 518 taxpayers and 2,839 taxpayers and that the true exception rate is between 1.95 percent and 10.66 percent.

### **Type and Value of Outcome Measure:**

- Increased Revenue – Potential; 1,142 taxpayers who had an incorrect CSED posted to their accounts, incorrectly shortening the amount of time the IRS has to legally collect delinquent taxes (see Recommendation 2).

### **Methodology Used to Measure the Reported Benefit:**

We reviewed a statistically valid stratified sample of 140 CDP and Equivalent Hearing cases closed during FY 2019. We identified six CDP or Equivalent Hearing cases for which the IRS incorrectly computed the CSED, allowing the IRS less time to legally collect delinquent taxes. This may result in a loss of revenue to the Federal Government. We estimate that 4.29 percent of the taxpayer cases closed in FY 2019 (1,142 taxpayer cases) had an incorrect CSED posted to taxpayer records. The TIGTA statistician calculated these error rate projections and applied them over the total population size of 26,635 closed CDP and Equivalent Hearing cases. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 218 taxpayers and 2,065 taxpayers and that the true exception rate is between 0.82 percent and 7.75 percent.



Review of the Independent Office of Appeals  
Collection Due Process Program

## Appendix III

### Time Periods for Collection Due Process and Equivalent Hearings

Taxpayers must appeal within certain deadlines to qualify for either a CDP hearing or an Equivalent Hearing, depending on whether the taxpayer is appealing a proposed levy or a filed NFTL.<sup>1</sup>

#### CDP Deadlines

Lien Notice – A request for a CDP hearing for a NFTL filing must be postmarked by the date indicated in the Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under I.R.C. 6320*.

Levy Notice – A request for a CDP hearing for a levy must be postmarked within 30 calendar days after the date of the Letter 11/1058, *Final Notice – Notice of Intent to Levy and Notice of Your Right to a Hearing*.

#### Equivalent Hearing Deadlines

Taxpayers who miss the deadline for a CDP hearing may request an Equivalent Hearing within the following time periods:

Lien Notice – one year plus five business days from the NFTL filing date indicated in the Lien Notice.

Levy Notice – one year from the date of the Levy Notice.

#### Timeliness Considerations

Any written request for a CDP hearing should be filed at the address indicated on the notice. If the request is not sent to the correct address, it must be received by the correct office within the 30-calendar-day period in order to be timely.

Source: Publication 1660, *Collection Appeal Rights* (Rev. 07-2018).

<sup>1</sup> Form 12153, *Request for a Collection Due Process or Equivalent Hearing* (Rev. 3-2012), explains the deadlines for requesting a CDP hearing or an Equivalent Hearing. Regulations also specify that the written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice (26 C.F.R. § 301.6330-1, Q C-6, Nov. 16, 2006).



## Review of the Independent Office of Appeals Collection Due Process Program

### Appendix IV

## Closing Notices for Collection Due Process and Equivalent Hearings

At the conclusion of a hearing, Appeals provides the taxpayer a letter with the hearing officer's findings, agreements reached with the taxpayer, any relief provided to the taxpayer, and any actions the taxpayer or the IRS are required to take.

- For a CDP case, the taxpayer receives a Letter 3193, *Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, which provides an explanation of the right to a judicial review. If the taxpayer disagrees with the Appeals decision, he or she may petition the courts.
- For an Equivalent Hearing case, the taxpayer receives a Letter 3210, *Decision Letter on Equivalent Hearing Under Internal Revenue Code Sections 6320 and/or 6330*. If the taxpayer disagrees with the Appeals decision in an Equivalent Hearing, he or she may not petition the courts.
- For both applicable CDP and Equivalent Hearing cases, the taxpayer may receive:
  - Form 12257, *Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, Waiver of Suspension of Levy Action, and Waiver of Periods of Limitation in Section 6330(e)(1)*. Form 12257 and Letter 4382, *Form 12257 Closing Letter*, are applicable when the taxpayer:
    - Agrees with Appeals.
    - Waives the right to a judicial review.
    - Waives the suspension of collection action.
  - Form 12256, *Withdrawal of Request for Collection Due Process or Equivalent Hearing* and Letter 4383, *CDP/Equivalent Hearing Withdrawal Acknowledgement*, are applicable when the taxpayer:
    - Has reached a resolution with the IRS regarding the tax and tax periods.
    - Is otherwise satisfied that a hearing with Appeals is no longer needed.
  - Letter 5145, *Agreed Equivalent Hearing Closing Letter*, is applicable when the taxpayer:
    - Has agreed with the Equivalent Hearing case decision.
    - Has not raised any issues with the timeliness of the hearing request.<sup>1</sup>

<sup>1</sup> As of August 2013, Appeals created Letter 5145 to be used for Equivalent Hearing cases for which the taxpayer and Appeals reach an agreement.



## Review of the Independent Office of Appeals Collection Due Process Program

### Appendix V

#### Recent Mandatory Collection Due Process Audit Reports

Recent TIGTA audits of the Appeals CDP performed during FYs 2015 through 2019.

- **FY 2015** – TIGTA, Ref. No. 2015-10-068, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2015).
- **FY 2016** – TIGTA, Ref. No. 2016-10-064, *The Office of Appeals Has Improved Compliance Within the Collection Due Process Program* (Aug. 2016).
- **FY 2017** – TIGTA, Ref. No. 2017-10-055, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2017).
- **FY 2018** – TIGTA, Ref. No. 2018-10-054, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2018).
- **FY 2019** – TIGTA, Ref. No. 2019-10-058, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2019).



**Review of the Independent Office of Appeals  
Collection Due Process Program**

**Appendix VI**

**Management's Response to the Draft Report**



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224**

Date: August 6, 2020

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Andrew J. Keyso <sup>Andrew J. Keyso Jr.</sup>  
Chief, IRS Independent Office of Appeals

Digitally signed by Andrew J. Keyso Jr.  
Date: 2020.08.06 15:27:01  
-0400

SUBJECT: Draft Report – Fiscal Year 2020 – Review of the  
Office of Appeals Collection Due Process Program  
(Audit #202010017)

Thank you for the opportunity to review and comment on the draft report of the Collection Due Process program audit. We agree with your recommendations and outcome measures. Please see our attached response.

Please note that Section 1001 of the Taxpayer First Act changed the name of the Office of Appeals to the Internal Revenue Service Independent Office of Appeals. Your report currently references the former name.

If you have any questions, please have a member of your staff contact Steven M. Martin, Director, Case and Operations Support at (202) 317-6991.

Attachment



## Review of the Independent Office of Appeals Collection Due Process Program

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Attachment

Recommendation 1:

The Chief, Appeals, should (a) require the applicable Office of Appeals technical employees to complete available training on determining the timeliness of CDP and Equivalent Hearing requests, and (b) issue additional interim guidance, along with the Small Business/Self-Employed Division Collection function, to provide clarity about what constitutes a timely filed CDP request..

Proposed Corrective Action:

The IRS Independent Office of Appeals agrees with this recommendation. We will ensure that Appeals technical employees complete the available training on determining the timeliness of CDP and Equivalent Hearing requests. We have collaborated with the Small Business/Self-Employed Division's Collection function to develop interim guidance to provide clarity about what constitutes a timely filed CDP request.

Implementation Date: April 15, 2021

Responsible Official: Director, Collection Appeals

Recommendation 2:

The Chief, Appeals, should update the inaccurate suspension start or stop dates for the 12 taxpayer accounts that we identified with CSED errors.

Proposed Corrective Action:

The IRS Independent Office of Appeals agrees with this recommendation. Appeals has reviewed the 12 taxpayer accounts identified in this report and will initiate the necessary corrective actions.

Implementation Date: February 15, 2021

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



## Review of the Independent Office of Appeals Collection Due Process Program

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### Outcome Measure 1:

Taxpayer Rights and Entitlements – Potential; 1,857 taxpayers who did not receive the correct type of hearing to which they were entitled because Appeals misclassified their hearing request (see Recommendation 1).

#### Response:

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

### Outcome Measure 2:

Taxpayer Rights and Entitlements – Potential; 224 taxpayers whose request for a CDP or Equivalent Hearing were not timely forwarded to the correct Collection location (See page 5).

#### Response:

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

### Outcome Measure 3:

Taxpayer Rights and Entitlements – Potential; 1,679 taxpayers who had an incorrect CSED posted to their accounts, incorrectly extending the amount of time the IRS has to legally collect delinquent taxes (see Recommendation 2).

#### Response:

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

### Outcome Measure 4:

Increased Revenue – Potential; 1,142 taxpayers who had an incorrect CSED posted to their accounts, incorrectly shortening the amount of time the IRS has to legally collect delinquent taxes (see Recommendation 2).

#### Response:

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



## Review of the Independent Office of Appeals Collection Due Process Program

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### Appendix VII

#### Abbreviations

CDP	Collection Due Process
CSED	Collection Statute Expiration Date
FY	Fiscal Year
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code