

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2021 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers

August 18, 2021

Report Number: 2021-30-054

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

HIGHLIGHTS: Fiscal Year 2021 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers

Final Audit Report issued on August 18, 2021

Report Number 2021-30-054

Why TIGTA Did This Audit

This audit was initiated because TIGTA is required to annually report on the IRS's compliance with provisions of the law that restrict the direct contact of taxpayers who are represented. For this year's review, TIGTA analyzed the extent to which employees who perform Earned Income Tax Credit examinations comply with the direct contact provisions of Internal Revenue Code (I.R.C.) § 7521 and fair tax collection practices of I.R.C. § 6304(a)(2) during interactions with taxpayers or their representatives. The Taxpayer Bill of Rights (I.R.C. § 7803(a)(3)(I)) also guarantees the right of representation for taxpayers before the IRS.

Impact on Taxpayers

If taxpayers' rights to representation are not adhered to by the IRS, they might not receive the benefits under the law and procedures to which they are entitled, and they may experience adverse outcomes.

What TIGTA Found

The IRS has a number of policies and procedures to help ensure that taxpayers are afforded the right to designate an authorized representative to act on their behalf in a variety of tax matters. In addition, the IRS has a process to handle the review and disposition of taxpayer allegations of direct contact violations.

TIGTA selected a statistically valid stratified sample of case histories to review for 75 Earned Income Tax Credit examinations from an overall total of 4,349 examinations in which the taxpayer had an authorized representative, and the case was closed between October 1, 2019, and September 30, 2020. TIGTA reviewed the case history narratives for these sampled cases and found [REDACTED]

While reviewing these cases, TIGTA determined that the Internal Revenue Manual covering EITC examinations does not provide clear guidance on who the examiner should contact when a valid power of attorney (POA) is on file. Further, TIGTA found that in 18 of 75 cases reviewed, taxpayer rights were infringed upon because the IRS did not send notices and letters to authorized representatives as required by the Internal Revenue Manual. Of the 75 cases reviewed, the POA was authorized to receive notices in 50 of these cases. When projected to the overall population of 4,349 examinations in which taxpayers had an authorized representative, the IRS potentially negatively impacted taxpayer rights for 1,043 taxpayer accounts in regards to representative notice and letter requirements.

What TIGTA Recommended

TIGTA recommended that the Commissioner, Wage and Investment Division: 1) ensure that a POA letter is included in electronic examination files when issuing 30-day letters for examinations with POA notice requirements; 2) ensure that a manual process exists while awaiting the creation of the new Enterprise Case Management system and that the new system systemically identifies taxpayers with a valid POA and determines if the POA should receive notices or letters; 3) ensure that the exception cases identified by TIGTA are discussed directly with the responsible employees who closed the examinations; 4) include training and guidance to examination staff regarding bypass procedures; 5) revise the Internal Revenue Manual to remove the option to contact the POA or taxpayer; and 6) [REDACTED]

The IRS agreed with 5 of the 6 recommendations provided in this report. For recommendation 4, the Wage and Investment Division disagreed with our recommendation to include training and guidance to its examination staff regarding bypass procedures.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

August 18, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink that reads "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2021 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers (Audit # 202130009)

This report presents the results of our review to determine whether the Internal Revenue Service is in compliance with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in Internal Revenue Code (I.R.C.) §§ 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304(a)(2) and I.R.C. § 7803(a)(3)(I). This review is part of our Fiscal Year 2021 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 IV.

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 Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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Background

Taxpayers have a right to representation in matters before the Internal Revenue Service (IRS).¹ Internal Revenue Code (I.R.C.) §§ 7521(b)(2) and (c) provide taxpayers the right to representation during interviews.² The Treasury Inspector General for Tax Administration (TIGTA) is required to annually assess whether the IRS is protecting taxpayers' rights to representation under I.R.C. § 7521.³ I.R.C. § 6304(a) also protects taxpayers' rights to representation by prohibiting IRS contact of a taxpayer if it knows the taxpayer is represented.⁴

The effort to determine whether the IRS is complying with I.R.C. §§ 7521(b)(2) and (c) (hereafter referred to as the direct contact provisions) and other provisions of the law protecting the right to representation is complicated by the fact that the IRS cannot proactively identify IRS employee violations of this law. TIGTA Office of Investigations receives complaints and initiates investigations based on those complaints. The Office of Investigations tracks those complaints and investigations using its Criminal Results Management System. From October 1, 2019, to September 30, 2020, the Office of Investigations did not receive any specific complaints alleging that an IRS employee bypassed taxpayer representatives and contacted taxpayers directly.

To designate power of attorney (POA) authority to a representative, a taxpayer files Form 2848, *Power of Attorney and Declaration of Representative*, with the IRS. Once received and validated, the IRS records the representative's authorization in its Centralized Authorization File, a computerized system of records that houses authorization information from both the POAs and tax information authorizations. This file is linked to other IRS applications and is used by many IRS functions to determine when a taxpayer is working with an authorized representative.

Identifying the authorized representative during audit or collection activities is critical for IRS personnel because I.R.C. § 6103 prohibits disclosure of tax return information to third parties unless the taxpayer has authorized the IRS to make the disclosure. In addition, the direct contact provisions of I.R.C. § 7521 enacted on November 10, 1988, as part of the Omnibus Taxpayer Bill of Rights, created a number of safeguards to protect the rights of taxpayers interviewed by IRS employees as part of a tax examination or collection action.⁵ Specifically, IRS employees are required to:

¹ I.R.C. §§ 7803(a)(3)(I), 7521(b)(2), and 6304(a)(2).

² I.R.C. § 7521(b)(2) provides: *If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.*

³ I.R.C. § 7803(d)(1)(A)(ii).

⁴ I.R.C. § 6304(a)(2) provides: *The Secretary may not communicate with a taxpayer in connection with the collection of any unpaid tax if the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer.*

⁵ Pub. L. No. 100-647, 102 Stat 3730 (1988) (codified as amended in scattered sections of 5 and 26 U.S.C.).

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- Stop the interview (unless initiated by an administrative summons) whenever a taxpayer requests to consult with a representative, *i.e.*, any person, such as an accountant or attorney, who is permitted to represent taxpayers before the IRS.
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative unreasonably delays the completion of an examination, collection, or investigation.

The IRS Restructuring and Reform Act of 1998 was enacted into law and directed the IRS to revise Publication 1, *Your Rights as a Taxpayer*, to better inform taxpayers of these rights.⁶ In addition, this Act added I.R.C. § 7803(d)(1)(A)(ii), which requires TIGTA to annually evaluate the IRS's compliance with the direct contact provisions. TIGTA has previously performed 22 annual reviews to meet this requirement. Appendix III lists the five most recent audit reports related to this statutory review.

Results of Review

The Internal Revenue Service Has a Process to Handle the Review and Disposition of Taxpayer Allegations of Direct Contact Violations

IRS management cannot track situations in which a taxpayer is denied the right to appropriate representation unless the taxpayer or his or her representative files a complaint with the IRS, TIGTA, Taxpayer Advocate Service, or his or her congressional Representative or Senator. The IRS has not put a system in place to systemically track violations of the direct contact provisions and does not plan to implement a system. However, the IRS has a process to ensure that reported allegations of direct contact violations are reviewed to determine if there was any employee misconduct.

The IRS Labor, Employee Relations, and Negotiation Program Execution Office receives, processes, and tracks all complaint referrals, *e.g.*, allegations not investigated by TIGTA, as well as reports of investigation that TIGTA forwards to the IRS. According to the IRS, the Program Execution Office is responsible for ensuring that IRS management addresses the complaint referrals to determine their proper disposition. It also tracks the disposition of TIGTA complaint referrals. These complaint referrals are assigned, tracked, and recorded on the Compliance and Accountability Branch E-trak database.

During our review, we requested a report of all complaints related to potential direct contact violations received between October 1, 2019, and September 30, 2020, by the Program Execution Office and maintained on the E-trak database. We reviewed these cases and determined that the Program Execution Office closed [REDACTED]

⁶ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.)

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For those complaint referrals in which there is action taken by IRS management, the dispositions of the complaint referrals (including any disciplinary actions for substantiated allegations) are entered into the Automated Labor and Employee Relations Tracking System. The use of this system also helps ensure consistency in recording employee misconduct and disciplinary actions, *e.g.*, admonishment letters, employee suspensions, and employee removals.

Earned Income Tax Credit Examiners Are Not Consistently Following the Notification Procedures Intended to Protect Taxpayer Rights

Congress mandates that TIGTA report annually regarding IRS compliance with the direct contact provisions. This year's review focused on potential taxpayer rights and direct contact issues related to Earned Income Tax Credit (EITC) examinations. EITC examinations in general are correspondence audits that take 1.6 hours on average. Taxpayer contacts such as phone calls are mainly initiated by the taxpayers after receiving a letter from the IRS about their EITC claim. Similar to any IRS examination, taxpayers have the right to representation regardless of scope or type of audit. The Wage and Investment (W&I) Division is responsible for most EITC examinations. Specifically, the Refundable Credits Examination Operations unit has a responsibility to fairly and effectively assist taxpayers in understanding refundable tax credits and tax credits for which they are eligible. The Refundable Credits Examination Operations unit should also be operating within the standards set forth in the Taxpayer Bill of Rights.

To determine how well the IRS is complying with direct contact provisions and taxpayer rights provisions of the I.R.C., we obtained a download of all EITC examination cases closed during Fiscal Year 2020 from TIGTA's data center warehouse (DCW) and determined how many of these examinations have a POA on file. Figure 1 provides a summary of the EITC examinations conducted, along with POA status.⁷

**Figure 1: Fiscal Year 2020 EITC Examinations
Conducted and POA Status**

Description	Number	Percentage
No Power of Attorney	153,461	97%
Power of Attorney	4,349	3%
Totals⁸	157,810	100%

Source: TIGTA analysis of EITC examinations data from the DCW.

As shown in Figure 1, only 3 percent of the EITC examinations involved taxpayers with a POA. Our review focused on the 3 percent of taxpayers with a POA to determine whether the IRS followed the correct direct contact procedures. Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS.⁹ Taxpayers can request that copies of notices and communications be provided to their POA when filing

⁷ According to the IRS, there was a significant drop in audits overall as well as EITC examinations specifically due to the COVID-19 shutdown.

⁸ The total is comprised of 157,490 from the W&I Division, 59 from the Small Business/Self-Employed Division, and 261 from the Large Business and International Division.

⁹ Publication 1 (Rev.9-2017).

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Form 2848 or Form 8821, *Tax Information Authorization*. Figure 2 is an example of how the taxpayer can check a box so the POA can be provided with copies of notices and communications.

Figure 2: Form 2848 Excerpt

The image shows a portion of Form 2848, titled "Power of Attorney and Declaration of Representative". The form is from the Department of the Treasury, Internal Revenue Service, and is dated January 2021. It includes a "For IRS Use Only" section with fields for Name, Telephone, Function, and Date. Part I, "Power of Attorney", contains a caution: "A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS." Section 1, "Taxpayer information", includes fields for Taxpayer name and address, Taxpayer identification number(s), Daytime telephone number, and Plan number (if applicable). Section 2, "Representative(s)", includes fields for Name and address, CAF No., PTIN, Telephone No., and Fax No. At the bottom, there is a red-bordered box containing the text "Check if to be sent copies of notices and communications" followed by a checked checkbox. To the right of this box are three unchecked checkboxes labeled "Check if new: Address", "Telephone No.", and "Fax No."

Source: *IRS.gov*.

We selected a statistically valid stratified random sample of 75 cases from the population of 4,349 unique EITC examination cases closed with a POA during Fiscal Year 2020.¹⁰ Our case review process utilized the Correspondence Examination Automation Support (CEAS) system, which contains examiner work papers.¹¹ We reviewed the case history narratives in the CEAS system for these sample cases to determine if the examinations complied with the direct contact provisions of I.R.C. § 7521(b)(2) and fair tax collection practices of I.R.C. § 6304(a)(2). We also noted that Internal Revenue Manual (IRM) 4.19.13.8(2), *Power of Attorney and Other Third Party Authorizations*, states that original notices and other written communications will be sent to the taxpayer and a copy to the first and second listed representative(s) if the taxpayer checks the appropriate box, as shown in Figure 2.

For the sample cases, we found that 50 (67 percent) of the 75 cases involved taxpayers who had requested their POA receive notices. The IRS uses Letter 937, *Transmittal Letter for Power of Attorney*, to transmit notices to POA's. We determined that, for 18 (36 percent) of the 50 cases, the examination process did not follow correct procedures. The CEAS system files for the 18 potential violations contained only partial or no correspondence to the POA on file. The summary of these 18 potential violations by stratum is shown in Figure 3.

¹⁰ Our sample size was determined by using a 95 percent confidence level, 5 percent error rate, and ± 5 percent precision using three stratum. We stratified the disposal code into three stratum, with stratum one covering no-change cases, stratum two covering agreed cases, and stratum three covering unagreed cases. Based on discussions with our contracted statistician, we confirmed the sample would be based on 75 cases, with 24, 18, and 33 cases in each stratum, respectively. See Appendix I, Figure 1, for a summary by disposal code by stratum.

¹¹ The CEAS system is a suite of web-based applications developed to enhance the examination process.

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Figure 3: Potential Violations by Case Outcomes

Stratum	Disposal Code	Number of Exceptions	Number In Sample	Number Requiring Notices
1	01 – No Change With Adjustments	█	█	█
1	02 – No Change	4	23	16
2	04 – Agreed (after issuance 30-60-day letter)	3	11	7
2	08 – Other	█	█	█
2	09 – Agreed (after issuance 90 day letter)	█	6	3
3	10 – Default	8	28	20
3	11 – Petitioned	█	█	█
3	12 – Other	█	█	█
3	13 – Undeliverable 90-Day Letter, FPAA, or FSAA	█	█	█
	Totals	18	75	50

Source: TIGTA analysis of EITC examinations data from the DCW. FPAA = Final Partnership Administrative Adjustment. FSAA = Final S-Corporation Administrative Adjustment.

We provided the case history narratives and our observations to W&I Division management where these cases originated, and they agreed that, for these 18 cases, the examination process did not follow the guidance as outlined in the IRM procedures.¹² According to the IRS, 12 of the 18 case exceptions were the result of the Automated Campus Exam system not checking for POA information when issuing the initial contact letter and 30-day letter, while six of the 18 case exceptions were a consequence of the examiner not following procedures during the examination.¹³

The 30-day letter is sent when the examiner has computed the proposed adjustments. If no response is received in regards to the 30-day letter, a Notice of Deficiency letter is issued, at which point the taxpayer has 90 days to appeal any disagreements with the IRS by petitioning the U.S. Tax Court.¹⁴

POAs include tax professionals such as tax lawyers and tax accountants, so it is likely they would be more responsive to this 30-day letter to take advantage of the ability to appeal a disagreement with the IRS as compared to a taxpayer who may not be familiar with the process. As noted in Figure 3 (stratum 3) the 30-day letter was not sent to the POA in nine (27 percent) of 33 cases. This high rate of noncompliance with the notice requirement specifically for 30-day letters is concerning. This disregard directly infringes on taxpayer rights by not directly making their representative aware that a letter with a deadline has been issued.

Based on the high rate of noncompliance from the sample, we projected the potential taxpayer accounts impacted for taxpayer rights to the overall population of EITC examinations with POAs.

¹² IRM 4.19.13.8(2) (July 30, 2020).

¹³ The Automated Campus Exam system generates automated correspondence notices that are sent to taxpayers under audit by IRS Campus Examination Service Center groups. Initial Contact Letters used: Letter CP 75 *Exam Initial Contact Letter – Earned Income Credit (EIC) – Refund Frozen*; CP 75A, *Exam Initial Contact Letter – EITC – No Refund Frozen*; Letter 566-E, *Initial Contact for Questionable Refund Program (QRP)*; and Letter 525, *General 30-Day Letter*.

¹⁴ Letter 3219, *Notice of Deficiency*.

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We projected 232 taxpayer accounts for stratum one, 292 for stratum two, and 519 for stratum three, for an overall total of 1,043 taxpayer accounts potentially negatively impacted in regards to notice and letter requirements.¹⁵

According to the IRS, Campus Exam is in the process of creating a new report writing system called Enterprise Case Management (ECM) which will, over time, be replacing the existing report writing systems, including the Automated Correspondence Exam. The IRS position is that any corrective programming changes should be made with the ECM programming rather than the legacy Automated Correspondence Exam system.

Quality review found instances in which taxpayer representatives were not correctly contacted

The IRS quality review process includes testing for correct POA contact. Reports from the Embedded Quality Review System (EQRS) were requested and reviewed for Fiscal Year 2020. The EQRS report provided by the W&I Division identified 11 instances (12 percent) out of 90 reviewed cases during the EQRS process in which the taxpayer had a valid POA on file and the POA was not contacted during an EITC paper examination. The examiners involved in these cases appear to have been informed in at least 10 (91 percent) of the 11 EQRS incidences of the oversight. However, we are concerned that, in six of the 11 cases, corrective action was not taken and the POA may not have received audit correspondence. We also confirmed with W&I Division management that the 18 exception cases identified from our sample review would have been identified as errors during the EQRS review. We concluded that W&I Division EITC examinations are not consistently following IRM 4.19.13.8 and corrective actions are needed.

The Commissioner, W&I Division, should:

Recommendation 1: Ensure that examiners always include Letter 937 in electronic examination files when issuing Letter 525 (30-day letter) for examinations with POA notice requirements to document compliance and increase quality control efforts to ensure that compliance is improved regarding the notice requirement.

Management's Response: IRS management agreed with this recommendation. The Director, Refundable Credits Program Management, Return Integrity and Compliance Services, will distribute an organization-wide memorandum reinforcing that campus examination operations review the warning lists to identify those cases with a POA on file and ensure that Letter 937 is included in the electronic examination case file. The Director will also revise affected IRMs to clarify procedures.

Recommendation 2: Update procedures to ensure that a manual process exists while the business unit awaits the creation of the ECM system. Once implemented, the new ECM system should systemically identify taxpayers with a valid Form 2848 and determine if the POA should receive notices or letters.

Management's Response: IRS management agreed with this recommendation. The Director, Refundable Credits Program Management, Return Integrity and Compliance

¹⁵ When projecting the results of our statistical sample, we are 95 percent confident that the actual total taxpayer accounts impacted is between 621 and 1,466. See Appendix II for our detailed calculations.

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Services, will update the IRM to mandate saving Letter 937 electronically in the Report Generation System when it is generated for mailing.

Recommendation 3: Ensure that the exception cases identified by TIGTA in this report are discussed directly with the responsible W&I Division employees who closed these examinations.

Management's Response: IRS management agreed with this recommendation. The Director, Refundable Credits Program Management, Return Integrity and Compliance Services, will distribute an organization-wide memorandum reminding tax examiners of the requirement to send copies of IRS letters to valid POAs on file per IRM 4.19.13.10.1.

Earned Income Tax Credit Examination Employees Should Avoid Making Direct Taxpayer Contact With Represented Taxpayers

We reviewed the case history narratives in the CEAS system for the 75 sample cases and found that, during EITC examinations, employees generally adhered to procedures that help ensure taxpayers' right to representation under I.R.C. § 6304(a)(2) and I.R.C. § 7803(a)(3)(I). However, during the review, we found [REDACTED]

The EITC examination IRM procedures state that examiners may attempt to contact the taxpayer or authorized POA by telephone when the information provided is insufficient and an audit report has been sent.¹⁶ These procedures are not intended to contradict the IRS policy regarding the need for bypass procedures to be followed prior to directly contacting a taxpayer who has elected to be represented by a POA on a valid Form 2848. However, it is problematic when employees inadvertently bypass authorized representatives without an appropriate objective analysis of whether the POA is nonresponsive or has otherwise become an impediment to resolving the issue with the taxpayer's examination. We provided the case history narratives and our observations to W&I Division management, where these cases originated, and they agreed that these could be potential violations of bypass procedures.

Interviews were conducted to determine employee and management knowledge related to the direct contact provisions. An employee and manager list was requested for all employees who perform EITC examinations, and a judgmental sample of 20 employees and 10 managers were selected from the population.¹⁷ During the interviews, when asked if examiners could directly contact taxpayers, we received inconsistent explanations. Several employees (35 percent) and managers (40 percent) mentioned the ability to contact a taxpayer directly if necessary. Further, no management interviewees were aware of the terminology "bypass procedures" since these procedures have not been used in W&I Division Campus Exam. As previously mentioned, IRM 4.19.13.10.1(2) is counter to the bypass procedures that must be followed when an examiner needs to contact a taxpayer directly.¹⁸

¹⁶ IRM 4.19.13.10.1(2) (July 30, 2020) and 4.19.13.8 (July 30, 2020)

¹⁷ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

¹⁸ IRM 13.1.23.7 (June 6, 2019), IRM 4.19.13.10.1(2) (July 30, 2020), and IRM 4.11.55.4.2 (April, 20, 2010).

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Recommendation 4: The Commissioner, W&I Division, should include training and guidance to W&I Division examination staff regarding bypass procedures and be prepared to apply them if necessary.

Management's Response: The W&I Division disagreed with this recommendation and stated that the bypass procedures are not applicable to the prerefund examinations performed by the W&I Division as the scope of each examination is defined by the information presented on the tax return. The IRS also stated that there is virtually no opportunity for a representative to unreasonably delay or hinder the progress of these limited scope examinations.

Office of Audit Comment: This recommendation is important to protect taxpayer rights. It is true that a situation in which a representative unreasonably delays an examination is unlikely; however, we believe it is important for tax examiners to have a general awareness of bypass procedures. Examiners should always attempt to contact the taxpayer's POA unless the POA is unreasonably hindering or delaying the examination. In the unlikely scenario that occurs, examiners need to be aware of, and follow, bypass procedures prior to contacting the taxpayer directly.

Recommendation 5: The Commissioner, Small Business/Self-Employed Division, should revise IRM 4.19.13.10.1(2) to clarify that the POA must be contacted in lieu of the taxpayer when a valid POA is present.

Management's Response: IRS management agreed with this recommendation. The Director, Examination Field and Campus Policy, Small Business/Self-Employed Division, will clarify the language in IRM 4.19.13.10.1(2) to state that the POA must be contacted in lieu of the taxpayer when a valid POA is present.

Employees Who Perform Earned Income Tax Credit Examinations Have a Responsibility to Protect a Taxpayer's Right to Privacy

Taxpayers have the right to confidentiality, and IRS employees are prohibited from disclosing taxpayer information to unauthorized individuals.¹⁹ This right is also addressed in the Taxpayer Bill of Rights as outlined in Publication 1, which states that the information taxpayers provide to the IRS will be released only if the disclosure is authorized by the taxpayer or by law.

The IRS's disclosure policies outline every IRS employees' responsibility to protect the confidentiality of records and information entrusted to the IRS and state that every IRS employee who has access to tax returns, return information, Personally Identifiable Information, and sensitive but unclassified information is charged with the responsibility of protecting the information from disclosure and is charged with the responsibility to know when disclosures are authorized.²⁰ The law, as well as Publication 1, states that employees who disclose taxpayer return information without proper authorization may be disciplined. The IRM procedures state that indications of willful disclosures of returns or return information must be reported to TIGTA,

¹⁹ I.R.C. § 7803(a)(3)(H), I.R.C. § 6103(a), and I.R.C. § 7213(a)(1).

²⁰ IRM 11.3.1.1 (Mar. 13, 2018).

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while no further corrective action is necessary once the employee and manager discuss the matter for inadvertent disclosures.²¹ Employees who are convicted of willfully disclosing any return or return information to an unauthorized party may be subject to a fine in any amount not exceeding \$5,000, imprisonment of five years or less, or both. The employee would also be subject to paying for the costs of prosecution and would be dismissed from the IRS.

In our review of the case history narratives from the CEAS system, we found the IRS was overall in compliance with the confidentiality and disclosure of returns and return information provisions set forth in I.R.C. § 6103(a). [REDACTED]

[REDACTED] IRS management should ensure that employees performing EITC examinations remain mindful of I.R.C. § 6103(a). When IRS employees disclose confidential taxpayer information to unauthorized parties, it not only violates a taxpayer's right to confidentiality, but it may also negatively affect taxpayers' perception of the IRS as a trusted institution. Additionally, a taxpayer who has had their right to confidentiality violated may bring a civil action for damages against the United States in a district court, which can result in other costs to the Government.²²

[REDACTED]

²¹ IRM 11.3.1.10 (Mar. 13, 2018).

²² I.R.C. § 7431(a)(1).

Detailed Objective, Scope, and Methodology

Our overall objective of this review is to determine whether the IRS is in compliance with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in I.R.C. § 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304 (a)(2) and I.R.C. § 7803(a)(3)(I). To accomplish our objective, we:

- Determined what procedures and controls the IRS uses to ensure that employees are following the direct contact provisions, fair tax collection practices, and taxpayer’s right to representation provisions.
- Determined whether the W&I Division provides training/learning opportunities that adequately address the direct contact provisions of I.R.C. § 7521(b)(2) and (c), the fair tax collection practices of I.R.C. § 6304(a)(2), and taxpayer’s right to representation under I.R.C. § 7803(a)(3)(I).
- Determined how well the IRS is ensuring that taxpayer rights, under the direct contact provisions, fair tax collection practices, and taxpayer rights to representation, are protected by the W&I Division.

Performance of This Review

This review was performed with information obtained from the W&I Division during the period October 2020 through May 2021. 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 Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Christina M. Dreyer, Director; Lee Hoyt, Audit Manager; and Shaun Starnes, Lead Auditor.

Sampling Methodology

We used TIGTA’s contracted statistician to select a statistically valid random sample of EITC cases closed between October 1, 2019, and September 30, 2020, in which the taxpayer had a valid POA on file. We conducted case reviews using a 95 percent confidence level, 5 percent error rate, and ± 5 percent precision and divided the cases into three strata. Based on discussions with our contracted statistician, we calculated that the stratified sample would be 75 cases with 24, 18, and 33 cases in each stratum, respectively. The sample stratified by disposal code is shown in Figure 1.

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Figure 1: Summary of Sample by Strata

Stratum	Disposal Code	Number	Sample
1	01 – No Change With Adjustments	148	█
1	02 – No Change	1,246	23
2	03 – Agreed (prior to issuance)	78	█
2	04 – Agreed (after issuance 30-60-day letter)	640	11
2	07 – Appealed	█	█
2	08 – Other	41	█
2	09 – Agreed (after issuance 90 day letter)	290	6
3	10 – Default	1,591	28
3	11 – Petitioned	155	█
3	12 – Other	83	█
3	13 – Undeliverable 90-Day Letter, FPAA, or FSAA	75	█
	Totals	4,349	75

Source: TIGTA analysis of EITC examinations data from the DCW. FPAA = Final Partnership Administrative Adjustment. FSAA = Final S-Corporation Administrative Adjustment.

Validity and Reliability of Data From Computer-Based Systems

We performed tests to assess the reliability of data from the CEAS system. We evaluated the data by: 1) performing electronic testing of required data elements; 2) reviewing existing information about the data and the system that produced them; and 3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management’s plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the IRS’s policies, procedures, and practices related to responding to taxpayer and taxpayer representative allegations of IRS employee violations of the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c), the fair tax collection practices of I.R.C. § 6304(a)(2), and the general right to representation set out in I.R.C. § 7803(a)(3)(I). We evaluated these controls by contacting management, reviewing IRM guidance provided to managers and employees, reviewing closed complaints and investigations from TIGTA’s Criminal Results Management System, identifying closed cases tracked on the IRS’s E-trak database, and reviewing case history narratives associated with the selected cases.

Outcome Measure

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential: 1,043 Taxpayer accounts where the examiner may not have appropriately involved the POA during the examination process (see Recommendations 1 and 2).

Methodology Used to Measure the Reported Benefit:

We calculated our outcome for the exception cases using the following methodology:

- We selected a statistically valid stratified random sample of 75 of the 4,349 EITC examination cases that were closed from October 1, 2019, through September 30, 2020, for taxpayers with a POA. Our sample size was determined using a 95 percent confidence level, 5 percent error rate, and ± 5 percent precision and divided the cases into three strata.
- Based on discussions with our contracted statistician, we calculated the stratified sample to be 75 cases with 24, 18, and 33 cases in each stratum, respectively.

We reviewed the case history narratives in the CEAS system for these sample cases to determine if the examinations complied with IRM 4.19.13.8(2), *Power of Attorney and Other Third Party Authorizations*, which states that original notices and other written communications will be sent to the taxpayer and a copy to the first and second listed representative(s) if the taxpayer checks the appropriate box.

- We determined that 50 of the 75 examinations included the notice requirement as stated in IRM 4.19.13.8(2) based on the taxpayer checking the box.
- Details of the strata results are shown in Figure 1.

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Figure 1: Projected Total of Affected Taxpayers

	Stratum 1	Stratum 2	Stratum 3	Totals
Population Size	1,394	1,051	1,904	4,349
Sample Size	24	18	33	75
Number of Exceptions	4	5	9	18
Projected Stratum Total	232	292	519	1,043
Projected Stratum Percentage	16.67%	27.78%	27.27%	

Source: TIGTA analysis of EITC examinations data from the DCW.

As shown in Figure 1, we identified a total of 18 cases in which the IRS did not follow procedures that help protect taxpayers' rights to representation.¹ We projected the results of our review to the overall population and determined that a total of 1,043 taxpayer accounts were potentially impacted for taxpayer rights and entitlements.²

¹ IRM 4.19.13.8 (July 30, 2020).

² When projecting the results of our statistical sample, we are 95 percent confident that the actual total taxpayer accounts impacted is between 621 and 1,466 accounts.

Appendix III

Previous Audit Reports Related to This Statutory Review

TIGTA, Report No. 2020-30-046, *Fiscal Year 2020 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2020).

TIGTA, Report No. 2019-30-076, *Fiscal Year 2019 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2019).

TIGTA, Report No. 2018-30-070, *Fiscal Year 2018 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2018).

TIGTA, Report No. 2017-30-076, *Fiscal Year 2017 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2017).

TIGTA, Report No. 2016-30-067, *Fiscal Year 2016 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2016).

Management's Response to the Draft Report



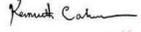
COMMISSIONER
WAGE AND INVESTMENT DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

August 4, 2021

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Kenneth C. Corbin 
Commissioner, Wage and Investment Division

Digitally signed by
Kenneth C. Corbin
Date: 2021.08.04
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SUBJECT:

Draft Audit Report – Fiscal Year 2021 Statutory Review of
Restrictions on Directly Contacting Represented Taxpayers
(Audit # 202130009)

Thank you for the opportunity to review and comment on the subject draft report. Internal Revenue Code § 6304(a) protects taxpayers' rights to representation by prohibiting contact of a taxpayer if it is known the taxpayer is represented.

The number of taxpayers audited by the Wage and Investment Division's Campus Examination function who are represented by a Power of Attorney (POA) is relatively small, as determined during the review to be three percent of the total Earned Income Tax Credit examinations performed. From the population of 4,349 examinations with representation, 75, or two percent, were tested, with the finding that 18 were procedurally incorrect with respect to representative notification and contact. Although the number of cases where procedures were not followed correctly is small, we recognize that improvements to our processes are needed in order to ensure they work as intended. We understand the importance of taxpayer rights to representation during the audit process.

We agree that instructions provided to employees, when there is a need to follow-up on a response for additional information, do not place the appropriate emphasis on contacting the designated POA in lieu of the taxpayer. We will address that by clarifying the instructions provided in Internal Revenue Manual, 4.19.13.10.1(2), *Taxpayer Responses — Prior to Status 24*.

Additionally, we strive to ensure that confidential information is not improperly disclosed to unauthorized individuals. However, in the event information is improperly disclosed, the IRS has procedures to address the disclosure. If information is unintentionally disclosed to an unauthorized individual after performing proper authentication probes, the disclosure must be reported to the employee's manager and the employee must complete the Incident Reporting Form made available by the IRS's Privacy,

**Fiscal Year 2021 Statutory Review of Restrictions
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Governmental Liaison and Disclosure function. Further, when examination case files are reviewed by managers and an improper disclosure is identified, the managers are to address the disclosure with the employee and document the actions taken.

Our responses to your specific recommendations are enclosed. If you have any questions, please contact me, or a member of your staff may contact Michael Beebe, Director, Return Integrity and Compliance Services, Wage and Investment Division, at 470-639-3250.

Attachment

**Fiscal Year 2021 Statutory Review of Restrictions
on Directly Contacting Represented Taxpayers**

Attachment

Recommendations

The Commissioner, W&I Division, should:

RECOMMENDATION 1

Ensure examiners always include Letter 937 (POA letter) in electronic examination files when issuing Letter 525 (30-day letter) for examinations with POA notice requirements to document compliance and increase quality control efforts to ensure that compliance is improved regarding the notice requirement.

CORRECTIVE ACTION

We will distribute an organization-wide memorandum, reinforcing that campus examination operations review the warning lists to identify those cases with a Power of Attorney (POA) on file and ensure that Letter 937, *Transmittal Letter for Power of Attorney*, is included in the electronic examination case file. We will also revise affected Internal Revenue Manuals (IRMs) to clarify procedures.

IMPLEMENTATION DATE

April 15, 2022

RESPONSIBLE OFFICIAL

Director, Refundable Credits Program Management, Return Integrity and Compliance Services, Wage and Investment Division

CORRECTIVE ACTION MONITORING PLAN

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

RECOMMENDATION 2

Update procedures to ensure that a manual process exists while the business unit awaits the creation of the Enterprise Case Management system (ECM). Once implemented, the new ECM system should systemically identify taxpayers with a valid F2848 and determine if the POA should receive notices or letters.

CORRECTIVE ACTION

We will update the IRM to mandate saving of the POA Letter 937 electronically in the Report Generation System when it is generated for mailing.

IMPLEMENTATION DATE

March 15, 2022

RESPONSIBLE OFFICIAL

Director, Refundable Credits Program Management, Return Integrity and Compliance Services, Wage and Investment Division

Fiscal Year 2021 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers

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CORRECTIVE ACTION MONITORING PLAN

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

RECOMMENDATION 3

Ensure that the exception cases identified by TIGTA in this report are discussed directly with the responsible W&I employees who closed these examinations.

CORRECTIVE ACTION

We will distribute an organization-wide memorandum reminding tax examiners of the requirement to send copies of IRS letters to valid Powers of Attorney on file per IRM 4.19.13.10.1, *Taxpayer Responses — Prior to Status 24*. With the time that has passed since the individual case errors occurred, we do not believe discussions with the affected employees would be productive as the details of the cases and their actions would not be remembered.

IMPLEMENTATION DATE

April 15, 2022

RESPONSIBLE OFFICIAL

Director, Refundable Credits Examination Operations, Return Integrity and Compliance Services, Wage and Investment Division

CORRECTIVE ACTION MONITORING PLAN

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

Recommendations

RECOMMENDATION 4

The Commissioner, W&I Division, should include training and guidance to W&I examination staff regarding bypass procedures and be prepared to apply them if necessary.

CORRECTIVE ACTION

The procedures for bypassing authorized representatives, as permitted under the authority of Internal Revenue Code § 7521(c), are applicable when it is determined such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer. This condition is not applicable to the pre-refund examinations performed by the Wage and Investment Division, as the scope of each examination is defined by the information presented on the tax return. There is virtually no opportunity for a representative to unreasonably delay or hinder the progress of these limited scope examinations.

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IMPLEMENTATION DATE

N/A

RESPONSIBLE OFFICIAL

N/A

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 5

The Commissioner, SB/SE Division, should revise IRM 4.19.13.10.1(2) clarify {sic} that the POA must be contacted in lieu of the taxpayer when a valid POA is present.

CORRECTIVE ACTION

We will clarify the language in IRM 4.19.13.10.1(2) to state that the POA must be contacted in lieu of the taxpayer when a valid POA is present.

IMPLEMENTATION DATE

May 15, 2022

RESPONSIBLE OFFICIAL

Director Examination Field and Campus Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN

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

RECOMMENDATION 6

[REDACTED]

CORRECTIVE ACTION

[REDACTED]

IMPLEMENTATION DATE

Implemented

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RESPONSIBLE OFFICIAL

Director, Refundable Credits Examination Operations, Return Integrity and Compliance Services, Wage and Investment Division

CORRECTIVE ACTION MONITORING PLAN

N/A

Glossary of Terms

Term	Definition
Automated Labor and Employee Relations Tracking System	An application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.
Centralized Authorization File	A computerized system of records that houses authorization information from both the POAs and tax information authorizations. It contains several types of records, among them taxpayers, representatives, tax periods, and authorizations.
Correspondence Examination Automation Support	System which contains examiner work papers.
Criminal Results Management System	A management information system that provides TIGTA Office of Investigations the ability to manage and account for complaints received, including congressional inquiries, investigations initiated, and leads developed from local investigative initiatives and national investigative initiatives.
Enterprise Case Management	An enterprise-wide solution comprised of data-driven applications and services which will streamline processes and reduce the number of duplicate applications related to case management.
E-trak	E-trak is a web-based, Service-wide document tracking application which replaced the i-trak system. E-trak assists the IRS leadership and business operating divisions with their ability to timely and effectively manage their responses to issues
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Internal Revenue Code	The Federal tax law, enacted by Congress in Title 26 of the United States Code. It is organized by topics such as income, estate and gift, employment, and miscellaneous excise taxes.
Wage and Investment Division	Provides W&I Division customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.

Abbreviations

CEAS	Correspondence Examination Automation Support
DCW	Data Center Warehouse
ECM	Enterprise Case Management
EITC	Earned Income Tax Credit
EQRS	Embedded Quality Review System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
POA	Power of Attorney
TIGTA	Treasury Inspector General for Tax Administration
W&I	Wage and Investment



**To report fraud, waste, or abuse,
call our toll-free hotline at:**

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www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

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