



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

September 6, 2019

Reference Number: 2019-10-058

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HIGHLIGHTS

REVIEW OF THE OFFICE OF APPEALS COLLECTION DUE PROCESS PROGRAM

Highlights

**Final Report issued on
September 6, 2019**

Highlights of Reference Number: 2019-10-058
to the Commissioner of Internal Revenue.

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.

WHY TIGTA DID THE 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.

WHAT TIGTA FOUND

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 errors that were similar to errors identified in prior reports. Specifically, the Office of 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 nine taxpayer cases that were misclassified. This is approximately the same number of misclassified cases that were identified in the prior year's review.

Based on the same stratified sample, TIGTA determined that the Collection function did not timely process the hearing requests for an additional five 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 Due Process Coordinator at the correct location on the same day. While the Office of 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 Collection Statute Expiration Date (CSED) on taxpayer accounts. TIGTA identified eight taxpayer cases that had an incorrect CSED. For five taxpayer cases, the IRS incorrectly extended the time period, allowing the IRS additional time to collect delinquent taxes. In the remaining three taxpayer cases, the IRS incorrectly decreased the time to collect the delinquent taxes. Overall, this is approximately the same number of CSED errors that were identified in the prior year's review.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, Collection, take action to provide reasonable assurance that Collection function personnel forward misdirected Collection Due Process and Equivalent Hearing requests to the correct location on the same day the requests are received. TIGTA also recommended that the Chief, Appeals, update the inaccurate CSEDs for the eight taxpayer accounts that TIGTA identified with CSED errors. IRS management agreed with both recommendations and plans to take appropriate corrective actions.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 6, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Review of the Office of Appeals Collection Due Process Program (Audit # 201910001)

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 as our Fiscal Year 2019 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

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 H. Hill, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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Abbreviations

CDP	Collection Due Process
CSED	Collection Statute Expiration Date
FY	Fiscal Year
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



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Background

Per the Internal Revenue Code (I.R.C.),¹ if any person neglects or refuses to pay their tax liability after demand,² the Internal Revenue Service (IRS) has the authority to attach a lien upon property and rights to property by filing a Notice of Federal Tax Lien (NFTL).³ 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. 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.⁴ By law, under most circumstances,⁵ 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.⁶ Such notice shall be required only once for the taxable period to which the unpaid tax applies. 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.⁷ Congress subsequently enacted the IRS Restructuring and Reform Act of 1998,⁸ which gave taxpayers the right to a hearing with the Office of Appeals (Appeals) under the 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.

¹ 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.

² 26 U.S.C. § 6321.

³ An NFTL is a public notice document filed with the local recording office that identifies tax liabilities owed by the taxpayer. By filing, the IRS is putting other creditors on notice that the U.S. Government has a priority claim against all property, and any rights to property of the taxpayer. Per 26 U.S.C. § 6323, the IRS NFTL does not have validity or priority against certain other creditors.

⁴ 26 U.S.C. § 6331.

⁵ 26 U.S.C. § 6330(f). Under certain circumstances, the IRS will not notify the taxpayer before 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.

⁶ 26 U.S.C. § 6330.

⁷ 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.).

⁸ Pub. L. No. 105-206, 112 Stat. 685.



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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 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 taxpayers not more than five business days after the filing of a lien. Taxpayers then have 30 calendar days to request a lien hearing.

Taxpayers who timely request a CDP hearing are generally granted a hearing.⁹ 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.¹⁰ Figure 1 provides an overview of the process for requesting a CDP hearing or an Equivalent Hearing.

⁹ 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.

¹⁰ The taxpayer is not entitled to seek judicial review of Appeals' decision in an Equivalent Hearing case unless he or she raises the specific issues of spousal relief under I.R.C. § 6015, abatement of interest under I.R.C. § 6404(h), or questions of the timeliness of the request for a CDP hearing.



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Figure 1: Overview of the Process for Requesting a CDP or Equivalent Hearing¹¹

<p>Taxpayers may request a CDP or Equivalent Hearing upon receipt of any of the following letters or notices:</p> 	<ul style="list-style-type: none"> -Letter 3172 (tax lien notice). -Letter 11 (final levy notice). -Letter 1058 (final levy notice). -Computer Paragraph 90, Final Notice of Intent to Levy. -Computer Paragraphs 92 and 242, Notice of Levy Upon Your State Tax Refund.
<p>Taxpayers then:</p> 	<ul style="list-style-type: none"> -Have 30 calendar days to request a CDP hearing. -Have one calendar year from the issuance of the Notice of Intent to Levy and one calendar year plus five business days after the filing date of the NFTL to request an Equivalent Hearing. -Must make a request in writing for a CDP hearing. It is important to identify all the reasons for any disagreements.¹² -Must send the written request for the CDP hearing to the same address that is shown on the CDP notice.
<p>The IRS will decide if the taxpayer's hearing request was timely:</p> 	<ul style="list-style-type: none"> -If the IRS grants a CDP hearing, levy actions and the Collection Statute Expiration Date (CSED) are generally suspended. In addition, taxpayers who disagree with Appeals' decision may seek judicial review with the U.S. Tax Court. -If the IRS grants an Equivalent Hearing, levy actions and the CSED are not suspended and taxpayers who disagree with Appeals' decision cannot petition the U.S. Tax Court.

Source: 26 United States Code (U.S.C.) Sections (§§) 6320 and 6330 and various Internal Revenue Manuals.

¹¹ See Appendix V for more details regarding CDP procedures.

¹² Taxpayers are encouraged to use IRS Form 12153, *Request for a Collection Due Process Hearing*, in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals.



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Processing taxpayers' requests for a CDP or Equivalent Hearing

Once a taxpayer receives a Notice of Intent to Levy or an NFTL, the notice informs the taxpayer of the legal right to appeal the intended levy or lien by requesting a CDP hearing. 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 Collection function office that initiated the compliance action, *i.e.*, the address shown on the lien or levy notice. 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 their 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 to the taxpayer acknowledging receipt of the request in Appeals for the CDP or Equivalent Hearing.¹³ The contact letter notifies the taxpayer that Appeals has received the taxpayer's request for a CDP hearing and provides the opportunity to discuss with Appeals the reasons for disagreement with the collection action or to discuss alternatives to the collection action. The contact letter also informs the taxpayer that he or she should contact the hearing officer within 14 calendar days of the date of the letter if the scheduled time for discussion is not convenient.

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.¹⁴ 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.¹⁵

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.¹⁶ This

¹³ On August 11, 2017, Letter 4837, *Substantive Contact Uniform Acknowledgement Letter*, replaced Letter 4836, *Substantive Contact Letter*; the new version includes information on the impartiality status of the hearing officer.

¹⁴ If the taxpayer withdraws the request for a hearing and a contact letter has not been issued, Appeals will not issue a closing letter.

¹⁵ See Appendix V for details on Appeals closing letters.

¹⁶ 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv).



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is our nineteenth annual audit of taxpayer appeal rights and provides our assessment of CDP and Equivalent Hearing cases closed in Fiscal Year (FY) 2018.¹⁷

This review was performed with information obtained from the Appeals offices in Los Angeles, California; Washington, D.C.; Matteson, Illinois; and Holtsville, New York, and the Collection function office in Lanham-Seabrook, Maryland, during the period October 2018 through May 2019. 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 finding and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹⁷ 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 31. Therefore, FY 2018 covers the period October 1, 2017, through September 30, 2018.



Results of Review

Appeals Generally Complied With Collection Due Process Requirements

Our review of a statistically valid stratified sample¹⁸ of 140 of the 35,850 CDP and Equivalent Hearing cases closed in FY 2018 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. However, we identified 22 errors in 20 (14 percent) of the 140 sampled cases. The number of cases we identified with errors is consistent with the number of errors identified in our prior year review of the IRS's compliance with the CDP hearing requirements.¹⁹ Specifically, we found that:

- Appeals did not properly classify taxpayers' hearing requests.
- The Collection function did not timely forward misdirected hearing requests to the proper office.
- The CSEDs on the taxpayer's account were not correct.

Figure 2 provides a summary of the errors we identified.

Figure 2: Summary of Errors Identified

Type of Error	Total Number of Errors Identified
Misclassified Hearing Request	9
Collection Routing Error ²⁰	5
Incorrect CSED	8
Total	22

Source: TIGTA review of 140 CDP and Equivalent Hearing cases closed in FY 2018.

Based on our sample results, we estimate that Appeals misclassified 1,402 CDP or Equivalent Hearing cases, the Collection function did not timely forward 378 misdirected

¹⁸ See Appendix I for details on our sampling methodology.

¹⁹ TIGTA, Ref. No. 2018-10-054, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2018).

²⁰ Appeals worked these five cases properly; however, the Collection function did not timely route misdirected hearing requests to the correct location.



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Equivalent Hearing cases to the correct location, and 2,771 taxpayer accounts had incorrect CSED suspensions during FY 2018.²¹

Some taxpayers did not receive the appropriate type of hearing

Taxpayers who wish to have a CDP hearing must submit their request to the IRS within 30 calendar days of the date of the levy notice or not more than five business days plus 30 calendar days from the filing of a 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 filing of the lien notice. We found that the IRS misclassified nine of the 140 CDP and Equivalent Hearing cases we reviewed. As a result, these taxpayers did not receive the hearings to which they were entitled or incorrectly received a hearing when they should not have. By comparison, we identified eight misclassified CDP and Equivalent Hearing cases in our prior year review. Based on our sample results, we estimate that 1,402 of 35,850 taxpayer cases closed in FY 2018 were misclassified by Appeals and, as a result, taxpayers did not receive the type of hearing to which they were entitled.²²

-In four misclassified cases, taxpayers were entitled to a CDP or Equivalent Hearing based on their hearing requests being timely received by the IRS. Appeals incorrectly provided three 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 five misclassified CDP and Equivalent Hearing cases, the taxpayers did not file their hearing requests by the appropriate due dates. These five taxpayers received hearings they were not entitled to. 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.

With the exception of *****1*****,²³ Appeals management agreed with our analysis and indicated that taxpayer cases were mainly misclassified due to 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

²¹ See Appendix IV.

²² The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 348 taxpayers and 2,456 taxpayers. See Appendix IV.

²³ *****1*****



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CDP and Equivalent Hearing cases are classified correctly.²⁴ In September 2013, Appeals developed a refresher course on the topic of determining timeliness of CDP and Equivalent Hearing requests. The class is available as a Continuing Professional Education topic to Appeals technical employees who work CDP cases. As such, we are not making any additional recommendations to address the misclassification errors.

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

The written request for a CDP hearing must be sent to the IRS office and address as directed on the CDP notice. However, taxpayers do not always send their request to the address on the lien or levy notices. To help ensure that taxpayers' rights are protected, Collection function guidance requires Collection function employees to fax a misdirected hearing request on the day it is received to the correct Collection function office.

Our review of the 140 closed CDP and Equivalent Hearing cases identified five cases for 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. Although these hearing requests were not timely received at the correct location, Appeals did provide taxpayers with the correct hearing type in these cases. 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 taxpayer to a CDP hearing. Based on the results of our sample, we estimate that 378 of 35,850 taxpayer cases closed in FY 2018 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.²⁵

Collection function personnel agreed that the Collection function did not timely forward these five cases to the correct location as required by Internal Revenue Manual guidance. Because the taxpayer's request was not timely forwarded to the correct Collection function office, these taxpayers requested and were granted an Equivalent Hearing in lieu of a CDP hearing. As a result, these taxpayers were denied the right to petition the U.S. Tax Court if they disagreed with Appeal's decision based on the hearing. In addition, the IRS does not suspend collection actions during an Equivalent Hearing, which may result in less time for the IRS to collect any outstanding balance due by the taxpayer.

²⁴ TIGTA, Ref. No. 2014-10-049, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2014).

²⁵ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 110 taxpayers and 646 taxpayers. See Appendix IV.



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Recommendation

Recommendation 1: 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.

Management's Response: The IRS agreed with this recommendation and will revise wording in the Internal Revenue Manual to state that misdirected CDP requests must be forwarded to the correct location within one business day of receipt.

The CSED was not always computed correctly

We continued to identify errors related to the determination of the CSED on taxpayer accounts. The IRS has 10 years from the date of assessment to collect a liability owed by a taxpayer.²⁶ The CSED is the date established by law by which the IRS must collect any amount due from a taxpayer for a given tax period. Once a tax liability is assessed, the statute of 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 final²⁷ or the date the IRS receives the taxpayer's withdrawal request. The CSED is not suspended for an Equivalent Hearing.

We found that eight of the 140 cases reviewed had an incorrect CSED. In comparison, we identified nine cases with CSED errors in our prior year review.²⁸ We identified:

- Five CDP cases for which the CSED was incorrectly extended. As a result, the IRS had 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 in 2,183 of 35,850 CDP and Equivalent Hearing cases closed in FY 2018.²⁹

- Three CDP and Equivalent Hearing cases for which the CSED was incorrectly shortened. As a result, the IRS had less time to collect any outstanding balance from the taxpayer than it was authorized. Based on our sample results, we estimate that the IRS incorrectly reduced the CSED in 588 of 35,850 CDP and Equivalent Hearing cases closed in FY 2018.³⁰

²⁶ 26 U.S.C. § 6502 (a)(1).

²⁷ Including any litigation.

²⁸ TIGTA, Ref. No. 2018-10-054, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2018).

²⁹ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 626 taxpayers and 3,739 taxpayers. See Appendix IV.

³⁰ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between zero taxpayers and 1,326 taxpayers. See Appendix IV.



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Appendix I

Detailed Objective, Scope, and Methodology

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

- I. Determined whether any new procedures specific to CDP and Equivalent Hearings have been developed since TIGTA's prior statutory review.
- II. Determined whether Appeals CDP and Equivalent Hearing cases were classified correctly by reviewing the case files for a statistically valid stratified sample of 140 CDP and Equivalent Hearing cases closed during FY¹ 2018.

Using the Appeals Centralized Database System,² we identified 35,892 CDP and Equivalent Hearings that were closed during FY 2018. We used a stratified sampling methodology to select a statistically valid sample of 140 hearings of 35,850 closed during FY 2018.³ Our sample strata are based on the type and location of the CDP and Equivalent Hearing closed case files. We randomly selected and reviewed:

- 47 of the 20,345 CDP hearing cases that were closed during FY 2018 and filed at an IRS campus.⁴
- 23 of the 10,214 CDP hearing cases that were closed during FY 2018 and filed at a Federal Records Center.⁵
- 44 of the 3,338 Equivalent Hearing cases that were closed during FY 2018 and filed at an IRS campus.

¹ 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 31. Therefore, FY 2018 covers the period October 1, 2017, through September 30, 2018.

² A computerized case control system used to control and track cases throughout the appeals process.

³ We used a closed case total of 35,850 CDP and Equivalent Hearing cases for our sampling. Per the Appeals Centralized Database System, 23,683 closed CDP and Equivalent Hearing cases were returned to campuses, and 12,167 CDP and Equivalent hearing cases were returned to Collection function revenue officers and refiled in a Federal Records Center. A total of 42 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.

⁴ 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.

⁵ The National Archives and Records Administration operates a system of Federal Records Centers for the economical storage of, and access to, records of the Federal Government.



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- 26 of the 1,953 Equivalent Hearing cases that were closed during FY 2018 and filed at a Federal Records Center.

We used a confidence level of 90 percent, a precision level of ± 6 percent, and an expected error rate of 10 percent to determine these sample sizes. We discussed our sampling methodology with our contracted statistician, who reviewed our projections.

- III. Determined whether the CSED was calculated correctly by reviewing the taxpayer's account on the Integrated Data Retrieval System⁶ for the 140 sample cases we selected.
- IV. 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.

Data validation methodology

During this review, we relied on data obtained from the Appeals Centralized Database System. This file is maintained at TIGTA's Data Center Warehouse.⁷ 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 status of policies and procedures in the CDP Program and the IRS policies and procedures for classifying CDP and Equivalent Hearing taxpayer cases, ensuring that hearing officers met the criteria specified in 26 U.S.C. §§ 6320 and 6330, and reviewing applicable computer codes on the Integrated Data Retrieval System 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.

⁶ IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

⁷ 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.



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Appendix II

Major Contributors to This Report

Deann L. Baiza, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Heather H. Hill, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Troy D. Paterson, Director
Janice M. Pryor, Audit Manager
Zachary P. Orrico, Acting Audit Manager
Mark A. Judson, Lead Auditor



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Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Chief, Appeals
Commissioner, Small Business/Self-Employed Division
Director, Enterprise Audit Management



Appendix IV

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; 1,402 taxpayers who did not receive the correct type of hearing to which they were entitled because Appeals misclassified their hearing request (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 2018. Based on our review, we identified nine CDP and Equivalent Hearing case files that contained a request that was misclassified by Appeals. In the nine 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 3.91 percent of the taxpayer cases closed in FY 2018 (1,402 taxpayer cases) may have contained misclassified CDP and Equivalent Hearing requests. TIGTA's statistician calculated these error projections and applied them over the total population size of 35,850 closed CDP and Equivalent Hearing cases. When CDP and Equivalent Hearing cases are misclassified, taxpayers may be incorrectly advised of the right to petition the U.S. Tax Court. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 348 taxpayers and 2,456 taxpayers and the true exception rate is between 0.97 percent and 6.85 percent.

Type and Value of Outcome Measure:

-Taxpayer Rights and Entitlements – Potential; 378 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 2018. We identified five 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 1.05 percent of taxpayer cases closed in FY 2018 (378 taxpayer cases) were misdirected and not timely forwarded to the correct Collection function location.



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TIGTA's statistician calculated these error projections and applied them over the total population size of 35,850 closed CDP and Equivalent Hearing cases. Had the Collection function timely forwarded the hearing requests, these taxpayers likely would have received a CDP hearing instead of an Equivalent Hearing. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 110 taxpayers and 646 taxpayers, and the true exception rate is between .31 percent and 1.80 percent.

Type and Value of Outcome Measure:

-Taxpayer Rights and Entitlements – Potential; 2,183 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 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 2018. We identified five CDP cases in which the IRS incorrectly computed the CSED, allowing the IRS additional time to legally collect delinquent taxes. We estimate that 6.09 percent of the taxpayer cases closed in FY 2018 (2,183 taxpayer cases) had an incorrect CSED posted to taxpayer records. TIGTA's statistician calculated these error projections and applied them over the total population size of 35,850 closed CDP and Equivalent Hearing cases. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between 626 taxpayers and 3,739 taxpayers, and the true exception rate is between 1.75 percent and 10.43 percent.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; 588 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 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 2018. We identified three CDP or Equivalent Hearing cases in 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 1.64 percent of the taxpayer cases closed in FY 2018 (588 taxpayer cases) had an incorrect CSED posted to taxpayer records. TIGTA's statistician calculated these error projections and applied them over the total population size of 35,850 closed CDP and Equivalent Hearing cases. Using the Normal Binomial Distribution Method, we are 90 percent confident that the point estimate is between zero taxpayers and 1,326 taxpayers, and the true exception rate is between zero percent and 3.7 percent.



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Appendix V

Collection Due Process Procedures

The IRS is required to notify taxpayers in writing when an NFTL¹ has been filed or when it intends to levy a taxpayer's property. A taxpayer is allowed to appeal the filing of the NFTL or proposed levy action through the CDP by filing a hearing request.

Attribute/Action	CDP Hearing	Equivalent Hearing
Period in Which a Hearing Must be Requested	-Within the 30-calendar-day period that commences the day after the end of the five business day period following the filing of the NFTL. -Within the 30-calendar-day period commencing on the day after the date the CDP Notice of Intent to Levy was issued.	-Within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL. -Within the one-year period commencing the day after the date the Notice of Intent to Levy was issued.
Suspends Collection Activity	Yes	No
Right to Petition the U.S. Tax Court	Yes	No
Appeals Hearing Officers Must:	-Verify whether the requirements of all applicable laws or administrative procedures related to the NFTL or Notice of Intent to Levy were met.	-Verify whether the requirements of all applicable laws or administrative procedures related to the NFTL or Notice of Intent to Levy were met.

¹ An NFTL is a public notice document filed with the local recording office that identifies tax liabilities owed by the taxpayer. By filing, the IRS is putting other creditors on notice that the U.S. Government has a priority claim against all property, and any rights to property, of the taxpayer. Courts use the filed lien notice to establish priority in such situations as bankruptcy proceedings and sales of real estate.



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Attribute/Action	CDP Hearing	Equivalent Hearing
<p>Appeals Hearing Officers Must:</p>	<ul style="list-style-type: none"> -Address any issues the taxpayer may raise relevant to the unpaid tax, the filing of the NFTL, or the proposed levy, such as whether the taxpayer is an innocent spouse. -Determine if collection actions were appropriate. -Decide if other collection alternatives would facilitate the payment of the tax. -Determine whether any proposed collection action balances the need for efficient collection of taxes with the taxpayer's legitimate concerns. -Not allow the taxpayer to raise an issue that was considered at a prior administrative or judicial hearing if the taxpayer participated meaningfully in the prior proceeding. 	<ul style="list-style-type: none"> -Address any issues the taxpayer may raise relevant to the unpaid tax, the filing of the NFTL, or the proposed levy, such as whether the taxpayer is an innocent spouse. -Determine if collection actions were appropriate. -Decide if other collection alternatives would facilitate the payment of the tax. -Determine whether any proposed collection action balances the need for efficient collection of taxes with the taxpayer's legitimate concerns. -Not allow the taxpayer to raise an issue that was considered at a prior administrative or judicial hearing if the taxpayer participated meaningfully in the prior proceeding.
<p>At the Conclusion of the CDP or Equivalent Hearing</p>	<p>-The hearing officer may issue a Determination Letter,² 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 U.S. Tax Court.</p>	<p>-The hearing officer may issue a Decision Letter.³ If the taxpayer disagrees with the Appeals decision in an Equivalent Hearing, he or she may not petition the U.S. Tax Courts.</p>

² Letter 3193, *Notice of Determination Concerning Collection Actions under IRC Sections 6320 or 6330 of the Internal Revenue Code.*

³ Letter 3210, *Decision Letter on Equivalent Hearing Under Internal Revenue Code Sections 6320 and/or 6330.*



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Attribute/Action	CDP Hearing	Equivalent Hearing
At the Conclusion of the CDP or Equivalent Hearing	<p>-The hearing officer may issue a Waiver Letter if the taxpayer agrees with Appeals' determination. The taxpayer will also waive the right to a judicial review and the suspension of collection action.⁴</p> <p>-The hearing officer may issue a Withdrawal Letter if the taxpayer has reached a resolution with the IRS regarding the tax and tax periods and is otherwise satisfied that a hearing with Appeals is no longer needed.⁵</p>	<p>-The hearing officer may issue a Withdrawal Letter if the taxpayer has reached a resolution with the IRS regarding the tax and tax periods and is otherwise satisfied that a hearing with Appeals is no longer needed.⁶</p> <p>The hearing officer may issue an Agreed Equivalent Hearing Closing Letter, which is applicable when the taxpayer has agreed with the Equivalent Hearing case decision and has not raised any issues with the timeliness of the hearing request.⁷</p>

Source: 26 U.S.C. Sections 6320 and 6330 and various Internal Revenue Manuals.

⁴ At the conclusion of a CDP hearing, Appeals issues 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)*.

⁵ Appeals issues Form 12256, *Withdrawal of Request for Collection Due Process or Equivalent Hearing*.

⁶ Appeals issues Form 12256.

⁷ Letter 5145, *Agreed Equivalent Hearing Closing Letter*, is to be used for Equivalent Hearing cases for which the taxpayer and Appeals reach an agreement.



Appendix VI

Time Periods for Collection Due Process and Equivalent Hearings

Taxpayers must appeal within certain deadlines to qualify for either a CDP or Equivalent Hearing, depending on whether the taxpayer is appealing a proposed levy or a tax lien.¹

CDP Deadlines

- Lien Notice – A request for a CDP hearing for an 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 filing date of the NFTL.
- 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 CDP or Equivalent Hearing request is not addressed to the correct office as indicated in the CDP notice, the date to determine timeliness is the date the request is received by the IRS office to which the request should have been sent.

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

¹ Form 12153, *Request for a Collection Due Process or Equivalent Hearing* (Rev. 12-2013), explains the deadlines for requesting a CDP or 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, AC-3, Nov. 16, 2006).



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Appendix VII

*Prior Mandatory Collection
Due Process Audit Reports*

Prior TIGTA audits of the Appeals CDP performed during FYs 2014 through 2018:

- FY 2014** – TIGTA, Ref. No. 2014-10-049, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2014).
- 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).



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Appendix VIII

Management's Response to the Draft Report



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

August 15, 2019

MEMORANDUM FOR MICHAEL E. MCKENNEY

DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Donna C. Hansberry
Chief, Appeals

SUBJECT:

Draft Report – Fiscal Year 2019 – Review of the Office of
Appeals Collection Due Process Program (Audit #201910001)

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

If you have any questions, please have a member of your staff contact Anita M. Hill, Director, Case and Operations Support at (901) 546-2041.

Attachment



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Attachment

Recommendation 1:

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.

Proposed Corrective Action:

SB/SE Collection agrees with this recommendation. We will revise wording in the IRM to state that mis-directed CDP requests must be forwarded to the correct location within one business day of receipt in your operation/function.

Implementation Date: December 15, 2019

Responsible Official: Director, SB/SE Collection Policy

Recommendation 2:

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

Proposed Corrective Action:

Appeals agrees with this recommendation. Appeals has reviewed the eight taxpayer accounts identified in this report and has initiated the necessary corrective actions.

Implementation Date: February 15, 2020

Responsible Official: Director, Appeals Case and Operations Support

Outcome Measure 1:

Taxpayer Rights and Entitlements – Potential; 1,402 taxpayers who did not receive the correct type of hearing to which they were entitled because Appeals misclassified their hearing request.

Response:

We agree with this outcome measure.

Outcome Measure 2:

Taxpayer Rights and Entitlements – Potential; 378 taxpayers whose request for a CDP or Equivalent hearing were not timely forwarded to the correct Collection location.



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Response:

We agree with this outcome measure.

Outcome Measure 3:

Taxpayer Rights and Entitlements – Potential; 2,183 taxpayers who had an incorrect CSED posted to their accounts, incorrectly extending the amount of time the IRS has to legally collect delinquent taxes.

Response:

We agree with this outcome measure.

Outcome Measure 4:

Increased Revenue – Potential; 588 taxpayers who had an incorrect CSED posted to their accounts, incorrectly shortening the amount of time the IRS has to legally collect delinquent taxes.

Response:

We agree with this outcome measure.