

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2024 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures

August 23, 2024

Report Number: 2024-300-037

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 2024 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures

Final Audit Report issued on August 23, 2024

Report Number 2024-300-037

Why TIGTA Did This Audit

TIGTA is required by law to determine annually whether the IRS complied with Collection Due Process (CDP) requirements pursuant to Internal Revenue Code (I.R.C.) § 6320.

Impact on Tax Administration

The IRS files Form 668(Y)(C), *Notice of Federal Tax Lien* (NFTL), to protect the Government's interest in delinquent taxpayers' property. On the first filing of an NFTL, the IRS must notify the affected taxpayers in writing at their last known address, within five business days of the NFTL filing, of their right to a CDP hearing before the Independent Office of Appeals. Taxpayers may not be timely advised of their appeal rights if the IRS does not comply with this statutory requirement. Taxpayers have the right to elect a CDP hearing after the filing of the NFTL wherein the taxpayer can raise any relevant issue, including the appropriateness of the NFTL filing or other collection actions. Taxpayers have 30 calendar days to request a CDP hearing with the IRS's Independent Office of Appeals. While I.R.C. § 6320(c) incorporates I.R.C. § 6330(e) (which grants a collection stay during levy-related CDP hearings), the Treasury Regulations allow the IRS to levy during lien CDP hearings, although IRS procedures state that in general its policy is not to do so.

What TIGTA Found

TIGTA's systemic review of 103,460 NFTLs that were filed from July 1, 2022, to June 30, 2023, in which a CDP notice was required to be sent to the taxpayer, and a separate review of a statistical sample of 117 NFTLs from the same population, identified a total of 272 taxpayers that were potentially not timely mailed a CDP notice as required by I.R.C. § 6320(a).

TIGTA also identified thousands of levies that were issued during the period when taxpayers had the right to request a lien CDP hearing. TIGTA's analysis of NFTLs filed from July 1, 2022, to June 30, 2023, identified:



5,801 cases in which levies were issued during the 30-calendar-day period while the taxpayer had the right to elect a CDP hearing.



4 cases in which levies were issued while the taxpayer's appeal was pending.

In addition, taxpayer representatives should be provided copies of all taxpayer correspondence if designated by the taxpayer. From the statistical sample of 117 NFTLs, there were 41 cases in which the taxpayer designated their authorized representative to receive notices. However, in three of the 41 cases, the IRS did not provide CDP notices to the taxpayers' authorized representatives.

TIGTA also reviewed procedures for filing NFTLs in cases where taxpayers were in a disaster zone due to Hurricane Ian. TIGTA determined that the IRS did not take any of the required preemptive steps that were available to it to suspend collection activity on taxpayers that were impacted by the hurricane on September 28, 2022.

What TIGTA Recommended

TIGTA recommended that the IRS: 1) take corrective action on the cases identified in the statistical sample in which the lien notice was not mailed timely; 2) ensure that the corrective actions initiated on the cases systemically identified are completed, and safeguards are implemented to protect against the recurrence of the causal issues; 3) direct the Director, Collection, to establish Field Collection Internal Revenue Manual procedures that prohibit field employees from taking levy action during the 30-calendar-day period that the law provides taxpayers can elect lien CDP hearings; 4) apply the retention standard when evaluating IRS Collection employees, managers, and executives who intentionally disregard IRS policies designed to protect taxpayers; and 5) review disaster procedures for NFTL processing and consider updates, as needed, to reduce burden for taxpayers impacted by disasters.

The IRS agreed with four of the five recommendations provided in this report. For recommendation 3, the IRS did not agree to establish Field Collection IRM procedures to prohibit field employees from taking levy action on taxpayers during the period the law provides taxpayers to elect a lien CDP hearing, which potentially impacted 5,801 taxpayers.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

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

August 23, 2024

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

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

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

SUBJECT: Final Audit Report – Fiscal Year 2024 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Collection Due Process
Procedures (Audit No.: 2024300001)

Attached for your review and comments is the subject draft audit report. The overall objective of this review was to determine whether Collection Due Process lien notices issued by the Internal Revenue Service (IRS) comply with legal guidelines set forth in the Internal Revenue Code (I.R.C.) and Treasury Regulations. The Treasury Inspector General for Tax Administration is required by law to determine annually whether lien notices issued by the IRS comply with the legal requirements in I.R.C. § 6320. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenge of *Taxpayer Rights*.

Management's complete response to the draft report is included as Appendix VI. If you have any questions, please contact me or Frank O'Connor, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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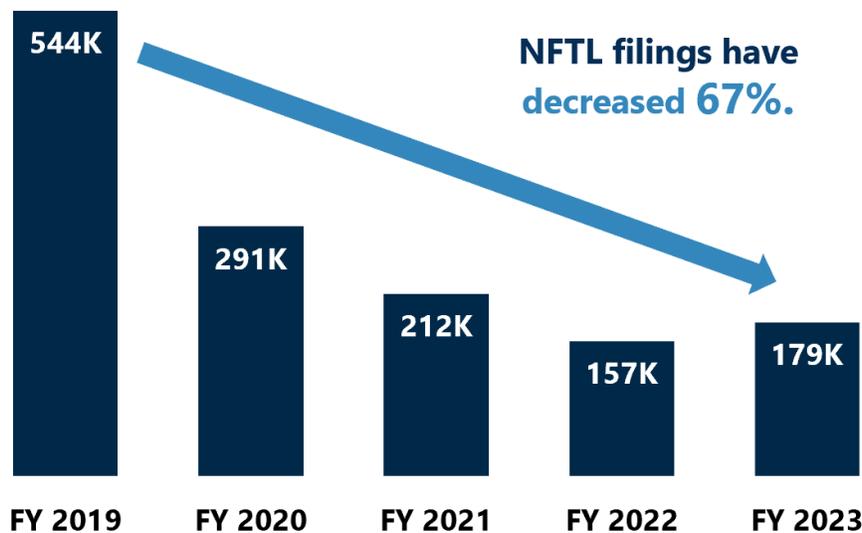
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Background

The Internal Revenue Service (IRS) attempts to collect delinquent Federal taxes due from taxpayers by sending letters, and in some instances either making telephone calls or meeting face-to-face with taxpayers. As a matter of law, a lien arises upon the occurrence of a tax delinquency and encumbers the property of the delinquent taxpayer.¹ To protect the Government's claim, the IRS has the authority to file a Form 668(Y), *Notice of Federal Tax Lien* (NFTL), in the appropriate State and local office to notify interested parties that a lien exists.²

Figure 1 shows the annual NFTL filings for the past five fiscal years. The number of NFTLs filed in Fiscal Year (FY) 2023 was 67 percent lower than the number in FY 2019. NFTL filings reached a peak of 1,096,376 in FY 2010 (not shown in Figure 1) and have generally declined since then. NFTL filings reached a low of 157,323 in FY 2022, which tracks with the decline in the number of revenue officers of almost 68 percent, from 5,922 at the end of FY 2010 to 1,906 at the end of FY 2022.

Figure 1: Number of NFTLs Filed for FYs 2019 Through 2023



Source: IRS Data Book for FYs 2019 through 2023. Data for 2023 provided by the IRS.

The decline in the number of NFTL filings from FY 2019 to FY 2020 was due, in part, to the suspension of collection activities, impacting the filing of new NFTLs from April 1, 2020, through September 30, 2020, from the People First Initiative. On March 25, 2020, the IRS announced the People First Initiative in response to the Coronavirus 2019 Disease Pandemic to ease the burden on people facing tax issues. This initiative included a series of steps to assist taxpayers by providing relief on a variety of issues ranging from easing payment guidelines to postponing compliance actions, such as filing NFTLs. Beginning on April 1, 2020, and continuing through July 15, 2020, the IRS suspended collection activities, including new NFTLs, unless there was a

¹ Internal Revenue Code §§ 6321 and 6323.

² Internal Revenue Code § 6323.

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risk of permanent loss to the Government due to an exigent circumstance or the taxpayer agreed to the action.³ Although some enforcement processes were authorized to resume on July 16, 2020, the suspension of NFTL filings remained in effect until September 30, 2020. The reduced number of filings in FY 2021 and FY 2022 was due, in part, to delays in resuming automated enforcement activities while backlogs of incoming mail and outgoing notices were being resolved.

Depending on employee access and case status, NFTL requests can be generated using one of three IRS systems:

- 1) The Integrated Collection System (ICS).
- 2) The Automated Collection System (ACS).
- 3) Directly input into the Automated Lien System (ALS).⁴

The Internal Revenue Code (I.R.C.) has long required the IRS to notify taxpayers in writing of the filing of an NFTL; however, the IRS Restructuring and Reform Act of 1998 (RRA 98) expanded upon this notice requirement, creating I.R.C. § 6320 to give taxpayers additional rights.⁵ When the first NFTL is filed for a tax period, the lien notice must be issued within five business days of the filing of the NFTL and inform taxpayers of the right to elect a Collection Due Process (CDP) hearing wherein the taxpayer can raise any relevant issues, including:

- Spousal defenses.
- The appropriateness of the collection actions.
- Collection alternatives.

The IRS issues a Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under I.R.C. § 6320*, to advise taxpayers that they have 30 calendar days, after the five-business-day period, to request a CDP hearing with the IRS's Independent Office of Appeals. The lien notice indicates the date on which this 30-calendar-day period expires. When a subsequent NFTL is filed for the same assessment for which the taxpayer previously was issued a right to a hearing, a Letter 3171, *Notice of Federal Tax Lien Additional Filing*, is issued.

If the taxpayer fails to request a CDP hearing within the 30-calendar-day period, the IRS may grant an "equivalent hearing."⁶ Taxpayers can file a request for an equivalent hearing within one year following the five-business-day period after the NFTL is filed. An equivalent hearing is like a regular CDP hearing; however, the taxpayer cannot seek judicial review of the Independent Office of Appeals' decision.⁷

Although I.R.C. § 6320(c) incorporates I.R.C. § 6330(e) (which applies to CDP hearings in the event of a levy) such that, by the plain reading of the statute, all collection action should cease during the period in which a lien CDP hearing is requested and resolved, the Treasury

³ The determination of an exigent circumstance required approval from the Director, Collection, Small Business/Self-Employed Division.

⁴ See Appendices III and IV for information about these systems and their use.

⁵ RRA 98 § 3401(a), Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.); I.R.C. § 6320.

⁶ Treas. Reg. § 301.6320-1(i)(2) Q&A-17.

⁷ Treas. Reg. § 301.6320-1(i)(2) Q&A-16.

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Regulations specify that levy action is permissible during a lien CDP hearing.⁸ As we have reported previously, the IRS's policy is that collection action will generally not take place during a lien CDP period. However, we have found that the IRS does not suspend certain levy actions while the taxpayer has the right to request a lien CDP hearing.

A CDP hearing (whether on the notice of intent to levy or on the filing of an NFTL) allows a taxpayer an opportunity to raise all relevant issues, including collection alternatives, innocent spouse protections, and other issues. Although the Treasury Regulations grant authority for the IRS to levy during a lien CDP hearing, it is beneficial to the taxpayer if the IRS does not do so. Accordingly, the Treasury Inspector General for Tax Administration (TIGTA) continues to report on cases in which the IRS takes a collection action during a lien CDP period.

During our review in FY 2023, we identified an issue with the Automated Levy Program (ALP).⁹ The report confirmed that the IRS allowed automated levies to continue during the 30-calendar-day period when the taxpayer has the option to elect a lien CDP hearing. IRS officials stated that the IRS would levy after a lien CDP hearing has been elected but for a systemic limitation in the levy process. However, the IRS's procedures specifically do not allow this. At the closeout of last year's audit, the IRS stated that it plans to change the Internal Revenue Manual (IRM) regarding ALP levies. The prior year review illustrates the IRS view regarding collection activities such as ALP levies. Our report this year does not include ALP activity as it was paused by the IRS for the full period of our review.

The law also requires that the lien notice explain, in simple terms, the amount of unpaid tax, other administrative appeal rights available to the taxpayer, and provisions of the law and procedures related to the release of the lien on the property.¹⁰ The lien notice must be:



Given in person or left at the taxpayer's home or business.



Sent by certified or registered mail to the taxpayer's last known address.

TIGTA is required to determine annually whether the IRS complied with the law pertaining to CDP rights when filing NFTLs.¹¹ This is our twenty-sixth annual audit to determine whether the IRS complied with the legal requirements of I.R.C. § 6320(a) and its own related internal guidelines for issuing lien notices. In four of the past five years, TIGTA reported full compliance with the law of timely notifying taxpayers each time an NFTL is filed.¹² In addition, in the last five years, we reported that the IRS has not achieved full compliance with guidelines involving power of attorney (POA) notifications.

⁸ Treas. Reg. § 301.6320-1(g) Q&A-3.

⁹ TIGTA, Report No. 2023-30-057, *Fiscal Year 2023 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures* (Sept. 2023). See Appendix VII for a glossary of terms.

¹⁰ I.R.C. § 6320(a)(3)(A), (a)(3)(C), and (a)(3)(D).

¹¹ I.R.C. § 7803(d)(1)(A)(iii).

¹² In TIGTA, Report No. 2023-30-057, *Fiscal Year 2023 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures* (Sept. 2023), we found 17 lien notices were not mailed timely as required by I.R.C. § 6320 due to an isolated programming issue.

Results of Review

I.R.C. § 6320(a) requires the IRS to notify taxpayers in writing, at their last known address, within five business days of the filing of an NFTL.¹³ We found that the IRS did not always timely (within five business days) mail a copy of the NFTL to all taxpayers as required by I.R.C. § 6320(a). In addition, lien notices were not always sent to the taxpayers' last known addresses. Furthermore, as we reported in our FY 2023 report, the IRS does not suspend certain levy actions while the taxpayer has the right to request a lien CDP hearing.



The IRS Generally Complied With Internal Revenue Code Section 6320 Requirements

Our systemic review of all 103,460 NFTLs that were filed from July 1, 2022, to June 30, 2023, and required a CDP notice, determined that 270 taxpayers were potentially not timely mailed a CDP notice as required by I.R.C. § 6320(a).¹⁴

The IRS reviewed a sampling of the 270 taxpayers and based on its review estimated the following breakdown in cases for not timely mailing a CDP notice:

- 93 of the 270 taxpayers. According to the IRS, 93 taxpayers were not timely mailed a lien notice because the ALS migrated to a different platform that was incompatible with the system used by the Minnesota Secretary of State's office.¹⁵ The migration disabled the previously used electronic exchange between the IRS lien unit and the Minnesota Secretary of State's office. As a workaround, the IRS converted electronic NFTL filings to paper documents until the electronic process could be restored. In the summer of 2022, paper filings in Minnesota were halted while programmers attempted to restart the electronic process; however, the restart attempts failed. The IRS recovered the NFTLs that were used for the attempted restart, printed them, and resumed paper filings. When it was later found that the recovered NFTLs did not generate their respective CDP notices, actions were taken to manually regenerate the CDP notices with updated response deadlines.
- 177 of the 270 taxpayers. The IRS could not affirm on a case-by-case basis whether all 177 taxpayers were not timely mailed a lien notice, but stated if the liens notices were not mailed, the issue was likely a consequence of manual entry input errors by revenue

¹³ I.R.C. § 6320(a)(3) addresses the notice of the amount of unpaid tax, the right to request a hearing, administrative appeal available, procedures for the release of liens, and the provisions of I.R.C. § 7345 on the certification of seriously delinquent tax debt.

¹⁴ This is the first year we supplemented our review of a random sample with a systemic review of the population.

¹⁵ Migrated involves moving data or software from one platform to another. A platform is a hardware and/or software architecture that serves as a foundation or base.

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officers.¹⁶ When revenue officers were making NFTL requests, they identified the wrong taxpayer entity. The cause for the error was likely a consequence of specific cases identified as taxpayers using an Alter Ego.¹⁷ The IRS is aware of the issue and has since issued an ICS alert addressing users. In addition, the IRS is coordinating a recovery effort to generate new CDP notices for the NFTLs affected by the Alter Ego entity situation. Finally, ICS programming was updated in March 2024 to protect against the incorrect selection of the Alter Ego entity type when requesting an NFTL.

We also reviewed a statistically valid sample of 117 NFTLs from the same population and found that the IRS usually printed and mailed lien notices in a timely manner.¹⁸ However, for three (nearly 3 percent) of the 117 sample notices, the IRS did not timely mail a copy of the NFTL and a CDP notice to taxpayers as required by I.R.C. § 6320(a). [REDACTED]

[REDACTED] In total, we identified 272 taxpayers that were not timely provided with a Letter 3172, resulting in potential legal violations of taxpayers' rights.

I.R.C. § 6320(a) also provides that all parties named on the NFTL must be provided notice of the NFTL filing in person or at their respective last known address.¹⁹ Accordingly, IRS procedures require that as part of NFTL preparation, the IRS must confirm the last known address and any changes of address for taxpayers so that lien notices and other notices are issued correctly.²⁰

Our review of the sample of 117 lien notices also found that [REDACTED]

We estimate that [REDACTED]

[REDACTED] 21 [REDACTED]

¹⁶ The IRS stated that the 177 taxpayers did not timely receive a CDP notice likely due to ALS suppressing Alter Ego NFTLs.

¹⁷ The Alter Ego doctrine is used when there is such a unity of interest and ownership between a taxpayer and an entity that the individuality or separateness of the taxpayer and entity has ceased. The doctrine allows the law to disregard the entity's separate legal identity to extend liability and prevent abuse. The Alter Ego doctrine allows the assets of the entity to satisfy the debts of the taxpayer.

¹⁸ The IRS provided 166,676 NFTLs that were prepared nationwide from July 1, 2022, to June 30, 2023, and originated in the ICS, the ALS, or the ACS. We reviewed only the first NFTL filed for a tax period because the IRS is required to include a CDP notice. Our sample was selected from a population of 103,460 NFTLs using a 90 percent confidence interval, 2 percent error rate, and ± 2.5 percent precision factor.

¹⁹ A taxpayer's "last known address" is defined in Treas. Reg. § 301.6212-2(a) as the address on the taxpayer's most recently filed and properly processed return. Accordingly, a taxpayer's last known address is generally the address on the IRS Master File.

²⁰ IRM 5.12.7.3 (Sept. 21, 2017).

²¹ We used an exact procedure based on the hypergeometric distribution. The projection is based on [REDACTED] of 117 randomly sampled cases. We are 90 percent confident that the range of potential violations is between 46 and 4,133 taxpayers.

The Director, Collection Policy, Small Business/Self-Employed Division, should:

Recommendation 1: Take corrective action on [REDACTED]
[REDACTED]

Management's Response: IRS management agreed with this recommendation and will review [REDACTED]

Recommendation 2: Ensure that the corrective actions initiated on the 270 cases we systemically identified are completed, and safeguards are implemented to protect against the recurrence of the causal issues.

Management's Response: IRS management agreed with this recommendation. The IRS agreed to review the cases and issue substitute CDP notices as needed, and to evaluate the factors that prevented the notices from being timely issued and the potential safeguards against them.

Revenue Officers Took Levy Action While Taxpayers Had the Right to Request a Hearing

We systemically identified 5,801 Field Collection cases in which revenue officers took levy action on taxpayers during the 30-day calendar period in which they had the right to request a hearing under I.R.C. § 6320.²² We provided the IRS with the list of all 5,801 taxpayers for its review. The IRS reviewed a sample of 10 cases to determine if levies were issued on these taxpayers while they had the right to request a hearing. The IRS confirmed that for these 10 taxpayers, the taxpayers were sent a CDP lien notice, and that levy action was taken on the taxpayer during the 30-calendar-day period in which they had the right to request a NFTL CDP hearing.

IRS Campus Compliance policy has historically been to prohibit levy action during the period in which the taxpayer had the right to request a hearing under I.R.C. § 6320. I.R.C. § 6320 states that the period in which the taxpayer has a right to request a hearing is the "30-calendar day period beginning on the day after the five-business day period described in paragraph (2)," which is "not more than five business days after the day of the filing of the notice of lien."

IRS IRM procedures applicable to the Campus Collection provide that:

(1) If the taxpayer files a timely appeal during the I.R.C. 6330 notice period, levy actions, except in jeopardy situations, levies on state income tax refunds, Disqualified Employment Tax Levies (DETL), or Federal Contractor Collection Due Process, must be suspended during the appeal period and during any further appeals to Tax Court. *Levy action also must be suspended during the period in which the taxpayer has a right to request a hearing under I.R.C. 6320 or 6330.* [emphasis added]

(2) When a taxpayer files a timely request for a CDP hearing during the I.R.C. 6320 notice period, levy actions are not required to be suspended. *However, as a general rule, levy action is suspended pending the Appeals determination on the NFTL.* [emphasis added] Levy action can be taken if it is determined that collection is at risk such as when the

²² I.R.C § 6320 gives taxpayers the right to request a hearing during the 30-calendar-day period that begins on the first day after five business days after the filing of a NFTL.

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taxpayer continues to pyramid trust fund tax liabilities. Prior to initiating levy action against tax modules that are the subject of a CDP hearing under I.R.C. 6320, contact Appeals to advise them that levy action is planned. Determine if Appeals has new information that may affect the decision to levy. Managerial approval is required for levy under these circumstances.²³

The Campus Collection procedures specifically state that no levy action should be taken during the 30-calendar-day period the taxpayer has to decide whether they want to request a CDP hearing. This policy has been in place since November of 2007. There is no contrary language found in the IRM pertaining to Field Collection which provide that:

(2) Levy action is generally suspended:

- On tax periods not subject to the CDP levy hearing, unless all pre-levy notifications have been met.
- On tax periods subject to an equivalent hearing.
- On periods subject to a CDP NFTL hearing.²⁴

While this procedure is silent of the period the taxpayer must decide whether they want to request a CDP hearing, it provides that levy action is generally suspended on periods subject to a CDP NFTL hearing. The previously cited Campus Collection IRM procedure makes clear that levies are not allowed during the 30 calendar days that the taxpayer must elect a lien CDP hearing. In contrast to its long-standing policy and current procedures, the IRS disagreed that the 5,801 cases were a violation of its own procedures. Management stated that the lien notice had no impact on levy action because the pre-levy notice requirements contained in the Treasury Regulations were met.²⁵ Further, during a telephone call discussing the IRS policy, the Director, Collection Policy, Small Business/Self-Employed Division, simply said that levy action in these situations is not prohibited.

In response to FY 2023's lien audit recommendation, the IRS agreed to review IRM procedures among the distinct levy programs to ensure that they are fair, equitable, and effective. As part of this review, the IRS found one change to the IRM and removed the reference to I.R.C. § 6320 because it conflicts with Department of the Treasury policy and IRS policy.²⁶ This change took effect April 2024 and will now allow for levy actions to continue during the 30-calendar-day period the taxpayer has the right to appeal and will only stop when a valid I.R.C. § 6320 CDP lien request is accepted by the Independent Office of Appeals. The IRS took levy action on the 5,801 cases that we identified prior to when this change took effect (April 2024). We are concerned about this procedure change as it relates to the negative impact on taxpayer rights. For years, the IRS Collection function has stated that the policy of the IRS was to generally not levy during lien CDP hearings, and its IRM was consistent with that statement. The IRS (Campus Collection) was not following its own IRM and has now changed it so that it can take levy action during the 30-calendar-day period in which the taxpayer has the right to request a CDP hearing.

²³ IRM 5.19.8.4.6 (Aug. 5, 2016).

²⁴ IRM 5.1.9.3.5.1 (Aug. 30, 2018).

²⁵ Treas. Reg. § 301.6320-1(g) Q&A-3.

²⁶ IRM 5.19.8.4.6 (Aug. 5, 2016).

We also systemically identified four cases in which levies were issued on taxpayers for a tax period in which NFTL appeals were filed timely, and the appeals determinations were still pending. The IRS agreed that for these cases, the revenue officer did not contact the Independent Office of Appeals to determine if there was new information that could affect the decision to levy as required by the IRM.²⁷

The Taxpayer Bill of Rights affords taxpayers the right to raise objections and to expect that the IRS will consider their objections and the right to a fair and just tax system, which considers facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely.²⁸ As previously noted, a CDP hearing allows a taxpayer an opportunity to raise all relevant issues at the hearing, including collection alternatives, innocent spouse protections, and other issues. TIGTA believes that the intent of the IRM as it is currently written is consistent with the spirit of those rights, and we urge the IRS to reconsider this perspective for both Campus Collection and Field Collection. Taxpayers' right to a NFTL CDP hearing may be infringed upon when the IRS takes levy action while the taxpayers contemplate whether to appeal the NFTL.

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS refers to this as "the retention standard." This provision of the law was enacted to provide assurance that all employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

The fair and equitable treatment of taxpayers applies to levies in which NFTL appeals were filed timely, and determinations were still pending, when the IRM specifically prohibits levies during this period.

The Commissioner, Small Business/Self-Employed Division, should:

Recommendation 3: Direct the Director, Collection Policy, Small Business/Self-Employed Division, to establish Field Collection IRM procedures that prohibit field employees from taking levy action on taxpayers during the 30-calendar-day period the law provides taxpayers can elect lien CDP hearings.

Management's Response: IRS management disagreed with this recommendation. In its response, the IRS stated that there is no legal prohibition for the IRS to proceed with a levy during the time in which a taxpayer may request a NFTL CDP hearing.

Office of Audit Comment: Although the IRS is allowed to levy during the time in which a taxpayer may request a CDP hearing for the NFTL, taking levy action during this 30-calendar-day period potentially causes an unnecessary burden when levy action is not suspended while the taxpayer considers requesting a lien CDP hearing. A CDP hearing allows a taxpayer an opportunity to raise all relevant issues at the hearing, including collection alternatives, innocent spouse protections, and other issues. The intent of the IRM as it is currently written is consistent with the spirit of those rights. A taxpayer's right to a NFTL CDP

²⁷ IRM 5.19.8.4.6 (Aug. 5, 2016).

²⁸ I.R.C. § 7803(a)(3).

hearing may be infringed upon when the IRS takes levy action while the taxpayer contemplates whether to appeal the NFTL.

Recommendation 4: Apply the RRA 98 § 1204(b) retention standard when evaluating IRS Collection employees, managers, and executives who intentionally disregard IRS policies concerning levy action on a tax period in which NFTL appeals were filed timely and determinations were still pending, and consider appropriate discipline in accordance with IRM 6.751.1, the manager's guide to penalty determinations, and in consultation with Labor Relations and Small Business/Self-Employed Division Collection leadership.

Management's Response: IRS management partially agreed with this recommendation. In their response, the IRS stated that RRA 98 § 1204(b), as shown in IRM 6.430.2.4.7 and IRM 6.430.2-1, is applied when evaluating Collection employees, managers, and executives who intentionally disregard policies concerning levy action on a tax period in which NFTL appeals were filed timely and determinations still pending, and appropriate discipline in consultation with Labor Relations and Small Business/Self-Employed Division Collection leadership is considered. IRS management agreed to review and update IRM guidance to clarify that there is consideration of appropriate discipline in accordance with IRM 6.751.1.

Office of Audit Comment: While IRS management partially agreed with our recommendation, we believe their corrective actions are in the spirit of our recommendation.

Taxpayer Representatives Were Not Always Notified Correctly

Our review of a statistically valid sample of 117 lien notices identified a total of 41 (35 percent) cases in which the taxpayers had representatives designated to receive notifications at the time the NFTLs were requested. However, our review of ALS records found that the IRS did not send copies of the lien notices to the taxpayers' representatives for three (nearly 3 percent of the total sample of 117 and 7 percent of the 41 taxpayers identified with a representative designated to receive notices) I.R.C. § 6320 CDP notices. We estimate that 2,653 taxpayers continue to be affected adversely because the IRS did not follow procedures to notify the taxpayers' designated representatives of the taxpayers' rights related to NFTLs.²⁹

Taxpayers have the right to retain a representative of their choice to represent them in matters with the IRS.³⁰ When completing Form 2848, *Power of Attorney and Declaration of Representative*, to designate a representative, the taxpayer may check a box to indicate that the IRS should ordinarily send the representative(s) copies of notices and other written communications pertaining to the representation. If the taxpayer does not check this box, the IRS will not ordinarily send copies of notices to the listed representative.

²⁹ The IRS provided 166,676 NFTLs that were prepared nationwide from July 1, 2022, to June 30, 2023, and originated in the ICS, the ALS, or the ACS. We reviewed only the first NFTL filed for a tax period because the IRS is required to include a CDP notice. Our sample was selected from a population of 103,460 NFTLs using a 90 percent confidence interval, 2 percent error rate, and ± 2.5 percent precision factor. We used an exact procedure based on the hypergeometric distribution. The projection is based on three (3 percent) of 117 randomly sampled cases. We are 90 percent confident that the range of potential violations is between 728 and 6,715 taxpayers.

³⁰ I.R.C. § 7803(a)(3)(I).

Similarly, when completing Form 8821, *Tax Information Authorization*, taxpayers can check a box authorizing the IRS to send copies of notices or other written communications to their third-party designee on an ongoing basis. If the taxpayer does not check this box on Form 8821, the third-party designee should not receive notices on an ongoing basis.

Taxpayer representative information is contained in the Centralized Authorization File. Using the Integrated Data Retrieval System (IDRS), employees can research the Centralized Authorization File to determine if the taxpayer has a representative on file and whether that representative is designated to receive notices.

Additionally, IRS procedural rules require that any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the IRS must be given to the taxpayer and the representative unless restricted by the taxpayer.³¹ More specifically, when an NFTL is filed, IRS policy requires that a copy of the lien notice be sent to the taxpayer's authorized representative, if designated to receive notices, as soon as possible after the lien notice is sent to the taxpayer.³² We reported in four of our last five reviews that the IRS did not always properly notify taxpayer representatives of NFTL filings and due process procedures.³³ As previously noted, our review this year confirms that taxpayers continue to be affected adversely.

Copies of lien notices were sent to representatives who were not expressly designated to receive them

Our review of the statistically valid sample of 117 lien notices found that the IRS sent copies of I.R.C. § 6320 CDP notices to [REDACTED] representatives who were authorized to represent the taxpayers but not expressly designated by the taxpayer to receive notices.

The IRS disagreed with seven of the [REDACTED] instances. The IRS explained that because the representatives were authorized to represent the taxpayers, they could also be sent notices regardless of the fact that the Form 2848 filed by the taxpayer did not specifically designate their POA to receive copies of notices. The IRS does not advise taxpayers of this possibility or how taxpayers can ensure that the IRS does not send notices to representatives against their wishes. Specifically, for:

- Three cases, the POA was authorized to represent the taxpayer, but the Form 2848 did not expressly designate the POA to routinely receive a copy of the lien notice.
- Four cases, the POA was authorized on at least one, but not all, tax modules on the NFTL. The IRS explained that the IRM states that a POA authorized for any tax module shown on the NFTL should receive a copy of the CDP notice.³⁴ This IRM appears to be in direct conflict with another IRM section, which states that the IRS should ensure that the authorized representative is authorized to receive taxpayer data on all modules

³¹ Treas. Reg. § 601.506, *Conference and Practice Requirements, Statement of Procedural Rules* (2009).

³² IRM 5.12.6.3.10 (Jan. 19, 2018). This IRM section incorrectly cross references IRM 5.1.23.3.2.3 instead of the correct section IRM 5.1.23.4.2.3.

³³ See Appendix V for additional information on taxpayer representatives not receiving notification.

³⁴ IRM 5.12.6.3.10(1) (Jan. 19, 2018).

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contained in any communication that it planned to send to the authorized representative.³⁵



Taxpayers have the right to confidentiality, and IRS employees are prohibited from disclosing taxpayer information to unauthorized individuals.³⁶ This right is also addressed in the Taxpayer Bill of Rights as outlined in Publication 1, *Your Rights as a Taxpayer*, 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.³⁷

The IRS's disclosure policies outline every IRS employee's responsibility to protect the confidentiality of records and information entrusted to the IRS. The policies 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 to protect the information from disclosure and to know when disclosures are authorized.³⁸

Figure 2 shows that the Form 2848 instructions give the taxpayer the option to elect whether their representative should routinely be sent copies of notices and communications by checking a box.

Figure 2: Excerpt Taken From Form 2848

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address (Note: IRS sends notices and communications to only two representatives.)	CAF No. _____ PTIN _____ Telephone No. _____ Fax No. _____ Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

Source: Excerpt taken from IRS Form 2848 (Rev. January 2021).

Based on the instructions on Form 2848, taxpayers would expect the IRS not to send their representatives copies of notices if they do not check the box.

³⁵ IRM 5.1.23.4.2.3(5) (Dec. 26, 2019).

³⁶ I.R.C. § 7803(a)(3)(H), I.R.C. § 6103(a), and I.R.C. § 7213(a)(1).

³⁷ Pub. L. No. 105-206, 112 Stat. 726 (1998) (codified as amended in scattered sections of 26 U.S.C.).

³⁸ IRM 11.3.1.1 (Nov. 12, 2021).

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' perceptions of the IRS as a trusted institution. The IRS potentially violates the taxpayer's rights when it sends a notice to a representative who is not authorized to receive it because the IRS might share the taxpayer's Personally Identifiable Information with a third party without written permission. In addition, the IRS is subject to potential liability claims by the taxpayer.

We project that 7,074 taxpayers were potentially burdened because the IRS did not send copies of the lien notices only to taxpayers' representatives who are authorized to receive notices.³⁹ During our FY 2023 review, we had similar findings and made recommendations to address these issues through IRM updates. The IRS is currently in the process of reviewing the applicable IRM areas and addressing last year's recommendations. Accordingly, we are not making a recommendation this year. We will test the effectiveness of the IRS's corrective actions during our FY 2025 review.

The IRS Did Not Take Preemptive Actions to Protect Taxpayers Impacted by Hurricane Ian

Some taxpayers affected by Hurricane Ian were adversely impacted and without relief from September 28, 2022, until October 17, 2022. The following is a summary of the timeline regarding Hurricane Ian:

- September 28, 2022, Hurricane Ian made landfall.
- September 29, 2022, in response to Hurricane Ian, the President issued a declaration of disaster in the State of Florida.⁴⁰
- September 29, 2022, the IRS released announcement FL-2022-19.⁴¹
- From October 6, 2022, through October 17, 2022, certain freeze codes (explained later in report) were declared for the impacted zip codes to provide relief to the impacted taxpayers.

As previously noted, there was a time span from September 28, 2022, until October 17, 2022, in which taxpayers could have been impacted without relief while under the conditions of a natural disaster. The IRS does have procedures in place to address this issue.

When the President declares a major disaster or emergency, immediate notification is made to the Governor of the affected State or U.S. Territory, appropriate members of Congress, and

³⁹ The IRS provided 166,676 NFTLs that were prepared nationwide from July 1, 2022, to June 30, 2023, and originated in the ICS, the ALS, or the ACS. We reviewed only the first NFTL filed for a tax period because the IRS is required to include a CDP notice. Our sample was selected from a population of 103,460 NFTLs using a 90 percent confidence interval, 2 percent error rate, and \pm 2.5 percent precision factor. We used an exact procedure based on the hypergeometric distribution. The projection is based on eight (6.8 percent) of 117 randomly sampled cases. We are 90 percent confident that the range of potential violations is between 3,569 and 12,411 taxpayers.

⁴⁰ Certain areas were identified by FEMA to be eligible for assistance under the Robert T. Stafford Disaster Relief and Emergency Act. Disaster Assistance for the State of Florida (FEMA-4673-DR) Memorandum (September 29, 2022).

⁴¹ This announcement gave affected taxpayers until February 15, 2023, to perform other time-sensitive actions, described in Treas. Reg. § 301.7508A-1(c)(1) and Rev. Proc. 2018-58, 2018-50 IRB 990 (December 10, 2018), that were due to be performed on or after September 23, 2022, and before February 15, 2023, and were postponed through February 15, 2023.

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Federal departments and agencies. At that time, the Director of the Federal Emergency Management Agency (FEMA) appoints a Federal Coordinating Officer to assess the damage and make an initial appraisal of the types of relief most urgently needed by the affected citizens and public officials. The Federal Coordinating Officer coordinates FEMA's disaster assistance efforts and works with other Federal agencies, including the IRS, on relief issues. For example, after FEMA assesses the damage, it issues a Disaster Declaration to both notify the IRS Disaster Assistance Program Office and to provide general disaster information including the specific counties/municipalities/parishes/islands (referred to collectively in this report as "counties") within the disaster area designated as eligible for assistance. There are three types of assistance given by FEMA:

- **Emergency Measures** – include actions to be taken before, during, and after a disaster to save lives, protect public health and safety, and prevent damage to improved public and private property.
- **Public Assistance** – provides assistance to State, Tribal, and local governments for the repair or replacement of disaster-damaged public facilities. The Public Assistance Grant Program provides grants to State and local governments and certain private nonprofit agencies to respond to disasters, recover from the impact, and mitigate the impact of future disasters.
- **Individual Assistance** – provides assistance to individuals and businesses in need of temporary housing, unemployment payments, housing repairs, medical assistance, and similar benefits.

The specific type of assistance that FEMA gives generally dictates the type of disaster assistance the IRS will provide. For example, the IRS grants tax relief to individuals and businesses in counties given individual assistance by FEMA. In certain circumstances, this relief can also be extended to taxpayers in counties identified for public assistance. Once individual assistance is given by FEMA to specific counties affected by the disaster, the IRS Disaster Assistance Program Office prepares and distributes an internal Disaster Relief Memorandum to key IRS functional areas that summarizes the tax relief to be provided.⁴²

Below is an excerpt from the IRM.⁴³

*(1) Immediately following a major disaster, but before receipt of a Disaster Relief Memorandum, the Field Collection (FC) territory manager (TM) has the following **options** involving taxpayers residing in the general disaster area:*

- a. Initiate Soft Contact Procedures per IRM 5.1.12.2.2, Soft Contact, with the taxpayer to determine impact status prior to resumption of collection activity.*
- b. Initiate an initial suspension of ALL collection activity (including soft contact) pending the initial determination of the exact IRS Designated Disaster Area and magnitude - no contact whatsoever.*

⁴² A Disaster Relief Memorandum is an internal document issued to notify IRS personnel that tax relief has been granted associated with a Federally declared disaster. It is prepared for each disaster declaration and includes a summary of the relief (such as the counties eligible for tax relief), the disaster relief period (beginning and ending dates), and the type of tax relief granted.

⁴³ IRM 5.1.12.2.1(1) (Nov. 15, 2023).

We asked the IRS if it followed either option as noted in (a) and (b) above. We confirmed that for Hurricane Ian, the respective Territory Manager did not take either preemptive option described in the IRM. The IRS responded that IRM 5.1.12.2.3(1) does not require the Field Collection Territory Manager to take either of the actions described in subparagraphs (a) or (b). The IRM as written only provides for these two options following a major disaster but before receipt of a Disaster Relief Memorandum.

The IRS noted that IRM guidance was crafted to allow the Territory Manager the flexibility to assess the level of impact following a disaster and determine if one of the options for pausing collection activity is appropriate before a formal disaster declaration. However, in this response, the IRS did not provide or confirm whether an assessment of the level of impact following this disaster was performed to determine if one of the options for pausing collection activity was appropriate. As such, the IRS did not take any preemptive steps available to it to suspend collection activity on taxpayers that were impacted by a hurricane on September 28, 2022.

When it is determined a taxpayer is in a designated disaster area, the IRS adds an -O freeze designation to the taxpayer's IDRS account. This -O freeze designation is for use only in the most catastrophic disasters and for areas suffering the most damage.

Before recommending -O freeze administrative tax relief, the IRS Disaster Program Office will consider:

- The number of casualties and/or displaced persons.
- Extensive housing damage and/or environmental damage forcing long-term or permanent relocation for a significant portion of the population.
- Severe infrastructure damage on a scale likely to cause service impacts and economic disruptions.
- Severe economic or physical damage to key industries and incapacitated governments.

This -O freeze designation provides systemic penalty, interest, and compliance relief and stops most collection actions, including NFTL filings.

The IRS filed some NFTLs and issued collection letters on taxpayers impacted by Hurricane Ian and designated to be in disaster area

During this review, we identified seven taxpayers residing in a zip code with an -O freeze designation in which the IRS filed a NFTL. We provided these instances to the IRS, and IRS management agreed a NFTL was filed after the -O freeze was in place for the taxpayer's zip code. This places undue burden and stress on a taxpayer that has recently been affected by a hurricane.

Our review also identified 200 potential taxpayers that were in a Federally declared disaster zone and were sent a notice or demand for payment. The law requires, for taxpayers in Federally declared disaster zones, the postponement of giving or making any notice or demand for payment of any tax, or with respect to any liability to the United States in respect of any tax.⁴⁴

We asked the IRS if it considered Letter 3172 to be a notice or demand for payment. IRS management explained that they do not consider Letter 3172 to be a notice or demand for

⁴⁴ Treas. Reg. § 301.7508A-1(c)(2)(ii).

payment, and its purpose is to advise taxpayers of the NFTL filing and their CDP rights relative to that filing.

We disagree with the IRS that this letter is neither a notice nor a demand for payment. Figure 3 shows an excerpt from Letter 3172 that states, “What you need to do immediately” and “Pay your outstanding tax debt.”

Figure 3: Excerpt Taken From Letter 3172

What you need to do immediately

Pay your outstanding tax debt. Please note additional interest and penalties may increase the amount shown below. Contact the person identified at the top of this notice for the full amount due or if you have questions.

Source: Excerpt taken from IRS Letter 3172 (Rev. January 2024).

From the 200 taxpayers that were in a Federally declared disaster zone and sent Letter 3172, we provided a judgmental sample of 10 cases for the IRS to review. The IRS disagreed that any of these taxpayers were sent a notice or demand for payment, presumably because the IRS does not consider the Letter 3172 to be a notice or demand for payment. However, this notice gives the taxpayers 30 calendar days to respond if they are requesting a CDP hearing. If the taxpayer does not, or is unable to, respond within 30 calendar days, the taxpayer is then limited to filing a request for an equivalent hearing within one year following the five-business-day period after the NFTL is filed. An equivalent hearing is like a regular CDP hearing; however, the taxpayer cannot seek judicial review of the Independent Office of Appeals’ decision.⁴⁵ Additionally, taxpayers that have experienced a disaster, such as a damaging hurricane, may have a difficult time receiving and sending mail timely for various reasons.

The IRS explained that it is legally mandated to mail the CDP notice to the taxpayer within five business days of filing the NFTL. However, the IRS needs to take a more proactive approach to prevent undue harm to taxpayers impacted by disasters.

The IRS should have enacted a suspension of all collection activity on these taxpayers that recently experienced a damaging hurricane, and were likely undergoing hardship, until the initial determination of exact disaster zip codes was made. This suspension is allowed by IRS policy and would have provided these taxpayers relief from having liens filed on their property and demands for payment from the IRS while undergoing the aftermath of the hurricane.

Recommendation 5: The Director, Collection Policy, Small Business/Self-Employed Division, should review disaster procedures for NFTL processing and consider updates, as needed, to reduce burden for taxpayers impacted by disasters.

Management’s Response: IRS management agreed with this recommendation and will review the guidance for processing NFTLs in disaster areas to ensure consistency and will consider procedural updates for identified deficiencies.

⁴⁵ Treas. Reg. § 301.6320-1(i)(2) Q&A-16.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether CDP lien notices issued by the IRS comply with legal guidelines set forth in the I.R.C. and Treasury Regulations. To accomplish our objective, we:

- Determined whether lien notices issued by the IRS complied with legal requirements set forth in I.R.C. § 6320(a) and related internal guidelines. The IRS provided 166,676 NFTLs that were prepared nationwide from July 1, 2022, to June 30, 2023, that originated in the ICS, the ALS, or the ACS. We attempted to review only NFTLs that included a CDP notice. Factoring for only NFTLs that we would expect included a CDP notice, we arrived at a sample population of 103,460. We selected a statistical sample of 117 cases to conduct additional testing and determine if lien notices adhered to legal guidelines regarding timely notifications of NFTL filings to the taxpayer, the taxpayer's spouse, or business partners.¹ A statistical sample was used to allow the results to be projected to the overall population. In addition, we used this sample to determine if the taxpayers' representatives were provided a copy of the lien due process notice. TIGTA's contracted statistician assisted with reviewing the sampling plans and projections.
- Determined whether the IRS complied with legal requirements set forth in I.R.C. § 6320, including its reference to I.R.C. § 6330(e) related to any levy or seizure action involving the same tax period for NFTLs filed during the audit period for this year's review (July 1, 2022, to June 30, 2023). These taxpayers were identified by comparing taxpayer data in TIGTA's Data Center Warehouse to data received from the IRS in the annual data extract that is provided for this review. We identified taxpayers that had a fact pattern in which: 1) the taxpayer timely requested a CDP hearing, 2) a levy was made on the taxpayer, and 3) the Independent Office of Appeals had not yet made a determination on the taxpayer's appeal.
- Determined if internal guidelines have been implemented or modified since our last review by discussing procedures and controls with appropriate IRS personnel in the National Headquarters.
- Determined if the IRS is following procedures to suspend filing of the NFTL during a disaster declaration as required by internal guidelines.

Performance of This Review

This review was performed with information obtained from the Small Business/Self-Employed Division's Office of Collection Policy in New Carrollton, Maryland, during the period September 2023 through April 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and

¹ The sample population consisted of all lien notices both prepared and printed nationwide from July 1, 2022, to June 30, 2023, that originated in the ICS, the ALS, or the ACS and included a CDP notice. Our sample was selected using a 90 percent confidence interval, a 2 percent error rate, and a ± 2.5 percent precision factor. We used an exact procedure based on the hypergeometric distribution.

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 Phyllis London Heald, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Timothy Greiner, Director; Lee Hoyt, Audit Manager; Shaun Starnes, Lead Auditor; and James Kang, Auditor.

Data Validation Methodology

During this review, we relied on data stored at TIGTA's Data Center Warehouse and performed analyses of data received from the IRS. We performed tests to assess the reliability of the data and 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 Small Business/Self-Employed Division Collection function's policies, procedures, and practices for timely notifying taxpayers of NFTL filings and timely verifying addresses of undelivered lien notices. We evaluated these controls by reviewing samples of lien notices sent to taxpayers and lien notices returned to the IRS as undelivered.

Appendix II

Outcome Measures

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 272 taxpayers were not timely provided with a Letter 3172, resulting in potential legal violations of taxpayers' rights (see Recommendations 1 and 2).

Methodology Used to Measure the Reported Benefit:

We reviewed a statistically valid random sample of 117 NFTLs that required a CDP notice from the 103,460 NFTLs filed from July 1, 2022, to June 30, 2023. The IRS did not timely (within five business days) mail a copy of Letter 3172 to three taxpayers, as required by I.R.C. § 6320(a).

From the population of 103,460 liens that required a CDP notice and were filed from July 1, 2022, to June 30, 2023, we systemically identified 270 potential taxpayers that were not timely provided Letter 3172, as required by I.R.C. § 6320(a).

Accordingly, we identified 272 taxpayers that were not timely provided with a Letter 3172, resulting in potential legal violations of taxpayers' rights.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 5,801 taxpayers in which the revenue officers took levy action during the 30-calendar-day period in which the taxpayer has the right to request a lien CDP hearing (see Recommendation 3).

Methodology Used to Measure the Reported Benefit:

From TIGTA's Data Center Warehouse, we identified a population of 120,522 levies on taxpayers that were also sent a lien CDP notice. Levy action was taken during the period July 1, 2022, to June 30, 2023. From this population, we systemically identified 5,801 potential taxpayers in which the IRS took levy action while the taxpayer had the right to request a lien CDP hearing.

Management's Response: In their response, IRS management disagreed with the outcome measure. The IRS stated there is no legal prohibition for the IRS to proceed with a levy during the time in which a taxpayer may request a CDP hearing for the NFTL.

Office of Audit Comment: Although the IRS is allowed to levy during the time in which a taxpayer may request a CDP hearing for the NFTL, taking levy action during this 30-calendar-day period potentially causes an unnecessary burden when levy action is not suspended while the taxpayer considers requesting a lien CDP hearing. A CDP hearing allows a taxpayer an opportunity to raise all relevant

issues at the hearing, including collection alternatives, innocent spouse protections, and other issues. The intent of the IRM as it is currently written is consistent with the spirit of those rights. Taxpayers right to a NFTL CDP hearing may be infringed upon when the IRS takes levy action while the taxpayers contemplate whether to appeal the NFTL.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; four taxpayers in which the IRS took levy action after the taxpayer had timely requested a CDP hearing and the Independent Office of Appeals had not yet made a determination (see Recommendation 3).

Methodology Used to Measure the Reported Benefit:

From a population of 55 taxpayers that had requested a lien CDP hearing, obtained from TIGTA’s Data Center Warehouse and were filed from July 1, 2022, to June 30, 2023, we systemically identified four potential taxpayers in which the IRS took levy action after the taxpayer had timely requested a CDP hearing and the Independent Office of Appeals had not yet made a determination.

Appendix III

Synopsis of IRS Collection and Notice of Federal Tax Lien Filing Processes

The collection of unpaid tax begins with a series of letters (notices) sent to taxpayers advising them of their debt and asking for payment of the delinquent tax. IRS computer systems are programmed to mail these notices when certain criteria are met. If either personal (face-to-face) or telephone contact is required:

- IRS employees, called revenue officers who work in various locations, make personal contact with taxpayers. The ICS is used for workload management, case assignment/tracking, inventory control, and case analysis.¹
- IRS employees make telephone contact to collect unpaid taxes and secure delinquent returns. The ACS is used in the call sites to track collection actions taken on taxpayer accounts.

When these efforts have been taken and the taxpayer has not paid the tax liability, designated IRS employees are authorized to file an NFTL by sending a Form 668(Y)(C), *Notice of Federal Tax Lien*, to the appropriate local government offices. NFTLs protect the Federal Government's interest by informing the public of its claim to the taxpayer's assets for the amount of unpaid tax. The Federal tax lien is created by I.R.C. § 6321 when:

- The IRS has made an assessment and given the taxpayer notice of the assessment, stating the amount of the tax liability and demanding payment.
- The taxpayer has neglected or refused to pay the amount after the notice and demand for payment.

The authority to file an NFTL is found in I.R.C. § 6323. When employees request the filing of an NFTL using either the ICS or the ACS, the ALS processes the NFTL filing requests. In an expedited situation, employees can manually prepare the NFTL. Even for manually prepared NFTLs, the ALS controls and tracks NFTLs and initiates subsequent lien notices to notify responsible parties of NFTL filings and of their appeal rights.² The ALS maintains an electronic database of all open NFTLs and updates the IRS's primary computer records to indicate that an NFTL has been filed.

Lien notices are provided to taxpayers by certified, registered mail, or in person. To maintain a record of the notices, the IRS prepares a certified mail list (U.S. Postal Service Form 3877, *Firm Mailing Book for Accountable Mail*), which identifies each notice that is to be mailed. The U.S. Postal Service date-stamps the list and returns a copy to the IRS. The stamped certified mail list is the documentation the IRS has that certifies the date on which the notices were mailed. IRS guidelines require that the stamped certified mail list be retained for 10 years after the end of the processing year.

¹ See Appendix IV for detailed descriptions of IRS computer systems used in the filing of NFTLs.

² Letter 3172.

Appendix IV

IRS Computer Systems Used in the Filing of Notices of Federal Tax Lien

Automated Collection System – The ACS accepts IDRS balance due and nonfiler cases requiring telephone contact for resolution and generates levies and correspondence. Tax examiners use the ACS’s case management abilities to contact taxpayers, review their case histories, issue notices, request NFTLs, and issue levies to resolve the cases.

Automated Lien System – The ALS stores NFTL and CDP document data and provides the tools for users to create, release, refile, and withdraw NFTLs; revoke releases; process CDP letters; and print NFTL and CDP letter facsimiles. Systemic NFTL requests are received from the ACS and the ICS. The ALS generates lien documents that are printed and processed for mailing by Centralized Lien Operations and the Consolidated Production Services.

Integrated Collection System – The ICS is a program that provides workload management, case assignment/tracking, inventory control, case analysis tools, and management information system capabilities to support the Small Business/Self-Employed Division’s Collection function fieldwork.

Integrated Data Retrieval System – The IDRS is an application consisting of databases and operating programs that support IRS employees working active tax cases within each business function across the entire IRS, allowing IRS employees to take specific actions on taxpayer account issues, track status, and post transaction updates back to the Master Files. Actions taken via the IDRS include notice issuance, installment agreement processing, offers in compromise processing, adjustment processing, penalty and interest computations and explanations, credit and debit transfers within an account or other related accounts, and research of taxpayer accounts for problem resolution of taxpayer inquiries.

Appendix V

Error Rates Reported on Taxpayer Representatives Not Receiving Notification for Reports Issued in Fiscal Years 2019 Through 2023

Error Rate for Reports Issued in FYs 2019 Through 2023

Report FY	Sample Cases Requiring Representative Notification	Sample Cases Not Receiving Representative Notification	Error Rate
2019	21	0	0.0%
2020	37	■	■
2021	35	3	8.6%
2022	57	6	10.5%
2023	41	3	7.3%

Source: Prior year results of TIGTA's tests on taxpayer representatives not receiving notification when authorized.

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/Self-EMPLOYED DIVISION

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

July 8, 2024

MEMORANDUM FOR DANNY R. VERNEUILLE
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT
Amalia C. Colbert
FROM: Lia Colbert, Commissioner, Small Business/Self-Employed Division
SUBJECT: Draft Audit Report – Fiscal Year 2024 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures (Audit #2024300001)

Digitally signed by Amalia C. Colbert
Date: 2024.07.08 08:46:46 -04'00'

Thank you for the opportunity to review and comment on the subject draft report, which evaluates whether the IRS is complying with the statutory requirements to notify taxpayers of their appeal rights when a Notice of Federal Tax Lien (NFTL) is filed.

We appreciate your recognition that we generally complied with Internal Revenue Code (IRC) § 6320 requirements by timely notifying taxpayers of NFTL filings and their appeal rights. We are committed to conducting our collection programs in a manner that is consistent with the taxpayer's statutory right to Collection Due Process (CDP).

We agree that authorized taxpayer representatives should be informed of NFTL filings and their clients' appeal rights. Your report confirms that, in most cases, we correctly notified representatives. In some instances, you determined that we sent copies of CDP notices to representatives whom the taxpayer had not designated to routinely receive notices on Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization. We acknowledge that, for the cases noted in your report, the applicable box on those forms was not checked for all the tax periods included on the NFTL. Nevertheless, those forms completed by the taxpayers gave the representatives a general grant of authority to receive information about their cases, including receiving copies of correspondence. In response to your recommendation from last year's report, we continue to review Internal Revenue Manual (IRM)

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Notice of Federal Tax Lien Filing Collection Due Process Procedures**

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procedures of our various offices to ensure instructions for when to notify taxpayers' representatives are consistent and that taxpayer rights are protected. We appreciate your acknowledgement that Treasury Regulations grant authority for the IRS to levy after a CDP notice has been issued for a NFTL filing. Treasury Decision 8979 affirms that suspending levy actions is not required after the issuance of a Letter 3172, Notice of Federal Tax Lien and Your Rights to a Hearing Under IRC 6320. As discussed in previous lien audits, IRS policy is that levies are generally not suspended during the 30-calendar-day period in which the taxpayer has the option to request a CDP hearing after Letter 3172 is issued.

In response to last year's audit recommendation, the IRS agreed to review IRM procedures among the distinct levy programs to ensure they are fair, equitable and effective. As part of this review, the IRS concluded that a change to IRM 5.19.8.4.6 was appropriate to remove the reference to IRC § 6320 to ensure consistency with Treasury Regulations. This change clarifies that levy actions may generally continue during the 30-calendar-day period that the taxpayer has the right to request a NFTL CDP hearing. We will continue to generally suspend levy action once a CDP hearing is requested and accepted by the Independent Office of Appeals. We disagree with your recommendation to prohibit levy during the 30-calendar-day period, as it is contrary to Treasury Regulations.

We support the efforts led by the Federal Emergency Management Agency (FEMA) to assist taxpayers who are experiencing catastrophic situations. As noted in the report, we suspend collection activities, such as filing new NFTLs and issuing certain demand notices, as soon as FEMA assesses the situation and issues a Disaster Declaration. Due to the unique nature of each disaster, IRS will continue to evaluate and provide relief where appropriate prior to FEMA declarations of disaster to address the specific needs of taxpayers.

Per IRC § 6320, CDP notices must be issued within five days of the NFTL filings. This means that the notices may be issued after the NFTL filing, but before the issuance of a Disaster Declaration. By statute, the CDP notice must show the tax liabilities and how the lien can be released. We do not characterize Letter 3172 as a demand for payment since the notice does not establish a deadline for payment. The response deadline is for the taxpayers' CDP request, which is extended for taxpayers in disaster areas.

Attached are our comments and proposed actions to your recommendations. If you have any questions, please contact me, or Frederick W. Schindler, Director, Collection, Small Business/Self-Employed Division.

Attachment

**Fiscal Year 2024 Statutory Review of Compliance With
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Attachment

The Director, Collection Policy, Small Business/Self-Employed Division, should:

RECOMMENDATION 1:

Take corrective action on [REDACTED]

CORRECTIVE ACTION:

We agree to review [REDACTED] as needed.

IMPLEMENTATION DATE:

August 15, 2024

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 2:

Ensure that the corrective actions initiated on the 270 cases we systemically identified are completed, and safeguards are implemented to protect against the recurrence of the causal issues.

CORRECTIVE ACTION:

We agree to review the cases and issue substitute CDP notices as needed; and to evaluate the factors that prevented the notices from being timely issued and the potential safeguards against them.

IMPLEMENTATION DATE:

October 15, 2024

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

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The Commissioner, Small Business/Self-Employed Division, should:

RECOMMENDATION 3:

Direct the Director, Collection Policy, Small Business/Self-Employed Division, to establish Field Collection IRM procedures that prohibit field employees from taking levy action on taxpayers during the 30 calendar day period the law provides taxpayers can elect lien CDP hearings.

CORRECTIVE ACTION:

We disagree. There is no legal prohibition for the IRS to proceed with a levy during the time in which a taxpayer may request a CDP hearing for NFTL.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 4:

Apply the RRA 98 § 1204(b) retention standard when evaluating IRS Collection employees, managers, and executives who intentionally disregard IRS policies concerning levy action on a tax period in which NFTL appeals were filed timely and determinations were still pending, and consider appropriate discipline in accordance with IRM 6.751.1, the manager's guide to penalty determinations, and in consult with Labor Relations and SB/SE Collection leadership.

CORRECTIVE ACTION:

We partially agree. When evaluating IRS Collection employees, managers, and executives who intentionally disregard IRS policies concerning levy action on a tax period in which NFTL appeals were filed timely and determinations were still pending, we apply the RRA 98 § 1204(b) retention standard as shown in IRM 6.430.2.4.7 and IRM 6.430.2-1, and we consider appropriate discipline in consultation with Labor Relations and SB/SE Collection leadership. IRS will review and update IRM guidance to clarify that there is consideration of appropriate discipline in accordance with IRM 6.751.1.

IMPLEMENTATION DATE:

July 15, 2025

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RESPONSIBLE OFFICIAL:

Director, Collection, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 5:

The Director, Collection Policy, Small Business/Self-Employed Division, should review disaster procedures for NFTL processing and consider updates, as needed, to reduce burden for taxpayers impacted by disasters.

CORRECTIVE ACTION:

We agree to review the guidance for processing NFTLs in disaster areas to ensure consistency and will consider procedural updates for identified deficiencies.

IMPLEMENTATION DATE:

March 15, 2025

RESPONSIBLE OFFICIAL:

Director, Collection Policy, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

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

OUTCOME MEASURE #2:

Taxpayer Rights and Entitlements – Potential; 270 taxpayers were not timely provided with a Letter 3172, resulting in potential legal violations of taxpayers' rights (see Recommendation 2).

IRS RESPONSE:

We agree with the number as identified in the systemic review of all NFTLs.

OUTCOME MEASURE #3:

Taxpayer Rights and Entitlements – Potential; 5,801 taxpayers in which the revenue officers took levy action during the 30-calendar day period in which the taxpayer has the right to request a lien CDP hearing (see Recommendation 3).

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IRS RESPONSE:

We disagree. There is no legal prohibition for the IRS to proceed with a levy during the time in which a taxpayer may request a Collection Due Process hearing for NFTL.

OUTCOME MEASURE #6:

Taxpayer Burden – Potential; 7,074 taxpayers whose NFTLs were also sent to a representative who was not designated to receive it (Prior year report 2023-30-057 Recommendation 5).

IRS RESPONSE:

We agree with the measure as defined by TIGTA, but disagree with TIGTA's definition of representatives authorized to receive notices.

Appendix VII

Glossary of Terms

Term	Definition
Automated Levy Program	Operates electronically without employee action and proceeds are received electronically. The four ALPs are: 1) Federal Payment Levy Program – Levy attaches to Federal disbursements due to an individual or business, such as Federal wages, retirement, vendor/contractor payments, and Social Security; 2) State Income Tax Levy Program – Levy attaches to participating State income tax refunds; 3) Municipal Tax Levy Program – Levy attaches to participating local municipal income tax refunds; and 4) Alaska Permanent Fund Dividend Levy Program – Levy attaches to the Permanent Fund Dividend distributed by Alaska.
Campus	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.
Centralized Authorization File	Contains information about the types of authorizations taxpayers have given their representatives for their tax returns.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Master File	IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

Appendix VIII

Abbreviations

ACS	Automated Collection System
ALP	Automated Levy Program
ALS	Automated Lien System
CDP	Collection Due Process
FEMA	Federal Emergency Management Agency
FY	Fiscal Year
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
POA	Power of Attorney
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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

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

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