

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2023 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures

September 21, 2023

Report Number: 2023-30-057

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.

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**HIGHLIGHTS: Fiscal Year 2023 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Collection Due Process Procedures**

Final Audit Report issued on September 21, 2023

Report Number 2023-30-057

Why TIGTA Did This Audit

TIGTA is required by law to determine annually whether the IRS complies 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, wherein various issues can be raised including the appropriateness of the NFTL filing. 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 review of a statistically valid sample of 116 NFTLs determined that the IRS did not always mail a copy of the NFTL and notice of CDP appeal rights to the taxpayers' last known addresses. The sample identified four cases for which the address on the original I.R.C. § 6320 CDP lien notices and the current address on the IRS computer system did not agree.

TIGTA's analysis of NFTLs filed from July 1, 2021, to June 30, 2022, identified 1,214 cases in which automated levies for the Federal Payment Levy Program were issued during the 30-calendar-day period while the taxpayer had the right to elect a CDP hearing and 91 cases in which automated levies were issued for a Federal Payment Levy Program or State Income Tax Levy Program while the taxpayer's appeal was pending. Representatives of the IRS's Automated Levy Program stated that IRS levies are permitted during the 30 calendar days when the taxpayer is deciding whether to elect a CDP hearing; however, the IRS's procedures specifically do not allow this.

Additionally, taxpayer representatives should be provided copies of all taxpayer correspondence if designated by the taxpayer. However, the IRS did not provide CDP notices in seven of 42 cases in our sample in which the taxpayer designated their authorized representative to receive notices.

Also, the IRS did not file NFTLs for more than 1 million individual and business taxpayers with balances due of more than \$10,000 during our review period, even though an NFTL generally should be filed for cases above this dollar amount, unless certain other circumstances are present.

What TIGTA Recommended

TIGTA made eight recommendations to the Small Business/Self-Employed Division to improve processes and protect taxpayer rights, including: ensuring that NFTLs and CDP lien notices reflect the correct information for the taxpayer and are only sent to authorized representatives; reviewing CDP lien notices not sent to the taxpayers' last known addresses and taking corrective action if needed; implementing tracking codes for non-Automated Levy Program levies; conforming to the IRS's long-standing policy of generally not levying during lien CDP hearings; restarting the Automated Collection System NFTL systemic process for high-dollar delinquencies; and conducting lien determinations on the 12 high dollar cases identified and filing NFTLs if appropriate.

The IRS agreed with seven of the eight recommendations provided in this report. The IRS disagreed with the recommendation to consider implementing codes that would allow for internal and external review to determine the date of non-Automated Levy Program levies and seizures.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

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

September 21, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2023 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Collection Due Process
Procedures (Audit # 202330001)

This report presents the results of our review 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 2023 Annual Audit Plan and addresses the major management and performance challenge of *Increasing Domestic and International Tax Compliance and Enforcement*.

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

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Background

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)(C), *Notice of Federal Tax Lien* (NFTL), in the appropriate State and local office to notify interested parties that a lien exists.²

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.³ 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, and 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 assessments 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."⁴ 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 similar to a regular CDP hearing; however, the taxpayer cannot seek judicial review of the Independent Office of Appeals' decision.⁵ 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 Regulations specify that levy action is permissible during a lien CDP hearing.⁶ As we have reported previously, the IRS's policy is that collection action will generally not take place during a lien CDP period. 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 at the CDP hearing, 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

¹ Internal Revenue Code §§ 6321 and 6323.

² Internal Revenue Code § 6323.

³ 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.

⁴ Treas. Reg. § 301.6320-1(i)(2) Q&A-17.

⁵ Treas. Reg. § 301.6320-1(i)(2) Q&A-16.

⁶ Treas. Reg. § 301.6320-1(g) Q&A-3.

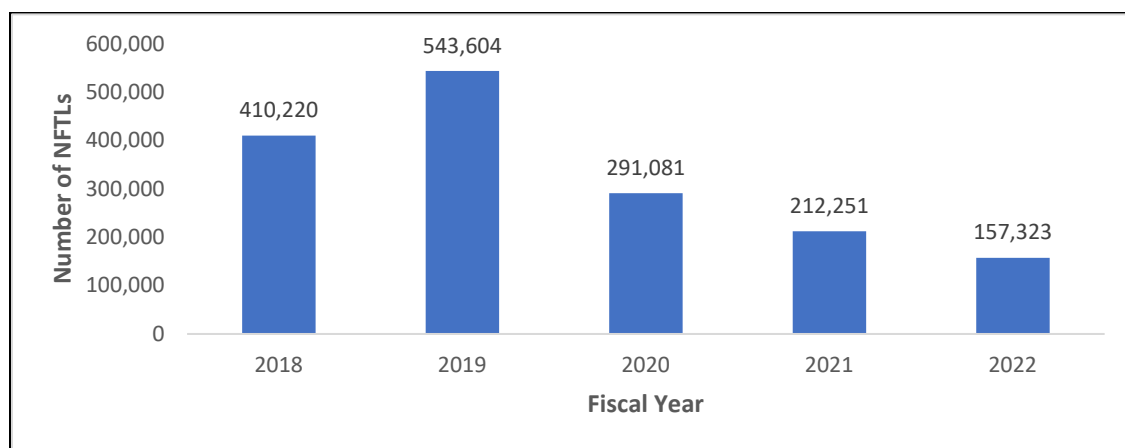
**Fiscal Year 2023 Statutory Review of Compliance With
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Inspector General for Tax Administration (TIGTA) continues to report on cases in which the IRS takes a collection action during a lien CDP period.

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.⁷ The lien notice must be given in person, left at the taxpayer's home or business, or sent by certified or registered mail to the taxpayer's last known address. 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), or 3) directly input into the Automated Lien System (ALS).⁸

Figure 1 shows the annual NFTL filings for the past five fiscal years in which the number of NFTLs filed in Fiscal Year (FY) 2022 was 62 percent lower than the number in FY 2018. NFTL filings reached a peak of 1,096,376 in FY 2010 (not shown in Figure 1) and have generally declined since then, except for FY 2019. NFTL filings reached a low of 157,323 in FY 2022, which tracks with a 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. The reduced number of filings in FY 2020 was due, in part, to suspension of collection activities, including the filing of new NFTLs from April 1, 2020, through September 30, 2020, due to the People First Initiative (PFI). 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.

Figure 1: Number of NFTLs Filed for FYs 2018 Through 2022



Source: IRS Data Book for FYs 2018 through 2021. Data for 2022 provided by the IRS.

We are required to determine annually whether the IRS complied with the law pertaining to CDP rights when filing NFTLs.⁹ This is our twenty-fifth 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, we have reported full compliance with the law of timely notifying taxpayers each time an NFTL is filed. In addition, we have reported in

⁷ I.R.C. § 6320(a)(3)(A), (a)(3)(C), and (a)(3)(D).

⁸ See Appendices III and IV for information about these systems and their use.

⁹ I.R.C. § 7803(d)(1)(A)(iii).

four of the last five years that the IRS has not achieved full compliance with guidelines involving power of attorney notifications.

On March 25, 2020, the IRS announced the PFI in response to the Coronavirus 2019 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 risk of permanent loss to the Government due to an exigent circumstance or the taxpayer agreed to the action.¹⁰ Although some enforcement processes were authorized to resume on July 16, 2020, the suspension of NFTL filings remained in effect until September 30, 2020. Automated enforcement activities did not resume immediately while backlogs of incoming mail and outgoing notices were being resolved.

Results of Review

Our review of a statistically valid random sample of 116 NFTLs from the 108,217 NFTLs filed that required a CDP notice from July 1, 2021, to June 30, 2022, found that the IRS timely mailed a copy of the NFTL to all taxpayers as required by I.R.C. § 6320(a).¹¹ Additionally, 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.¹² However, the lien notice was not always sent to the taxpayers' last known addresses. Furthermore, as we have reported in previous years, the IRS does not suspend certain automated levy actions for open NFTL appeal cases contrary to its written procedures. Lastly, the IRS did not file NFTLs for more than 1 million individual and business taxpayers with balances due of more than \$10,000.

Generally, the IRS Complied With Internal Revenue Code § 6320 Requirements

We tested a statistically valid random sample of 116 NFTLs from the 108,217 NFTLs filed from July 1, 2021, to June 30, 2022, that required a CDP notice and found that the IRS timely mailed a copy of the NFTL and a CDP notice to all taxpayers as required by I.R.C. § 6320(a).

IRS procedures require that part of NFTL preparation include determining the last known address and any changes of address for taxpayers in order that CDP and other notices are issued

¹⁰ The determination of an exigent circumstance required approval from the Director, Collection, Small Business/Self-Employed Division.

¹¹ The IRS provided 164,334 NFTLs that were prepared nationwide from July 1, 2021, to June 30, 2022, 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 108,217 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.

¹² 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.

correctly.¹³ In accordance with I.R.C. § 6320(a), all parties named on the NFTL must be provided notice of the NFTL filing in person or at their respective last known address.¹⁴

However, our review of a statistically valid sample of 116 lien notices found that the lien notice was not sent to the taxpayers last known address in four (approximately 3 percent) cases. We estimate that 3,732 taxpayers were affected because the IRS did not follow procedures to ensure that the lien notice was sent to the taxpayers' last known address.¹⁵

IRS management agreed that the four NFTLs were not correctly mailed to the taxpayers' last known addresses. [REDACTED]

Nonliable parties were included on NFTLs

The law requires that the taxpayer's name on the NFTL must properly identify who owes the liability.¹⁶ These procedures also require that the information used when filing an NFTL is correct, which is the responsibility of the person assigned the taxpayer's balance due account.¹⁷ Erroneously filing an NFTL for a taxpayer who was never liable for the tax can have serious consequences for the innocent party. For example, a taxpayer can be affected by an NFTL in the following ways:

- Assets - An NFTL indicates the Government has a claim on all assets (such as property, securities, and vehicles) and to future assets acquired during the duration of the lien.
- Credit - The NFTL may limit the ability to get credit.¹⁸
- Business - An NFTL indicates the Government has a claim on all business property and to all rights to business property, including accounts receivable.

Our review of a statistically valid sample of 116 lien notices identified [REDACTED]

¹³ Internal Revenue Manual 5.12.7.3 (Sept. 21, 2017).

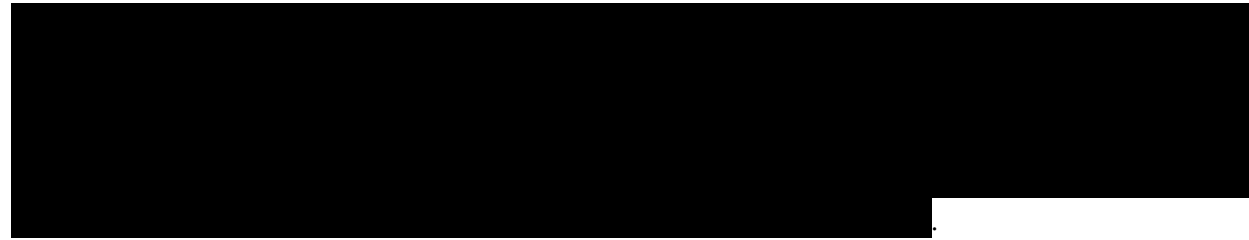
¹⁴ A taxpayer's "last known address" is defined in Treas. Reg. § 301.6212-2(a) as the address on the taxpayer's most recently filed and properly processed return. Accordingly, a taxpayer's last known address is generally the address on the IRS Master File.

¹⁵ The projection is based on four (3 percent) of 116 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 1,285 and 8,348 taxpayers.

¹⁶ I.R.C. §§ 6320(a)(1) and 6321.

¹⁷ Internal Revenue Manual 5.12.7.3 (Sept. 21, 2017).

¹⁸ IRS Publication 594, *The IRS Collection Process*, states, "If a Notice of Federal Tax Lien is filed against you, it's often reported by consumer credit reporting agencies. This can have a negative effect on your credit rating and make it difficult for you to receive credit (such as a loan or credit card). Employers, landlords and others may also use this information and not favorably view the fact that a Notice of Federal Tax Lien has been filed against you."



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

Recommendation 1: Issue a reminder to Collection employees to reinforce guidance in Internal Revenue Manual (IRM) 5.12.7 to ensure that NFTLs and CDP lien notices reflect the correct information for the taxpayer.

Management's Response: IRS management agreed with this recommendation and will issue a communication to Collection employees that reinforces IRM 5.12.7.3 instructions on using the most current taxpayer information when requesting an NFTL.

Recommendation 2: Review the three cases to determine if the CDP notices were re-sent to the last known addresses or if the taxpayers were otherwise provided their CDP rights; then take corrective action, if needed.

Management's Response: IRS management agreed with this recommendation and will review the specified cases to ensure that the taxpayers were notified of their Collection Due Process (CDP rights) and, if needed, take corrective action to reissue the notice.

Contrary to the IRS's Long-Standing Policy, Automated Levies Were Not Suspended While Taxpayers Had the Right to Request a Hearing and When Taxpayers Appealed Their Notices of Federal Tax Lien

I.R.C. § 6320(c) incorporates I.R.C. § 6330(e) (which grants a collection stay during levy-related CDP hearings), and the Treasury Regulations allow the IRS to levy during lien CDP hearings, although IRS procedures state that in general its policy is generally not to do so. 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 procedures provide:

(1) If the taxpayer files a timely appeal during the IRC 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 IRC 6320 or 6330.* [emphasis added]

(5) When a taxpayer files a timely request for a CDP hearing during the IRC 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

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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 IRC 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.¹⁹

We identified 1,214 cases systemically in which Automated Levy Program (ALP) levies (for the Federal Payment Levy Program (FPLP) and the State Income Tax Levy Program (SITLP)) were issued on taxpayers during the period in which they had the right to request a hearing under I.R.C. § 6320. In all 1,214 cases, the IRS sent the taxpayer a CDP lien notice, and an ALP levy was made on the taxpayer within 30 calendar days after the lien notice was sent.²⁰

We provided a sample of 10 cases, and the IRS confirmed that the taxpayers were sent a CDP lien notice and that ALP levy action was taken on the taxpayer during the period in which they had the right to request a CDP hearing. We also systemically identified 91 cases in which ALP levies were issued on taxpayers for a tax period in which NFTL appeals were filed timely and determinations were still pending. IRS management stated that generally levy actions are suspended during the period in which they had the right to request a hearing; however, representatives of ALP management stated that the IRS uses ALP levies during the 30 calendar days during which the law grants to the taxpayer to elect the hearing. The previously cited portions of the IRS procedures do not support the positions taken by the ALP representative in this audit.

During discussions with the IRS, we asked how the IRS determines when to suspend ALP collection activity during a lien CDP hearing. IRS officials stated that the IRS allows automated levies to continue during the 30-calendar-day period when the taxpayer has the option to elect a lien CDP hearing. IRS officials also 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. In a written explanation, the IRS stated that the previously cited procedures exclude "FPLP" levies from a suspension during a lien CDP hearing. This is not accurate as only the following automated levies are excluded from the levy suspension in the IRM section: jeopardy situations, levies on State income tax refunds, disqualified employment tax levies, and Federal contractor CDP levies. Other FPLP levies, such as Social Security levies and levies on Federal wages or retiree payments are not excluded from the suspension of levies during lien CDP hearings.

Initially, when we asked IRS officials about the levies issued during lien CDP hearings, seemingly in violation of the IRM, they stated that the IRS planned to revise these procedures to specifically provide that FPLP levies would not be suspended during the 30-calendar-day period for electing lien CDP hearings. We disagree that this revision would be a mere clarification, instead it would be an expansion of levies during lien CDP hearings. At the close-out of this audit, we also asked IRS officials why the IRS did not follow the IRM which restricts levies during lien CDP hearings, and they responded that the ALP levies were consistent with the IRM, although officials were

¹⁹ IRM 5.19.8.4.6 (Aug. 5, 2016).

²⁰ A FPLP levy is an automated levy that the IRS operates with the Bureau of the Fiscal Service as a systemic means for the IRS to collect delinquent taxes by levying Federal payments. A SITLP levy is another automated levy in which the IRS matches a Master File database of delinquent taxpayers eligible to be levied against a database of State tax refunds for each State participating in the SITLP.

unable to explain how the IRM permitted the levies. They further stated that the IRS now plans to change the IRM regarding ALP levies. We asked whether the new policy is going to be more permissive of levies during lien CDP hearings because current procedures follow the long-standing IRS policy to generally restrict levies during lien CDP hearings. They stated they did not know yet how the procedures would change, only that they would change.

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.²¹ 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 consider this perspective as it contemplates revisions to the IRM.

Additionally, limitations with IRS data prevent us from systemically determining whether the IRS suspended or did not take levy action during lien CDP hearings in Field Collection cases, *i.e.*, when a revenue officer issues a levy during a lien CDP hearing, that involved the same tax period as the NFTL under appeal. The processing codes established and used when there are FPLP or SITLP levies enabled us to systemically identify the 1,214 and 91 cases, respectively, reported previously. While the IRS had established a similar code to reflect the date of levy action for Field Collection levies, it has never been used.

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 ALP levies during lien CDP hearings when the IRM generally restricts levies during lien CDP hearings. The retention standard also applies to the current limitations with IRS data, which do not allow for the IRS or TIGTA to monitor its adherence to RRA 98 § 1204(b) requirements. The absence of coding to determine the date of a Field Collection levy or seizure action on a taxpayer makes it difficult to determine if collection employees are applying levy or seizure action fairly or equitably to taxpayers that have timely requested an NFTL CDP hearing. This prohibits an internal review by the IRS or an oversight entity such as TIGTA to determine if RRA 98 § 1204(b) requirements are being followed.

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

Recommendation 3: Consider implementing codes that would allow for internal and external review to determine the date of non-ALP levies and seizures.

Management’s Response: IRS management disagreed with this recommendation and stated that inputting a transaction code for every levy issued would negatively impact resources and not yield meaningful information to employees working cases or to management officials charged with reviewing employee performance.

²¹ I.R.C. § 7803(a)(3).

Office of Audit Comment: Inputting a transaction code for non-ALP levies will establish transparency for the IRS and TIGTA to ensure that IRS employees are complying with RRA 98 § 1204(b) requirements. It is important that managers have the ability to track non-ALP levies issued during CDP hearings in the assurance that their employees' performance is consistent with the fair and equitable treatment of taxpayers.

Recommendation 4: Conform IRS levy practice to follow the existing IRM which generally prohibits levies during lien CDP hearings.

Management's Response: IRS management agreed with this recommendation and will review IRM procedures among the distinct levy programs to ensure that they are fair, equitable, and effective. In the interim, the IRS will continue to levy until a valid I.R.C. § 6320 CDP lien request is accepted by the Independent Office of Appeals.

Taxpayer Representatives Were Not Always Notified Correctly

Taxpayers have the right to retain a representative of their choice to represent them in matters with the IRS.²² 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 the box, the IRS will not ordinarily send copies of notices to the listed representative.

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 the 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 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.

²² I.R.C. § 7803(a)(3)(I).

Taxpayer representatives did not always receive a copy of the NFTL when designated to receive notification

Our review of a statistically valid sample of 116 lien notices identified a total of 42 (36 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 seven I.R.C. § 6320 CDP notices (6 percent of the total sample of 116 and 17 percent of the 42 taxpayers identified with a representative designated to receive notices). We estimate that 6,530 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.²³

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.²⁴ 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.²⁵ We reported in four of our last five reviews that the IRS did not properly notify taxpayer representatives of NFTL filings and due process procedures.²⁶ Our review this year confirms that taxpayers continue to be affected adversely.

The FY 2022 review recommended the IRS reinforce guidance in IRM 5.12.6.3.10 to ensure that taxpayers' representatives are notified of NFTL filings. In response to this recommendation, the IRS issued an alert on November 28, 2022, to remind employees who request NFTLs of the procedures to ensure that taxpayers and their authorized representatives are properly notified of the NFTL filing. This alert was issued after our sample of 116 NFTLs from the 108,217 NFTLs filed from July 1, 2021, to June 30, 2022.

Copies of Lien Notices Were Sent to Representatives Who Were Not Designated to Receive Them

Taxpayers have the right to confidentiality, and IRS employees are prohibited from disclosing taxpayer information to unauthorized individuals.²⁷ 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.²⁸

²³ The projection is based on seven (6 percent) of 116 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 3,103 and 11,939 taxpayers.

²⁴ Treas. Reg. § 601.506, *Conference and Practice Requirements, Statement of Procedural Rules* (2009).

²⁵ 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.

²⁶ See Appendix V for additional information on taxpayer representatives not receiving notification.

²⁷ I.R.C. § 7803(a)(3)(H), I.R.C. § 6103(a), and I.R.C. § 7213(a)(1).

²⁸ Taxpayer Bill of Rights 3 (TBOR 3), Pub. L. No. 105-206, 112 Stat. 726 (1998) (codified as amended in scattered sections of 26 U.S.C.).

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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 is charged with the responsibility to know when disclosures are authorized.²⁹

As shown in Figure 2, the Form 2848 instructions give the taxpayer the option to elect whether their representative is entitled to receive 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 <div style="background-color: #e0e0e0; height: 20px; width: 100%;"></div> <div style="text-align: right; margin-right: 10px;">↓</div> Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. <input type="text"/> PTIN <input type="text"/> Telephone No. <input type="text"/> Fax No. <input type="text"/> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address <div style="background-color: #e0e0e0; height: 20px; width: 100%;"></div> <div style="text-align: right; margin-right: 10px;">↓</div> Check if to be sent copies of notices and communications <input type="checkbox"/>	CAF No. <input type="text"/> PTIN <input type="text"/> Telephone No. <input type="text"/> Fax No. <input type="text"/> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address <div style="background-color: #e0e0e0; height: 20px; width: 100%;"></div> (Note: IRS sends notices and communications to only two representatives.)	CAF No. <input type="text"/> PTIN <input type="text"/> Telephone No. <input type="text"/> Fax No. <input type="text"/> Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address <div style="background-color: #e0e0e0; height: 20px; width: 100%;"></div> (Note: IRS sends notices and communications to only two representatives.)	CAF No. <input type="text"/> PTIN <input type="text"/> Telephone No. <input type="text"/> Fax No. <input type="text"/> 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. Our review of a statistically valid sample of 116 lien notices found that the IRS sent copies of I.R.C. § 6320 CDP notices to 10 (9 percent of the total sample of 116) representatives who were not designated by the taxpayer to receive notices.

The IRS disagreed with nine of the 10 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. For seven of the cases, including one the IRS agreed with, 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. For the remaining three cases, the POA was authorized on at least one, but not all, tax modules on the NFTL. The IRS explained that IRM 5.12.6.3.10(1) states that a POA authorized for any tax module shown on the NFTL should receive a copy of the CDP notice. This IRM appears to be in direct conflict with IRM 5.1.23.4.2.3(5), which states that the IRS should ensure that the authorized representative is authorized to receive taxpayer data on

²⁹ IRM 11.3.1.1 (Nov. 12, 2021).

all modules contained in any communication that is planned to send to the authorized representative.

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 9,329 taxpayers may have potentially been affected because the IRS did not send copies of the lien notices only to taxpayers' representatives who are authorized to receive notices.³⁰

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

Recommendation 5: Revise the IRM procedures to clarify that copies of notices and other written communications should only be provided to representatives for whom taxpayers have expressly designated the IRS to send them.

Management's Response: IRS management agreed with this recommendation and will review IRM 5.12.6.3.10 and address any inconsistencies in the instructions without restricting the general grant of authority provided to representatives.

Recommendation 6: Review and revise pertinent IRM sections accordingly to ensure that procedures for notifying taxpayers' representatives are consistent.

Management's Response: IRS management agreed with this recommendation and will review and revise pertinent IRM sections accordingly to ensure that procedures for notifying taxpayers' representatives are consistent.

Notices of Federal Tax Lien Are Not Always Filed for High-Dollar Delinquencies

IRS procedures generally require an NFTL filing determination be made when a taxpayer has an unpaid balance of assessment of \$10,000 or more.³¹ Other factors for determining whether to file an NFTL include the taxpayer's compliance history, the proposed resolution of the unpaid balance, and whether the determination should be deferred to allow the taxpayer more time. We identified the population of individuals and business taxpayers that had an assessed account balance greater than \$10,000 and no NFTL filed. Figure 3 shows that NFTLs were not filed for 1,513,310 individual and business taxpayers with assessed account balances greater than \$10,000 from July 1, 2021, to June 30, 2022.

³⁰ The projection is based on 10 (8.6 percent) of 116 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 5,144 and 15,346 taxpayers.

³¹ IRM 5.12.2.6 (Oct. 14, 2013).

Figure 3: Number of Taxpayers With Balance Due Amounts Above \$10,000 From July 1, 2021, to June 30, 2022

Balance Due Amount	Business Taxpayers	Individual Taxpayers	TOTAL
\$10,001 - \$50,000	220,163	1,018,859	1,239,022
\$50,001 - \$100,000	27,197	124,771	151,968
\$100,001 - \$500,000	24,154	83,100	107,254
\$500,001 - \$1,000,000	3,097	7,903	11,000
\$1,000,001 - \$10,000,000	2,097	1,689	3,786
Above \$10,000,000	226	54	280
Total	276,934	1,236,376	1,513,310

Source: TIGTA analysis of IRS Master File and Collection data.

We matched the data on the 1,513,310 taxpayers with data on individual taxpayers who received Form 1098, *Mortgage Interest Statement*. Taxpayers receiving Form 1098 reporting mortgage interest indicates that these taxpayers own property (assets). Given that NFTLs protect the Federal Government’s interest by informing the public of its claim (and establishing priority if competing with certain third-party claims) to the taxpayer’s assets, there is a greater opportunity for the collection of unpaid taxes when an NFTL is filed. Figure 4 shows that we found 266,568 individual taxpayers with assessed account balances greater than \$10,000 with no NFTL and paid mortgage interest.

Figure 4: Number of NFTLs Not Issued for Individuals With Balance Due Amounts Above \$10,000 and Mortgage Interest Recorded on Form 1098 From June 12, 2020, to June 17, 2021

Balance Due Amount	Individual Taxpayers
\$10,001 - \$50,000	206,221
\$50,001 - \$100,000	34,746
\$100,001 - \$500,000	22,988
\$500,001 - \$1,000,000	2,104
\$1,000,001 - \$10,000,000	502
Above \$10,000,000	7
Total	266,568

Source: TIGTA analysis of data from IRS Individual Master File, Information Reporting Master File, and Collection data.

As a general rule, NFTLs should be filed to protect the Federal Government’s interest in having the tax debt paid.³² According to the IRS, an NFTL would not be filed in the following situations:

³² IRM 5.12.2.6 (Oct. 14, 2013).

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- Bankruptcy - NFTLs usually cannot be filed for tax liabilities that existed before the bankruptcy while the bankruptcy law's automatic stay is in effect.
- Deceased Individuals - NFTLs are generally not filed when the taxpayer is deceased and there are no assets in the estate.
- Fraud (Return Preparer/Payroll Service Misconduct) - NFTL determination can be deferred to examine potential fraud.
- The CDP - NFTL filings are generally suspended while a CDP is pending (except for the filing that gave rise to the CDP).
- Installment Agreements - An NFTL determination is not required for a streamline or guaranteed installment agreement but may be made based on the case facts.
- Health Insurance Shared Responsibility Payments - By statute, assessments made for Shared Responsibility Payments are not subject to NFTL filings.
- Disaster Freeze - Generally, collection activity is suspended for taxpayers in the disaster area during the length of the disaster declaration.
- Identity Theft Victims - NFTL determination can be deferred to investigate the situation.
- Taxpayers Serving in a Combat Zone - Generally, collection activity is suspended for taxpayers while in a combat zone.

We selected a random sample of 39 taxpayers from the 266,568 shown in Figure 4 and asked the IRS to explain why an NFTL was not filed. The sample included seven taxpayers from each balance due amount below \$10 million and four taxpayers from above \$10 million (see Figure 4). As of June 2022, the balance due for these 39 taxpayers was more than \$91 million. The IRS provided a sufficient explanation for why an NFTL was not filed for 17 of these cases based on the situations bulleted previously.

For another 10 cases in the random sample, the IRS stated that the NFTL filing was likely impacted by the suspension of certain collection processes from the PFI. Specifically, the PFI initially suspended the initiation of NFTLs. However, after the PFI period, IRS executives decided that Campus Collection would only return to manual NFTL processes while the systemic NFTL process performed on cases exiting the ACS remained off. This systemic NFTL process is responsible for most ACS NFTL filings.

This systemic NFTL process generally follows the dollar threshold of making an NFTL determination when the assessed balance of the taxpayer's account exceeds \$10,000; however, the programming can be adjusted to a higher amount if necessary. This process remains idle due to other workload issues. According to IRS management, the resumption decision will be made by high-level IRS executives with consideration given to a variety of factors, such as correspondence backlogs, the restart of other systemic treatments, and staffing situations. The balance due of these 10 potential taxpayers was more than \$2.8 million.

For the remaining 12 cases, the IRS explanation as to why no NFTL was filed did not include specific guidance that was followed when determining not to file a NFTL. For instance:

- [REDACTED]
- [REDACTED]

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- [REDACTED]
- Four taxpayers' cases were not assigned.
- Five taxpayers were potentially private debt collection cases.

The total balance due amount for these 12 taxpayers was more than \$6.1 million. We plan to conduct additional analysis in next year's review as to the actual circumstances for these types of cases.

Recommendation 7: The Commissioner, Small Business/Self-Employed Division, should restart the ACS NFTL systemic process for high-dollar delinquencies.

Management's Response: IRS management agreed with this recommendation. IRS leadership will consider the restart of systemic processes as they take a fresh look at how the IRS operates to better serve taxpayers and the Nation following passage of the Inflation Reduction Act and creation of the new IRS Strategic Operating Plan.³³

Recommendation 8: The Director, Collection, Small Business/Self-Employed Division, should conduct lien determinations on the 12 cases we reported and file NFTLs if appropriate.

Management's Response: IRS management agreed with this recommendation and will review the 12 cases and, if appropriate, refer the cases to Field Collection for assignment and action.

³³ Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.

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 164,334 NFTLs that were prepared nationwide from July 1, 2021, to June 30, 2022, 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 108,217. We selected a statistical sample of 116 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, 2021, to June 30, 2022). 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 followed internal threshold guidelines for making NFTL filing determinations by selecting a random sample of 39 taxpayers. This random sample was used to determine if NFTLs filed by the IRS followed internal guidelines for accounts with a balance due liability greater than \$10,000.

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

¹ The sample population consisted of all lien notices both prepared and printed nationwide from July 1, 2021, to June 30, 2022, 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.

September 2022 through March 2023. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Timothy Greiner, Director; Lee Hoyt, Audit Manager; and Shaun Starnes, Lead Auditor.

Validity and Reliability of Data From Computer-Based Systems

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.

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; 3,732 taxpayers for whom the IRS did not mail the lien notice to the taxpayers last known address as required under I.R.C. § 6320 (see Recommendation 2).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample of 116 NFTL cases, we identified four cases in which the IRS failed to mail the lien notice to the taxpayers last known address. The sample size was determined based on a confidence level of 90 percent, a precision rate of ± 2.5 percent, and an expected rate of occurrence of 2 percent. We projected the error rate (four of 116 = 3.4 percent) to the total population (provided by the IRS) of 108,217 NFTLs generated by the ALS that included a CDP notice from July 1, 2021, to June 30, 2022, to arrive at 3,732 taxpayers who were potentially affected by not having their lien notice sent to their last known address in accordance with I.R.C. § 6320(a). We are 90 percent confident that the range of potential violations is between 1,285 and 8,348 taxpayers.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 6,530 taxpayers whose representatives may not have been provided copies of Letter 3172 (see Recommendation 5).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample of 116 NFTL cases, we identified 42 cases with representatives authorized to receive notifications at the time the NFTLs were filed. From those 42 cases, we identified seven cases for which IRS employees did not provide notice to taxpayer representatives, resulting in potential taxpayer burden. The sample size was determined based on a confidence level of 90 percent, a precision rate of ± 2.5 percent, and an expected rate of occurrence of 2 percent. We projected the error rate (seven of 116 = 6 percent) to the total population (provided by the IRS) of 108,217 NFTLs generated by the ALS that included a CDP notice from July 1, 2021, to June 30, 2022, to arrive at 6,530 taxpayers whose representatives may not have been provided notification. We are 90 percent confident that the range of potential violations is between 3,103 and 11,939 taxpayers.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 9,329 taxpayers whose NFTLs were also sent to a representative who was not designated to receive it (see Recommendation 5).

Methodology Used to Measure the Reported Benefit:

From a statistically valid sample of 116 NFTL cases, we identified 10 cases for which IRS employees provided notices to taxpayer representatives who were not authorized to receive them, resulting in potential taxpayer burden. The sample size was determined based on a confidence level of 90 percent, a precision rate of ± 2.5 percent, and an expected rate of occurrence of 2 percent. We projected the error rate (10 of 116 = 8.6 percent) to the total population (provided by the IRS) of 108,217 NFTLs generated by the ALS that included a CDP notice from July 1, 2021, to June 30, 2022, to arrive at 9,329 taxpayers whose authorized representatives may not have been provided notification. We are 90 percent confident that the range of potential violations is between 5,144 and 15,346 taxpayers.

Management’s Response: In their response, IRS management stated that the representatives reflected in this projection were authorized to act on behalf of the taxpayer, and that nearly one third of the projected number were also designated by the taxpayers to receive copies of correspondence about certain tax periods included on the NFTL.

Office of Audit Comment: Seventy percent of the representatives reflected in this projection were not designated by the taxpayers to receive a copy of the NFTL. For the remaining 30 percent, the representatives were not authorized to receive a copy of the NFTL because they were not authorized to receive taxpayer data pertaining to all of the tax periods contained on the NFTL.

Type and Value of Outcome Measure:

- Revenue Protection – Potential; \$2,828,201 in balances due that have not had an NFTL filed but may meet the criteria to have an NFTL filed to protect the Federal Government’s interest in having the tax debt paid (see Recommendation 6).

Methodology Used to Measure the Reported Benefit:

From a random sample of 39 taxpayers, we received information from the IRS that potentially 10 of these cases were affected by a systemic NFTL determination process that was disabled during the PFI. The amount calculated for these potential 10 taxpayers is \$2,828,201.

Type and Value of Outcome Measure:

- Revenue Protection – Potential; \$6,123,420 in balances due that have not had an NFTL filed but may meet the criteria to have an NFTL filed to protect the Federal Government’s interest in having the tax debt paid (see Recommendation 7).

Methodology Used to Measure the Reported Benefit:

From a random sample of 39 taxpayers, the IRS was unable to provide sufficient explanation for why an NFTL was not filed for 12 of these cases. The amount calculated for these potential 12 taxpayers is \$6,123,420.

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) 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

Confidence Intervals for Error Rates Reported on Taxpayer Representatives Not Receiving Notification for Reports Issued in Fiscal Years 2018 Through 2022

Two-Sided 90 Percent Confidence Intervals Using the Exact Binomial Method for the Exception Rate for Reports Issued in FYs 2018 Through 2022

Report FY	Sample Cases Requiring Representative Notification	Sample Cases Not Receiving Representative Notification	Error Rate	Confidence Interval
2018	47	3	6.3%	Between 0.5% and 4.7%
2019	21	0	0.0%	Not projected
2020	37	2	5.4%	Not projected
2021	35	3	8.6%	Not projected
2022	57	6	10.5%	Not projected

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

August 24, 2023

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT
Amalia C. Colbert

FROM: Lia Colbert Colbert
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report: Fiscal Year 2023 Statutory Review of
Compliance With Notice of Federal Tax Lien Filing Due Process
Procedures (Audit 202330001)

Digitally signed by Amalia C. Colbert
Date: 2023.08.24 11:37:00 -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 timely notified taxpayers of NFTL filings and their appeal rights and generally complied with Internal Revenue Code (IRC) § 6320 requirements. 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). As recommended in your report, we will remind employees of the importance of using accurate address information when requesting NFTLs so that taxpayers continue to be properly notified.

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 NFTL 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 was not checked; nevertheless, the representatives were authorized to represent the taxpayers, including receiving copies of correspondence. We will continue to protect taxpayer rights through our collection processes and review our Internal Revenue Manual (IRM) procedures to ensure instructions for when to notify taxpayers' representatives are consistent.

**Fiscal Year 2023 Statutory Review of Compliance With
Notice of Federal Tax Lien Filing Collection Due Process Procedures**

2

We appreciate your acknowledgement that Treasury Regulations grant authority for the IRS to levy during an NFTL CDP hearing. 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 audits, IRS policy is that Automated Levy Programs continue during the IRC § 6320 CDP appeal period, but other types of levies generally are suspended. As stated in IRM 5.11.1, *Background, Pre-Levy Actions, Restrictions on Levy & Post-Levy Actions*, levies are not required to be paused during the 30-calendar day period in which the taxpayer has a right to request a CDP NFTL hearing. However, when a CDP hearing is requested and accepted by the Independent Office of Appeals, the automated levies are suspended during the administrative or judicial appeal. We believe that changing policy so that all levies must be suspended does not strike the appropriate balance between protection of taxpayer rights and collection of outstanding tax liabilities.

Your report identified a population of taxpayers who had an assessed account balance greater than \$10,000 without an NFTL filed. While the amount owed is a factor for making NFTL determinations, there are many other factors and circumstances of each taxpayer's case that are considered before filing an NFTL. Additionally, certain processes that affect the filing of an NFTL remain suspended as a result of the Coronavirus 2019 pandemic and the People First Initiative (PFI). IRS leadership continually monitors this situation, and we anticipate that the cases identified in this audit will be evaluated for NFTL filings when routine case processing resumes.

We value TIGTA insights and recommendations. 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 2023 Statutory Review of Compliance With
Notice of Federal Tax Lien Filing Collection Due Process Procedures**

Attachment

Recommendations

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

RECOMMENDATION 1:

Issue a reminder to Collection employees to reinforce guidance in IRM 5.12.7 to ensure NFTLs and CDP lien notices reflect the correct information for the taxpayer.

CORRECTIVE ACTION:

We will issue a communication to Collection employees that reinforces the IRM 5.12.7.3 instructions on using the most current taxpayer information when requesting an NFTL.

IMPLEMENTATION DATE:

February 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:

Review the three cases to determine if the CDP notices were resent to the last known addresses or if the taxpayers were otherwise provided their CDP rights; then take corrective action, if needed.

CORRECTIVE ACTION:

We will review the specified cases to ensure the taxpayers were notified of their Collection Due Process (CDP rights) and, if needed, take corrective action to reissue the notice.

IMPLEMENTATION DATE:

October 15, 2023

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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RECOMMENDATION 3:

Consider implementing codes that would allow for internal and external review to determine the date of non-ALP levies and seizures.

CORRECTIVE ACTION:

Inputting a transaction code for every levy issued would negatively impact resources and not yield meaningful information to employees working cases or to management officials charged with reviewing employee performance.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 4:

Conform IRS levy practice to follow the existing IRM which generally prohibits levies during lien CDP hearings.

CORRECTIVE ACTION:

IRS will review IRM procedures among the distinct levy programs to ensure they are fair, equitable and effective. In the interim, consistent with IRC § 6320 and Treasury Regulations, Automated Levy Programs will continue to levy until a valid IRC § 6320 CDP lien request is accepted by the Independent Office of Appeals.

IMPLEMENTATION DATE:

February 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 5:

Revise the IRM Procedures to clarify that copies of notices and other written communications should only be provided to representatives for whom taxpayers have expressly designated the IRS to send them.

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CORRECTIVE ACTION:

We will review IRM 5.12.6.3.10 on providing CDP lien notices to designated representatives and address any inconsistencies in the instructions without restricting the general grant of authority provided to representatives.

IMPLEMENTATION DATE:

March 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 6:

Review and revise pertinent IRM sections accordingly to ensure that procedures for notifying taxpayers' representatives are consistent.

CORRECTIVE ACTION:

We will review IRM 5.12.6.3.10 and 5.1.23.4.2.3 on providing CDP lien notices to representatives and, as needed, address any inconsistencies in the guidance.

IMPLEMENTATION DATE:

March 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 7:

The Commissioner, Small Business/Self-Employed Division, should restart the ACS NFTL systemic process for high-dollar delinquencies.

CORRECTIVE ACTION:

IRS leadership continues to consider the restart of systemic processes as we take a fresh look at how the IRS operates to better serve taxpayers and the nation following the passage of the Inflation Reduction Act and the creation of the new IRS Strategic Operating Plan.

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IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 8:

The Director, Collection, Small Business/Self-Employed Division, should conduct lien determinations on the 12 cases we reported and file NFTLs if appropriate.

CORRECTIVE ACTION:

We will review the 12 cases TIGTA reported and, where appropriate, will refer the cases to Field Collection for assignment and action.

IMPLEMENTATION DATE:

March 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.

OUTCOME MEASURE 3:

Taxpayer Burden – Potential; 9,329 taxpayers whose NFTLs were also sent to a representative who was not designated to receive it (see Recommendation 5).

IRS Comment:

The representatives reflected in this projection were authorized to act on behalf of the taxpayer, nearly one third of the projected number were also designated by the taxpayers to receive copies of correspondence about certain tax periods included on the NFTL.

Appendix VII

Glossary of Terms

Term	Definition
Automated Levy Program	A levy program in which selected Federal tax debts are matched with State taxing authorities, municipal taxing authorities, and Federal agencies disbursing funds such as salary, pension, and vendor payments.
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.
Federal Payment Levy Program	An ALP that the IRS has implemented with the Department of the Treasury Bureau of the Fiscal Service since Calendar Year 2000. The Bureau of the Fiscal Service administers the Treasury Offset Program to collect delinquent debts owed to Federal agencies. The Treasury Offset Program matches delinquent debts with money that Federal agencies pay. To the extent allowed by law, when a match happens, the Treasury Offset Program withholds (offsets) money to pay the delinquent debt. The FPLP was developed to interface with the Treasury Offset Program as a systemic and efficient means for the IRS to collect delinquent taxes.
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.
State Income Tax Levy Program	An ALP that matches a Master File database of delinquent taxpayers eligible to be levied against a database of State tax refunds for each State participating in the program.

Appendix VIII

Abbreviations

ACS	Automated Collection System
ALP	Automated Levy Program
ALS	Automated Lien System
CDP	Collection Due Process
FPLP	Federal Payment Levy Program
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
PFI	People First Initiative
POA	Power of Attorney
RRA 98	Restructuring and Reform Act of 1998
SITLP	State Income Tax Levy Program
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.