

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences, Which Do Not Provide the Same Legal Protections as the Seizure Process**

March 28, 2022

Report Number: 2022-30-026

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.

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

## **HIGHLIGHTS: The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences, Which Do Not Provide the Same Legal Protections as the Seizure Process**

Final Audit Report issued on March 28, 2022

Report Number 2022-30-026

### **Why TIGTA Did This Audit**

Lien foreclosure is a specific judicial enforcement tool that the IRS can use in certain circumstances to assist in the collection of delinquent taxes. However, the law grants certain rights to taxpayers subject to seizures that are not granted to taxpayers subject to lien foreclosure suits.

This audit was initiated to determine whether the IRS is properly pursuing suits to foreclose.

### **Impact on Tax Administration**

Under Internal Revenue Code (I.R.C.) § 7403, if there has been a refusal or neglect to pay any tax, the Attorney General, at the request of the Secretary of the Treasury, is authorized to institute a civil action in Federal district court to enforce the lien or to subject any property in which the taxpayer has an interest to the payment of the tax liability.

In a lien foreclosure action, the court determines the merits of all claims to and liens on the property and, where the interest of the United States is established, may order the sale of the property. The property is sold free and clear of all liens and encumbrances. The proceeds of the sale are then distributed in accordance with the court's determination of the parties' interests in the property.

### **What TIGTA Found**

In Fiscal Year 2020, the IRS used lien foreclosure suits more often than seizures when pursuing principal residences, which do not provide the same legal protections as seizures. For seizures, the IRS must comply with the legal provisions set forth in I.R.C. §§ 6330 through 6344, which govern many aspects of the seizure process, including requiring a thorough exploration of collection alternatives before a levy action can be taken and additional Collection Due Process appeal rights. In contrast, for lien foreclosure suits, I.R.C. § 7403 offers very little discretion for the court to consider anything other than determining the merits of all claims to and liens upon the property. In addition, unlike the sale of real property at a distraint (seizure) sale, the taxpayer has no right to redeem the property after court ordered foreclosure of the Federal tax lien. Therefore, it is important that the IRS pursue a seizure rather than a suit to foreclose, whenever possible, to ensure that taxpayers are afforded all available administrative and legal protections.

Additionally, TIGTA reviewed 96 lien foreclosure cases identified on the IRS's eApproval system between October 1, 2018, and September 30, 2020, that were in litigation status as of January 12, 2021, and 35 suit recommendations that were in declined status during this same time frame. Revenue officers generally followed procedures and internal controls; however, TIGTA identified some instances in which procedures and internal controls were not followed or were not clear. For example, TIGTA identified instances in which revenue officers were asked to make revisions on suit packages, but improper or untimely actions prevented the IRS from filing suit. TIGTA also identified cases in which suit packages were missing required forms or case actions were not timely.

Finally, while the IRS has developed a system to track lien foreclosure cases internally, once the cases are sent to the Department of Justice for litigation, there is no way to track and measure the outcome or the related costs and revenues collected on lien foreclosure cases.

### **What TIGTA Recommended**

TIGTA made five recommendations, including recommending that the IRS work with the Department of the Treasury Office of Tax Policy to consider a legislative proposal to amend the law (I.R.C. § 7403) so that taxpayers are afforded the same rights and protections whether the IRS is conducting a Federal tax lien foreclosure or a seizure on their property. Additionally, TIGTA recommended that the IRS make several updates to the Internal Revenue Manual to ensure that Field Collection managers and employees take timely and proper case actions when determining whether to recommend a suit to foreclose on a taxpayer's property.

The IRS agreed with four of the five recommendations. However, the IRS disagreed with TIGTA's recommendation to work with the Department of the Treasury to consider a legislative proposal. The IRS's view is that, while each process has its own advantages and disadvantages, each ensures taxpayers' rights are protected. TIGTA continues to believe that similar legal protections are needed for both processes.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**U.S. DEPARTMENT OF THE TREASURY**  
**WASHINGTON, D.C. 20220**

March 28, 2022

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

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

**SUBJECT:** Final Audit Report – The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences, Which Do Not Provide the Same Legal Protections as the Seizure Process (Audit # 202130011)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) is properly pursuing suits to foreclose. This review is part of our Fiscal Year 2022 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

# Table of Contents

<a href="#">Background</a> .....	Page 1
----------------------------------	--------

<a href="#">Results of Review</a> .....	Page 2
---	--------

<a href="#">The Lien Foreclosure Process Does Not Have the Same Legal Protections for Taxpayers As the Seizure Process</a> .....	Page 2
--	--------

<a href="#">Recommendation 1:</a> .....	Page 7
---	--------

<a href="#">Lien Foreclosure Procedures and Internal Controls Were Generally Followed, With Some Exceptions</a> .....	Page 8
---	--------

<a href="#">Recommendations 2 and 3:</a> .....	Page 14
--	---------

<a href="#">Recommendation 4:</a> .....	Page 15
---	---------

<a href="#">The IRS Tracks Foreclosure Suit Cases Internally but Does Not Track Outcomes</a> .....	Page 15
--	---------

<a href="#">Recommendation 5:</a> .....	Page 18
---	---------

## Appendices

<a href="#">Appendix I – Detailed Objective, Scope, and Methodology</a> .....	Page 19
---	---------

<a href="#">Appendix II – Outcome Measure</a> .....	Page 21
---	---------

<a href="#">Appendix III – Management’s Response to the Draft Report</a> .....	Page 22
--	---------

<a href="#">Appendix IV – Glossary of Terms</a> .....	Page 28
---	---------

<a href="#">Appendix V – Abbreviations</a> .....	Page.30
--	---------

## **Background**

Lien foreclosure is a specific judicial enforcement tool that the Internal Revenue Service (IRS) can use in certain circumstances to assist in the collection of delinquent taxes. Internal Revenue Code (I.R.C.) § 7403 states that, if there has been a refusal or neglect to pay any tax, the Attorney General, at the request of the Secretary of the Treasury, is authorized to institute a civil action in Federal district court to enforce the lien or to subject any property in which the taxpayer has an interest to the payment of the tax liability.<sup>1</sup> In a lien foreclosure action, the court determines the merits of all claims to and liens on the property and, where the interest of the United States is established, may order the sale of the property. The property can then be sold free and clear of all liens and encumbrances. The proceeds of the sale are distributed in accordance with the court's determination of the parties' interests in the property.

**Real property with a  
Notice of Federal Tax  
Lien (NFTL) attached can  
be subject to foreclosure  
under I.R.C. § 7403.**

When determining whether to recommend a suit to foreclose on property with a Federal tax lien, IRS employees must follow the policies and procedures outlined in the Internal Revenue Manual (IRM). According to those procedures, a suit to foreclose should be pursued only when there are no reasonable administrative remedies, such as levies (includes seizure), installment agreements, or offers in compromise, and when there are no taxpayer hardship issues.<sup>2</sup> Due to the expense and time associated with bringing a suit to foreclose against a taxpayer, it is not generally considered unless the total tax liability is greater than a particular threshold and the IRS has exhausted all applicable and effective administrative remedies. However, there are circumstances in which a suit can be recommended when the tax liability is below the particular dollar threshold. For example, a suit may be referred if the liabilities are related to liabilities previously recommended in an ongoing suit. Also, the Department of Justice (DOJ) may request a foreclosure referral in response to a title issue. Other situations in which a lien foreclosure may be appropriate include issues related to ownership, encumbrances on the property, clouded title, or collection statute concerns. Ultimately, the determination of whether to use administrative or judicial collection processes depends upon the facts of a specific case.

The authority to approve a recommendation for lien foreclosure action is generally delegated to Collection territory managers, as well as the area director when pursuing a principal residence. After a revenue officer prepares the suit package and receives approval from their manager, it is submitted to the Advisory function for review and perfection. Once perfected through Advisory and either the Collection territory manager or area director approves it, the package is submitted to IRS Area Counsel for approval and submission to the DOJ for adjudication.

---

<sup>1</sup> See Appendix IV for a glossary of terms. I.R.C. § 6321. A lien automatically attaches to a taxpayer's assets after assessment and demand followed by the taxpayer's neglect or refusal to pay their unpaid taxes. The lien is not effective against other secured creditors until a Notice of Federal Tax Lien (NFTL), under I.R.C. § 6323, is filed.

<sup>2</sup> The IRS considers the taxpayer's ability to pay the tax and alternative payment options, such as an installment agreement or an offer in compromise.

## **Results of Review**

When the IRS has exhausted all other collection alternatives, it may pursue a levy (seizure) or a suit to foreclose on a taxpayer's real property. However, the law grants certain rights to taxpayers subject to seizures that are not the same as the rights granted to taxpayers subject to foreclosure suits. Therefore, it is important that the IRS pursue a seizure rather than a suit to foreclose, whenever possible, to ensure that taxpayers are afforded all available administrative and legal protections. Our review explains the differences in the law for both lien foreclosure and seizure actions and how this can negatively affect taxpayers. Also, our review of 96 lien foreclosure cases identified on the IRS's eApproval system that were in litigation status as of January 12, 2021, found that, while revenue officers generally followed required internal procedures and controls, there were some instances in which they did not. In addition, the IRS has not developed a way to track and measure the related costs and revenues collected on lien foreclosure cases.

## **The Lien Foreclosure Process Does Not Have the Same Legal Protections for Taxpayers As the Seizure Process**

There are several important factors that the IRS considers when determining whether to recommend that a case be referred to the DOJ to institute an action to foreclose on property with a Federal tax lien. A seizure and a lien foreclosure are two distinct collection tools. While suit recommendations to foreclose a tax lien carry many of the same considerations as seizures, the suit to foreclose is the secondary alternative used only when the seizure remedy is not the optimal solution. However, our review found that, for principal residences, the IRS used lien foreclosures more often than seizures. This could be attributed to a number of reasons.

One reason for this is that the IRS must comply with the legal provisions set forth in I.R.C. §§ 6330 through 6344 when considering a seizure. These provisions govern many aspects of the seizure process, including requiring a thorough exploration of collection alternatives before taking a levy action. In contrast, for lien foreclosure suits, I.R.C. § 7403 offers very little discretion for the court to consider anything other than determining the merits of all claims to and liens upon the property.<sup>3</sup> Additionally, unlike the sale of real property at a distraint (seizure) sale, the taxpayer has no right to redeem the property after court-ordered foreclosure of the Federal tax lien. A court-ordered foreclosure sale of the Federal tax lien does not provide these rights because the sale provides the purchaser an acquisition of the property free of all encumbrances. In December 2012, the National Taxpayer Advocate recommended that Congress amend I.R.C. § 7403 to include a requirement that, prior to submitting a foreclosure recommendation, an IRS employee must determine that the taxpayer has no other property sufficient to pay the amount due and to ensure that the foreclosure sale will not create an economic hardship due to the financial condition of the taxpayer. IRS management responded that each enforcement tool authorized by Congress has its own advantages and disadvantages. The lien foreclosure judicial protections afforded to taxpayers are different from those afforded by the seizure process. For example, the inability to redeem the property in a lien foreclosure

---

<sup>3</sup> Foreclosure protections are also set forth in I.R.C. §§ 6320, 7401 through 7403, 7406, and 7421. For example, I.R.C. 6320 provides taxpayers with Collection Due Process rights with the first filing of any NFTL for any one liability.

and the inability for taxpayers to raise broad issues in a lien foreclosure court proceeding are just some examples of how rights in a lien foreclosure suit are different from the taxpayer rights for a seizure.

There are several specific circumstances in which a lien foreclosure suit is used in lieu of a seizure, which are primarily:

- **Clouded Title** – A cloud on title is any encumbrance on the property in addition to the Federal tax lien that makes it difficult to determine interests in the property. The existence of a cloud on title casts doubt upon the ability of an owner of real property to convey marketable title to their land, thereby lessening its value. For example, if a property is jointly owned by nonmarried individuals, then the title is clouded; the IRS cannot seize the entirety of the property when it is owned by multiple parties. The IRS can only seize and sell the liable taxpayer's interest in the property.
- **Imminent Collection Statute Expiration Date (CSED)** – An imminent CSED, for purposes of preparing a suit recommendation to foreclose on a Federal tax lien, is a case in which there are less than nine months left on the CSED when Counsel receives the recommendation. As a general rule, suit recommendations must be forwarded to the IRS's Advisory function with sufficient time to perfect the referral and forward it to Area Counsel. Whenever it is determined that a suit recommendation cannot be forwarded to Area Counsel with at least nine months before the earliest CSED, Advisory must receive written notification of the case and an explanation as to why the suit recommendation is untimely. Advisory will then contact Area Counsel to provide notice of the potential suit recommendation and determine if the suit can be properly initiated before the CSED. It is within Area Counsel's discretion not to accept a suit recommendation for which the earliest CSED will expire in less than nine months.
- **Life Estate** – On occasion in special circumstances, such as a taxpayer's age, the IRS when recommending lien foreclosure also requests that the DOJ create a life estate allowing the taxpayer to remain in the home until the special circumstances resolve. After reducing the tax liability to judgment, the life estate documentation with qualifying parameters remains in place until circumstances qualifying for a sale of the property occur.

In some other cases, the DOJ or IRS Chief Counsel may recommend that a revenue officer submit a suit to foreclose rather than a seizure. This could be for a variety of reasons, such as a third-party lender foreclosure in which the IRS needs to intervene or the DOJ obtaining knowledge of additional property in an original referral initiated by the IRS or another party.

We reviewed the 96 suit to foreclose recommendations that were submitted through the eApproval system between October 1, 2018, and September 30, 2020, and were also in litigation status as of January 12, 2021. Figure 1 shows the reason revenue officers cited on the Form 4477-D, *Civil Suit Package* narrative for preparing foreclosure recommendations.

**Figure 1: Primary Reason Cited by Revenue Officer  
for Pursuing Lien Foreclosure Over Seizure**

Primary Reason	Number of Cases	Percentage
Clouded Title <sup>4</sup>	56	58%
Imminent CSED	29	30%
Life Estate	5	5%
Supplemental Suit	3	3%
Other <sup>5</sup>	3	3%
<b>Totals</b>	<b>96</b>	<b>100%<sup>6</sup></b>

*Source: Form 4477-D suit packages on eApproval.*

The majority of suit recommendations involved properties with a clouded title (58 percent), with the second most common reason being imminent CSED (30 percent). Although other reasons for lien foreclosures are used, these reasons are less frequent and totaled only about 11 percent of all cases we reviewed. In addition to reviewing why a lien foreclosure suit was selected rather than a seizure, we also determined whether the property being foreclosed on was a taxpayer's principal residence.

### **The majority of principal residence enforcement actions are lien foreclosures**

Foreclosure suits are generally only considered after all other collection alternatives are exhausted, including seizures. If the property is a secondary residence, a vehicle, or real property besides a principal residence, the revenue officer may complete the seizure relatively quickly with the properly delegated approval. However, when the property is a principal residence, the IRS must obtain court approval before conducting the seizure. The law allows taxpayers the opportunity to bring additional arguments against the seizure of the principal residence, such as showing cause as to why the residence should not be seized and demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the IRS did not follow applicable laws or procedures. The judicial process may take up to a year or more to complete due to backlogs in various courts. Additionally, for these cases, the collection statute continues to run until the seizure is approved by the court and the Notice of Seizure is served to the taxpayer. Therefore, for a principal residence, if the collection statute is imminent, the IRS will not attempt a seizure

---

<sup>4</sup> Ten of these cases also had an imminent CSED. However, due to the clouded title issue, these cases would have been a lien foreclosure suit, rather than a seizure, even if the CSED had not been imminent.

<sup>5</sup> The reasons for the suit to foreclose in the "Other" category included [REDACTED]

<sup>6</sup> Percentages do not total to 100 percent due to rounding.



because it may not be approved by the court in time before the statute expires. Instead, the IRS will recommend a foreclosure suit and will simultaneously file a reduce tax liability claims to judgment suit, which is used to stop the collection statute from expiring. The court will then adjudicate all matters involved and determine the merits of all claims to and liens upon the property.

Figure 2 shows the total number of principal residence foreclosure recommendations referred to the DOJ that were in litigation as of September 2021 and the total number of principal residence seizures conducted from July 1, 2019, through June 30, 2020.

**Figure 2: Lien Foreclosure Referrals Versus Seizures on  
Principal Residences From July 1, 2019, Through June 30, 2020**

Principal Residence Lien Foreclosure Referrals and Seizures Conducted	Count	Percentage
Lien Foreclosure Referrals to the DOJ	21	88%
Seizures Conducted	3	13%
<b>Total</b>	<b>24</b>	<b>100%<sup>7</sup></b>

*Source: eApproval data extract as of September 27, 2021, and Treasury Inspector General for Tax Administration (TIGTA), Report No. 2021-30-055, Fiscal Year 2021 Review of Compliance With Legal Guidelines When Conducting Seizures of Taxpayers' Property (Sept. 2021).*

During the period July 1, 2019, through June 30, 2020, there were 24 actions against principal residences. Of those, the majority (88 percent) were suit to foreclose actions submitted and referred to the DOJ. One possible reason is that principal residence seizures require court approval but do not allow for the extension of the CSED until the seizure has been conducted. Therefore, for imminent CSED cases, the revenue officer will use a lien foreclosure rather than a seizure in order to protect the statute.

Prior to submitting a lien foreclosure recommendation or seizure of a principal residence, revenue officers must perform the following procedural requirements:<sup>8</sup>

- Attempt to contact the taxpayer by either a telephone call or a field call and advise the taxpayer that seizure or lien foreclosure is the next planned action.
- Give the taxpayer an opportunity to resolve the tax liability voluntarily and provide and explain Publication 1, *Your Rights as a Taxpayer*, and Publication 594, *The IRS Collection Process*.
- Advise the taxpayer about the Taxpayer Advocate and provide Form 911, *Request for Taxpayer Advocate Service Assistance*.
- Provide the taxpayer with the name and location of the immediate supervisor if the taxpayer requests a managerial review.
- Attempt to identify the occupants of the principal residence.

---

<sup>7</sup> Percentages do not total to 100 percent due to rounding.

<sup>8</sup> IRM 5.17.4.8.2.5 (May 23, 2019) and IRM 5.10.1.6.1(2) (Aug. 29, 2017).

- Include a summary statement in the case history and narrative report. The history statement will contain a discussion of whether the action proposed would result in an inability to secure future housing or otherwise lead to an economic hardship.

Additionally, the IRS is required to provide taxpayers with I.R.C. § 6320 Collection Due Process (CDP) rights after the first filing of any NFTL for any one liability. Taxpayers have the right to challenge an NFTL filing, request a CDP hearing with the IRS Office of Appeals, and seek judicial review of Appeals' determination with the Tax Court. Further, I.R.C. § 6330(a) requires that no levy (seizure) may be made on any property or right to property of any person unless the owner of such property has been notified in writing of their rights to a hearing under this section before such levy is made. A revenue officer can satisfy this requirement with the issuance of Letter 1058, *Final Notice of Intent to Levy*. Letter 1058 informs the taxpayer of their CDP rights to appeal and the expiration of CDP rights. If a taxpayer does not pay overdue taxes, make other arrangements to satisfy the tax debt, or request a hearing within 30 calendar days of the date of the notice, the IRS may seize the taxpayer's property. There are no similar legal requirements affording taxpayers the right to appeal prior to submitting a suit to foreclose recommendation. As previously mentioned, once the DOJ files the complaint, I.R.C. § 7403(c) provides that the court shall adjudicate all matters involved and determine the merits of all claims to and liens on the property.

### **Imminent CSED is a main factor when recommending principal residence lien foreclosures**

Because foreclosure suits are a last resort for IRS collection methods, in some cases, the 10-year collection statute is at risk of expiring. We reviewed the 29 cases for which the IRS submitted a suit to foreclose specifically due to an imminent CSED and found that 23 (79 percent) included principal residence suits. We further reviewed these cases to determine if any case delays were a contributing factor to the CSEDs becoming imminent. Figure 3 shows how long the cases were assigned to revenue officers prior to the suit being submitted to Advisory for review.

**Figure 3: Time Between Case Assignment and  
Foreclosure Recommendation Submission**

	Number of Cases	Percentage
Less Than One Year	9	31%
Between One and Three Years	14	48%
Three Years or More	6	21%
<b>Total</b>	<b>29</b>	<b>100%</b>

*Source: TIGTA analysis of IRS eApproval suits to foreclose data extract as of January 12, 2021, and IRS collection transaction codes as of July 8, 2021, and August 10, 2021.*

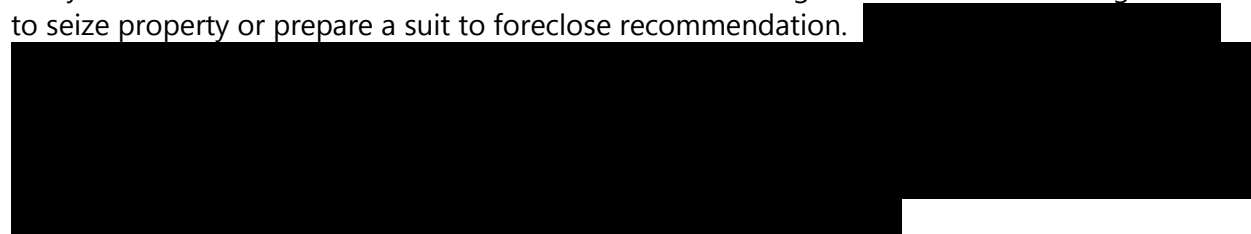
Nine cases (31 percent) were assigned to a revenue officer less than one year before the suit recommendation was submitted, suggesting that more than likely the CSEDs on these cases were already imminent. There were 14 cases (48 percent) assigned to a revenue officer between

one and three years before suit submission. Six cases (21 percent) were assigned to a revenue officer three years or more before the suit was submitted.

Further review of the six cases that had been assigned to a revenue officer three or more years found that these cases were often reassigned to multiple different revenue officers. This could be due to multiple reasons such as a detail assignment or resignation. In each of these cases, the revenue officers attempted other enforcement actions prior to submitting a foreclosure recommendation, including levies and attempted seizure.

These cases were reassigned multiple times, some as many as five times, which contributed to delays on these cases being worked. Because the CSED continues to run down on these cases, by the time the revenue officer gets to the point of considering whether to seize property or prepare a suit to foreclose recommendation, there is little choice except to pursue a suit to foreclose over a seizure due to an imminent CSED.

In many instances, by the time a case is assigned to a revenue officer, there may already be imminent statute concerns. One contributing factor for this is the amount of time cases wait in the Collection Queue prior to revenue officer assignment. From the 29 lien foreclosure cases submitted due to an imminent CSED, we also identified six cases that were in the Queue awaiting assignment for more than two years. We reviewed these cases and found that all six were worked for one year or more before the suit to foreclose recommendation was submitted. Although these cases did not appear to have an imminent CSED when they initially came out of the Queue, if cases are sitting in the Queue for an extended period and then take multiple years to try to resolve, an imminent CSED becomes the determining factor when considering whether to seize property or prepare a suit to foreclose recommendation.



Because the law does not allow taxpayers the same rights when the IRS pursues a seizure versus a foreclosure suit, it is important that the IRS pursue a seizure whenever possible, particularly when possessing a taxpayer's principal residence. If the law were to be changed to offer the same rights to taxpayers under both a suit and a seizure, such as the right to redemption after sale, then the importance of pursuing a seizure first would be minimized. Under current law, some taxpayers may be burdened because they are not afforded these additional rights due to the structure of the court process with respect to cases with an imminent CSED.

**Management Action:** IRS management informed us that Collection Policy reviewed the suit packages with short CSEDs and as a result, updated IRMs 25.3.2.4.1(2) and IRM 25.3.2.4.5.5 on November 24, 2021, to include additional guidance and requirements for Collection employees (revenue officers and advisors) to follow when considering and submitting suit packages with short CSEDs.

**Recommendation 1:** The IRS Commissioner should work with the Department of the Treasury Office of Tax Policy to consider a legislative proposal to amend the law (I.R.C. § 7403) so that taxpayers are afforded the same rights and protections whether the IRS is conducting a Federal tax lien foreclosure or a seizure on their property.

**Management's Response:** IRS management disagreed with the recommendation, stating that the seizure process and the lien foreclosure process are two of several collection devices authorized by Congress. Every collection device has its own advantages and disadvantages to tax administration, but each ensures that taxpayers' rights are protected. While the mechanisms for ensuring that taxpayer rights are protected may be different, they are not less. In lien foreclosure cases, the IRS provides certain administrative protections, but Congress ensured that taxpayer rights are fully protected by empowering a neutral third party, a district court, and broad equitable powers to review the merits of all claims before it may order a sale. *United States v. Rodgers*, 461 US 677 (1983). Based on our data, such a legislative change potentially benefits only a small population of taxpayers.

**Office of Audit Comment:** According to IRM procedures, a suit to foreclose should be pursued only when there are no reasonable administrative remedies including seizures, yet this is not explicitly stated in the law. Although IRS management has policies to ensure that taxpayers' rights are protected with each collection tool, protections under the law with respect to lien foreclosures are fewer than the protections under the seizure provisions. As noted in this report, the IRS used lien foreclosure suits more often than seizures when pursuing principal residences. One main reason for this is that the law allows for suspending the CSED for lien foreclosure suits but not for principal residence seizures. As previously stated, when the property is a principal residence, the IRS must obtain court approval before conducting the seizure, which allows taxpayers the opportunity to bring additional arguments against the seizure of the principal residence. In contrast, for lien foreclosure suits, I.R.C. § 7403 offers very little discretion for the court to consider anything other than determining the merits of all claims to and liens upon the property. Additionally, unlike the sale of real property at a distraint (seizure) sale, the taxpayer has no right to redeem the property after court ordered foreclosure of the Federal tax lien. Lastly, I.R.C. § 6330(a) requires that no levy (seizure) may be made on any property or right to property of any person unless the owner of such property has been notified in writing of their rights to a hearing under this section before such levy is made. There are no similar legal requirements affording taxpayers the right to appeal prior to submitting a suit to foreclose recommendation. Even if this change may only benefit a small population of taxpayers, it is important that those taxpayer's rights are protected.

### **Lien Foreclosure Procedures and Internal Controls Were Generally Followed, With Some Exceptions**

We reviewed the 96 suit to foreclose recommendations that were submitted through the eApproval system between October 1, 2018, and September 30, 2020, and were in litigation status as of January 12, 2021, to determine whether procedures and internal controls were followed.<sup>9</sup> We also reviewed 35 suit recommendations that were in declined status during this

---

<sup>9</sup> Suit recommendations in litigation status are those cases that have been prepared by revenue officers, reviewed by Advisory and IRS Area Counsel, submitted to the DOJ, and filed with the court.

same time frame. Our review showed that revenue officers generally followed procedures and internal controls; however, we did identify some instances in which procedures and internal controls were not followed or were not clear.

### **Some foreclosure suit cases were improperly closed**

Once the suit package has been received, the role of Advisory in reviewing suit packages is to ensure that the package is complete. In reviewing the suit package, the Advisor should:

- Evaluate and critically review the suit recommendation.
- Ensure that the suit recommendation meets all criteria for bringing suit.
- Consider whether additional development is needed.
- Determine whether necessary documents have been included and obtain any omitted documents.
- Ensure that the suit recommendation is approved by the appropriate officials.<sup>10</sup>

If a lien foreclosure package does not have the required information or further development is needed, the case may be returned to the revenue officer to make revisions. If the revenue officer does not make the revisions timely or take the correct actions, the IRS may lose the opportunity to file a suit to foreclose, thus losing revenue. Our case review of the 35 declined suit recommendations identified a few cases in which revenue officers were asked for revisions on suit packages but improper or untimely actions prevented the IRS from filing suit.

- 
- 

The IRM instructs Advisory to close their control once returning a suit to the revenue officer for revision. In these instances, the advisor's responsibility does not extend to the revenue officer's

---

<sup>10</sup> IRM 25.3.2.7 (May 29, 2019).

decision to continue or not continue work on the suit package. [REDACTED]

When revenue officers do not timely submit suits, the DOJ may not be able to accept and work the case prior to the collection statute expiration. When revenue officers close out cases rather than revising them as requested, the IRS cannot collect taxes owed from those taxpayers.

### **Revenue officers did not always exhaust all available administrative remedies before filing suit**

IRMs 5.17.4 and 25.3.2 outline the procedures IRS employees must take when initiating suits, including what forms are required to be submitted with the suit to foreclose recommendation. Revenue officers must consider all available administrative remedies and either exhaust them or determine they are unfeasible prior to initiating a suit. Administrative remedies that must be considered include levies, installment agreements, and offers in compromise. Additionally, a collection information statement submitted by a taxpayer should reflect information no older than the prior six months. If during the investigation the financial information becomes older than 12 months and it appears significant changes have occurred, a request for updated information may be appropriate.<sup>11</sup> If financial information is not current, then the revenue officer cannot make an accurate determination of the taxpayer's ability to pay or what the best collection action should be.

Our review of the 96 suits in litigation status identified a few cases in which suits to foreclose on a taxpayer's principal residence were submitted, and the collection information statements were older than 12 months with no documentation as to whether significant changes had occurred or not.

- [REDACTED]

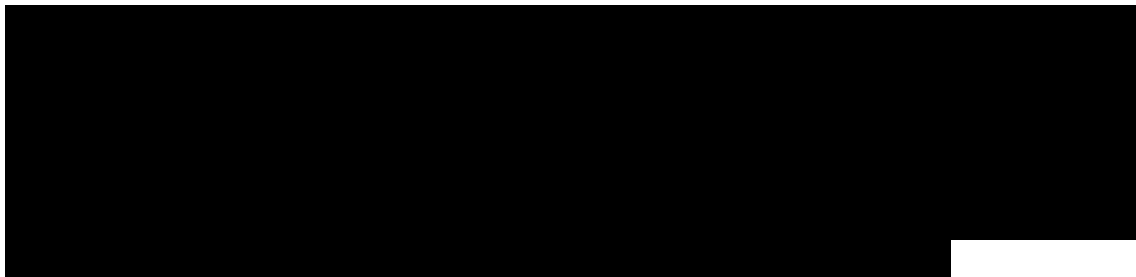
[REDACTED] Additionally, the American Jobs Creation Act of 2004 amended I.R.C. § 6159 to provide the authority for the IRS to enter into partial payment installment agreements even if it does not fully pay the liability within the CSED.<sup>12</sup>

- [REDACTED]

---

<sup>11</sup> IRM 5.15.1.2 (July 24, 2019).

<sup>12</sup> Pub. L. No. 108-357, 118 Stat. 1418 (2004). IRM 5.14.2.3 (Apr. 26 2019).

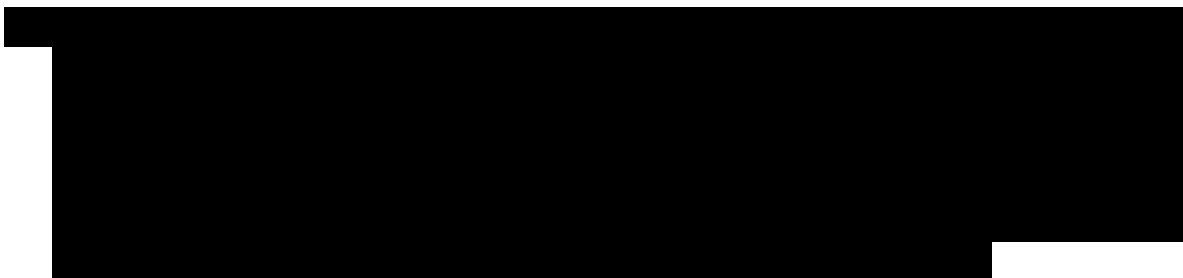


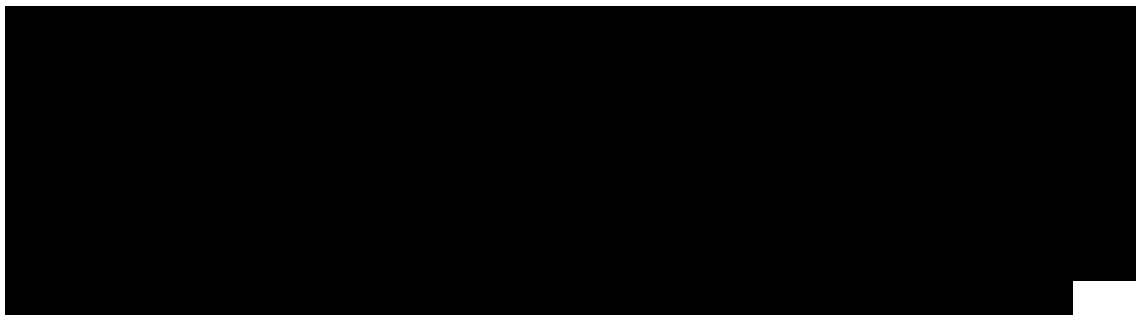
Although issuing levies must be considered, they are not a requirement prior to submitting a suit to foreclose on a Federal tax lien. However, if the collection information statements are outdated, as in these cases, there is no way to know whether or not other administrative remedies, such as installment agreements or levies, are unfeasible. When submitting a suit to foreclose, especially on a taxpayer's principal residence, it is important that all of the case information used to consider a suit is current and complete.

**Management Action:** IRS management informed us that they updated IRM 25.3.2.1.7(1)h on November 24, 2021, to include a reference to IRM 5.15.1, *Financial Analysis Handbook*, which will help ensure that prior to submitting a suit to foreclose recommendation, revenue officers are attempting to obtain taxpayer financial information that is complete and current within 12 months.

### **Time requirements were not always followed**

After a suit to foreclose recommendation is prepared by the revenue officer, it goes through multiple stages of review, and each stage has its own time frame requirements. Procedures require that, no later than 45 calendar days after receipt of the suit package, Advisory must review the suit package to determine if it meets all criteria for bringing suit, contact the case revenue officer if additional information is needed, address any other issues, and follow up as appropriate. Once IRS Counsel receives the suit recommendation, it has 90 calendar days to review the suit package before submitting it to the DOJ. We identified a few cases in which the suit packages were not reviewed timely per IRM and Chief Counsel Directives Manual requirements:



- 

[REDACTED]

In June 2014, the IRS adopted the Taxpayer Bill of Rights, which includes 10 fundamental rights to provide taxpayers a better understanding of their rights when dealing with the IRS, including the right to quality service.<sup>13</sup> These taxpayer rights include the right to receive prompt, courteous, and professional assistance from the IRS. When cases are substantially delayed, this infringes on that right, resulting in additional penalties and interest accruing on the taxpayer's account and the possibility of the revenue officer needing to pursue a foreclosure suit rather than a seizure due to a CSED becoming imminent. In these cases, issues with employees' schedules could have been addressed and the cases could have been reassigned to meet the time frame requirements as outlined in the IRM and the Chief Counsel Directives Manual.

In addition, under I.R.C. § 6320, the IRS must notify taxpayers in writing of their right to a CDP hearing with the Office of Appeals the first time a tax period is included on an NFTL. The written notification must be given within five business days of the filing of an NFTL. The taxpayer then has 30 calendar days to file a CDP hearing request. When the taxpayer timely requests a CDP hearing, the taxpayer has a right to judicial review of the Appeals determination.

[REDACTED]

[REDACTED]

### **Required forms were not always included in suit to foreclose packages**

Once the revenue officer makes the determination to prepare the suit to foreclose recommendation, they must complete and submit the Form 4477-D suit package, which includes the following forms:

- Form 4477-C, *Civil Suit Table of Contents and Contact List*.
- Form 4477, *Civil Suit Recommendation*.

---

<sup>13</sup> I.R.C. § 7803(a)(3).



- Form 4477-B, *Civil Suit Narrative Report*.
- Form 4480, *Civil Suit – Service of Legal Papers*.
- Form 4478, *Civil Suit Checklist*.
- Form 4479, *Civil Suit – Property, Liens, and Claims* (if the suit involves specific property).

Advisory then reviews the Form 4477-D suit package, completes its applicable portion of the Form 4478, and sends the approved suit package to the delegated approving official. Once it is approved, Advisory forwards the suit package to Area Counsel. There were a few cases in which suit recommendations were submitted to Counsel and the required forms were either missing or were incomplete.



Success in litigation is highly dependent upon the full and complete development of factual and legal issues before the suit is actually filed. Suit recommendations must be forwarded to Area Counsel with sufficient time remaining on the CSED to allow for proper review of the suit recommendation, analysis of any legal issues, preparation of the suit letter, and time for the DOJ to draft the pleadings and file the suit. As previously mentioned, 30 percent of suits in litigation are submitted with imminent CSEDs. Therefore, if checklists are not completed or forms are missing, there may not be time to obtain the missing information and still protect the statute. This could have adverse effects on the IRS when the case is being litigated in court.

### **Procedures on the reasons to pursue lien foreclosure lack clarity**

IRS procedures state that a suit to foreclose may be pursued if a distraint sale, which is generally what takes place after the IRS seizes a taxpayer's property, would result in a lower price paid.<sup>14</sup> However, based on the IRM procedures for determining equity valuations used for seizure sales and lien foreclosures, this is illogical. For a seizure sale, the IRS generally uses 60 percent of market value as the reduced forced sale value calculation, while it uses 75 percent of market value for a suit to foreclose sale calculation. Using this procedure and reasoning, the IRS could always justify a suit to foreclose over a seizure. In fact, every distraint sale will likely result in a lower price paid, by definition.

---

<sup>14</sup> IRM 5.17.4.8.2.1(1) (May 23, 2019).

Our review showed that, in seven cases, the recommendations' cited reasoning for filing the suit to foreclose was because a distraint sale would result in a lower price paid, although that was not the primary reason. Five of the seven cases were principal residence foreclosure suits. While all seven of these case histories also included additional reasons for pursuing a suit to foreclose over a seizure, including clouded titles and imminent CSEDs, the IRM does not make it clear that the distraint sale price should not be the only reason to pursue a lien foreclosure suit over a seizure. Based on the current IRM wording, revenue officers could submit a foreclosure recommendation based solely on the distraint price sale. Because the suit to foreclose does not provide the same rights as a seizure, it should only be pursued in cases in which a seizure is not possible due to a clouded title on the property or an imminent CSED. Better clarification in the IRM for primary reasons to pursue a foreclosure recommendation, such as a clouded title or imminent CSED, would increase the likelihood of considering the seizure collection tool first as opposed to the lien foreclosure collection tool.

When we questioned IRS management about this, they stated that each case is different, each taxpayer's interest in the property is different, and all are dependent on the facts of the case. Additionally, sales markets across the country have local variations. However, based on our analysis of the IRM procedures for determining equity valuation, it is clear that a sale using 60 percent of the market value for calculation, no matter the location of the market, will always be lower than a sale using 75 percent of the market value for calculation. Therefore, this procedure could allow revenue officers to submit a foreclosure suit on any property, without considering seizure first, bypassing additional taxpayer rights.

**Recommendation 2:** During this audit, we recommended that the Director, Field Collection, should update I.R.M. 25.3.2.7.2 to include a requirement that the group managers monitor and follow up on suit recommendations that are returned to revenue officers for revisions, to ensure suits are submitted within the required CSED time frames as requested by the DOJ and Area Counsel.

**Management's Response:** IRS management agreed with the recommendation, stating that they updated IRM 25.3.2.7.2 on November 24, 2021, to include Advisory instructions on returning recommendations to the Field for revision. This publication also added the specific instructions for the Field Collection Group Managers in IRM 25.3.2.6(3), *Revenue Officer Referral and Account Disposition*. Additionally, with this revision, submission timeliness and CSED instructional improvements are now covered in IRM 25.3.2.4.5.5, *Cases with Imminent CSEDs*; IRM 25.3.2.6.(1), *Revenue Officer Referral and Account Disposition*; and IRM 25.3.2.4.1(2), *Preliminary Actions*.

**Recommendation 3:** The Director, Field Collection, Small Business and Self-Employed (SB/SE) Division, should issue a memorandum to all group managers to review and consider reassigning cases in situations where significant delays in employee schedules will cause missed time frame deadlines, helping to ensure that the IRS complies with IRM and Chief Counsel Directives Manual timeliness requirements and avoids potentially violating taxpayers' rights.

**Management's Response:** IRS management agreed with the recommendation, stating that the Director, Field Collection, will issue a message by July 15, 2022, to remind group managers to consider reassigning cases when practicable to avoid missed time frame deadlines, helping to ensure that the IRS meets timeliness requirements and avoids potentially violating taxpayer's rights.

**Recommendation 4:** The Director, Collection Policy, SB/SE Division, should update IRM 5.17.4.8.2.1(1) to replace the example reasons for recommending a suit to foreclose to ensure that revenue officers take into consideration all factors when determining whether to recommend a suit to foreclose or a seizure on a taxpayer's property.

**Management's Response:** IRS management agreed with the recommendation, stating that the example reason used in the lead in paragraph of IRM 5.17.4.8.2.1(1), *Administrative Collection Devices Are Not Feasible or Adequate*, will be updated by November 15, 2022.

## **The IRS Tracks Foreclosure Suit Cases Internally but Does Not Track Outcomes**

An effective internal control system can help Federal agencies achieve their missions and objectives and improve accountability. The Government Accountability Office's *Standards for Internal Control in the Federal Government* states that internal controls comprise the plans, methods, and procedures used to meet an entity's mission, goals, and objectives, which support performance-based management.<sup>15</sup> Internal control is not one event, but rather an ongoing series of actions and activities that occur throughout an entity's operations. Tracking and measuring results of enforcement activities is an important control that helps agency program managers achieve desired results and provides reasonable assurance that program objectives are being achieved.

In the past, the IRS did not have a way to track I.R.C. § 7403 suits to foreclose on Federal tax liens until it initiated its eApproval system. Although it tracked the overall total number of Advisory suits, it did not specifically track suits to foreclose. Since the eApproval system was initiated in August 2018, the IRS now tracks foreclosure suits while they are being worked by the IRS. However, it does not track suit to foreclose outcomes after they are submitted to the DOJ for adjudication. IRS management stated that the design of eApproval instructs moving cases returned by the DOJ to eApproval closed files. The intent is to have eApproval serve as the IRS official records of the litigation status. However, eApproval is new and does not yet have DOJ litigation closures to reflect. Currently, there are no dedicated portions of the eApproval suit module tracking status or costs. As a result, the IRS does not know the costs associated with the litigation or whether they resulted in collected revenue to reduce the taxpayer's debt.

### **Foreclosure suit cases are now tracked internally**

The IRS began tracking I.R.C. § 7403 foreclosure recommendations through its eApproval system on August 1, 2018, in limited areas, and nationwide in August 2019. The cases are monitored from preapproval until a case is accepted for litigation or a suit recommendation is declined. Figure 4 shows the number of foreclosure recommendations submitted by revenue officers and tracked in the eApproval system by area in Fiscal Years (FY) 2019 and 2020.

---

<sup>15</sup> Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

**Figure 4: IRS Lien Foreclosure Recommendations  
Submitted in the eApproval System by Area**

Area	FY 2019	FY 2020
Central	4	22
Gulf States	22	52
Northwest	16	38
North Atlantic	17	9
South Atlantic	4	20
Southwest	35	21
<b>Totals</b>	<b>98</b>	<b>162</b>

*Source: TIGTA analysis of IRS eApproval suits to foreclose data as of January 12, 2021.*

Some IRS Collection areas (Central and South Atlantic) did not begin tracking their suits to foreclose until the last two months of FY 2019, which is the reason for the lower number. All Areas tracked their suits to foreclose for the entirety of FY 2020.

The eApproval system also tracks suits by the type of suit recommendation (some suit recommendations may have more than one action). For example, in addition to a suit to foreclose on a tax lien, the IRS may also use a suit to reduce tax liability claims to judgment, which extends the CSED in cases in which there is no source of collection currently available.<sup>16</sup> Combining a lien foreclosure action with a suit to reduce tax liability claims to judgment avoids potentially duplicative suits. Figure 5 shows the number of lien foreclosure recommendation actions submitted by revenue officers in FY 2020.

**Figure 5: IRS Lien Foreclosure  
Recommendation Actions Submitted in FY 2020**

Suit Action Submitted	FY 2020	Percentage
Principal Residence Foreclosure	93	57%
Other Residence Foreclosure	30	18%
Other Type of Foreclosure <sup>17</sup>	41	25%
<b>Totals</b>	<b>164</b>	<b>100%</b>

*Source: TIGTA analysis of IRS eApproval suits to foreclose data extract as of January 2021.*

Revenue officers submitted a total of 164 lien foreclosure recommendation actions in FY 2020, which includes 103 that were also filed with suits to reduce tax liability claims to judgment in order to extend the CSED. Some lien foreclosure recommendations had multiple actions submitted during FY 2020; therefore, the number of actions shown in Figure 5 is greater than the number of cases initiated in Figure 4. Principal residence foreclosure was the highest

<sup>16</sup> I.R.C. § 7402.

<sup>17</sup> "Other Type of Foreclosure" actions include foreclosures on land and buildings.

recommended suit to foreclose action (57 percent) in FY 2020, followed by other types of foreclosure or actions (25 percent).

### **Foreclosure suit case outcomes are not tracked**

Although the IRS is now tracking suit to foreclose cases as revenue officers work them, as well as through IRS Advisory and IRS Counsel reviews of the cases, once the suits are submitted to the DOJ, the IRS does not formally track the status or outcome of the cases. The IRM requires cases monitored by Advisory to be followed up on as necessary, but no less than annually, until the litigation is concluded. Advisors are to determine the status of all open litigation cases by contacting Counsel or by using PACER, LexisNexis, or similar research systems.<sup>18</sup> However, when we requested basic case information from the IRS, such as taxpayer name, identification number, and tax periods for suit to foreclose cases that were submitted to the DOJ prior to the initiation of eApproval (FY 2015 through FY 2018), IRS management responded that they could not provide all of this information.

The DOJ uses the taxpayer's name and the type of suit that is filed to track cases, while IRS Counsel tracks cases by last name, resulting in many duplicate records when searching for taxpayers with common last names. The IRS and the DOJ are separate agencies that do not share case systems or any sort of case number tracking system that can be used to tie DOJ cases to IRS tax information. Therefore, the IRS is unable to track the outcome of the suit to foreclose cases, including the costs associated with the litigation or whether they result in any payments received. Because foreclosure sales are done under the auspices of the court, the costs of any sale ordered by the court are submitted to the court, and the court has sole authority to dispense sale proceeds or sale costs. The primary responsibility for the collection of judgments rendered in favor of the United States rests with the DOJ. After the judgment has been entered or a settlement is reached, the case is transferred to the DOJ Tax Division Financial Litigation Unit, which is responsible for attempting to collect the judgment. When collection efforts are exhausted, the Financial Litigation Unit transfers the case back to the DOJ trial section for closing and notification to the IRS. At this point, collection jurisdiction is generally returned to the IRS.<sup>19</sup> However, the IRS would still not necessarily know the collection amounts because payments from suits are not specific to foreclosure suits. Without some sort of tracking system in place, the IRS cannot determine the extent of its collection efforts through lien foreclosure suits unless it monitors each case to see if any payments have posted or waits for notification from the DOJ.

When we questioned IRS management about this issue, they responded that the eApproval system used to track the suits was not set up to track the outcomes. The IRS currently uses communication with the DOJ and Counsel to track the outcome of the suit to foreclose cases. Costs associated with sales resulting from litigation and any payments received through sales or settlements are difficult to track.

---

<sup>18</sup> IRM 25.3.6.4.1 (Dec. 7, 2010).

<sup>19</sup> IRM 5.17.4.6 (May 23, 2019).

**The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences,  
Which Do Not Provide the Same Legal Protections as the Seizure Process**

---

**Recommendation 5:** The Director, Collection Policy, SB/SE Division, should explore developing a process to track suits submitted through IRS, Counsel, and DOJ systems to determine outcomes of suit to foreclose cases accepted for litigation.

**Management's Response:** IRS management agreed with the recommendation, stating Collection Policy will schedule and chair a meeting with eApproval stakeholders and programmers to explore developing a process to track outcomes in suit to foreclose cases that are accepted for litigation by November 15, 2022, and present available options to the Director, Collection Policy.

## **Appendix I**

### **Detailed Objective, Scope, and Methodology**

The overall objective of this audit was to determine whether the IRS is properly pursuing suits to foreclose. To accomplish our objective, we:

- Identified and compared the number of suit recommendations referred to the DOJ and the number of seizures conducted in FY 2019 and FY 2020. This included identifying how many involved principal residences.
- Identified current laws and IRS internal procedures used by SB/SE Division employees during the audit period for conducting seizures and submitting foreclosure recommendations and analyzed the differences.
- Reviewed the population of suit to foreclose recommendations that were submitted through the eApproval system between October 1, 2018, and September 30, 2020, and were in litigation status as of January 12, 2021, to determine whether procedures and internal controls were followed. We also reviewed the population of suit to foreclose recommendations that were in declined status during this same time frame.
- Attempted to obtain and compare cost and outcome data for foreclosure suits and seizures; however, the IRS does not track these data.

### **Performance of This Review**

This review was performed with information obtained from the offices of the SB/SE Division Headquarters located in Lanham, Maryland, during the period January through November 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Phyllis Heald London, Director; Autumn Macik, Audit Manager; Danielle Marchetta, Lead Auditor; and Marcus Sloan, Auditor.

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

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

### **Internal Controls Methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for

planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: SB/SE Division Collection function's policies, procedures, and practices for completing suit recommendations to foreclose on taxpayers' property that fall under the provisions of I.R.C. §§ 6320, 7401 through 7403, 7406, and 7421. We evaluated these controls by reviewing appropriate internal procedures and guidelines and completed a review of foreclosure recommendation case files.



## Appendix II

### Outcome Measure

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

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

- Increased Revenue – Potential; [REDACTED] expected to be received [REDACTED] cases in which the IRS did not comply with internal guidelines and procedures, resulting in improper or untimely case actions that prevented the IRS from filing suit (see Recommendation 2).

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

We reviewed the population of 35 foreclosure recommendations that were submitted through the eApproval system between October 1, 2018, and September 30, 2020, and were in declined status as of January 12, 2021. We identified [REDACTED] cases for which the revenue officers did not comply with internal guidelines and procedures, resulting in improper or untimely case actions that prevented the IRS from filing suit. Had the revenue officers properly submitted the foreclosure recommendations, the IRS could have potentially collected [REDACTED]

- [REDACTED]

Therefore, the IRS could have collected [REDACTED] expected to be received from the sale of the foreclosure [REDACTED]

## **Appendix III**

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




Small Business/Self-Employed Division

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

March 9, 2022

MEMORANDUM FOR MICHAEL E. McKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Darren John Guillot  Digitally signed by Darren J. Guillot  
Commissioner, Small Business/Self-Employed Collection Date: 2022.03.10 13:08:11 -05'00'

SUBJECT: The IRS Primarily Uses Lien Foreclosures When Pursuing  
Principal Residences, Which Do Not Provide the Same Legal  
Protections as the Seizure Process (Audit #202130011)

Thank you for the opportunity to review your draft audit report, which evaluates the Internal Revenue Service's (IRS) use of lien foreclosures to collect taxes due and owed. TIGTA reviewed 96 lien foreclosure cases prepared by the IRS from October 1, 2018 through January 12, 2021. We appreciate your recognition that our lien foreclosure program generally complies with all procedures and controls. Our commitment remains to protect taxpayer rights while balancing the responsibility of effectively enforcing the tax code.

Section (§) 7403 of the Internal Revenue Code (IRC) authorizes the judicial sale of certain properties to satisfy the tax indebtedness of delinquent taxpayers. A taxpayer who is the defendant in a lien foreclosure suit has a broad array of rights and defenses available to them. A lien foreclosure is a proceeding in which the U.S. district court determines all claims on the merits before it orders the sale of the property, ensuring that the rights of the taxpayer and interested third parties are protected. If the court determines that the debt is owed and the taxpayer has a legal interest in the property, the court may order the sale of the property free and clear of all liens and encumbrances.

TIGTA recommends that the IRS pursue a seizure rather than a suit to foreclose whenever possible because the seizure process affords taxpayers more administrative rights, specifically the right of redemption after sale. TIGTA also recommends that the IRS propose a legislative change to the law to offer the right to redemption after sale. Based on our data, taxpayers avail themselves of the administrative right of redemption in approximately 5% of seizure sales. Providing a right of redemption to the lien foreclosure process could eliminate or diminish the effort to provide clear title to the buyer because the proceeds from the sale will be reduced as the buyer's rights to the property are restricted during the period of redemption. While such a legislative change

may benefit a small population of taxpayers, it could also harm other taxpayers by not realizing the full value of the property.

The seizure process and the lien foreclosure process are two of several collection devices authorized by Congress. Every collection device has its own advantages and disadvantages to tax administration. When it becomes necessary to compel collection, the IRS is expected to use the appropriate collection device based on the facts of the individual case. We appreciate your acknowledgement (in both this audit of our foreclosure suits and recent audit of our seizure activity) that we generally followed all internal procedures and controls. We will continue to expect the sound use of these and all other collection devices. As a result of our own internal reviews and continued discussions with the National Taxpayer Advocate, in recent years we revised our procedures to require revenue officers address the potential that any foreclosure may cause an economic hardship. We did so without the need for legislative action and will continue to stress that all of these cases involve the lives of real Americans – fellow citizens and the public we serve. Our employees are expected to apply that understanding in each decision about whether to pursue a suit to foreclose. In addition, while the provisions of IRC § 7403 are broad and profound, the taxpayer's rights in a suit to foreclose are also fully protected by the district court, a neutral third party.

The audit report acknowledges actions previously taken by the IRS and makes several recommendations aimed at continuing to improve our lien foreclosure program. As you noted in the report, we performed a review of imminent collection statute expiration date (CSED) lien foreclosure cases and implemented steps to improve our processes in imminent CSED cases. In addition, we added instructions on attempting to obtain current taxpayer financial information and replaced the example to clarify the factors to consider in lien foreclosure cases. We will remind our employees to take timely actions in these cases and to reassign cases when practicable to avoid missing timeframe deadlines.

Finally, TIGTA determined that the IRS has a system to track the approval process on all recommendations for suits to foreclose but does not track the outcomes once the Department of Justice (DOJ) accepts the recommendation for litigation, except in individual case files. We will explore developing a process to track outcomes of lien foreclosure cases.

We appreciate your evaluation of the program and recommendations to improve our current lien foreclosure processes. If you have any questions, please contact me, or Frederick W. Schindler, Director, Collection, Small Business/Self-Employed Division.

Attachment

**The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences,  
Which Do Not Provide the Same Legal Protections as the Seizure Process**

---

Attachment

**RECOMMENDATION 1:**

The IRS Commissioner should work with the Department of the Treasury Office of Tax Policy to consider a legislative proposal to amend the law (I.R.C. § 7403) so that taxpayers are afforded the same rights and protections whether the IRS is conducting a Federal tax lien foreclosure or a seizure on their property.

**CORRECTIVE ACTION:**

The seizure process and the lien foreclosure process are two of several collection devices authorized by Congress. Every collection device has its own advantages and disadvantages to tax administration, but each ensures that taxpayers rights are protected. While the mechanisms for ensuring that taxpayer rights are protected may be different, they are not less. In lien foreclosure cases, the IRS provides certain administrative protections, but Congress ensured that taxpayer rights are fully protected by empowering a neutral third-party, a district court, broad equitable powers to review the merits of all claims before it may order a sale. *United States v. Rodgers*, 461 US 677 (1983). Based on our data, such a legislative change potentially benefits only a small population of taxpayers.

**IMPLEMENTATION DATE:**

N/A

**RESPONSIBLE OFFICIAL:**

N/A

**CORRECTIVE ACTION MONITORING PLAN:**

N/A

**RECOMMENDATION 2:**

During this audit, we recommended that the Director, Field Collection, should update Internal Revenue Manual (IRM) 25.3.2.7.2 to include a requirement that the group managers monitor and follow up on suit recommendations that are returned to revenue officers for revisions, to ensure suits are submitted within the required CSED time frames as requested by the DOJ and Area Counsel.

**CORRECTIVE ACTION:**

The IRS completed this recommendation. TIGTA asked that we update IRM 25.3.2.7.2, *Pre-Suit Review/Referral Received*, to include instructions for Field Collection Group Managers. We updated IRM 25.3.2.7.2 on November 24, 2021, to include Advisory instructions on returning recommendations to the Field for revision. This publication also added the specific instructions for the Field Collection Group Managers in IRM

**The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences,  
Which Do Not Provide the Same Legal Protections as the Seizure Process**

---

2

25.3.2.6(3), *Revenue Officer Referral and Account Disposition*. Additionally, with this revision, submission timeliness and CSED instructional improvements are now covered in IRM 25.3.2.4.5.5, *Cases with Imminent CSEDs*, IRM 25.3.2.6.(1), *Revenue Officer Referral and Account Disposition*, and IRM 25.3.2.4.1(2), *Preliminary Actions*.

**IMPLEMENTATION DATE:**

Implemented

**RESPONSIBLE OFFICIAL:**

Director, Collection Policy.

**CORRECTIVE ACTION MONITORING PLAN:**

N/A

**RECOMMENDATION 3:**

The Director, Field Collection, SB/SE Division, should issue a memorandum to all group managers to review and consider reassigning cases in situations where significant delays in employee schedules will cause missed time frame deadlines, helping to ensure that the IRS complies with IRM and Chief Counsel Directives Manual timeliness requirements and avoids potentially violating taxpayers' rights.

**CORRECTIVE ACTION:**

The Director, Field Collection will issue a message to remind group managers to consider reassigning cases when practicable to avoid missed time frame deadlines, helping to ensure that the IRS meets timeliness requirements and avoids potentially violating taxpayer's rights.

**IMPLEMENTATION DATE:**

July 15, 2022

**RESPONSIBLE OFFICIAL:**

Director, Field Collection.

**CORRECTIVE ACTION MONITORING PLAN:**

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



**RECOMMENDATION 4:**

The Director, Collection Policy, SB/SE Division, should update IRM 5.17.4.8.2.1(1) to replace the example reasons for recommending a suit to foreclose to ensure that revenue officers take into consideration all factors when determining whether to recommend a suit to foreclose or a seizure on a taxpayer's property.

**CORRECTIVE ACTION:**

The example reason used in the lead in paragraph of IRM 5.17.4.8.2.1(1), *Administrative Collection Devices Are Not Feasible or Adequate*, will be updated. The IRM's post-clearance approval submission date was February 8, 2022.

**IMPLEMENTATION DATE:**

November 15, 2022

**RESPONSIBLE OFFICIAL:**

Director, Collection Policy.

**CORRECTIVE ACTION MONITORING PLAN:**

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

**RECOMMENDATION 5:**

The Director, Collection Policy, SB/SE Division, should explore developing a process to track suits submitted through IRS, Counsel, and DOJ systems to determine outcomes of suit to foreclose cases accepted for litigation.

**CORRECTIVE ACTION:**

Collection Policy will schedule and chair a meeting with eApproval stakeholders and programmers to explore developing a process to track outcomes in suit to foreclose cases that are accepted for litigation. We will present available options to the Director, Collection Policy.

**IMPLEMENTATION DATE:**

November 15, 2022

**RESPONSIBLE OFFICIAL:**

Director, Collection Policy

**CORRECTIVE ACTION MONITORING PLAN:**

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

**OUTCOME MEASURE:**

Increased Revenue – Potential; [REDACTED] expected to be received from the sale of the foreclosure for [REDACTED] cases in which the IRS did not comply with internal guidelines and procedures, resulting in improper or untimely case actions that prevented the IRS from filing suit (see Recommendation 2).

**IRS RESPONSE:**

IRS management agrees with this outcome measure. Lien foreclosure submissions remain fact dependent and thus the outcome would be determined by individual case factors along with agreement between the Field Collection revenue officer and group manager. The IRS published IRM revisions to better address submission timeliness. (See IRS Response to Recommendation 2, IRS Response to Recommendation 3, and Management Actions identified in the Report).

## Appendix IV

### Glossary of Terms

<b>Term</b>	<b>Definition</b>
Advisory	Provides technical guidance to revenue officers and other personnel about collection issues, including liens and levies.
Clouded Title	A cloud on title is any encumbrance on the property in addition to the Federal tax lien that makes it difficult to determine interests in the property. The existence of a cloud on title casts doubt upon the ability of an owner of real property to convey marketable title to their land, thereby lessening its value.
Collection Due Process (CDP) Rights	I.R.C. §§ 6320 and 6330 gives the taxpayer the right to appeal after the first filing of an NFTL for a liability, before a proposed levy action and after a jeopardy levy, a disqualified employment tax levy, a levy on a Federal contractor, and a levy on State tax refunds. The IRS notifies taxpayers of their CDP rights by issuing a notice explaining their right to request a hearing.
Collection Information Statement	Form used by the IRS to determine a taxpayer's income and expenses to assist the IRS in making a collection determination on past due debt.
Collection Statute Expiration Date (CSED)	Each tax assessment has a CSED. I.R.C. § 6502 provides that the length of the period for collection after assessment of a tax liability is 10 calendar years. The CSED ends the Government's right to pursue collection of a liability.
eApproval System	The system used by the IRS to track I.R.C. § 7403 foreclosure suit recommendations. The IRS began tracking I.R.C. § 7403 foreclosure recommendations through its eApproval system on August 1, 2018, in limited areas, and nationwide in August 2019. The cases are monitored from preapproval until a case is accepted for litigation or a suit recommendation is declined.
Field Collection	An IRS function within the SB/SE Division that helps taxpayers understand and comply with all applicable tax laws and applies the tax laws with integrity and fairness. It is also responsible for protecting the revenue and the interests of the Government through direct collection and enforcement activity with taxpayers or their representatives.
Fiscal Year (FY)	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Integrated Collection System	A system used by Field Collection function employees (revenue officers) to report taxpayer case time and activity.
Internal Revenue Code (I.R.C.)	The body of law that codifies all Federal tax laws, including income, estate, gift, excise, alcohol, tobacco, and employment taxes.



**The IRS Primarily Uses Lien Foreclosures When Pursuing Principal Residences,  
Which Do Not Provide the Same Legal Protections as the Seizure Process**

<b>Term</b>	<b>Definition</b>
Internal Revenue Manual (IRM)	The primary, official source of IRS instructions to staff related to the organization, administration, and operation of the IRS.
Levy	A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages or a legal seizure of property to satisfy a tax debt.
Lien	An encumbrance on property or rights to property as security for outstanding taxes.
Lien Foreclosure	Lien foreclosure is a specific judicial enforcement tool that the IRS can use in certain circumstances to assist in the collection of delinquent taxes. In a lien foreclosure action, the court determines the merits of all claims to and liens on the property and, where the interest of the United States is established, may order the sale of the property.
Life Estate	When recommending foreclosure in special circumstances (such as a taxpayer's advanced age), the IRS may on occasion also request the DOJ create a life estate allowing the taxpayer to remain in the home until the special circumstances resolve. After reducing the tax liability to judgment, the life estate documentation with qualifying parameters remains in place until circumstances qualifying for a sale of the property occur.
Notice of Federal Tax Lien (NFTL)	A notice filed with the appropriate local government office protecting the Federal Government's interest in the taxpayer's assets by providing public notice of the amount of unpaid tax.
PACER	The Public Access to Court Electronic Records (PACER) service provides electronic public access to federal court records. PACER provides the public with instantaneous access to more than 1 billion documents filed at all Federal courts.
Queue	An automated holding file for unassigned inventory of delinquent cases that the Collection function does not have enough resources to immediately assign for contact.
Revenue Officer	Employees in the Field Collection function who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS.
Seizure	The taking of a taxpayer's property to satisfy their outstanding tax liability.

## **Appendix V**

### **Abbreviations**

CDP	Collection Due Process
CSED	Collection Statute Expiration Date
DOJ	Department of Justice
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration



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

(800) 366-4484

**By Web:**

[www.treasury.gov/tigta/](http://www.treasury.gov/tigta/)

**Or Write:**

Treasury Inspector General for Tax Administration  
P.O. Box 589  
Ben Franklin Station  
Washington, D.C. 20044-0589

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