



*Fiscal Year 2018 Statutory  
Review of Restrictions on  
Directly Contacting Taxpayers*

**September 13, 2018**

**Reference Number: 2018-30-070**

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.

**Redaction Legend:**

1 = Tax Return/Return Information

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## HIGHLIGHTS

### FISCAL YEAR 2018 STATUTORY REVIEW OF RESTRICTIONS ON DIRECTLY CONTACTING TAXPAYERS

## Highlights

**Final Report issued on  
September 13, 2018**

Highlights of Reference Number: 2018-30-070  
to the Commissioner of Internal Revenue.

### IMPACT ON TAXPAYERS

The direct contact provisions of Internal Revenue Code (I.R.C.) Section (§) 7521 generally require IRS personnel to stop a taxpayer interview whenever a taxpayer requests consultation with a representative, and prohibits IRS personnel from bypassing a qualified representative without supervisory approval if the representative unreasonably delays the completion of an examination, collection, or investigation. The fair tax collection practices of I.R.C. § 6304(a)(2) prohibit IRS personnel from communicating with a taxpayer if it is known that the taxpayer has an authorized representative.

### WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is required to annually report on the IRS's compliance with the direct contact provisions of the I.R.C. Each year, TIGTA focuses on one IRS office or function that interacts with taxpayers and their representatives on a routine basis. For this year's review, TIGTA analyzed the extent to which Appeals officers in the Office of Appeals comply with the direct contact provisions and fair tax collection practices of the I.R.C. during interactions with taxpayers or their representatives.

### WHAT TIGTA FOUND

The IRS has a number of policies and procedures in place to help ensure that taxpayers are afforded the right to designate an authorized representative to act on their behalf in dealing with IRS personnel in a variety of tax matters. In addition, the IRS has a process to

handle the review and disposition of taxpayer allegations of direct contact violations.

To determine compliance with I.R.C. § 7521 and § 6304(a)(2), TIGTA selected a stratified statistically valid sample of case histories to review. For the sample, TIGTA reviewed the case history narratives for the selected cases and reported the results to Appeals.

TIGTA also identified inconsistencies between guidance for Appeals employees and management's position that the Office of Appeals did not need to adhere to § 7521(b)(2) and (c), which protect taxpayer rights to representation. The Office of Appeals Internal Revenue Manual (IRM) also provides that it is exempt from I.R.C. § 7521(b)(1) which requires IRS employees to explain to taxpayers their rights in examination and collection matters.

Additionally, TIGTA found that the Appeals employee training materials and IRM procedures for Appeals managers and employees do not provide guidance on fair tax collection practices under I.R.C. § 6304(a)(2).

### WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Office of Appeals, update the Appeals IRM for employees and managers to clarify the applicability of I.R.C. §§ 7521(b)(2) and (c), and add I.R.C. § 6304(a)(2) related guidance and training regarding taxpayer rights under I.R.C. § 6304(a)(2); and consult with the Office of Chief Counsel on the applicability of I.R.C. § 7521(b)(1).

The IRS agreed with all recommendations and has already addressed two of the three recommendations including requesting an opinion from the Office of Chief Counsel on the applicability of I.R.C. § 7521(b)(1). Additionally, the IRS will update its guidance to Office of Appeals employees clarifying the applicability of I.R.C. §§ 7521(b)(2) and (c), will add I.R.C. § 6304(a)(2) guidance and training to emphasize the importance of protecting taxpayers' right to representation, and will designate to whom group managers should report cases with potential violations.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 13, 2018

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

**FROM:**

Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – Fiscal Year 2018 Statutory Review of Restrictions  
on Directly Contacting Taxpayers (Audit # 201830009)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in Internal Revenue Code (I.R.C.) Sections (§§) 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304 (a)(2). The Treasury Inspector General for Tax Administration is annually required to evaluate the IRS's compliance with the direct contact provisions.<sup>1</sup> This audit is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

Management's complete response to the draft report is included as Appendix 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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<sup>1</sup> I.R.C. § 7803(d)(1)(A)(ii).



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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*Table of Contents*

[Background](#).....Page 1

[Results of Review](#) .....Page 3

[The Internal Revenue Service Has a Process to Handle  
the Review and Disposition of Taxpayer Allegations  
of Direct Contact Violations](#) .....Page 3

[Actions Are Needed to Ensure That the Office of Appeals  
Adheres to the Law Protecting Taxpayer Rights to  
Representation](#).....Page 4

[Recommendation 1:](#).....Page 7

[Recommendations 2 and 3:](#) .....Page 8

**Appendices**

[Appendix I – Detailed Objective, Scope, and Methodology](#) .....Page 9

[Appendix II – Major Contributors to This Report](#) .....Page 12

[Appendix III – Report Distribution List](#) .....Page 13

[Appendix IV – Previous Audit Reports Related to This  
Statutory Review](#).....Page 14

[Appendix V – Glossary of Terms](#) .....Page 15

[Appendix VI – Management’s Response to the Draft Report](#) .....Page 18



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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*Abbreviations*

ACDS	Appeals Centralized Database System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration



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## *Fiscal Year 2018 Statutory Review of Restrictions on Directly Contacting Taxpayers*

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### *Background*

Taxpayers have a right to representation in matters before the Internal Revenue Service (IRS).<sup>1</sup> Internal Revenue Code (I.R.C.) Sections (§§) 7521(b)(2) and (c) provide taxpayers the right to representation during in-person interviews.<sup>2</sup> The Treasury Inspector General for Tax Administration (TIGTA) is required to annually assess whether the IRS is protecting taxpayers' rights to representation under I.R.C. § 7521.<sup>3</sup> I.R.C. § 6304(a) also protects taxpayers' rights to representation by prohibiting contact of a taxpayer if it knows the taxpayer is represented.<sup>4</sup>

The effort to determine whether the IRS is complying with I.R.C. §§ 7521(b)(2) and (c) (hereafter referred to as the direct contact provisions) and other provisions of the law protecting the right to representation is complicated by the fact that the IRS cannot proactively identify IRS employee violations of this law. The TIGTA Office of Investigations receives complaints and initiates investigations based on those complaints. The Office of Investigations tracks those complaints and investigations using its Criminal Results Management System.

During Fiscal Year 2017, the Office of Investigations received 11 new complaints alleging that IRS employees bypassed taxpayer representatives and contacted taxpayers directly. The Office of Investigations evaluates all complaints and makes a determination as to whether it will initiate an investigation into the matter or take other appropriate action. In Fiscal Year 2017, three new investigations were initiated based on these 11 complaints. Additionally, the Office of Investigations closed four investigations during the fiscal year, some of which may have been opened in prior years.

To designate power of attorney authority to a representative, a taxpayer files Form 2848, *Power of Attorney and Declaration of Representative*, with the IRS. Once received and validated, the IRS records the representative's authorization in its Centralized Authorization File. This file is

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<sup>1</sup> I.R.C. §§ 7803(b)(3)(I), 7521(b)(2), and 6304(a)(2). See Appendix V for a glossary of terms.

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

<sup>3</sup> I.R.C. § 7803(d)(1)(A)(ii).

<sup>4</sup> I.R.C. § 6304(a)(2) provides: *If the Secretary knows the taxpayer is represented by any person authorized to practice before the Internal Revenue Service with respect to such unpaid tax and has knowledge of, or can readily ascertain, such person's name and address, unless such person fails to respond within a reasonable period of time to a communication from the Secretary or unless such person consents to direct communication with the taxpayer.*



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## *Fiscal Year 2018 Statutory Review of Restrictions on Directly Contacting Taxpayers*

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linked to other IRS applications and is used by many functions within the IRS to determine when a taxpayer is working with an authorized representative.

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

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

The Senate Committee on Finance conducted numerous hearings in Calendar Years 1997 and 1998 addressing the rights of taxpayers. Several witnesses provided statements regarding abuses of taxpayer rights by IRS employees, including incidents in which employees failed to observe the taxpayers' right to representation. Shortly after these hearings, the IRS Restructuring and Reform Act of 1998 was enacted into law, which directed the IRS to revise Publication 1, *Your Rights as a Taxpayer*, to better inform taxpayers of these rights. In addition, this Act added I.R.C. § 7803(d)(1)(A)(ii), which requires TIGTA to annually evaluate the IRS's compliance with the direct contact provisions. TIGTA has previously performed 19 annual reviews to meet this requirement. Appendix IV lists the five most recent audit reports related to this statutory review.

This review was performed with information obtained from the offices of the Commissioner, the Office of Appeals, and the IRS Human Capital Officer, during the period April through July 2018. 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. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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*Results of Review*

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

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

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

During our review, we requested a report of Fiscal Year 2017 complaint referrals that the Employee Conduct and Compliance office maintained on the E-trak database. We reviewed these cases and determined that the Employee Conduct and Compliance Office closed nine cases in which there were allegations of possible direct contact violations. In four of the nine cases, a Clearance letter or a Closed Without Action letter was issued to the employee. In three of the nine cases there was a cautionary statement issued, and in the two remaining cases there was verbal counseling to the employee. We reviewed the details of the closed cases and we agree with the final disposition and disciplinary actions taken on each case.

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



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Actions Are Needed to Ensure That the Office of Appeals Adheres to the Law Protecting Taxpayers Rights to Representation**

At the inception of this audit, Office of Appeals management took the position that I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2) did not apply to the Office of Appeals. According to Appeals management, there has been some uncertainty and controversy over the years about the applicability of these statutory provisions to Appeals. However, management's position appeared somewhat inconsistent with its own guidance. The Office of Appeals Internal Revenue Manual (IRM) provides:

(2) I.R.C. § 7521(b)(2) requires an officer or employee of the Internal Revenue Service to stop the interview whenever a taxpayer wishes to consult with a representative qualified to represent the taxpayer before the Internal Revenue Service.

(3) A taxpayer's involvement with Appeals is voluntary, so the need to "bypass an authorized representative" should be highly unlikely. In those rare occasions where an Appeals Technical Employee determines that it is appropriate to bypass a representative, the employee should follow procedures shown in IRM 8.6.1.4.3.2, *Bypass of a Representative*.<sup>5</sup>

While its own procedures seem to recognize the applicability of I.R.C. § 7521(b)(2), Office of Appeals management has taken the position that Appeals' taxpayer conferences are voluntary in nature and are not the kinds of "interviews" that Congress intended to address in § 7521(b). As evidence of the uncertainty and controversy over the meaning of the statute, the Office of Appeals management cited *Keene v. Commissioner*, a Tax Court case, in which a taxpayer claimed that his rights to a Collection Due Process hearing under I.R.C. § 6330 were denied because the Appeals Officer refused the taxpayer's request to record the hearing. The taxpayer cited I.R.C. § 7521(a) which grants taxpayers the right to record in person interviews with IRS employees in connection with the determination or collection of a tax. The IRS argued in the case that an "interview" is different from a "hearing" in that a taxpayer can be compelled to attend an interview whereas a Collection Due Process hearing is voluntary in nature since it is requested by the taxpayer. The Tax Court disagreed with the IRS and held that the taxpayer had a right under I.R.C. § 7521(a) to record a Collection Due Process hearing.<sup>6</sup> The Office of Appeals management also stated in discussions with TIGTA that it is not subject to I.R.C. § 6304(a)(2) since their interactions with taxpayers are not in connection with the collection of an unpaid tax.

TIGTA questioned the position held by the Office of Appeals that the provisions of §§ 7521(b)(2) and (c) do not apply to it since the Tax Court ruled against the IRS's position in

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<sup>5</sup> IRM 8.6.1.4.3.2 (Oct. 1, 2016). This IRM cites Treasury Regulation § 601.506 which grants the IRS the authority to bypass taxpayers' representatives if the representatives unreasonably delay an examination or investigation or fail to provide necessary non-privileged information.

<sup>6</sup> *Keene v. Commissioner*, 121 T.C. 8 (2003).



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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*Keene.* In light of the fact that the Office of Appeals makes determinations with respect to collection matters, we also questioned management’s assertion of the inapplicability of I.R.C. § 6304(a)(2). After consultation with the Office of Chief Counsel, the Office of Appeals conceded that it is subject to the provisions of I.R.C. §§ 7521(b)(2) and (c) and also I.R.C. § 6304(a)(2).

***The Office of Appeals should update training material and IRM guidance to include fair tax collection practices***

As noted above, the Office of Appeals has guidance on I.R.C. §§ 7521(b)(2) and (c) in the IRM. However, according to the IRM, the need to bypass a representative is referenced as a rare occasion, and notes, “A taxpayer’s involvement with Appeals is voluntary, so the need to ‘bypass an authorized representative’ should be highly unlikely.” We also reviewed the Appeals training materials and identified vague language that encourages employees to “act in accordance with the Taxpayer Bill of Rights.” In light of management’s assertion at the inception of this audit, that I.R.C. §§ 7521(b)(2) and (c) were inapplicable to the Office of Appeals, we believe the guidance should be updated to clarify the applicability of the provisions.<sup>7</sup> However, we did not observe any references to, or guidance for, the fair tax collection practices under I.R.C. § 6304(a)(2). We inquired with the IRS to confirm our finding and were informed that the Office of Appeals did not have any guidance in the IRM for Appeals managers or employees focused on I.R.C. § 6304(a)(2) provisions, nor did the IRS provide training specifically focused on § 6304(a)(2) for Appeals managers or employees. In contrast, the IRM for Field Collection group managers instructs group managers to report any potential employee violations of the fair tax collection practices to the local Labor Relations Specialist by the close of the next business day following notification of the alleged violation. If violations are confirmed, group managers are instructed to work with the Labor Relations Specialist to determine the next appropriate action.<sup>8</sup> As described above, the Office of Appeals did not believe its hearings were subject to the fair tax collection practices under I.R.C. § 6304(a)(2). If the Office of Appeals does not implement written guidance regarding taxpayer rights under the fair tax collection practices under I.R.C. § 6304(a)(2), then IRS managers and employees could potentially violate taxpayer rights.

***The Office of Appeals can take additional steps to ensure that taxpayers’ rights to representation are protected***

In order to determine how well Office of Appeals officers were complying with the direct contact provisions and fair tax collection practices of the I.R.C., we obtained a download from the Office of Appeals Centralized Database System (ACDS) and reviewed the case history narratives for cases with history action dates between October 1, 2016, and September 30, 2017.

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<sup>7</sup> IRM 1.4.28 (Aug. 15, 2017) and IRM 8.6.1. (Oct. 1, 2016)

<sup>8</sup> IRM 1.4.50.3.2.3 (Sep. 12, 2014).



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

We systemically searched these records using certain key words which would indicate that a potential direct contact or fair tax collection violation took place. After searching based on this specific criteria, TIGTA determined that there were 8,556 case history narratives that matched our criteria, which represented 7,325 unique taxpayer cases.

From the total cases meeting our criteria, we identified a total of 7,236 unique cases which potentially relate to I.R.C. §§ 7521(b)(2) and (c) and then selected a stratified statistically valid sample size of 110 cases.<sup>9</sup> Additionally, TIGTA conducted a review of the remaining 89 unique cases containing key words related to I.R.C. § 6304(a)(2). We reviewed the case history narratives for these sampled cases and determined that the Appeals officers working these cases generally followed the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c). However, TIGTA found \*\*\*\*\*1\*\*\*\*\*. The Office of Appeals agreed with TIGTA’s finding and concurred that \*\*\*\*\*1\*\*\*\*\* after which it took appropriate actions \*\*\*1\*\*\* \*\*\*\*\*1\*\*\*\*\*. \*\*\*\*\*1\*\*\*\*.

Further, in the review of the 89 cases containing potential I.R.C. § 6304(a)(2) related narratives, we did not find any indication that rights granted under this provision were violated. However, because of the Office of Appeals initial position that these provisions of the law did not apply, we cannot confidently assess the extent to which potential violations under I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2) may or may not have existed during interactions between Office of Appeals employees and taxpayers during Fiscal Year 2017. It is reasonable to believe that the views on the applicability of the law held by the Office of Appeals leadership are shared by some or all of the views held by its employees. Additionally, our review consists of reviewing case histories written by Office of Appeals employees who self-report the narratives. While it is reasonable to rely on case histories, if employees do not understand a particular provision of the law applies to them, they may not be including facts relevant in case histories for us determine whether the right to representation were actually protected.

**The Office of Appeals should reassess whether other requirements of I.R.C. § 7521 are applicable**

As described above, the Office of Appeals cited to a Tax Court case in which its rationale was refuted to assert that the provisions of I.R.C. §§ 7521(b)(2) and (c) do not apply to it. This same rationale appears also to be used by the Office of Appeals to assert that other safeguards under I.R.C. § 7521 do not apply to it. I.R.C. § 7521(b)(1) provides:

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<sup>9</sup> Our sampling plan was based on a 95 percent confidence interval, a ± 5 percent precision, and a 5 percent expected error rate.



Fiscal Year 2018 Statutory Review of Restrictions on Directly Contacting Taxpayers

(b) Safeguards

(1) Explanations of processes – An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer:

(A) in the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer’s rights under such process, or

(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer’s rights under such process.

This section of the law requires that IRS employees explain to taxpayers their rights in examination and collection matters. The Office of Appeals hears appeals for both examination and collection matters. However, the Office of Appeals IRM provides that it is exempt from I.R.C. § 7521(b)(1):

Unlike interviews with Collection and Examination, conferences with Appeals are new hearings requested by the taxpayer, where the taxpayer raises issues for consideration.

On that basis, I.R.C. § 7521(b)(1) does not apply to Appeals.<sup>10</sup>

The holding of Keene v. Commissioner stands for the proposition that the term “interview” encompasses hearings held by the Office of Appeals, and therefore, the rationale of the IRM appears to run afoul of the holding in that case. Additionally, the first right under the Taxpayer Bill of Rights is that taxpayers must be informed, and Office of Appeals employees should be required to provide this information to taxpayers.<sup>11</sup>

Recommendations

The Chief, Office of Appeals, should:

Recommendation 1: Ensure that \*\*\*\*\*1\*\*\*\*\* and ensure that \*\*\*\*\*1\*\*\*\*\* \*\*\*\*\*1\*\*\*\*\*.

Management’s Response: IRS management agreed with this recommendation. The Office of Appeals has already taken action to address \*\*\*\*\*1\*\*\*\*\* \*\*\*\*\*1\*\*\*\*\*.

<sup>10</sup> IRM 8.6.1.5.1(4) (Oct. 1, 2016).

<sup>11</sup> I.R.C. § 7803(a)(3)(A).



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Recommendation 2:** Update guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and add I.R.C. § 6304(a)(2) related guidance and training to emphasize the importance of protecting taxpayers' right to representation when working with Appeals and that designates to whom group managers should report cases with potential violations.

**Management's Response:** IRS management agreed with this recommendation. The Office of Appeals will update its guidance to employees clarifying the applicability of I.R.C. §§ 7521(b)(2) and (c), will add I.R.C. § 6304(a)(2) guidance and training to emphasize the importance of protecting taxpayers' right to representation, and will designate to whom group managers should report cases with potential violations.

**Recommendation 3:** Consult with the Office of Chief Counsel on the applicability of I.R.C. § 7521(b)(1) to the Office of Appeals.

**Management's Response:** IRS management agreed with this recommendation. The Office of Appeals has already requested the Office of Chief Counsel for an opinion on the applicability of I.R.C. § 7521(b)(1) to the Office of Appeals.



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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## **Appendix I**

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

The overall objective of this review was to determine whether the IRS's Office of Appeals complied with legal guidelines addressing the direct contact of taxpayers and their representatives set forth in I.R.C. §§ 7521(b)(2) and (c) and where applicable, the fair tax collection practices set forth in I.R.C. § 6304(a)(2). To accomplish this objective, we:

- I. Determined the procedures and controls the IRS uses to ensure that employees are following the direct contact provisions and fair tax collection practices.
  - A. Contacted IRS management personnel in the Office of Appeals to determine if an IRS system has been developed or is planned to identify those cases where taxpayers have requested consultation with a representative or when an IRS employee bypassed a representative and directly contacted the taxpayer.
  - B. Conducted searches on the IRS intranet and contacted IRS officials to identify guidance provided to employees to help them meet the direct contact provisions and fair tax collection practices, and to group managers to help them provide oversight of their employees' compliance with the direct contact provisions set forth in I.R.C. §§ 7521(b)(2) and (c); the fair tax collection practices set forth in I.R.C. § 6304(a)(2).
  - C. Analyzed the Office of Appeals' position on the applicability of I.R.C. §§ 7521(b)(2) and (c) and I.R.C. § 6304(a)(2) to Appeals employees and determined how the Office of Appeals procedures address other requirements of I.R.C. § 7521.
- II. Determined how well the IRS is ensuring that taxpayer rights, under the direct contact provisions and the fair tax collection practices of the I.R.C., are protected during Appeals actions.
  - A. Reviewed the ACDS history narratives for the stratified random sample of Appeals cases and the results on term "6304" with history action dates between October 1, 2016, and September 30, 2017, to determine whether Appeals officers were complying with the direct contact provisions set forth in I.R.C. § 7521(b)(2) and (c) and the fair tax collection practices set forth in I.R.C. § 6304 (a)(2).
    1. Electronically searched the ACDS database for Open and Archived Appeals case history narratives with history action dates between October 1, 2016, and September 30, 2017. We searched for certain key words that would indicate a potential direct contact violation.



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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2. The query produced 8,556 case history narratives that matched our criteria. This represented 7,325 unique taxpayer cases. We then classified the results of the key words into eight separate groupings as follows:
  - Group 1: Direct contact and directly contact.
  - Group 2: Consult with.
  - Group 3: Representation; 8.6.1.4.3; no contact with representative; seek advice with representative; right of consultation with representative; and no communication with POA.<sup>1</sup>
  - Group 4: 7521; 5.1.10.7.1; stop interview; stopped interview; stop the interview; stopped the interview; suspend interview; suspended interview; suspend the interview; suspended the interview; discontinue interview; discontinued interview; discontinue the interview; discontinued the interview; end interview; ended interview; end the interview; ended the interview; cease interview; ceased interview; cease the interview; ceased the interview; stop contact; stopped contact; suspend contact; suspended contact; end contact; ended contact; discontinued contact; stop TP; stopped TP; stop taxpayer; stopped taxpayer; suspend TP; suspended TP; suspend taxpayer; and suspended taxpayer.<sup>2</sup>
  - Group 5: 4016; 5.1.23.5; bypass; by-pass; by pass; not the POA; unreasonable delay; and hindrance of.<sup>3</sup>
  - Group 6: No form 2848; no F2848; valid Form 2848; valid F2848; TP consent; revoked F2848; revoked form 2848; F2848 not on file; and Form 2848 not on file.
  - Group 7: Counsel of record.
  - Group 8: 6304.
3. We selected a stratified random sample from the seven groupings, which resulted in sample size of 110 cases, and reviewed 100 percent of the grouping containing key words related to I.R.C. § 6304(a)(2) with a total of 89 unique cases.<sup>4</sup>

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<sup>1</sup> In Group 3, the term 8.6.1.4.3 represents IRM 8.6.1.4.3 (Oct. 1, 2016) and the term POA represents Power of Attorney.

<sup>2</sup> In Group 4, the term 5.1.10.7.1 represents IRM 5.1.10.7. (Nov. 20, 2017) and the term TP represents taxpayer.

<sup>3</sup> In Group 5, the term 5.1.23.5 represents IRM 5.1.23.5 (Oct. 30, 2014).

<sup>4</sup> Obtained assistance with developing the sampling plan from TIGTA's contracted statistician. Our sampling plan was based on a 95 percent confidence level, 5 percent error rate, and  $\pm 5$  percent precision. We oversampled the number of cases selected to ensure the randomness of the sample.



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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- B. Contacted officials in the IRS Employee Conduct and Compliance office to identify any taxpayer complaints resulting from potential IRS employee direct contact violations.
    - 1. Obtained and reviewed any direct contact complaints recorded on the E-trak system during Fiscal Year 2017 to identify and document the resolution or current status of the complaints and the number of taxpayers involved.
  - C. Reviewed the direct contact complaints and investigations closed by TIGTA's Office of Investigations in Fiscal Year 2017 and tracked on the Criminal Results Management System.
- III. Reviewed Appeals employee training materials to determine whether the IRS provided training/learning opportunities that adequately addressed the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) and the fair tax collection practices of I.R.C. § 6304(a)(2).

**Data validation methodology**

We assessed the reliability of the ACDS Case History files by: 1) performing electronic testing of required data elements, 2) reviewing existing information about the data and the system that produced them, and 3) comparing data elements from a judgmental sample of 20 sampled taxpayer accounts against data in the IRS's Integrated Data Retrieval System to ensure the accuracy of the data from the ACDS. We determined that the data were sufficiently reliable for the purposes of this report.

**Internal controls methodology**

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



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Appendix II**

*Major Contributors to This Report*

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Christina M. Dreyer, Director  
Javier Fernandez, Audit Manager  
Reatsamay Ly, Lead Auditor  
Victor Taylor, Lead Auditor  
Lance J. Welling, Information Technology Specialist (Data Analytics)



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Appendix III**

*Report Distribution List*

Deputy Chief, Appeals  
Deputy Commissioner for Services and Enforcement  
Deputy Human Capital Officer  
Director, Office of Audit Coordination



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Appendix IV**

*Previous Audit Reports Related  
to This Statutory Review*<sup>1</sup>

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

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

TIGTA, Ref. No. 2015-30-061, *Fiscal Year 2015 Statutory Review of Restrictions on Directly Contacting Taxpayers* (July 2015).

TIGTA, Ref. No. 2014-30-079, *Fiscal Year 2014 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Sept. 2014).

TIGTA, Ref. No. 2013-30-080, *Fiscal Year 2013 Statutory Review of Restrictions on Directly Contacting Taxpayers* (Aug. 2013).

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<sup>1</sup> This list provides the five most recent of the 19 previous reports issued by TIGTA.



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

**Appendix V**

*Glossary of Terms*

<b>Term</b>	<b>Definition</b>
<b>Appeals Centralized Database System (ACDS)</b>	An IRS application that provides workload management, case assignment/tracking, inventory control, timekeeping, reporting, and administrative support to Appeals employees.
<b>Appeals Technical Employee</b>	An umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration.
<b>Automated Labor and Employee Relations Tracking System</b>	An application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.
<b>Calendar Year</b>	The 12-consecutive-month period ending on December 31.
<b>Centralized Authorization File</b>	A computerized system of records which houses authorization information from both powers of attorney and tax information authorizations. It contains several types of records, among them taxpayers, representatives, tax forms, tax periods, and authorizations.
<b>Criminal Results Management System</b>	A management information system that provides TIGTA Office of Investigations the ability to manage and account for complaints received, including congressional inquiries, investigations initiated, and leads developed from Local Investigative Initiates and National Investigative Initiates.
<b>E-trak</b>	A web interface that easily allows business requirements to be translated into systemic configuration for case management and case tracking covering multiple IRS business functions.



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

<b>Term</b>	<b>Definition</b>
<b>Employee Conduct and Compliance Office</b>	An office within the Workforce Relations Division of the IRS's Human Capital Office that provides a centralized structure and forum for addressing concerns about employee conduct. It ensures that all allegations are addressed appropriately, in a fair and consistent manner, and that corrective actions are taken when necessary. In doing so, it handles all TIGTA complaint referrals and reports of investigation, as well as congressional inquiries and IRS Commissioner correspondence involving employee issues and misconduct.
<b>Field Collection</b>	An IRS function within the Small Business/Self-Employed Division that helps taxpayers understand and comply with all applicable tax laws and applies the tax laws with integrity and fairness. As a taxpayer-facing civil enforcement function, 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, and also detecting fraud and referring appropriate violations to IRS Criminal Investigation.
<b>Field Examination</b>	Examinations of individuals, partnerships, and corporations that occur either at the taxpayer's place of business or through interviews at an IRS office.
<b>Fiscal Year</b>	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.
<b>Integrated Data Retrieval System</b>	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
<b>Internal Revenue Code (I.R.C.)</b>	The Federal tax law, enacted by Congress in Title 26 of the United States Code. It is organized by topics such as income, estate and gift, employment, and miscellaneous excise taxes.
<b>Internal Revenue Manual (IRM)</b>	The official source of IRS policies, procedures, and guidelines.
<b>Taxpayer Advocate Service</b>	An independent organization within the IRS that works to protect taxpayers' rights by ensuring that all taxpayers are treated fairly and that they know and understand their rights.



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

<b>Term</b>	<b>Definition</b>
<b>TIGTA's Data Center Warehouse</b>	A collection of IRS databases containing various types of taxpayer account information that is maintained by TIGTA for the purpose of analyzing data for ongoing audits and investigations.
<b>TIGTA's Office of Investigations</b>	The Office of Investigations' overall mission is to help protect the ability of the IRS to collect revenue for the Federal Government. It conducts investigations and proactive investigative initiatives to ensure the integrity of IRS employees, contractors, and other tax professionals; ensure IRS employee and infrastructure security; and protect the IRS against external attempts to corrupt tax administration.



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

**Appendix VI**

*Management's Response to the Draft Report*



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

Date: August 29, 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Donna C. Hansberry  
Chief, Appeals

SUBJECT:

Draft Report – Fiscal Year 2018 Statutory Review of Restrictions  
on Directly Contacting Taxpayers (Audit #201830009)

Thank you for the opportunity to review and comment on the subject draft audit report and its recommendations. We are pleased TIGTA acknowledged that Appeals has longstanding guidance in its Internal Revenue Manual implementing the “direct contact” provisions of Internal Revenue Code (I.R.C.) §§ 7521(b)(2) and (c) and that, \*\*1\*\*  
\*\*\*\*\*1\*\*\*\*\*, Appeals Officers are following this guidance. Respect for taxpayer rights is an integral part of our mission to resolve cases impartially in a manner that improves voluntary compliance and public confidence in the integrity of the tax system.

Appeals understands the importance of taxpayers’ right to representation during the Appeals process. We appreciate your recommendations and understand that Appeals can do more to clarify our procedures with respect to I.R.C. §§ 7521 and 6304. The attached response indicates our agreement with each recommendation and identifies our proposed corrective actions.

Your report notes that Appeals management initially questioned whether Appeals conferences are the type of IRS interaction contemplated by I.R.C. §§ 7521 or 6304. A little context is in order here. Appeals is charged with resolving tax disputes in an independent, administrative forum that favors neither the Government nor the taxpayer. To properly fulfill our mission, taxpayers must understand that the appeals process is not a continuation of their interactions with IRS compliance functions. Appeals Officers do not investigate, develop, or examine tax matters. Some of the provisions of §§ 7521 and 6304 seem aimed at actions taken by IRS employees during examination and collection actions, not by an Appeals Officer during an Appeals conference. For example, §7521(b)(1) requires IRS employees to explain the audit process to a taxpayer before conducting an interview of the taxpayer. We think requiring an Appeals Officer to explain the audit process to a taxpayer whose audit has been completed and whose case is now before Appeals is potentially confusing to taxpayers.



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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We hope this perspective explains management's initial views about §§ 7521 and 6304. Notwithstanding our concerns, Appeals has never wavered in its commitment to taxpayer rights.

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

Attachment



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*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Recommendation 1:**

The Chief, Appeals, should ensure that\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\* and ensure that\*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*.

**Proposed Corrective Action:**

Appeals agrees with this recommendation and has already taken action \*\*\*\*\*1\*\*\*\*\*.

**Implementation Date:** November 15, 2018

**Responsible Official:** Director, Case and Operations Support

**Recommendation 2:**

The Chief, Appeals, should update guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and add I.R.C. § 6304(a)(2) related guidance and training to emphasize the importance of protecting taxpayers' right to representation when working with Appeals and that designates to whom group managers should report cases with potential violations.

**Proposed Corrective Action:**

Appeals agrees with this recommendation. Appeals will update guidance to employees that clarifies the applicability of I.R.C. §§ 7521(b)(2) and (c) and add I.R.C. § 6304(a)(2) related guidance and training to emphasize the importance of protecting taxpayers' right to representation when working with Appeals and that designates to whom group managers should report cases with potential violations.

**Implementation Date:** June 15, 2019

**Responsible Official:** Director, Case and Operations Support

**Recommendation 3:**

The Chief, Appeals, should consult with the Office of Chief Counsel on the applicability of I.R.C. § 7521(b)(1) to the Office of Appeals.

**Proposed Corrective Action:**

Appeals agrees with this recommendation. Appeals has already asked the Office of Chief Counsel for an opinion on the applicability of I.R.C. § 7521(b)(1) to the Office of Appeals.



*Fiscal Year 2018 Statutory Review of  
Restrictions on Directly Contacting Taxpayers*

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**Implementation Date:** November 15, 2018

**Responsible Official:** Director, Case and Operations Support