



*Improvements Are Needed to Ensure  
That Consistent Suitability Checks  
Are Performed for Participation in  
Internal Revenue Service Programs*

**November 21, 2019**

**Reference Number: 2020-40-005**

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

2 = Law Enforcement Techniques/ Procedures and Guidelines for Law Enforcement Investigations or Prosecutions

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## HIGHLIGHTS

### IMPROVEMENTS ARE NEEDED TO ENSURE THAT CONSISTENT SUITABILITY CHECKS ARE PERFORMED FOR PARTICIPATION IN INTERNAL REVENUE SERVICE PROGRAMS

## Highlights

Final Report issued on November 21, 2019

Highlights of Reference Number: 2020-40-005 to the Commissioner of Internal Revenue.

### IMPACT ON TAXPAYERS

The IRS partners with tax professionals and other entities to administer the tax system. Before accepting these individuals, the IRS conducts suitability checks such as background and tax compliance checks to determine if the individuals applying for participation should be accepted in the programs. Allowing unsuitable individuals into the programs would increase the risks to taxpayers.

### WHY TIGTA DID THE AUDIT

This audit was initiated to assess the effectiveness of IRS processes to ensure the suitability of applicants seeking to participate in IRS programs and to follow up on IRS planned corrective actions to address prior TIGTA recommendations.

### WHAT TIGTA FOUND

The IRS's suitability checks for applicants to the Acceptance Agent, Enrolled Agent, and e-File Provider Programs generally ensured that only reputable individuals were accepted in the programs during Fiscal Year 2018. The IRS's continuous suitability checks also ensured that individuals accepted in the programs prior to the initial suitability checks had not engaged in criminal activity warranting removal from the program.

However, the initial and continuous suitability checks vary depending on the specific program to which an individual applies to participate or has been approved to participate. This is

despite the fact that an individual's participation in each of the programs poses similar risks to tax administration. For example, a tax compliance check is performed for all new applicants for each of the programs. However, other checks to determine if an individual has a criminal history, is incarcerated, or is a United States citizen vary depending on the program for which the applicant is applying.

TIGTA also identified that when the Federal Bureau of Investigation reports a criminal history for an applicant, the adjudication process is inconsistent depending on the program to which the individual is applying. For example, the e-File Provider Program denies an applicant if the Federal Bureau of Investigation reports a conviction \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*, whereas the Enrolled Agent and Acceptance Agent Programs allow applicants to participate \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*.

Finally, the IRS has not taken sufficient actions to address the fraudulent submission of fingerprint cards by some applicants to pass their background investigations. TIGTA reported this issue to the IRS in February 2018.

### WHAT TIGTA RECOMMENDED

TIGTA made 10 recommendations including that the IRS 1) assess the risk to tax administration of performing inconsistent initial and continuous suitability checks on individuals seeking to participate or enrolled in the e-File Provider, Acceptance Agent, and Enrolled Agent Programs, 2) assess the risk of the e-File Provider Program's use of decision matrices to adjudicate an applicant's criminal history that are inconsistent with the matrices used by the Acceptance Agent and Enrolled Agent Programs, and 3) work with the Federal Bureau of Investigation to identify additional individuals who may have submitted fingerprint cards that match the fingerprints of another individual.

IRS management agreed with the recommendations and has taken or plans to take corrective actions.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

November 21, 2019

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

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

**SUBJECT:** Final Audit Report – Improvements Are Needed to Ensure That  
Consistent Suitability Checks Are Performed for Participation in  
Internal Revenue Service Programs (Audit # 201840041)

This report presents the results of our review to assess the effectiveness of the Internal Revenue Service's (IRS) processes to ensure the suitability of applicants seeking to participate in IRS programs. This audit was included in our Fiscal Year 2019 Annual Audit Plan and addresses the major management challenge of Security Over Taxpayer Data and Protection of IRS Resources.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Russell P. Martin, Assistant Inspector General for Audit (Returns Processing and Account Services).





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## *Abbreviations*

EPSS	Electronic Products and Services Support
ESAM	External Services Authorization Management
FBI	Federal Bureau of Investigation
IRS	Internal Revenue Service
RAP	Records of Arrests and Prosecutions



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## *Background*

The Internal Revenue Service (IRS) partners with tax professionals and other entities that assist taxpayers in meeting their tax obligations. Before accepting these tax partners into the various IRS programs, the IRS conducts suitability checks to determine if the individuals applying for participation should be accepted to participate in the programs. Depending on the program, the suitability checks may include:

- ***Criminal Background.*** This involves obtaining the applicant's fingerprints, which the IRS forwards to the Federal Bureau of Investigation (FBI) to identify any criminal history.
- ***Tax Compliance.*** This involves reviewing the applicant's tax account on the Master File<sup>1</sup> to verify that the applicant filed all personal and business tax returns, paid all taxes owed, and has not been assessed a fraud penalty by the IRS.
- ***Citizenship.*** This involves researching citizenship information provided by the Social Security Administration to ensure that the applicant is a United States citizen or a resident alien lawfully admitted for permanent residence in the United States.
- ***Professional Licensing (e.g., certified public accountant, attorney).*** This involves researching a licensing authority's website to verify that the applicant has an active professional status, such as verifying that a certified public accountant is licensed to practice or an attorney is in good standing in his or her State or jurisdiction.

To assess whether an applicant with a reported criminal history can participate in an IRS program, IRS employees use a decision matrix that includes three factors:

- Seriousness of the crime (*e.g.*, major, moderate, minor).
- Duration of time since the crime occurred.
- Number of convictions.

Based on these three factors, the employees assign the applicant a risk level. An applicant assigned risk level A or B is permitted to participate in the program, whereas an applicant assigned risk level C is failed.

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<sup>1</sup> The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.



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The programs for which individuals apply and the IRS conducts suitability checks include:

- **E-File Provider Program** – This program enables tax returns to be sent to the IRS in an electronic format (called electronic filing, or e-filing) via an authorized IRS e-File Provider. The Electronic Products and Services Support (EPSS) function uses the External Services Authorization Management (ESAM) web application to receive applications for the e-File Provider Program and record the results of performed suitability checks.
- **Acceptance Agent Program** – This program authorizes an individual or entity to assist resident and nonresident alien individuals and other foreign persons to obtain an Individual Taxpayer Identification Number<sup>2</sup> from the IRS. IRS employees conduct suitability checks on the applicants and record the results in the Real-Time System. The IRS also authorizes some Acceptance Agents to authenticate the individual's foreign status and identity. These are referred to as Certifying Acceptance Agents. To be certified, these individuals must also complete forensic document training that is provided by an accredited vendor. The applicant must submit the training certificates of completion to the IRS along with Form 13551, *Application to Participate in the IRS Acceptance Agent Program*.
- **Enrolled Practitioner Program**<sup>3</sup> (hereafter referred to as **Enrolled Agent Program**) – This program allows an individual to represent taxpayers before the IRS as an Enrolled Agent. These individuals must either pass a three-part comprehensive IRS test covering individual and business tax returns or have gained experience as a former IRS employee. Enrolled Agents, like attorneys and certified public accountants, are unrestricted as to the taxpayers they can represent, types of tax matters they can handle, and IRS offices in which they can represent clients. Applicants apply for enrollment online or by submitting Form 23, *Application for Enrollment to Practice Before the Internal Revenue Service*, to the IRS. The Return Preparer Office maintains application data for the Enrolled Agent Program in the E-Trak System.

This review was performed in the EPSS function at the IRS's Campus in Andover, Massachusetts, with information from the Submission Processing function and Return Preparer office during the period June 2018 through June 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the

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<sup>2</sup> A tax processing number issued by the IRS to individuals who are required to have a taxpayer identification number but who do not have, and are not eligible to obtain, a Social Security Number.

<sup>3</sup> This program includes both Enrolled Agents and Enrolled Retirement Plan Agents. The IRS no longer accepts new applications to become an Enrolled Retirement Plan Agent, but continues to renew existing enrollments.



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evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

However, the scope of our testing to expand our identification of individuals who fraudulently submit fingerprints that were submitted by other individuals to circumvent criminal background checks was impaired. This relates to the testing we planned to conduct based on a memorandum<sup>4</sup> we issued to the IRS in February 2018, in which we reported that some applicants are submitting fingerprint cards using their identification information, but the fingerprints on the card match the fingerprints previously submitted by another individual. This analysis could not be performed because the IRS was unable to provide a data extract from their Automated Electronic Fingerprinting database for the applicants accepted in its programs after September 13, 2016. The IRS was unable to provide the data during our fieldwork because its limited Information Technology resources were used to address other priorities. 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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<sup>4</sup> Treasury Inspector General for Tax Administration, *Process and Procedures for Identifying Duplicate/Fraudulent Submission of Fingerprint Cards* (February 8, 2018). See Appendix IV for the memorandum and Appendix V for IRS management's response.



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*Results of Review*

**The Programs' Initial and Continuous Suitability Checks Are Inconsistent**

Our review of a statistical sample<sup>5</sup> of 163 individuals approved to participate in the Acceptance Agent, Enrolled Agent, or e-File Provider Programs during Fiscal Year<sup>6</sup> 2018 found that IRS suitability checks generally ensure that only reputable individuals are accepted into these programs. The IRS also timely processed most applications from individuals seeking to participate in the programs. In addition, a review of another statistically valid sample<sup>7</sup> of 170 individuals accepted into these programs prior to Fiscal Year 2018 found that none of the individuals engaged in a criminal activity that warranted removal from the program, but five individuals were not in tax compliance. The IRS identified and was addressing the tax compliance issue for four of these five individuals. \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. We notified IRS management, and they responded that tax compliance checks \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*.

We also identified that the comprehensiveness of the initial and continuous suitability checks that the IRS performs varies depending on the specific program to which an individual applies. For example, a tax compliance check is performed on all new applicants for each program but other suitability checks vary depending on the program (*e.g.*, checks to determine if the individual has a criminal background, is incarcerated, is a United States citizen, is deceased, is on the Specially Designated Nationals list,<sup>8</sup> or has an identity theft marker on his or her tax account). Management stated that the main reason for the inconsistent suitability checks is that different functional areas oversee each program, and each program has its own policy, regulations, and procedures. However, we believe each program poses similar, and significant,

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<sup>5</sup> We selected a statistical sample using a confidence level of 90 percent, an expected error rate of 5 percent, and a precision factor of  $\pm 5$  percent. We used a stratified sampling technique to evaluate both licensed and unlicensed applicants to all three programs. We selected 51 applicants to the Acceptance Agent Program, 58 applicants to the Enrolled Agent Program, and 54 applicants to the e-File Provider Program.

<sup>6</sup> 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.

<sup>7</sup> We selected a statistical sample using a 90 percent confidence level, an expected error rate of 5 percent, and a precision factor of  $\pm 5$  percent. We used a stratified sampling technique to evaluate both licensed and unlicensed applicants from all three programs. We selected 53 applicants to the Acceptance Agent Program, 64 applicants to the Enrolled Agent Program, and 53 applicants to the e-File Provider Program.

<sup>8</sup> The Department of the Treasury publishes a list of individuals and companies that are restricted from participating in financial activities in the United States. The list includes individuals such as terrorists and narcotics traffickers.



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risks to tax administration and the same comprehensive suitability checks should be conducted on the individuals.

In addition, there is also inconsistency among the various programs as it relates to continual tax compliance checks performed once applicants are approved for participation. For example, the IRS uses its *Automated Suitability Analysis Program* to perform ongoing systemic tax compliance checks of individuals participating in the e-File Provider Program. This program performs a daily check to identify e-File Program participants who are not compliant with their tax obligations, including not timely filing their return or having an outstanding tax liability. Individuals accepted in other programs \*\*\*\*\*2\*\*\*\*\*  
\*\*\*2\*\*\*.

Another concerning inconsistency relates to the requirements for background checks on applicants. Participation in the Enrolled Agent Program requires the performance of a criminal background check \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*, whereas the Acceptance Agent and e-File Provider Programs require a criminal background check \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*. IRS management stated that their decision \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\* is partly a result of concerns previously raised by stakeholders about the burden on applicants who would need to submit a fingerprint card.

\*\*\*\*\*2\*\*\*\*\* further increases the risk of not detecting an applicant who, although licensed, may not be suitable to participate in an IRS program. The National Association of State Boards of Accountancy reports<sup>9</sup> that only 13 State Boards of Accountancy conduct criminal background checks on individuals who apply for a certified public accountant license in their State. In addition, the National Conference of Bar Examiners conducted a survey of 56 State Bar Examination jurisdictions in January 2017 and identified that, of the 51 jurisdictions who responded to the survey, 19 do not obtain bar examination applicants' fingerprints to perform a criminal background check.

Security over taxpayer data and protecting taxpayers' rights are two of the IRS's top management and performance challenges. Therefore, the IRS should perform consistent initial and continuous suitability checks on program applicants and participants to ensure they are suitable partners for IRS programs. The inconsistencies we identified could result in the IRS determining that an applicant is unsuitable for one program while permitting participation in another. This increases the risks to taxpayers. Figure 1 provides a comparison of the initial and continuous suitability checks completed by each program.

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<sup>9</sup> As of July 24, 2018.



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**Figure 1: Comparison of Suitability Checks**

Suitability Check	E-File Provider Program Licensed Applicant	E-File Provider Program Unlicensed Applicant	Acceptance Agent Program Licensed Applicant	Acceptance Agent Program Unlicensed Applicant	Enrolled Agent Program
Criminal Background	N	Y	N	Y	****2**** ****2**** ****2****
Tax Compliance	Y	Y	Y	Y	**2**
Citizenship	Y	Y	Y	Y	**2**10
Incarceration	Y	Y	N	N	**2**11
Decedent <sup>12</sup>	Y	Y	Y	Y	**2**
Specially Designated Nationals List	Y	Y	N	N	**2**13
Identity Theft Marker	Y	Y	N	N	**2**
Continuous Tax Compliance	Y	Y	N	N	**2**

Source: Our analysis of IRS documentation and interviews with IRS officials.

10 \*\*\*\*\*2\*\*\*\*\*.  
 11 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.  
 12 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.  
 13 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.  
 \*\*\*\*\*2\*\*\*\*\*.





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**Recommendations**

The Commissioner, Wage and Investment Division, and the Director, Return Preparer Office, should, in an effort to reduce the risk to tax administration of unsuitable individuals gaining access to IRS programs:

**Recommendation 1:** Assess the risk to tax administration of performing inconsistent initial and continuous suitability checks on individuals seeking to participate or enrolled in the e-File Provider, Acceptance Agent, and Enrolled Agent Programs. These checks should include a criminal background check, continuous tax compliance checks, and checks to determine if the applicant is deceased, incarcerated, or on the Specially Designated Nationals list. Based on the risk assessment, update and revise the programs' suitability checks as needed.

**Management's Response:** The IRS agreed with this recommendation and plans to complete a risk assessment to address the risks associated with the inconsistencies within the three programs. Based on the risk assessment findings, IRS management will revise the programs' suitability checks as needed.

**Recommendation 2:** Perform criminal background checks on \*2\* individuals applying to participate in the e-File Provider, Acceptance Agent, and Enrolled Agent Programs. \*\*2\*\*  
\*\*\*\*\*2\*\*\*\*\*.

**Management's Response:** The IRS agreed with this recommendation and plans to begin performing criminal background checks on \*2\* new applicants applying to the three programs, \*\*\*\*\*2\*\*\*\*\*.

**Adjudication Processes Are Inconsistent for Applicants With a Criminal History**

Our review identified that, when the FBI reports a criminal history for an applicant, the adjudication process is inconsistent depending on the program to which the individual is applying. For example, the e-File Provider Program denies an applicant when the FBI reports a conviction for a single major crime (e.g., murder, robbery), \*\*\*\*\*2\*\*\*\*\*  
\*\*2\*\*. Conversely, the Enrolled Agent and Acceptance Agent Programs allow applicants to participate \*\*\*\*\*2\*\*\*\*\*. In addition to the inconsistent adjudication criteria, there is also inconsistency between the programs on the definition of a major crime. For example, \*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*2\*\*\*\*. IRS management stated that the inconsistencies result from the programs having different authorities. For example:



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- The Enrolled Agent Program is governed by the rules in the Department of the Treasury's Circular 230, *Regulations Governing Practice before the Internal Revenue Service*.<sup>14</sup> Under these rules, the IRS may conduct a suitability check limited to an inquiry regarding whether an applicant has engaged in conduct that would justify suspension or disbarment on the date the application is submitted. This includes whether the applicant has engaged in disreputable conduct such as conviction of any crime under the Federal tax laws, conviction of any crime involving dishonesty or breach of trust, or conviction of any felony under Federal or State law for which the conduct renders the applicant unfit to practice before the IRS.
- The e-File Provider Program is governed by IRS Revenue Procedure 2007-40,<sup>15</sup> which specifies the requirements for participating as an authorized IRS e-File Provider. In addition, the e-File Provider Program application procedures are included in Publication 3112, *IRS e-file Application and Participation*.<sup>16</sup> According to Publication 3112, the IRS conducts a suitability check on the applicant and on all Principals and Responsible Officials listed on the application. Suitability checks may include a criminal background check. The IRS may deny an applicant participation in the e-File Provider Program for a variety of reasons that include an indictment or conviction of a crime under the laws of the United States or a State or an active IRS criminal investigation.
- The Acceptance Agent Program is governed by IRS Revenue Procedure 2006-10,<sup>17</sup> which specifies the requirements for becoming an Acceptance Agent to facilitate the issuance of Individual Taxpayer Identification Numbers. The Acceptance Agent or Certifying Acceptance Agent applicant or the applicant's representative who has the authority to sign the Acceptance Agent or Certifying Acceptance Agent agreement, if applicable, will be subject to an FBI background check.

**The EPSS function did not correctly adjudicate applications from some individuals with a criminal history**

Our review of a judgmental sample<sup>18</sup> of 134 e-File Provider Program applications processed between September 1, 2017, and September 12, 2018, identified that tax examining technicians did not correctly adjudicate six (4 percent) applications submitted by individuals who were

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<sup>14</sup> U.S. Department of the Treasury, Treasury Department Circular No. 230 (Rev. 6-2014), *Regulations Governing Practice before the Internal Revenue Service* (June 2014).

<sup>15</sup> Rev. Proc. 2007-40, 1488-92 I.R.B. 2007-26 (June 25, 2007).

<sup>16</sup> IRS, Pub. 3112 (Rev. 7-2018), *IRS e-file Application and Participation* (July 2018).

<sup>17</sup> Rev. Proc. 2006-10, 293-98 I.R.B. 2006-2 (January 9, 2006).

<sup>18</sup> We were unable to select a statistically valid sample because the total population of cases could not be identified. A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. We evaluated 61 case files for which the applicant was accepted during the initial review and 73 case files for which the applicant was denied participation during the initial review. (61 + 73 = 134).



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identified as having a criminal history. In fact, four of these six applicants should not have been accepted into the program because they met the IRS's criteria for rejection. Moreover, \*1\* of \*1\* four applicants accepted into the e-File Provider Program \*\*\*\*\*1\*\*\*\*\*. For the remaining two, the applicants were erroneously denied participation in the program. Both applicants had a criminal history, but based on IRS guidelines, the risk level associated with their crimes should have allowed them to participate in the program.

The incorrect determinations occurred because IRS employees assigned an incorrect risk level to the applicants. The employees are required to use a decision matrix that groups crimes into risk-level categories. For example, an applicant who committed a crime determined to be risk level A or B would be allowed in the program, while an applicant with a level C crime would not be accepted. For the cases that were incorrectly approved, the tax examining technician should have assigned a risk level C and failed the applicant based on the applicant's criminal history. For the incorrectly failed cases, the tax examining technician should have assigned a risk level of A or B and approved the applicant.

**Some individuals who appealed their case were erroneously accepted in the e-File Provider Program, while others were erroneously denied**

Applicants with a criminal history who are denied participation in the e-File Provider Program have 30 calendar days to appeal the IRS's decision. When tax examining technicians deny an applicant's participation based on a criminal history, IRS guidelines require them to send an initial denial letter to the applicant. This letter explains to the applicant that he or she may appeal the decision by providing an explanation of why the decision should be reversed and documentation supporting his or her position.

When an appeal is received, tax examining technicians are required to use a different decision matrix to adjudicate the case. The decision matrix used for appeals is less stringent when assessing the risk level based on the duration of time since the crime occurred. For example, applicants are allowed to participate in the e-File Provider Program \*\*\*\*\*2\*\*\*\*\*. \*\*\*\*\*2\*\*\*\*\*, which is consistent with the decision matrices used by the Enrolled Agent and Acceptance Agent Programs when adjudicating initial applications. Our review of a judgmental sample<sup>19</sup> of 53 cases that e-File Provider Program applicants appealed between September 1, 2017, and September 12, 2018, identified that tax examining technicians erroneously processed 10 (19 percent) cases. Specifically:

- **Six applicants were incorrectly denied participation.** When the disposition of the crime by the court (*e.g.*, conviction or dismissal) is not specified in the criminal history provided by the FBI, the applicant is required to provide a certified court disposition

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<sup>19</sup> We were unable to select a statistically valid sample because we could not identify the total population of appealed cases.



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document<sup>20</sup> for the crime. For four of the six cases, the applicants were denied participation in the program because they did not provide the required document. However, these applicants should not have been denied because the information returned by the FBI showed the court disposition. Further, in the IRS's initial denial letter, the IRS did not request that the applicant provide this documentation. Internal guidelines state that tax examining technicians should only request the court disposition documentation if the disposition of the crime cannot be determined in the criminal history provided by the FBI.<sup>21</sup> After we raised this issue, IRS management agreed that these applicants were incorrectly denied participation; the IRS subsequently issued acceptance letters to the applicants.

For the other two cases, EPSS function management responded that the cases warranted a denial based upon the criminal history. However, this assessment was based upon the tax examining technician's use of the wrong decision matrix. Specifically, the initial review decision matrix was used instead of the decision matrix for appeals when assessing the risk level for the applicant. As a result, EPSS function management incorrectly responded that the crimes were classified as risk level C, warranting the denial of the appeal. After we raised this issue, IRS management agreed that these applicants were incorrectly denied participation; the IRS subsequently issued acceptance letters to the applicants.

- ***Four applicants were erroneously accepted into the program.*** The tax examining technician is required to consider the certified court disposition to determine the risk that the applicant poses to tax administration. In each of these cases, the appeal should have been denied because the applicant did not provide the required certified court disposition document to the EPSS function within 30 days of the IRS mailing its initial denial letter. Unlike the previously discussed cases, the letter sent to the denied applicant requested a certified court disposition document if appealing the IRS's decision (this was because the information returned by the FBI did not show the court disposition). Internal guidelines state that the tax examining technician must deny the application if the response is not received within 30 days of the date of the letter sent to the applicant.

When we discussed the fact that applicants did not provide the required certified court disposition document but were still approved for entry into the program, EPSS function management agreed. However, management noted that the 30-day requirement may not provide applicants with enough time to provide a certified court disposition and was considering extending the number of days allotted for applicants to respond. The

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<sup>20</sup> A certified court disposition document has an affixed Court Seal and states what happened in a criminal case. It provides details of the criminal charges, such as whether the case was dismissed or led to a conviction.

<sup>21</sup> If the disposition of the crime is not listed but would not prevent the applicant from passing, then the tax examining technician should not request the court disposition because this would create an unnecessary delay.



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process for applicants to obtain the certified court disposition document is lengthy and time-consuming. For example, the applicant must first determine where the documents are located and the process to obtain the documents and then wait to receive them via the United States Postal Service. As a result, the 30 days is not sufficient to respond, especially when the applicant has moved away from the jurisdiction where the court documentation is located.

## **Recommendations**

The Commissioner, Wage and Investment Division, should:

**Recommendation 3:** Assess the risk of the e-File Provider Program's use of decision matrices to adjudicate an individual's criminal history that are inconsistent with the matrices used by the Acceptance Agent and Enrolled Agent Programs. Based on the risk assessment, update and revise the EPSS function decision matrix as appropriate.

**Management's Response:** The IRS agreed with this recommendation. IRS management developed a single matrix for the e-File Provider Program to provide consistency within the adjudication process. Use of the new decision matrix began on October 1, 2019. IRS management also plans to review adjudication criteria to ensure that crime categories are consistent for all three programs.

**Recommendation 4:** Review the applications of the six individuals (two incorrectly denied participation and four erroneously accepted) to determine if they should be removed from the program or allowed to participate.

**Management's Response:** The IRS agreed with this recommendation. IRS management reviewed the six applications and determined all were eligible for participation in the e-File Program. IRS management also issued acceptance letters to the two applicants who were incorrectly denied participation. One letter was issued on April 12, 2019, and the other was issued on July 5, 2019.

**Recommendation 5:** Ensure that tax examining technicians include a request for a court disposition document in all initial denial letters sent to applicants if the disposition is not included in the criminal history provided by the FBI and the crime listed would prevent the applicant from passing if convicted.

**Management's Response:** The IRS agreed with this recommendation. IRS management stated that the Adjudication Job Aid contains specific verbiage to include in the denial letter when the request for court disposition documents is needed. IRS management also issued an e-mail alert on October 3, 2019, to all employees reminding them to include the request for court disposition documents in the denial letter when the disposition is not included in the FBI's criminal history.



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**Recommendation 6:** Determine if revisions are needed relative to the time frame of applicant responses to initial denial letters when the applicants are required to provide certified court disposition documents.

**Management's Response:** The IRS agreed with this recommendation and plans to update Adjudication Job Aid procedures to accept an appeal beyond the 30-day time frame when reasonable cause is established.

**Procedures Do Not Ensure That Potential Tax Compliance Issues Identified for Some Individuals Are Timely Addressed**

As of November 30, 2018, the IRS's continuous tax compliance check program identified 3,164 individuals accepted into the e-File Provider Program in Fiscal Years 2012 through 2018 who were not compliant with their tax obligations. As such, these individuals were placed in the recheck status for tax examining technicians to determine if they should be allowed to remain in the program. Recheck status means that the continuous tax compliance check identified a tax compliance issue (*e.g.*, returns not filed or taxes not paid) and a tax examining technician needs to research and resolve the issue. Although internal guidelines do not specify a time frame for addressing providers in a recheck status, the providers who remain in a recheck status for more than 45 days are listed on a *Provider Suitability Recheck Report* for follow-up by management.

However, we found that 2,438 (77 percent) of the 3,164 individuals remained in recheck status for more than 45 days (the average of these was 148 days). The applicant's suitability status will stay in "recheck" until a tax examining technician completes research to resolve the issue. The applicant will also remain in recheck status until all appeal rights are exhausted or until a decision is made by the Office of Appeals in the EPSS function. Providers can continue to participate in the e-File Provider Program while in a recheck status.

This delay occurred because EPSS function management did not use the *Provider Suitability Recheck Report* to follow up on individuals in a recheck status for more than 45 days. Management stated that systemic problems were encountered generating this report after ESAM system implementation in September 2017 and that information in the report was not always accurate. For example, dates provided in the report were not always correct. Management indicated that these problems were not resolved until the latter part of Calendar Year 2018. Although the technical problems were resolved, management explained that they still did not use the report to ensure that provider rechecks were performed due to other competing priorities. In addition, internal guidelines do not specify the frequency that the report should be generated to identify individuals in a recheck status. However, IRS management is responsible for providing adequate supervision to ensure that tax examining technicians timely address the tax compliance issues identified for some individuals. In response to our concerns, EPSS function management stated that they would begin generating the report for review every 45 days.





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## **Recommendation**

**Recommendation 7:** The Commissioner, Wage and Investment Division, should ensure that the report identifying e-File Providers in a recheck status is timely generated on a recurring basis and that time frames are established for tax examining technicians to timely review providers in a recheck status.

**Management's Response:** The IRS agreed with this recommendation and plans to establish procedures to run the recheck report every 45 days to ensure tax examiners take timely actions for those providers in recheck status.

## **Sufficient Actions Have Yet to Be Taken to Address the Fraudulent Submission of Fingerprint Cards by Some Applicants**

In February 2018, we issued a memorandum to the Commissioner, Wage and Investment Division, and the Chief Information Officer regarding deficiencies in IRS processes and procedures to identify individuals using a fingerprint card with fingerprints already submitted by another applicant of the e-File Provider, Acceptance Agent, or Certification for Professional Employer Organization Programs. Our Office of Investigations Cybercrime Investigations Division, with assistance from the FBI, analyzed the fingerprint cards associated with individuals who applied for participation in these programs. The objective was to identify individuals who submitted fingerprint cards that matched the fingerprints on a previously submitted card by another individual. To perform the match, the Office of Investigations coordinated with the IRS to obtain a download of the 148,000 electronically scanned fingerprint cards that the IRS received from January 1, 2006, through September 13, 2016.

Results from this analysis confirmed that some applicants are submitting fingerprint cards using their identification information, but the fingerprints on the card match the fingerprints previously submitted by another individual. The FBI's analysis identified 719 instances in which an applicant submitted a fingerprint card with fingerprints that matched those of one or more previously submitted fingerprint cards. This includes three instances in which 20 individuals submitted fingerprint cards with the same matching fingerprints. Each of these instances was undetected by the IRS because the current IRS Memorandum of Understanding with the FBI does not include steps to identify potential duplicate or fraudulent fingerprint submissions. In our discussions with FBI representatives, they noted that they offer an additional service which is used by other Federal/State agencies whereby the FBI retains copies of fingerprint cards submitted in order to notify the submitting agency when subsequent fingerprint cards are received with fingerprints used on another individual's card previously submitted to the FBI.

Use of this additional service requires the IRS to enroll in the FBI's Records of Arrests and Prosecutions (RAP) Back Program. Enrollment would also provide the IRS with participation in the FBI's continuous criminal background checks to identify any crimes committed by the individuals subsequent to their acceptance in IRS programs. If there is a criminal background



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hit, the FBI will electronically transmit applicable information to the IRS. When we presented this information to IRS management, they noted that if the IRS were to periodically resubmit fingerprint cards to the FBI for analysis, the cost to the IRS would be \$11.25 per card, whereas there is no fee to enroll in the RAP Back Program to receive the additional services from the FBI. However, changes need to be made to the IRS fingerprint imaging systems to meet FBI specifications for participation.

Internal guidelines require IRS management to provide adequate resources to correct identified problems and implement corrective actions timely. However, we found that sufficient actions have yet to be taken to address the fraudulent submission of fingerprint cards by some applicants. We made the following recommendations in our February 2018 memorandum:

- The Chief Information Officer should upgrade the IRS's Automated Electronic Fingerprinting system to ensure compatibility with the FBI's RAP Back Program. The IRS agreed with this recommendation and stated that it would complete its corrective actions by August 15, 2019. In this review, we determined that the IRS is on course to upgrade its system by this date.
- The Commissioner, Wage and Investment Division, should review the applicants identified by the FBI as submitting duplicate fingerprint cards, and for individuals actively participating in IRS programs, halt participation until a revised fingerprint card is obtained and verified by the FBI. The IRS agreed with this recommendation. IRS management noted that 117 of the 192 applicants<sup>22</sup> did not have an active Electronic Filing Identification Number<sup>23</sup> because it was already dropped by the ESAM system or placed in an inactive status due to nonuse. Between April and August 2018, the IRS issued a letter to the remaining 75 individuals with an active Electronic Filing Identification Number. The letter requested that the applicant provide another fingerprint card or a professional certification within 30 days.

In this review, we found that 34 of the 75 individuals submitted another fingerprint card and two provided a professional certification. For the remaining individuals, the IRS inactivated their Electronic Filing Identification Number if it was not already dropped by the ESAM system for another reason such as inactivity. However, the IRS did not forward the 34 fingerprint cards to the FBI for a duplicate analysis. When we asked the FBI to analyze the 34 fingerprint cards, it found that the fingerprints on nine (26 percent) again matched the fingerprints submitted by another individual. As a result, these

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<sup>22</sup> Some applicants were associated with more than one Electronic Filing Identification Number. Only 192 individuals were associated with an Electronic Filing Identification Number for the 719 instances for which the FBI identified a duplicate fingerprint card.

<sup>23</sup> A six-digit number assigned to providers to identify businesses that have completed the IRS e-file application to become an authorized Provider.





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nine individuals may have again provided someone else's fingerprints to pass their background check.

- The Commissioner, Wage and Investment Division, should provide the FBI with all fingerprint cards in the Automated Electronic Fingerprinting system once participation in the FBI's RAP Back Program is established. The intent is to refresh the FBI's analysis and identify additional individuals who submitted fingerprint cards subsequent to September 13, 2016, that matched the fingerprints of another individual. The IRS agreed and stated that it plans to provide all fingerprint cards to the FBI for a duplicate fingerprint analysis once the Automated Electronic Fingerprinting system is upgraded in August 2019.

## ***Recommendations***

The Commissioner, Wage and Investment Division, should:

**Recommendation 8:** Once participation in the FBI's RAP Back Program is started, work with the FBI to identify additional individuals who submitted fingerprint cards subsequent to September 13, 2016, that match the fingerprints of another individual.

**Management's Response:** The IRS agreed with this recommendation. IRS management plans to provide the FBI with a file containing fingerprint card information for analysis. Based on the FBI results, IRS management will take the appropriate actions.

**Recommendation 9:** Develop processes and procedures to ensure that continuous criminal background checks are conducted on all program participants as part of the FBI RAP Back Program. These processes and procedures should include steps to evaluate continued participation in IRS programs for individuals identified with a criminal history.

**Management's Response:** The IRS agreed with this recommendation and has developed procedures for enrolling new applicants in the RAP Back Program. IRS management also plans to submit programming requests to evaluate existing participants and will develop procedures to enroll that population of existing participants into the RAP Back Program as well.

**Recommendation 10:** Address the continued participation of the nine applicants who were identified by the FBI as once again submitting a fingerprint card with fingerprints associated with another individual and deactivate the applicants' Electronic Filing Identification Numbers as appropriate.

**Management's Response:** The IRS agreed with this recommendation. IRS management completed research on July 2, 2019, and determined that the fingerprint card demographics were entered incorrectly by IRS employees. Therefore, the fingerprint cards did not match those of other individuals.



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## Appendix I

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

The overall objective of this review was to assess the effectiveness of IRS processes to ensure the suitability of applicants seeking to participate in IRS programs. To accomplish this objective, we:

- I. Determined if the IRS implemented sufficient background and suitability checks for applicants to the e-File Provider, Acceptance Agent, and Enrolled Agent programs.
  - A. Selected a statistically valid sample of 163 applicants<sup>1</sup> accepted in the e-File Provider, Acceptance Agent, and Enrolled Agent Programs in Fiscal Year 2018 using a confidence level of 90 percent, an expected error rate of 5 percent, and a precision factor of  $\pm 5$  percent.
    1. Reviewed information returned by the FBI to the IRS and information contained on the Public Access to Court Electronic Records website ([www.pacer.gov](http://www.pacer.gov))<sup>2</sup> to determine if the applicants had a criminal history.
    2. Researched the Integrated Data Retrieval System<sup>3</sup> to determine if the applicants were tax compliant as well as if the applicants were U.S. citizens, deceased, or had identity theft markers on their account.
    3. Determined if the applicants were on the Specially Designated Nationals<sup>4</sup> list to determine if the applicants were restricted from participating in any financial or monetary activities in the United States and researched the IRS Prisoner File<sup>5</sup> to determine if the applicants were incarcerated.

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<sup>1</sup> We selected 54 from a population of 13,960 applicants to the e-File Provider Program, 51 from a population of 1,274 applicants to the Acceptance Agent Program, and 58 from a population of 4,320 applicants to the Enrolled Agent Program. We used a stratified sampling technique to evaluate both licensed and unlicensed applicants in all three programs. Our contracted statistician assisted with developing our sampling plans.

<sup>2</sup> An electronic public access service that allows users to obtain case and docket information online from Federal appellate, district, and bankruptcy courts.

<sup>3</sup> IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

<sup>4</sup> The Department of the Treasury publishes a list of individuals and companies that are restricted from participating in financial activities in the United States. The list includes individuals such as terrorists and narcotics traffickers.

<sup>5</sup> A compiled list of prisoners received from the Federal Bureau of Prisons and State Departments of Corrections.



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4. Researched the National Association of State Boards of Accountancy website ([www.cpaverify.org](http://www.cpaverify.org))<sup>6</sup> for applicants who were certified public accountants and researched various State Bar Association websites for applicants who were attorneys to determine if the applicants were in good standing.
  5. Reviewed time frames to work applications for the three programs and determined if the applications in our sample were timely processed.
- B. Selected a statistically valid sample of 170 applicants<sup>7</sup> accepted in the e-File Provider, Acceptance Agent, and Enrolled Agent Programs for Fiscal Years 2012 through 2017 using a confidence level of 90 percent, an expected error rate of 5 percent, and a precision factor of  $\pm 5$  percent.
1. Reviewed information contained on the [www.pacer.gov](http://www.pacer.gov) website to determine if the applicants had a criminal history.
  2. Researched the IRS's Integrated Data Retrieval System to determine if the applicants were tax compliant as well as whether the applicants were U.S. citizens, deceased, or had identity theft markers on their account.
  3. Determined if the applicants were on the Specially Designated Nationals list to determine if the applicants were restricted from participating in any financial or monetary activities in the United States and researched the Prisoner File to determine if the applicants were incarcerated.
  4. Researched the [www.cpaverify.org](http://www.cpaverify.org) website for applicants who were certified public accountants and researched various State Bar Association websites for applicants who were attorneys to determine if the applicants were in good standing.
- C. Identified inconsistencies in the suitability checks performed on individuals applying to the e-File Provider, Acceptance Agent, and Enrolled Agent Programs, including differences in the decision matrices to adjudicate applicants with a criminal history.
- II. Determined if the EPSS function properly adjudicated e-File Provider Program applicants with a criminal history.

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<sup>6</sup> An electronic public access service that allows users to access a central database to obtain State regulatory data on certified public accountants sent from Boards of Accountancy.

<sup>7</sup> We selected 53 from a population of 80,373 applicants to the e-File Provider Program, 53 from a population of 4,675 applicants to the Acceptance Agent Program, and 64 from a population of 22,987 applicants to the Enrolled Agent Program. We used a stratified sampling technique to evaluate both licensed and unlicensed applicants to all three programs. Our contracted statistician assisted with developing our sampling plans.



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- A. Selected a judgmental sample<sup>8</sup> of 187 e-File Provider Program applications processed between September 1, 2017, and September 12, 2018. We evaluated 61 case files for which the applicant was accepted during the initial review, 73 case files for which the applicant was denied participation during the initial review, and 53 case files for which the applicant appealed a denied application.
  - B. Assessed the effect on tax administration for any unsuitable applicants accepted into the e-File Provider Program by determining if the IRS had identified suspicious return filing activity committed by the program participants.
- III. Determined if the EPSS function took timely action to address the recommendations in our February 2018 Memorandum on duplicate submissions of fingerprint cards.
- A. Determined the status of the upgrade to the IRS's Automated Electronic Fingerprinting system to ensure compatibility with the FBI's RAP Back Program.
  - B. Determined if the fingerprints provided by those individuals who responded to the EPSS function's letter issued between April and August 2018 matched someone else's fingerprints by providing 35 fingerprint cards to the FBI for analysis.

**Data validation methodology**

During this review, we relied on data extracts from the ESAM, Real-Time, and E-Trak systems.<sup>9</sup> Before relying on the data, we ensured that the files contained the data elements we requested and performed analyses to evaluate the validity and reasonableness of the data. In addition, we selected random samples from each extract and verified that specific data elements in the extracts were the same as the data captured on the host systems. Based on the results of this testing, we believe that the data used in our review were reliable.

**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: controls in place to ensure that the IRS allowed only suitable applicants into the e-File Provider, Acceptance Agent, and Enrolled Agent Programs. We tested these controls by interviewing IRS management and staff, evaluating the processes for ensuring the suitability of applicants, reviewing program guidelines and other relevant documents, and analyzing the suitability of sampled program applicants.

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<sup>8</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. Our contracted statistician assisted with developing our sampling plans.

<sup>9</sup> These systems contain applicant data for the e-File Provider, Acceptance Agent, and Enrolled Agent Programs, respectively.



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**Appendix II**

*Major Contributors to This Report*

Russell P. Martin, Assistant Inspector General for Audit (Returns Processing and Account Services)  
Allen Gray, Director  
Paula Johnson, Audit Manager  
Jean Bell, Lead Auditor  
Van Warmke, Lead Auditor  
Jerome Antoine, Auditor  
Shay Baldwin, Auditor



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**Appendix III**

*Report Distribution List*

Deputy Commissioner for Services and Enforcement  
Commissioner, Wage and Investment Division  
Director, Office of Professional Responsibility  
Director, Return Preparer Office  
Director, Customer Account Services, Wage and Investment Division  
Director, Enterprise Audit Management



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**Appendix IV**

*Memorandum #1: Process and Procedures for  
Identifying Duplicate/Fraudulent Submission  
of Fingerprint Cards*



INSPECTOR GENERAL  
FOR TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

February 8, 2018

MEMORANDUM FOR COMMISSIONER, WAGE AND INVESTMENT DIVISION  
CHIEF INFORMATION OFFICER

*Russell P. Martin*  
FROM: Russell P. Martin  
Assistant Inspector General for Audit (Returns Processing and  
Account Services)

SUBJECT: Process and Procedures for Identifying Duplicate/Fraudulent  
Submission of Fingerprint Cards

This memorandum is to bring to your attention concerns regarding Internal Revenue Service (IRS) processes and procedures to identify individuals using a fingerprint card with fingerprints already submitted by another applicant of the e-file, Accepting Agents, or Certification for Professional Employer Organization programs. Please provide your response to the recommendations in this memorandum by February 22, 2018. If you have questions, please contact me at (978) 809-0296.

***Background***

TIGTA Office of Investigations (OI) Cybercrime Investigations Division requested assistance from the Federal Bureau of Investigations (FBI) in performing an analysis of fingerprint cards associated with individuals who applied for participation in the IRS's e-file, Acceptance Agent, and Certification for Professional Employer Organization programs. The objective of the OI analysis was to identify individuals who submitted fingerprint cards that matched the fingerprints on a previously submitted card by another individual. OI requested the FBI's assistance because of concerns, identified during investigations conducted in 2015 and 2016, that some disreputable e-file Program applicants used the fingerprints of other individuals to pass required background checks. To perform the match, OI coordinated with the IRS to obtain a download of the 148,000 electronically scanned fingerprint cards that the IRS received from January 1, 2006 through September 13, 2016. Once obtained, the OI Cybersecurity Team provided the electronic copies to the FBI to perform their match.

Individuals who are not Certified Public Accountants, Attorneys, or Enrolled Agents that apply for participation in the e-file Program are required to submit fingerprint cards which are used to perform a criminal background check. Once fingerprint cards are received from applicants, IRS personnel inputs information such as name, address, *etc.*





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into the IRS's Automated Electronic Fingerprinting (AEF)<sup>1</sup> Application as well as scan the fingerprint card into the AEF. Once scanned, the electronic version of the fingerprint card is sent to the FBI to be used to conduct a criminal background check on the applicant. IRS management indicated that the AEF houses fingerprint cards submitted by applicants applying for participation in the e-file, Acceptance Agent, and Certification for Professional Employer Organization Programs.

To determine whether fingerprint cards are being submitted using fingerprints that match those on a previously submitted card by another individual, the FBI performed a biometric analysis for OI using an algorithm to identify and score all fingerprint scans that meet a specified threshold. Based on this analysis, the FBI identified fingerprint cards where fingerprints matched other fingerprint card submissions by different individuals.

### ***Results***

The above analysis confirmed that some applicants are submitting fingerprint cards using their identification information, but the fingerprints on the card match the fingerprints previously submitted by another individual. The FBI's analysis identified 719 instances where an applicant submitted a fingerprint card in which the fingerprints matched those of one or more previously submitted fingerprint cards. This includes three instances in which 20 individuals submitted fingerprint cards with the same matching fingerprints. Each of these instances was undetected by the IRS.

Instances involving the duplicate and fraudulent submission of fingerprints are not detected because the current IRS Memorandum of Understanding with the FBI does not include the identification of potential duplicate or fraudulent fingerprint submissions. The IRS's current agreement with the FBI is limited to the FBI conducting a check to determine if the applicant has a criminal record. Under this agreement, the only situation in which the FBI will notify the IRS of a duplicate submission is when the applicant's identifying information on the fingerprint card is the same as another individual's identifying information previously entered into the AEF system.

However, in our discussions with representatives from the FBI, they noted that they offer an additional service which is used by other federal/state agencies in which the FBI retains copies of fingerprint cards submitted in order to notify the submitting agency that the fingerprints were previously used on another submitted card. This service would require the IRS to enroll in the FBI's Records of Arrests and Prosecutions (RAP) Back Program. In addition, IRS enrollment in the RAP Back Program would also provide the IRS with FBI's continuous criminal background checks of applicants to identify any crimes committed subsequent to acceptance in IRS programs. If there is a

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<sup>1</sup> *Automated Electronic Fingerprinting Application*: Collects, stores and electronically submits fingerprint images to the Federal Bureau of Investigation (FBI) electronically. E-file providers must submit fingerprints as part of the criminal background evaluation. AEF converts the manual, paper-based fingerprint process to an electronic means for transmitting to FBI's Integrated Automated Fingerprint Identification System (IAFIS).





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criminal background hit, the FBI will electronically transmit applicable information to the IRS. IRS management noted that if the IRS were to periodically resubmit fingerprint cards to the FBI for analysis, the cost to the IRS would be \$10 per card.

When we discussed enrollment in the RAP Back program with IRS management, they indicated that there is no fee to enroll in the RAP Back program. However, IRS fingerprint imaging systems must meet FBI specifications for participation. Currently, the IRS's AEF system is not compatible with RAP Back system requirements. In January 2017, an Information Technology Work Request was submitted to IRS Information Technology by the Wage and Investment Division requesting these system upgrades, with an estimated \$210,000 cost, to enable enrollment in the RAP Back Program. This request was denied by IRS Information Technology. Subsequently, a Development Modernization Enhancement (DME)<sup>2</sup> funding request for FY 2018, was submitted through the Wage and Investment Division, and is awaiting confirmation of funding.

Delays implementing the necessary system upgrades will continue to allow those intent on perpetrating fraud to gain access to IRS programs using fraudulent fingerprint cards to circumvent criminal background checks.

### ***Recommendations***

The Chief Information Officer should:

***Recommendation 1:*** Perform necessary upgrades to the AEF application to ensure compatibility with the FBI's Records of Arrests and Prosecutions Back Program providing IRS with FBI's ability to identify applicants who submit fingerprint cards that include fingerprints previously used on another submitted card as well as continuous criminal background checks on those individuals previously accepted into IRS programs.

The Commissioner, Wage and Investment Division, should:

***Recommendation 2:*** Review the 719 applicants identified by the FBI for having submitted duplicate fingerprint cards. For individuals actively participating in IRS programs, halt participation until a revised fingerprint card is obtained and verified by the FBI.

***Recommendation 3:*** Once participation in the RAP Back Program is established, provide the FBI with all fingerprint cards in the AEF to refresh the analysis it performed for TIGTA OI and identify additional individuals who submitted fingerprint cards, subsequent to September 2016, that matched the fingerprints of another individual and take appropriate action to verify the applicants continued participation in IRS programs.

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<sup>2</sup> Development Modernization Enhancement: Core Funding Requests to seek funding for new or enhanced Information Technology functionality to IRS systems.



*Improvements Are Needed to Ensure  
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**Appendix V**

*Management's Response to Memorandum # 1*

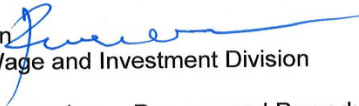


COMMISSIONER  
WAGE AND INVESTMENT DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
ATLANTA, GA 30308

FEB 28 2018

MEMORANDUM FOR RUSSELL P. MARTIN  
ASSISTANT INSPECTOR GENERAL FOR AUDIT (Returns  
Processing and Account Services)

FROM: Kenneth C. Corbin   
Commissioner, Wage and Investment Division

SUBJECT: Response to Memorandum – Process and Procedures for  
Identifying Duplicate/Fraudulent Submission of Fingerprint Cards

Thank you for the opportunity to review and provide comments on the subject memorandum communication. The IRS is committed to serving the American taxpayer to the very best of our ability, and we appreciate the assistance the Treasury Inspector General for Tax Administration has provided in helping us do so.

All e-file Providers (Electronic Return Originators, transmitters, and software developers) must have an approved e-file application on file with the IRS. Principals and responsible officials listed on the application must either provide professional credentials or submit fingerprint cards for a background check to the Federal Bureau of Investigation (FBI). Blank fingerprint cards, specific for e-file purposes, are mailed from the IRS e-help Desk via U.S. postal mail to the applicant (principal and/or responsible official) with instructions for those individuals to contact a trained specialist (local law enforcement or fingerprinting service company) for fingerprinting. The principal or responsible official must complete the following biographical fields on the card: name, date of birth, citizenship, sex, and Social Security number. The completed fingerprint cards, signed by the specialist, are mailed by the principal or responsible official via U.S. postal mail to the IRS. The e-help Desk scans the fingerprint card into the Automated Electronic Fingerprinting (AEF) system for review by the FBI. Typically, within two business days, the FBI returns one of the following results for the background check electronically:

- Data (criminal history/record of arrests and prosecutions (RAP) sheet provided)
- No Data (no criminal history)
- Unprocessable (scan could not be processed)



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Currently, the AEF System can only notify the e-help Desk if biographical information has been submitted previously, not if fingerprints (biometrics) on the card have already been submitted under another name.

We have taken several actions recently to identify suspicious activity. In 2013, the Electronic Products and Services Support and the Return Integrity and Compliance Services functions identified suspicious fingerprint cards (e.g. those received in batches or with similar handwriting and/or signatures) and implemented a process where those applicants were referred to Taxpayer Assistance Centers to personally identify themselves. In 2014, a systemic check for identity theft indicators on principals or responsible officials was implemented. In 2016, we worked with the FBI and the Treasury Inspector General for Tax Administration Office of Investigations to rerun all e-file fingerprint cards from 2006 through 2016 to search for duplicate fingerprint images.

We recognize that our participation in the FBI's RAP Back Program is essential for continued protection of the integrity of the e-File program. We are exploring the appropriate technical solution and will have one identified, and a plan in place, by March 15, 2018. Execution of the plan will be dependent upon the availability of any needed funding and resources to perform the work.

Attached are our comments and proposed actions to your recommendations. If you have any questions, please contact me, or a member of your staff may contact James P. Clifford, Director, Customer Account Services, Wage and Investment Division, at (470) 639-3504.

Attachment



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Attachment

**Recommendation**

The Chief Information Officer should:

**RECOMMENDATION 1**

Perform necessary upgrades to the AEF application to ensure compatibility with the FBI's Records of Arrests and Prosecutions (RAP) Back Program providing IRS with FBI's ability to identify applicants who submit fingerprint cards that include fingerprints previously used on another submitted card as well as continuous criminal background checks on those individuals previously accepted into IRS programs.

**CORRECTIVE ACTION**

We agree with this recommendation. We are exploring the appropriate technical solution and will have a solution identified, and a plan in place, by March 15, 2018. Execution of the plan will be dependent upon the availability of any needed funding and resources to perform the work.

**IMPLEMENTATION DATE**

August 15, 2019

**RESPONSIBLE OFFICIAL**

Associate Chief Information Officer, Application Development, Information Technology

**CORRECTIVE ACTION MONITORING PLAN**

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

**Recommendations**

The Commissioner, Wage and Investment Division, should:

**RECOMMENDATION 2**

Review the 719 applicants identified by the FBI for having submitted duplicate fingerprint cards. For individuals actively participating in IRS programs, halt participation until a revised fingerprint card is obtained and verified by the FBI.

**CORRECTIVE ACTION**

We agree with this recommendation. We have determined duplicate fingerprint cards are associated with 219 Electronic Filer Identification Numbers (EFIN); of that group, 117 EFINs are already inactive and cannot be used to file electronically. We are researching the remaining 102 active EFINs. If our research does not support immediate deactivation of the remaining accounts, we will contact the applicants and





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require submission of new fingerprint cards for verification by the Federal Bureau of Investigation (FBI). The applicants' continued participation in the program will be determined by the outcome of the new fingerprint check and the outcome of administrative appeal rights to which the applicants are entitled.

**IMPLEMENTATION DATE**

October 15, 2018

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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

**RECOMMENDATION 3**

Once participation in the RAP Back Program is established, provide the FBI with all fingerprint cards in the AEF to refresh the analysis it performed for TIGTA OI and identify additional individuals who submitted fingerprint cards, subsequent to September 2016, that matched the fingerprints of another individual and take appropriate action to verify the applicants continued participation in IRS programs.

**CORRECTIVE ACTION**

We agree with this recommendation and will resubmit the fingerprint cards stored in the Automated Electronic Fingerprinting (AEF) system to the FBI. This action is dependent on the completion of modifications to the AEF system that are needed for compatibility with the RAP Back Program. We expect the needed programming modifications to be funded and completed by August 2019, or sooner; however, the contingency created by other priorities competing for these limited resources prevents us from determining an implementation date.

**IMPLEMENTATION DATE**

N/A

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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



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**Appendix VI**

*Management's Response to the Draft Report*



COMMISSIONER  
WAGE AND INVESTMENT DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
ATLANTA, GA 30308

OCT 31 2019

MEMORANDUM FOR MICHAEL E MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kenneth C. Corbin   
Commissioner, Wage and Investment Division

SUBJECT: Draft Audit Report – Improvements Are Needed to Ensure That  
Consistent Suitability Checks Are Performed for Participation in  
Internal Revenue Service Programs (Audit #201840041)

Thank you for the opportunity to review and comment on the subject draft report. We appreciate the acknowledgement that the IRS's suitability checks for applicants to the Acceptance Agent, Enrolled Agent, and e-File Provider programs generally ensured that only reputable individuals were accepted into the programs during fiscal year 2018, and that continuous suitability checks also ensured individuals accepted into the programs prior to then had not engaged in criminal activity warranting removal from the programs. We agree with the recommendations made in the report and have either implemented them or are acting to do so.

Suitability checks are performed for all individuals applying to the Acceptance Agent, Enrolled Agent, and e-File Provider programs. However, these suitability checks vary because there are three distinct programs, each having its own separate policies, regulations, and procedures. The rules and requirements for the e-file Provider program are governed by Revenue Procedure 2007-40, the Acceptance Agent program is governed by Revenue Procedure 2006-10, and the Enrolled Agent program is governed by Circular 230, *Regulations Governing Practice before the Internal Revenue Service*. If future legislation grants the IRS authority to regulate all tax return preparers, we could further strengthen and align suitability checks for the remaining uncredentialed return preparers, which would improve taxpayer compliance and overall tax administration. We recognize and agree with the importance of consistent suitability checks for these programs.

Fingerprint cards are not required for licensed individuals (attorneys, certified public accountants and enrolled agents). Therefore, criminal background checks are only performed on licensed individuals if it is mandated by the licensing states or if they



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disclosed any convictions on their Enrolled Agent application. Once approved for participation in IRS programs, there are procedures in place to identify criminal convictions of licensed professionals. The Office of Professional Responsibility (OPR) performs oversight of practitioner conduct, initiating disciplinary proceedings when appropriate, and imposing sanctions when warranted. The Return Preparer Office (RPO) oversees preparer tax identification numbers (PTINs), enrollment programs, IRS approved continuing education providers, and the Annual Filing Season Program for tax return preparers. If the OPR or the RPO identifies licensed individuals with criminal convictions, either through research or from referrals, actions are taken that may include suspending or disbarring the individuals from the respective programs or from practicing before the IRS altogether. We verify that licensed individuals have valid credentials during the application process; however, we agree that performing a criminal background check at the time of the application process will provide additional safeguards to prevent unacceptable individuals from participating in IRS programs.

As of October 1, 2019, we revised and implemented procedures governing the adjudication process to eliminate inconsistencies among the three programs. The adjudication matrices were consolidated into a single matrix. We also issued a communication to reemphasize to employees the importance of obtaining and reviewing court disposition documentation during the adjudication process. We are also reviewing the procedures to address appeals received beyond the 30-day timeframe.

Since February 2018, we have been working to update the Automated Electronic Fingerprinting Application's programming to take full advantage of the Federal Bureau of Investigation's (FBI's) Records of Arrests and Prosecutions (RAP) Back Program. The RAP Back Program provides continuous criminal background check monitoring by the FBI for crimes committed subsequent to acceptance in our programs. On August 19, 2019, the RAP Back Program was deployed with limited functionality that will permit background monitoring of new program applicants. We are working with the FBI to finalize the Memorandum of Understanding that will allow us to fully implement the program's capabilities. Upon full implementation, we will resubmit previously-provided fingerprint cards for analysis to identify duplicate submissions by different individuals.

Attached are our comments and proposed actions to your recommendations. If you have any questions, please contact me, or a member of your staff may contact Karen Michaels, Acting Director, Customer Account Services, Wage and Investment Division, at (470)-639-3504.

Attachment



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Attachment

**Recommendations**

The Commissioner, Wage and Investment Division, and the Director, Return Preparer Office, should, in an effort to reduce the risk to tax administration of unsuitable individuals gaining access to IRS programs:

**RECOMMENDATION 1**

Assess the risk to tax administration of performing inconsistent initial and continuous suitability checks on individuals seeking to participate or enrolled in the e-File, Acceptance Agent, and Enrolled Agent Programs. These checks should include a criminal background check, continuous tax compliance checks and checks to determine if the applicant is deceased, incarcerated, or on the Specially Designated Nationals list. Based on the risk assessment, update and revise the programs' suitability checks as needed.

**CORRECTIVE ACTION**

We agree with this recommendation. A risk assessment to address the risks associated with the inconsistencies within the three programs will be completed. Based on the risk assessment findings, we will revise the programs' suitability checks as needed.

**IMPLEMENTATION DATE**

September 15, 2020

**RESPONSIBLE OFFICIAL**

Director, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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

**RECOMMENDATION 2**

Perform criminal background checks on all individuals applying to participate in the e-File Provider, Acceptance Agent, and Enrolled Agent Programs. \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*.

**CORRECTIVE ACTION**

We agree with this recommendation. We will begin performing criminal background checks on all new applicants applying to the three programs, \*\*\*\*\*2\*\*\*\*\*  
\*\*\*\*\*2\*\*\*\*\*.

**IMPLEMENTATION DATE**

September 15, 2020





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**RESPONSIBLE OFFICIAL**

Director, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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

**Recommendations**

The Commissioner, Wage and Investment Division, should:

**RECOMMENDATION 3**

Assess the risk of the e-File Program's use of decision matrices to adjudicate an individual's criminal history that are inconsistent with the matrices used by the Acceptance Agent and Enrolled Agent Programs. Based on the risk assessment, update and revise the EPSS decision matrix as appropriate.

**CORRECTIVE ACTION**

We agree with this recommendation. After considering the risks associated with the use of inconsistent adjudication matrices, a single matrix for the e-File Program was developed to provide consistency within its adjudication process. Use of the new decision matrix began on October 1, 2019. Further, the three programs will review adjudication criteria to ensure crime categories are consistent for all three programs.

**IMPLEMENTATION DATE**

Action 1, Assess e-File Program risk and standardize matrices – Implemented  
Action 2, Standardization of crime categories across the programs – October 15, 2020

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

N/A

**RECOMMENDATION 4**

Review the applications of the six individuals (two incorrectly denied participation and four erroneously accepted) to determine if they should be removed from the program or allowed to participate.

**CORRECTIVE ACTION**

We agree with this recommendation. The six applications were reviewed, and all applicants were determined eligible for participation in the e-File Program. Two



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applicants that were incorrectly denied participation were issued acceptance letters to the program, one on April 12, 2019 and the other on July 5, 2019.

**IMPLEMENTATION DATE**

Implemented

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

N/A

**RECOMMENDATION 5**

Ensure that tax examining technicians include a request for a court disposition document in all initial denial letters sent to applicants if the disposition is not included in the criminal history provided by the FBI and the crime listed would prevent the applicant from passing if convicted.

**CORRECTIVE ACTION**

We agree with this recommendation. The Adjudication Job Aid contains specific verbiage to include in the denial letter when the request for court disposition documents is needed. An email alert was issued on October 3, 2019, to all employees reminding them to include the request for court disposition documents in the denial letter when the disposition is not included in the Federal Bureau of Investigation's (FBI's) criminal history.

**IMPLEMENTATION DATE**

Implemented

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

N/A

**RECOMMENDATION 6**

Determine if revisions are needed relative to the time frame of applicant responses to initial denial letters when the applicants are required to provide certified court disposition documents.



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**CORRECTIVE ACTION**

We agree with this recommendation. We will update Adjudication Job Aid procedures to accept an appeal beyond the 30-day timeframe when reasonable cause is established.

**IMPLEMENTATION DATE**

January 15, 2020

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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

**Recommendation**

**RECOMMENDATION 7**

The Commissioner, Wage and Investment Division, should ensure that the report identifying e-File Providers in a recheck status is timely generated on a recurring basis and that time frames are established for tax examining technicians to timely review providers in a recheck status.

**CORRECTIVE ACTION**

We agree with this recommendation. Procedures will be established to run the recheck report every 45 days to ensure tax examiners take timely actions for those providers in recheck status.

**IMPLEMENTATION DATE**

March 15, 2020

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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



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**Recommendations**

The Commissioner, Wage and Investment Division, should:

**RECOMMENDATION 8**

Once participation in the FBI's RAP Back Program is started, work with the FBI to identify additional individuals who submitted fingerprint cards subsequent to September 13, 2016, that match the fingerprints of another individual.

**CORRECTIVE ACTION**

We agree with this recommendation. We will provide the FBI with a file containing fingerprint card information for analysis. Once the analysis is provided to the IRS, we will take the appropriate actions based on the FBI results.

**IMPLEMENTATION DATE**

June 15, 2020

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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

**RECOMMENDATION 9**

Develop processes and procedures to ensure that continuous criminal background checks are conducted on all program participants as part of the FBI RAP Back Program. These processes and procedures should include steps to evaluate continued participation in IRS programs for individuals identified with a criminal history.

**CORRECTIVE ACTION**

We agree with this recommendation. Procedures have been developed for enrolling new applicants in the Records of Arrests and Prosecutions (RAP) Back Program process. Upon completion of the requisite programming to evaluate existing participants, we will develop procedures to enroll that population of accepted participants into the RAP Back Program as well. The required programming is subject to limited Information Technology resources, including funding, and competing priorities. Consequently, we cannot an implementation date for this action.

**IMPLEMENTATION DATE**

N/A



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**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

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

**RECOMMENDATION 10**

Address the continued participation of the nine applicants who were identified by the FBI as once again submitting a fingerprint card with fingerprints associated with another individual and deactivate the applicants' Electronic Filing Identification Numbers as appropriate.

**CORRECTIVE ACTION**

We agree with this recommendation. Through research completed on July 2, 2019, it was determined that the fingerprint card demographics were entered incorrectly by IRS employees; therefore, the fingerprint cards did not match those of other individuals.

**IMPLEMENTATION DATE**

Implemented

**RESPONSIBLE OFFICIAL**

Director, Electronic Products and Services Support, Customer Account Services, Wage and Investment Division

**CORRECTIVE ACTION MONITORING PLAN**

N/A