

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2021 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures

September 23, 2021

Report Number: 2021-30-067

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document .

HIGHLIGHTS: Fiscal Year 2021 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures

Final Audit Report issued on September 23, 2021

Report Number 2021-30-067

Why TIGTA Did This Audit

TIGTA is required by law to determine annually whether lien notices issued by the IRS comply with the legal requirements set forth in Internal Revenue Code (I.R.C.) § 6320(a).

Impact on Taxpayers

After filing the first Form 668(Y)(c), *Notice of Federal Tax Lien* (NFTL), on a delinquent tax module, the IRS must notify the affected taxpayers in writing, at their last known address, within five business days of the NFTL filing. Taxpayers may not be timely advised of their appeal rights if the IRS does not comply with this statutory requirement.

Although I.R.C. § 6320(c) specifically incorporates I.R.C. § 6330(e) (which applies to Collection Due Process (CDP) hearings in the event of a levy) such that it would appear that collection action should cease during the period from which a lien CDP hearing is requested and resolved, the Treasury Regulations specify that levy action is permissible. However, as TIGTA has reported previously, the IRS's policy is that generally most collection action will not take place during a lien CDP period.

What TIGTA Found

Tests of a statistically valid sample of 116 NFTLs determined that the IRS timely and correctly mailed the notices of NFTL filing and CDP appeal rights to the taxpayers' last known addresses. However, tests of a judgmental sample of 69 returned (*e.g.*, undelivered, unclaimed, or refused) lien notices identified 10 cases for which the address on the original lien notice and the address on the IRS computer system did not agree. In three of these cases, the address on the IRS computer system was updated before the cycle (week) on which the NFTL was prepared, and the IRS resent the notices.

The IRS will grant an "equivalent hearing" if taxpayers request one after the 30-calendar-day period set forth in I.R.C. § 6320 but within one year following the five-business-day period after the NFTL is filed. However, IRS procedures do not require that notices be resent if the original notice was returned as undeliverable due to a change in address that occurred more than two weeks after it was mailed. The IRS did not reissue the NFTL to five of the 10 taxpayers in our sample of 69 undelivered lien notices at the updated address because their address change was more than two weeks after the notice was sent. The IRS should not limit the option to resend lien notices to only those taxpayers who had an address change within two weeks after the NFTL preparation date.

Taxpayer representatives should be provided copies of all taxpayer correspondence if authorized. However, the IRS did not provide notice for three of the 35 sample cases in which the taxpayer had an authorized representative. In addition, the IRS sent a copy of the notice to [REDACTED] representatives who were not authorized to receive it.

What TIGTA Recommended

TIGTA recommended that the Director, Collection Policy, Small Business/Self-Employed Division, correct Internal Revenue Manual (IRM) references for IRS employees to update delivery status when undeliverable mail is received. TIGTA also recommended that the Director, Campus Collection, Small Business/Self-Employed Division, issue a Servicewide Electronic Research Program Alert reminding IRS employees to follow IRM instructions when processing undeliverable NFTLs once the IRM section is updated.

IRS management agreed with TIGTA's recommendations. The IRS agreed to revise IRM references in the Automated Lien System User Guide for Automated Collection System Support function employees to update the delivery status when undeliverable mail is received. The IRS also agreed to issue a Servicewide Electronic Research Program Alert to remind Automated Collection System employees to follow IRM instructions when processing undeliverable NFTLs once the IRM section is updated.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 23, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink that reads "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2021 Statutory Review of Compliance
With Notice of Federal Tax Lien Filing Due Process Procedures
(Audit # 202130001)

This report presents the results of our review to determine whether liens issued by the Internal Revenue Service comply with legal guidelines set forth in the Internal Revenue Code and Treasury Regulations. This review is part of our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

Management's complete response to the draft report is included as Appendix 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 Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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Background

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

The Internal Revenue Code (I.R.C.) has long required the IRS to notify taxpayers in writing of the filing of an NFTL; however, the IRS Restructuring and Reform Act of 1998 expanded upon this notice requirement, creating I.R.C. § 6320 to give taxpayers additional rights.³ When the first NFTL is filed for a tax period, the lien notice must be issued within five business days of the filing of the NFTL and inform taxpayers of the right to elect a Collection Due Process (CDP) hearing wherein the taxpayer can raise any relevant issue, including spousal defenses, the appropriateness of the collection actions, and collection alternatives.⁴ The IRS issues a lien notice to advise taxpayers that they have 30 calendar days, after the five-business-day period, to request a CDP hearing with the IRS's Office of Appeals.⁵ The lien notice indicates the date on which this 30-calendar-day period expires.

If the taxpayer fails to request a CDP hearing within the 30-calendar-day period, the IRS may grant an "equivalent hearing."⁶ Taxpayers can file a request for an equivalent hearing within one year following the five-business-day period after the NFTL is filed. An equivalent CDP hearing is similar to a regular CDP hearing; however, the taxpayer cannot seek judicial review of the Office of Appeals' decision.⁷ Although I.R.C. § 6320(c) incorporates I.R.C. § 6330(e) (which applies to CDP hearings in the event of a levy) such that, by the plain reading of the statute, all collection action should cease during the period in which a lien CDP hearing is requested and resolved, the IRS has previously stated that the Treasury Regulations specify that levy action is permissible.⁸ However, as we have reported previously, the IRS's policy is that, except as provided for specific situations, collection action will generally not take place during a lien CDP period.

The law also requires that the lien notice explain, in simple terms, the amount of unpaid tax, other administrative appeal rights available to the taxpayer, and provisions of the law and procedures related to the release of the lien on the property.⁹ The lien notice must be given in

¹ I.R.C. §§ 6321 and 6323.

² I.R.C. § 6323.

³ RRA 98 §3401(a), Pub. L. No. 105-206, 112 Stat. 685. (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.); I.R.C. § 6320.

⁴ See Appendix VII for a glossary of terms.

⁵ Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC § 6320*.

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

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

⁸ Treas. Reg. § 301.6320-1(g) Q&A-3.

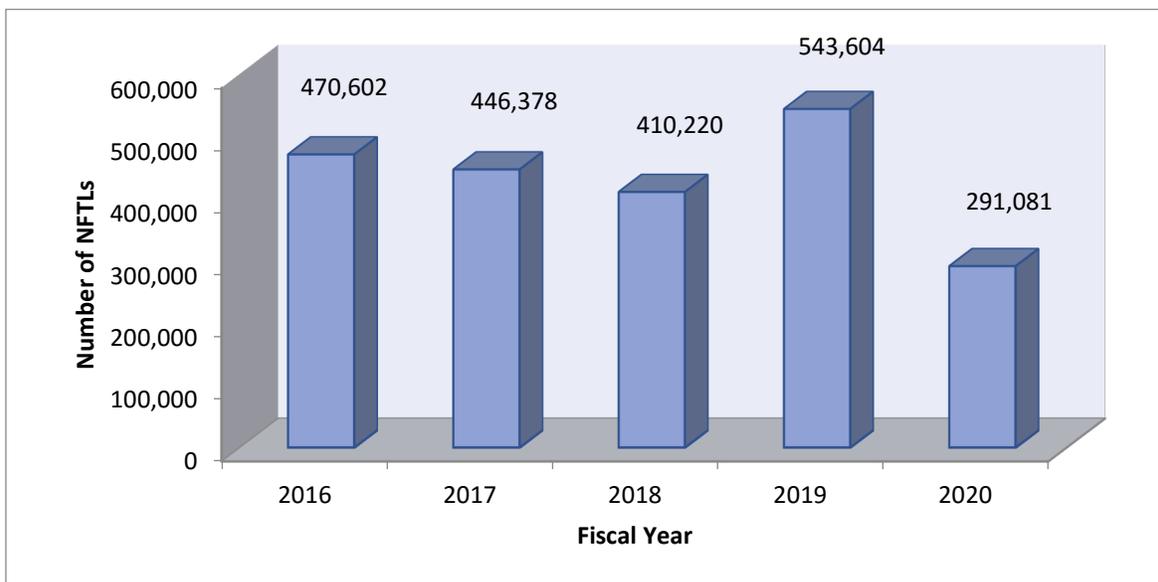
⁹ I.R.C. § 6320(a)(3)(A), (a)(3)(C), and (a)(3)(D).

person, left at the taxpayer's home or business, or sent by certified or registered mail to the taxpayer's last known address.

Depending on employee access and case status, NFTL requests can be generated using one of three IRS systems: 1) the Integrated Collection System (ICS), 2) the Automated Collection System (ACS), or 3) directly input into the Automated Lien System (ALS).¹⁰

Figure 1 shows the annual NFTL filings for the past five fiscal years. NFTL filings reached a peak of 1,096,376 in Fiscal Year (FY) 2010 and have generally declined since then, except for FY 2019. NFTL filings reached a low of 291,081 in FY 2020, which parallels with a decline in the number of revenue officers of more than 50 percent, from 5,922 at the end of FY 2010 to 2,913 at the end of FY 2020. The reduced number of filings in FY 2020 was due, in part, to suspension of collection activities, including the filing of new NFTLs, from April 1, 2020, through September 30, 2020, due to the COVID-19 pandemic.

Figure 1: Number of NFTLs Filed for FYs 2016 Through 2020



Source: IRS Data Book for FYs 2016 through 2020.

I.R.C. § 6320(c) provides that, for purposes of a taxpayer's appeal of an NFTL, certain paragraphs of I.R.C. § 6330 shall apply.¹¹ The law with respect to notices of liens specifically incorporates the provisions of I.R.C. § 6330(e), which provides for a stay of most collection activity during the CDP

¹⁰ See Appendices II and III for information about these systems and their use.

¹¹ I.R.C. §§ 6320(c), *Conduct of hearing; review; suspensions*, and 6330(e), *Suspension of collections and statute of limitations*.

period.¹² The IRS states its policy is that levy actions generally shall be suspended for the period during which such hearing and appeals therein are pending.¹³ However, Treasury Regulation § 301.6320-1, question and answer G-3, states that levies are not prohibited during NFTL CDP hearings.¹⁴

We are required to determine annually whether the IRS complied with the law pertaining to CDP rights when filing NFTLs.¹⁵ This is our twenty-third annual audit to determine whether the IRS complied with the legal requirements of I.R.C. § 6320(a) and its own related internal guidelines for issuing lien notices. In the previous five years, including this year, we have reported full compliance with the law of timely notifying taxpayers each time an NFTL is filed. However, from FY 2015 to FY 2018, we reported that the IRS had not achieved full compliance with guidelines involving power of attorney notifications.

On March 25, 2020, the IRS announced the People First Initiative, in response to the COVID-19 virus, in order to ease the burden on people facing tax issues. This initiative included a series of steps to assist taxpayers by providing relief on a variety of issues ranging from easing payment guidelines to postponing compliance actions, such as filing NFTLs. Beginning on April 1, 2020, and continuing through July 15, 2020, the IRS suspended collection activities, including new NFTLs, unless there was a risk of permanent loss to the Government due to an exigent circumstance or the taxpayer agreed to the action.¹⁶ Although some enforcement processes were authorized to resume on July 16, 2020, the suspension of NFTL filings remained in effect until September 30, 2020. Automated enforcement activities did not immediately resume while backlogs of incoming mail and outgoing notices were being resolved.

¹² I.R.C. § 6320(c) specifically incorporates I.R.C. § 6330(e), which provides for the suspension of the collections statute of limitations. "(1) In general – Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates." Despite this, the IRS does not believe that it is required to suspend all levy activity for lien CDP requests (though it states that it generally suspends most collection activity).

¹³ I.R.C. § 6330(e) and (f).

¹⁴ Treasury Regulation § 301.6320-1, question and answer G-3, provides: "The IRS may levy for tax periods and taxes covered by the CDP Notice under § 6320 and for other taxes and periods if the CDP requirements under § 6330 for those taxes and periods have been satisfied." IRS management has stated that they believe that this Treasury Regulation question and answer reflects the plain language interpretation of these provisions in conjunction with I.R.C. § 6320(c).

¹⁵ I.R.C. § 7803(d)(1)(A)(iii).

¹⁶ The determination of an exigent circumstance required approval from the Director, Collection, Small Business/Self-Employed Division.

Results of Review

Our review of a statistically valid random sample of 116 NFTLs from the 439,030 NFTLs filed between July 1, 2019, and June 30, 2020, found that the IRS timely and correctly mailed a copy of all 116 NFTLs and notice of appeal rights to the last known address of all taxpayers as required by I.R.C. § 6320(a).¹⁷ I.R.C. § 6320(a) requires the IRS to notify taxpayers in writing, at their last known address, within five business days of the filing of an NFTL.¹⁸ However, our review of a judgmental sample of undelivered NFTLs showed that the IRS did not always use the taxpayer's last known address when sending the notices.¹⁹ Also, the IRS did not file NFTLs for more than 1 million individual and business taxpayers with balances due of more than \$10,000 during the period of our review.

Undelivered Lien Notices Were Generally, but Not Always, Properly Worked

Our review of a judgmental sample of undelivered lien notices showed that the IRS usually sent lien notices to the taxpayer's last known address. However, copies of undelivered lien notices were not always sent to taxpayers when the IRS received an address change. In addition, IRS employees did not always perform required research and follow processing procedures.

Although undelivered lien notices were generally sent to correct addresses as required, copies of undelivered notices were not always resent to updated addresses

We selected a judgmental sample of 69 lien notices that were sent by certified mail to the taxpayer but returned by the U.S. Postal Service to the Cincinnati and Fresno Campuses in February 2021. Lien notices are generally returned because the taxpayer refused to accept delivery (refused), would not sign for the certified letter (unclaimed), or the letter was undeliverable due to an incorrect mailing address (undelivered). We reviewed these returned notices and identified 10 lien notices for which the address currently on the IRS computer system and the address on the original lien notice did not agree. For three of the 10 notices, the NFTL was prepared in the ALS after the cycle (week) the address was updated in the IRS Master File. IRS procedures require the lien notice be sent to the updated address when the Master File is updated before the NFTL was requested. We confirmed that the IRS later sent the three lien notices to the taxpayers using their updated addresses.

For seven of the 10 notices, the NFTL was requested before the address update for the taxpayer posted to the IRS database. While no additional action was required pursuant to IRS procedures, the IRS [REDACTED]

[REDACTED] The ACS Support function's Internal Revenue Manual (IRM) section permits notices to be reissued on what the section terms a "courtesy copy" procedure.²⁰ Specifically, the procedure advises that ACS Support function employees may send a copy of the lien notice to a

¹⁷ Our sample was selected using a 90 percent confidence interval, 2 percent error rate, and \pm 5 percent precision factor.

¹⁸ I.R.C. § 6320(a)(3) addresses the notice of the amount of unpaid tax, the right to request a hearing, administrative appeal available, procedures for the release of liens, and the provisions of I.R.C. § 7345 on the certification of seriously delinquent tax debt.

¹⁹ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

²⁰ IRM 5.19.6.18.4 (Nov. 4, 2016).

taxpayer's new address if the new address was effective within two weeks after the original lien notice was prepared.

The IRS did not reissue the lien notice to the other [REDACTED] (of the seven) taxpayers at their updated addresses because information on their address change was received more than two weeks after the NFTL was prepared. Although the IRM states that the courtesy copy procedures are not mandatory, we believe that it is in the best interest of taxpayers for the IRS to resend undelivered lien notices when addresses have been updated because the lien notice contains both the information that an NFTL has been filed and instructions on how to request a CDP hearing. Although taxpayers have one year from the date the original NFTL was filed to elect to have an equivalent CDP hearing, [REDACTED] taxpayers in our judgmental sample of 69 undelivered NFTLs never received their lien notices.

The IRS should resend the lien notice if it determines that the notice was not sent to the taxpayer's current address, regardless of when the address was updated. ACS Support function employees, who perform research for the taxpayer's last known address as part of the requirements for working undelivered mail, could take additional steps to input updated address information into the ALS to regenerate the notices. Because this service would support the taxpayers' right to be informed, we believe the IRS should not limit the option to resend lien notices to only those taxpayers who had an address change within two weeks after the NFTL preparation date.²¹

In our FY 2017 report, we recommended that the IRS expand these undelivered lien notice procedures in the IRM to allow a copy of the lien notice to be resent to those taxpayers whose original CDP lien notices were returned as undelivered.²² The IRS partially agreed to this recommendation by agreeing to include additional information on the equivalent hearing process on its CDP web page. However, the IRS did not agree that expanding the IRM requirements for resending notices would significantly enhance taxpayer service. The Treasury Inspector General for Tax Administration (TIGTA) responded to the proposed corrective action by noting that providing additional information on the CDP web page does not help taxpayers who do not receive a copy of their lien notice. Given that ACS Support function employees are already required to perform research for the taxpayer's last known address when working undelivered mail, the additional step of sending a copy to a taxpayer's newest address does not create an excessive burden on the IRS.

Address research is still not performed as required in all cases

During our review, we found that address research was not performed in [REDACTED] cases. Our judgmental sample of 69 returned lien notices identified [REDACTED]

[REDACTED]²³

If ACS Support function employees determine that a more current address was available when the NFTL was requested in the ALS, then they must request that the lien notice be reissued.²⁴

²¹ I.R.C. § 7803(a)(3) lists the 10 taxpayer rights, with the first being the right to be informed.

²² Treasury Inspector General for Tax Administration, Report No. 2017-30-070, *Fiscal Year 2017 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2017).

²³ IRM 5.19.6.18.4 (Nov. 4, 2016).

²⁴ IRM 5.19.6.18.4 (Nov. 4, 2016).

Additionally, employees are required to document the date undelivered lien notices are received in the ACS Support function. Documentation should be noted in the ACS action history codes (if the taxpayer's account is still open) or in the Account Management Services narrative history (if the taxpayer's account is closed). Without timely research of undelivered lien notices, the IRS cannot ensure compliance with the statutory requirement to provide the taxpayer a copy of the NFTL at their last known address.²⁵ In response to our FY 2017 report, IRS management updated IRM 5.19.6.18 to state that address research should be conducted for the appropriate taxpayer, and history documentation should reflect these actions.²⁶ However, based on the results of this year's review, it appears that ACS Support function employees are not always following the internal processes.

Procedures designed to process undelivered lien notices were not followed consistently

When working undelivered lien notices, employees should input a specific Integrated Data Retrieval System (IDRS) transaction code with an appropriate action code. The transaction code signifies that the lien notices were returned and the action code indicates the reason, *e.g.*, undelivered, unclaimed, or refused.²⁷ For the 69 returned lien notices addressed to taxpayers in our judgmental sample, 24 cases did not have the transaction code and action code on the Master File to indicate that the notices were returned as undelivered, unclaimed, or refused. Three of the 24 cases involved undelivered notices, which are the only type of returned notice required to be worked.²⁸

During our FY 2018 review, IRS management stated that, while the *ALS User Guide* provides instructions on how to update the status of returned lien notices with one of three action codes (undelivered, unclaimed, or refused), the IRM section for the ACS Support function states that unclaimed and refused notices do not have to be worked.²⁹ Therefore, any lien notice returned to the ACS Support function as unclaimed or refused will not have a transaction code and action code in the Master File to indicate the returned delivery status of the notice. Of the 69 returned notices in the judgmental sample, 21 were unclaimed and did not have the transaction code on Master File for unclaimed notices. The lack of coding for these returned notices might affect other IRS functional employees who use the Master File account to obtain information about the taxpayer. For example, if one of the three action codes is not posted on the Master File to indicate a returned delivery status, it may appear as if the taxpayer received the lien notice.

In our FY 2020 review, we recommended that the Director, Collection Policy, Small Business/Self-Employed Division, issue guidance to ensure that ACS Support function employees processing undeliverable mail document that the notice was returned as undelivered.³⁰ The IRS agreed with the recommendation and stated that it was correcting a link in the internal guidance providing instructions for updating the status of the undelivered notice. While the

²⁵ I.R.C. § 6320.

²⁶ IRM 5.19.6.18 (June 17, 2014).

²⁷ IRM 5.19.6.18.4 (Nov. 4, 2016).

²⁸ IRM 5.19.6.18.4 (Nov. 4, 2016).

²⁹ TIGTA, Report No. 2018-30-080, *Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2018).

³⁰ TIGTA, Report No. 2020-30-068, *Fiscal Year 2020 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2020).

IRM Procedure Update was issued in July 2020, the applicable IRM section still has an incorrect page reference to the *ALS User Guide* for procedures to update the delivery status.

Recommendation 1: The Director, Collection Policy, Small Business/Self-Employed Division, should correct IRM references to the *ALS User Guide* for ACS Support function employees to update delivery status when undeliverable mail is received.

Management's Response: The IRS agreed with this recommendation. IRS management agreed to revise IRM references in the *ALS User Guide* for ACS Support function employees to update the delivery status when undeliverable mail is received.

Recommendation 2: The Director, Campus Collection, Small Business/Self-Employed Division, should issue a Servicewide Electronic Research Program Alert to ACS Support functions reminding employees to follow IRM instructions when processing undeliverable NFTLs, once the IRM section is updated.

Management's Response: The IRS agreed with this recommendation. IRS management agreed to issue a Servicewide Electronic Research Program Alert to remind ACS employees to follow IRM instructions when processing undeliverable NFTLs once the IRM section is updated.

Enforcement Actions Were Suspended When Taxpayers Appealed Their Notices of Federal Tax Lien

I.R.C. § 6320(c) provides that certain paragraphs of I.R.C. § 6330 shall apply for purposes of a taxpayer's appeal of an NFTL.³¹ Specifically, if a hearing is requested under I.R.C. § 6330, the law requires levy actions that are the subject of the requested hearing generally "shall be suspended for the period during which such hearing, and appeals therein, are pending."³² Our review of the 11,413 open NFTL appeal cases as of September 2020 showed that the IRS suspended or did not take levy action that involved the same tax period as the NFTL under appeal.

Taxpayer Representatives Were Not Always Correctly Notified

Taxpayers have the right to retain a representative of their choice to represent them in matters with the IRS.³³ When completing Form 2848, *Power of Attorney and Declaration of Representative*, to designate a representative, the taxpayer may check a box to indicate that the IRS should ordinarily send the representative(s) copies of notices and other written communications pertaining to the representation. If the taxpayer does not check the box, the IRS will not ordinarily send copies of notices to the listed representative.

Similarly, when completing Form 8821, *Tax Information Authorization*, taxpayers have an opportunity to check a box authorizing the IRS to send copies of notices or other written

³¹ I.R.C. § 6320(c) incorporates I.R.C. § 6330 provisions related to matters considered at the hearing (§ 6330(c)), proceedings after the hearing (§ 6330(d)), suspension of collections and statute of limitations (§ 6330(e)), and frivolous requests for hearings (§ 6330(g)).

³² I.R.C. § 6330(e)(1).

³³ I.R.C. § 7803(a)(3)(I).

communications to their third-party designee on an ongoing basis. If the taxpayer does not check the box on Form 8821, the third-party designee is not authorized to receive notices on an ongoing basis. Taxpayer representative information is contained in the Centralized Authorization File. Using the IDRS, employees can research the Centralized Authorization File to determine if the taxpayer has a representative on file and whether or not that representative is authorized to receive notices.

Taxpayer representatives were not always notified as required

Our review of a statistically valid sample of 116 lien notices identified a total of 35 (30 percent) cases in which the taxpayers had representatives authorized to receive notifications at the time the NFTLs were requested. However, our review of ALS records found that the IRS did not send copies of the lien notices to the taxpayers' representatives for three (8.5 percent) cases with an authorized representative.

IRS procedural rules require that any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the IRS must be given to the taxpayer and the representative unless restricted by the taxpayer.³⁴ More specifically, when an NFTL is filed, IRS policy requires that a copy of the lien notice be sent to the taxpayer's authorized representative as soon as possible after the lien notice is sent to the taxpayer.³⁵ We estimate that 11,354 taxpayers continue to be adversely affected because the IRS did not follow procedures to notify the taxpayers' authorized representatives of the taxpayers' rights related to NFTLs.³⁶

We have reported that the IRS has not been properly notifying taxpayer representatives in six of our last seven reviews of the IRS's compliance with NFTL due process procedures. Our review this year confirms that taxpayers are still being adversely affected for cases requiring notification to taxpayer representatives. However, given the disruptions to IRS campus activities from the COVID-19 pandemic during the period of our review, we are not making a recommendation for this area in this year's report. However, we will continue to monitor the notification of representatives in future reviews.

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

Our review of a statistically valid sample of 116 NFTLs also found that for [REDACTED] of the 116 cases, [REDACTED]

[REDACTED]

³⁴ Treas. Reg. § 601.506, *Conference and Practice Requirements, Statement of Procedural Rules* (2009).

³⁵ IRM 5.12.6.3.10 (Jan. 19, 2018).

³⁶ The projection is based on three (2.6 percent) of 116 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 3,112 and 28,746 taxpayers.

The IRS potentially violates the taxpayer's rights when it sends a notice to a representative who is not authorized to receive it because the IRS might share the taxpayer's Personally Identifiable Information with a third party without written permission. In addition, the IRS is subject to potential liability claims by the taxpayer. We project that [REDACTED] taxpayers may have potentially been affected because the IRS did not send copies of the lien notices only to taxpayers' representatives who are authorized to receive notices.³⁷ The IRS disagreed with our findings on [REDACTED] in this year's report [REDACTED].

In response to our FY 2017 report, IRS management indicated that the Form 2848 provides a general grant of authority to the taxpayer's representative to request and inspect the taxpayer's confidential tax information pertaining to the representation. However, the Form 2848 instructions give the taxpayer the option to elect whether their representative is entitled to receive copies of notices and communications as follows:

If you want to authorize your representative to receive copies of all notices and communications sent to you by the IRS, you must check the box that is provided under the representative's name and address. Do not check the box if you do not want copies of notices and communications sent to your representative(s).

Based on these instructions, taxpayers will expect that the IRS will not send their representatives copies of notices if they do not check the box. Current IRM procedures state that a copy of the notice is ordinarily issued to the representative only if the authorization box is checked. However, it also notes that providing a copy of a notice to a representative when the taxpayer does not check the box is not prohibited. The IRS does not advise taxpayers of this possibility or how taxpayers can ensure that the IRS does not send notices to representatives against their wishes.

In our FY 2018 report, the IRS agreed with our recommendation to revise IRM procedures to clarify that copies of notices and other written communications should ordinarily only be provided to representatives when and for whom taxpayers have checked the box expressly requesting the IRS to send copies of notices to them. Since that report, the number of notices sent to representatives not authorized to receive them has increased from zero in FY 2019, to [REDACTED] in FY 2020, to [REDACTED] in this report. Again, we recognize that the COVID-19 pandemic had an effect on the IRS's activities during the review period of this report; therefore, we are not making a recommendation for this area in this year's report. However, we will continue to monitor the sending of lien notices to unauthorized representatives in future reviews.

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

We identified a population of individuals and business entities that had an assessed account balance greater than \$10,000 without a NFTL filed and less than \$10,000 with a NFTL filed. IRS procedures generally require an NFTL filing determination be made when a taxpayer has an unpaid balance of assessment of \$10,000 or more.³⁸ Systemic lien filing processes were

³⁷ The projection is based on [REDACTED] of 116 randomly sampled cases. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the range of potential violations is between 1,350 and 23,388 taxpayers.

³⁸ IRM 5.12.2.6 (Oct. 14, 2013).

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suspended and manual lien filings were limited from April 1, 2020, to July 15, 2020, as part of the IRS's People First initiative in response to the COVID-19 pandemic. Other factors for making a filing determination include the taxpayer's compliance history, the proposed resolution of the unpaid balance, and whether the determination should be deferred to allow the taxpayer more time. Our analysis in Figure 2 shows that NFTLs were not filed for 1,138,347 individual and business taxpayers with balances due of more than \$10,000 between June 13, 2019, and June 18, 2020.

**Figure 2: Number of Taxpayers With Balances Due
Amounts Above \$10,000 From June 13, 2019, to June 18, 2020**

Balance Due Amount	Business Taxpayers	Individual Taxpayers	TOTAL
\$10,001 – \$50,000	183,319	789,194	972,513
\$50,001 – \$100,000	20,896	66,215	87,111
\$100,001 – \$500,000	18,332	48,290	66,622
\$500,001 – \$1,000,000	2,362	7,046	9,408
\$1,000,001 – \$10,000,000	1,398	1,049	2,447
Above \$10,000,000	199	47	246
Total	226,506	911,841	1,138,347

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

We also compared our data on individual taxpayers with a balance due amount of more than \$10,000 and without an NFTL during our review period to data on taxpayers paying mortgage interest during the same period, as recorded on Form 1098, *Mortgage Interest Statement*. Figure 3 shows that we found 157,629 individual taxpayers with balance due amounts of more than \$10,000 during our review period who also received a Form 1098 reporting mortgage interest paid during this period, suggesting that the taxpayers owned property. If a taxpayer owns property, there is a greater opportunity for the collection of unpaid taxes based on the value of the asset. In addition, the NFTL will protect the Government's interest by establishing priority if competing with certain third-party claims.

**Figure 3: Number of NFTLs Not Issued for Individuals With
Balance Due Amounts Above \$10,000 and Mortgage Interest
Recorded on Form 1098 From June 13, 2019, to June 18, 2020**

Balance Due Amount	Individual Taxpayers
\$10,001 – \$50,000	126,962
\$50,001 – \$100,000	15,915
\$100,001 – \$500,000	12,479
\$500,001 – \$1,000,000	1,923
\$1,000,001 – \$10,000,000	346
Above \$10,000,000	4
Total	157,629

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

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As a general rule, NFTLs should be filed to protect the Federal Government's interest in having the tax debt paid.³⁹ When asked for situations when an NFTL would not be filed, the IRS responded with the following:

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

An NFTL can be filed for any unpaid tax debt regardless of the amount owed, with some exceptions. However, it may not be economical for NFTLs to be filed when the unpaid tax balance due is less than \$10,000. We found that NFTLs were filed on 3,021 taxpayers (1,568 individuals and 1,453 businesses) with a balance due amount less than \$10,000 during our review period. We plan to conduct additional analysis in a future review as to the actual circumstances when the IRS does not file NFTLs for high-dollar delinquencies.

³⁹ IRM 5.12.2.6 (Oct. 14, 2013).

Appendix I

Detailed Objective, Scope, and Methodology

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

- Determined whether lien notices issued by the IRS complied with legal requirements set forth in I.R.C. § 6320(a) and related internal guidelines. From an ALS extract of 439,030 NFTLs filed by the IRS nationwide between July 1, 2019, and June 30, 2020, we selected a statistical sample of 116 cases to conduct additional testing and determine if lien notices adhered to legal guidelines regarding timely notifications of NFTL filings to the taxpayer, the taxpayer's spouse, or business partners.¹ A statistical sample was used to allow the results to be projected to the overall population. In addition, we used this sample to determine if the taxpayers' representatives were provided a copy of the lien due process notice. TIGTA's contracted statistician assisted with reviewing the sampling plans and projections.
- Evaluated the procedures for processing lien notices (Letter 3172) that are returned undelivered by reviewing a judgmentally selected sample of 69 returned notices obtained from the ACS Support functions in Fresno, California, and Florence, Kentucky.² We used a judgmental sample because we could not determine the population of undelivered notices in advance.
- Determined whether the IRS complied with legal requirements set forth in I.R.C. § 6330(e) as they relate to any levy or seizure action involving the same tax period as the I.R.C. § 6320 NFTLs filed during FY 2020 (October 1, 2019, to September 30, 2020).
- Determined if internal guidelines have been implemented or modified since our last review by discussing procedures and controls with appropriate IRS personnel in the National Headquarters.
- Determined if NFTLs filed by the IRS followed internal guidelines for filing thresholds.

Performance of This Review

This review was performed at the Small Business/Self-Employed Division's Centralized Lien Processing Operation and the ACS Support functions in Fresno, California, and Florence, Kentucky, and with information obtained from the Small Business/Self-Employed Division's Office of Collection Policy in New Carrollton, Maryland, during the period December 2020 through June 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for

¹ Our sample was selected using a 90 percent confidence interval, 2 percent error rate, and ±5 percent precision factor.

² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. We selected our sample from all undelivered notices available at the two ACS Support locations on February 10, 2021.

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

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Linna Hung, Director; Tim Greiner, Acting Director; Robert Jenness, Audit Manager; Jessica Davis, Lead Auditor; Jeremy Berry, Senior Auditor; Lance Welling, Information Technology Specialist (Data Analytics); Nathan Cabello, Auditor; and Ali Vaezazizi, Auditor.

Validity and Reliability of Data From Computer-Based Systems

During this review, we relied on data stored at TIGTA's Data Center Warehouse and performed analyses of data received from the IRS. We performed tests to assess the reliability of the data and evaluated the data by 1) performing electronic testing of required data elements, 2) reviewing existing information about the data and the system that produced them, and 3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the Small Business/Self-Employed Division Collection function's policies, procedures, and practices for timely notifying taxpayers of NFTL filings and timely verifying addresses of undelivered lien notices. We evaluated these controls by reviewing samples of lien notices sent to taxpayers and lien notices returned to the IRS as undelivered.

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

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

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

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

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

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

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

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

² Letter 3172.

Appendix III

Internal Revenue Service Computer Systems Used in the Filing of Notices of Federal Tax Liens

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

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

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

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

Appendix IV

**Confidence Intervals for Error Rates Reported on
 Taxpayer Representatives Not Receiving Notification
 for Reports Issued in Fiscal Years 2016 Through 2020**

**Two-sided 90 percent confidence intervals using the
 exact binomial method for the exception rate
 for reports issued in FYs 2016 through 2020**

Report FY	Sample Cases Requiring Representative Notification	Sample Cases Not Receiving Representative Notification	Error Rate	Confidence Interval
2016	37	6	16.0%	Between 6.11% and 26.32%
2017	47	8	17.0%	Between 7.31% and 24.30%
2018	47	3	6.3%	Between 0.5% and 4.7%
2019	21	0	0.0%	Not projected
2020	37	■	■	Not projected

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

Appendix V

Statutory Lien Reports Issued During Fiscal Years 2016 Through 2020

TIGTA, Report No. 2016-30-047, *Fiscal Year 2016 Statutory Review of Compliance With Notice of Federal Tax Lien Due Process Procedures* (July 2016).

TIGTA, Report No. 2017-30-070, *Fiscal Year 2017 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2017).

TIGTA, Report No. 2018-30-080, *Fiscal Year 2018 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2018).

TIGTA, Report No. 2019-30-077, *Fiscal Year 2019 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2019).

TIGTA, Report No. 2020-30-068, *Fiscal Year 2020 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Due Process Procedures* (Sept. 2020).

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

08/30/2021

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Darren John Guillot  Digitally signed by Darren J. Guillot
Date: 2021.08.30 16:43:11 -04'00'
Commissioner, Small Business/Self-Employed, Collection

SUBJECT: Draft Audit Report – Fiscal Year 2021 Statutory Review of
Compliance With Notice of Federal Tax Lien Filing Due Process
Procedures (Audit #202130001)

Thank you for the opportunity to review and comment on the subject draft report, which evaluates whether the IRS is complying with the statutory requirements to notify taxpayers when a notice of federal tax lien (NFTL) is filed. The federal tax lien arises by operation of law and encumbers the property of a delinquent taxpayer once an assessment is made and a taxpayer neglects or refuses to pay. The IRS may file a NFTL to notify interested parties that a lien exists to further protect the Government's claim to the property. If an NFTL is filed, the IRS must provide notice to the taxpayer and comply with certain statutory requirements when it provides this notice. We appreciate your recognition for the eighth consecutive year that our employees correctly and timely notified taxpayers of NFTL filings and their appeal rights.

The report also notes that we complied with statutory requirements for addressing undelivered lien notices and generally adhered to additional procedures we have put in place to further protect taxpayer rights. We will correct the Internal Revenue Manual (IRM) references to the Automated Lien System (ALS) User Guide for updating the delivery status of undelivered mail and remind our employees to follow this IRM instruction.

The report notes that you identified a population of individuals and business entities that had an assessed account balance greater than \$10,000 without a NFTL filed. There are a number of situations where a NFTL would not be filed (for example if a taxpayer is in

**Fiscal Year 2021 Statutory Review of Compliance With
Notice of Federal Tax Lien Filing Due Process Procedures**

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bankruptcy, deceased, or the victim of identity theft). We also do not typically consider filing the NFTL until the notice process has run its course. This ensures that our NFTL filing determinations protect the government's interest and are not more intrusive than necessary to the taxpayer. Resource considerations also contribute to this; with fewer employees, there are more inactive cases in the collection queue that we are unable to assign for a lien filing determination.

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

Attachment

**Fiscal Year 2021 Statutory Review of Compliance With
Notice of Federal Tax Lien Filing Due Process Procedures**

Attachment

RECOMMENDATION 1:

The Director, Collection Policy, Small Business/Self-Employed Division, should correct IRM references to the *ALS User Guide* for ACS Support function employees to update delivery status when undeliverable mail is received.

CORRECTIVE ACTION:

We will revise IRM references to the *ALS User Guide* for ACS Support function employees to update the delivery status when undeliverable mail is received.

IMPLEMENTATION DATE:

November 15, 2022.

RESPONSIBLE OFFICIAL:

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

CORRECTIVE ACTION MONITORING PLAN:

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

RECOMMENDATION 2:

The Director, Campus Collection, Small Business/Self-Employed Division, should issue a Servicewide Electronic Research Program Alert to ACS Support functions reminding employees to follow IRM instructions when processing undeliverable NFTLs, once the IRM section is updated.

CORRECTIVE ACTION:

We will issue a Servicewide Electronic Research Program Alert to remind ACS employees to follow IRM instructions when processing undeliverable NFTLs once the IRM section is updated.

IMPLEMENTATION DATE:

February 15, 2023

RESPONSIBLE OFFICIAL:

Director, Campus Collection, Small Business/Self-Employed Division.

CORRECTIVE ACTION MONITORING PLAN:

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

Appendix VII

Glossary of Terms

Term	Definition
Account Management Services	A computer-based system used to answer and resolve taxpayer account inquiries. It provides a common interface that allows users of multiple IRS systems to view history and comments from other systems.
Campus	The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.
Centralized Authorization File	A computerized system of records which houses authorization information from both powers of attorney and tax information authorizations.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Master File	The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.
Spousal Defenses	A taxpayer may raise any appropriate spousal defenses at a CDP hearing. Under I.R.C. § 66 (relating to community income) or I.R.C. § 6015 (relating to relief from joint and several liability on returns), the taxpayer must do so in writing according to rules prescribed by the IRS.

Appendix VIII

Abbreviations

ACS	Automated Collection System
ALS	Automated Lien System
CDP	Collection Due Process
FY	Fiscal Year
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
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Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

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