

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **Review of the Advanced Manufacturing Production Credit Implementation Identified Weaknesses in the Pre-Rulemaking Process**

August 19, 2024

Report Number: 2024-308-035

**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: Review of the Advanced Manufacturing Production  
Credit Implementation Identified Weaknesses in the Pre-Rulemaking Process**

**Final Audit Report issued on August 19, 2024**

**Report Number 2024-308-035**

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

On August 16, 2022, the Inflation Reduction Act of 2022 (IRA) was enacted. The legislation contained 38 provisions, including 36 tax provisions that affect individual and business taxpayers and six provisions specific to energy credits.

TIGTA initiated this audit to evaluate the IRS and the Office of Chief Counsel's (Chief Counsel) efforts to implement the Advanced Manufacturing Production Credit (AMPC) and related provisions.

### **Impact on Tax Administration**

Provision 13502 of the IRA established the AMPC and provision 13801 established the Elective Payment for Energy Property and Electricity Produced from Certain Renewable Resources, *Etc.*, which has applicability to the AMPC. The AMPC was intended to encourage development of a manufacturing base to support renewable energy industries. IRA legislation expected to pay out \$270 billion in tax incentives for clean energy. According to the Joint Committee on Taxation, \$31 billion was estimated to be paid out specifically for the AMPC for Fiscal Years 2022 through 2031. These new provisions required the IRS and Chief Counsel to communicate and provide guidance to taxpayers and tax professionals regarding tax law changes.

### **What TIGTA Found**

On October 5, 2022, Chief Counsel and the Department of the Treasury issued Notice 2022-47, *Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X*, and Notice 2022-50, *Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits*. The two notices did not include any initial taxpayer guidance and were issued to aid Chief Counsel and the Department of the Treasury in drafting energy credit guidance. Notice 2022-47 and 2022-50 requested general comments in addition to specific comments on questions listed in the notices. TIGTA is referring to this process as "pre-rulemaking" as the issuance of these notices is taking place before guidance has been issued.

Our review of Internal Revenue Code (I.R.C.) § 45X comments found 81 (9 percent) of 924 comments were not documented in the comment summary document used by Chief Counsel. Of the 843 comments transcribed, TIGTA found Chief Counsel's written consideration for 319 (38 percent) comments. Chief Counsel's review of I.R.C. § 45X comments included the use of litigation document review software, which enabled the review of all comments for a specific issue or words simultaneously.

Our review of I.R.C. §§ 6417 and 6418 comments found 164 (12 percent) of 1,327 comments were not documented in the summary document used by Chief Counsel. Of the 1,163 comments transcribed, TIGTA found Chief Counsel's written consideration for six (0.5 percent) comments.

As part of our review, TIGTA found 49 comments submitted in response to I.R.C. § 45X with comments applicable to I.R.C. §§ 6417 and 6418 that were not referred to the related drafting team. TIGTA also found 16 comments submitted in response to I.R.C. §§ 6417 and 6418 with comments applicable to I.R.C. § 45X that were not referred to the related drafting team.

Overall, TIGTA identified a lack of written procedures and documentational evidence for the review and consideration of comments submitted during pre-rulemaking.

### **What TIGTA Recommended**

TIGTA recommended that Chief Counsel: 1) provide for a written process that will track all comment letters submitted prior to the issuance of a notice of proposed rulemaking or other guidance to facilitate consideration of those comments by the Chief Counsel drafting team assigned to the project and 2) allow for the use of document review software as part of the written process to track comment letters for requests that receive a significant number of submissions. Chief Counsel disagreed stating its Chief Counsel Directives Manual already provides written guidance. TIGTA's recommendations were made to enhance the efficiency and effectiveness of the pre-rulemaking process and to leverage software.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

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

August 19, 2024

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

**FROM:** Danny R. Verneuille  
Acting Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Review of the Advanced Manufacturing Production Credit Implementation Identified Weaknesses in the Pre-Rulemaking Process (Audit No.: 202330826)

This report presents the results of our review to evaluate the Internal Revenue Service's (IRS) and the Office of Chief Counsel's efforts to implement the Advanced Manufacturing Production Credit and related provisions. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenge of *Tax Law Changes*.

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

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## Background

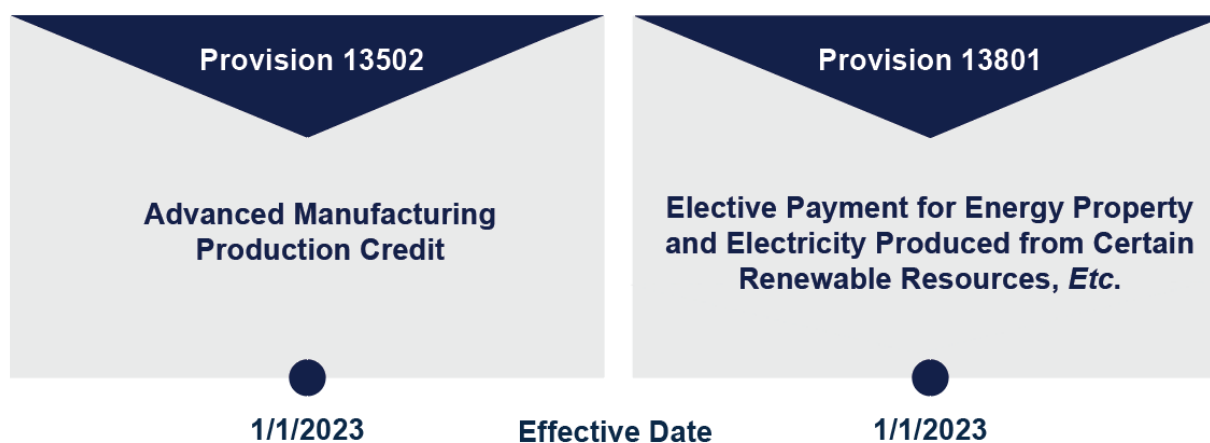
The Inflation Reduction Act of 2022 (IRA) was signed into law on August 16, 2022.<sup>1</sup> The IRA includes many provisions that impact a wide range of Government programs including tax credits to producers, developers, and investors in renewable energy and in projects that capture and sequester carbon. The IRA extended many of the existing clean energy provisions and added several new clean energy credits to the Internal Revenue Code (I.R.C.).<sup>2</sup>

The IRA contains 38 provisions affecting the Internal Revenue Service (IRS), including 36 tax provisions that affect individual and business taxpayers, and six provisions specific to energy credits. Provision 13502 is the Advanced Manufacturing Production Credit (AMPC) under I.R.C. § 45X. This is a new provision enacted as part of IRA legislation to expand the renewable and alternative energy sources.

Provision 13801 is the elective payment and transferability of credit under I.R.C. §§ 6417 and 6418 and has applicability to the AMPC. I.R.C. § 6417 provides for elective payment of applicable credits, and I.R.C. § 6418 provides that an eligible taxpayer can elect to transfer all (or any portion specified in the election) of an eligible credit to an unrelated taxpayer.

These provisions were intended to encourage development of a manufacturing base to support renewable energy industries. Given the complexity of these new provisions, it is important that the IRS and its Office of Chief Counsel (hereafter referred to as Chief Counsel) help taxpayers and tax professionals understand the rules and how these provisions can be applied by their organizations. Figure 1 shows the effective dates for new provisions 13502 and 13801.

**Figure 1: Effective Date of Select IRA Tax Provisions<sup>3</sup>**



Source: Treasury Inspector General for Tax Administration (TIGTA)-created figure with information from Chief Counsel.

<sup>1</sup> Pub. L. No. 117-169, 136 Stat. 1818.

<sup>2</sup> See Appendix VII for a glossary of terms.

<sup>3</sup> Figure 1: I.R.C. §§ 6417 and 6418 effective date is for taxable years beginning after December 31, 2022, while the effective date for I.R.C. § 45X applies to eligible components produced and sold after December 31, 2022.

Chief Counsel is responsible for interpreting tax laws enacted by Congress. Regulations are drafted and implemented to provide more detailed rules as guidance to both the IRS and the taxpayer. Specifically, the Department of the Treasury's (Treasury Department) Office of Tax Policy is responsible for issuing published guidance. Published guidance consists of regulations, revenue rulings, revenue procedures, and notices. The IRS also assists in reviewing the guidance and provides input and feedback. On October 5, 2022, Chief Counsel and the Treasury Department issued Notice 2022-47, *Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X*, and Notice 2022-50, *Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits*. The two notices did not include any initial taxpayer guidance and were issued to request general public comments and specific comments on questions listed in the notices to aid Chief Counsel and the Treasury Department in drafting energy credit guidance. TIGTA is referring to this process as "pre-rulemaking" as the process is not governed by the Administrative Procedure Act (APA) and takes place before proposed guidance has been issued.<sup>4</sup>

Figure 2 shows the processing timeline for I.R.C. § 45X in relation to Chief Counsel and the Treasury Department's tax regulatory rulemaking process.<sup>5</sup>

**Figure 2: I.R.C. § 45X Processing Timeline as of February 2024**

<b>IRS/Treasury Department Rulemaking Process</b>	<b>Date Completed</b>
<b>Notice (Pre-Rulemaking)</b>	<b>October 5, 2022</b>
<b>Notice of Proposed Rulemaking Issued</b>	<b>December 14, 2023</b>
<b>Proposed Regulations Published</b>	<b>December 15, 2023</b>
<b>Final Regulations</b>	<b>TBD</b>

*Source: TIGTA-created figure with information from Chief Counsel.*

Figure 3 shows the processing timeline for I.R.C. §§ 6417 and 6418 in relation to Chief Counsel and the Treasury Department's tax regulatory rulemaking process.

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<sup>4</sup> The APA is a rulemaking process requirement applicable to all Federal agencies to respond to public comments notice-and-comment period. 5 U.S.C. § 553.

<sup>5</sup> See Appendix IV for an overview description of the rulemaking process.

**Figure 3: I.R.C. §§ 6417 and 6418 Processing Timeline as of April 2024**

<b>IRS/Treasury Department Rulemaking Process</b>	<b>Date Completed</b>
<b>Notice (Pre-Rulemaking)</b>	<b>October 5, 2022</b>
<b>Temporary Regulations Issued<sup>6</sup></b>	<b>June 14, 2023</b>
<b>Notice of Proposed Rulemaking Issued</b>	<b>June 14, 2023</b>
<b>Proposed Regulations Published</b>	<b>June 21, 2023</b>
<b>Final Regulations<sup>7</sup></b>	<b>March 11, 2024, and April 30, 2024</b>

*Source: TIGTA-created figure with information from Chief Counsel.*

The IRS, Chief Counsel, the Treasury Department, and other Government agencies (when necessary) worked collaboratively to implement the IRA legislation. According to the IRS Strategic Operating Plan for Fiscal Years 2023-2031, in developing and communicating guidelines for energy security incentives, including mechanisms for taxpayers and other entities to monetize those incentives: “we are focused on developing clear, predictable and transparent approaches to administering these provisions so that taxpayers have the certainty they need to invest in energy security and clean energy projects.”<sup>8</sup>

Our review focused on the following two notices issued on October 5, 2022:<sup>9</sup>

- Notice 2022-47.
- Notice 2022-50.

These two notices did not provide substantive guidance but summarized the relevant statutes.<sup>10</sup> The notices were issued specifically to solicit public comments to help the IRS and the Treasury Department in drafting the Notice of Proposed Rulemaking (NPRM) guidance.

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<sup>6</sup> The IRS and Treasury Department decided to forego the notice-and-comment process and make effective immediately Temporary and Proposed Regulations to establish a mandatory registration process to be in place before the end of Calendar Year 2023 for taxpayers’ use. The IRS and Treasury Department cited a finding of good cause as the reason for not going through the notice-and-comment period.

<sup>7</sup> On March 11, 2024, and April 30, 2024, the IRS and the Treasury Department published final regulations under § 6417 (Elective Payment of Applicable Credits) and § 6418 (Transfer of Certain Credits) in the Federal Register. The effective dates of the final regulations are May 10, 2024, for § 6417 and July 1, 2024, for § 6418.

<sup>8</sup> Publication 3744, *Internal Revenue Service Inflation Reduction Act Strategic Operating Plan, FY 2023 - 2031* p. 134.

<sup>9</sup> The other four notices issued were: 1) Notice 2022-46, requests comments on credits for clean vehicles, 2) Notice 2022-48, requests comments on incentive provisions for improving the energy efficiency of residential and commercial buildings, 3) Notice 2022-49, requests comments on certain energy generation incentives, and 4) Notice 2022-51, requests comments on prevailing wage, apprenticeship, domestic content, and energy communities’ requirements.

<sup>10</sup> Notices may contain guidance of a substantive nature regarding interpretations of the I.R.C. or other provisions of the law depending on the situation and discretion of Chief Counsel and the Treasury Department.

Commenters were asked to respond by November 4, 2022, electronically on regulations.gov or by mail. According to Chief Counsel procedures, the NPRM is then issued to solicit public comments, input, and feedback to be considered before issuance of the final regulation. However, issuing notices earlier in the process before the NPRM is issued provides the Treasury Department and the IRS's Chief Counsel additional information to assist them in drafting the NPRM. This request for comments process provides the Treasury Department and the IRS's Chief Counsel an "accelerated process to taxpayers" with the goal of bringing clarity and certainty to taxpayers based on their input.<sup>11</sup> However, according to Chief Counsel, unlike the NPRM process, the request for public comments process used for I.R.C. §§ 45X, 6417, and 6418 is not required to follow the rigors of the APA.<sup>12</sup>

### **I.R.C. § 45X AMPC**

The AMPC pertains to the production and sale of eligible components, which are defined by the statute as certain solar energy components, wind energy components, inverters, qualifying batteries components, and certain applicable critical minerals in the United States or Territory of the United States after December 31, 2022. The AMPC was effective January 1, 2023, and will phase out in 25 percent increments starting in 2030 (to 75 percent in 2030, 50 percent in 2031, and 25 percent in 2032 as the final phase-out) except for applicable critical minerals.<sup>13</sup>

According to Chief Counsel, the I.R.C. has not had any similar provision previously that specifically dealt with manufacturing specific technical components. As a result, Chief Counsel and the Treasury Department sought technical assistance from other Federal agencies, *e.g.*, Department of Energy, to assist them as part of the NPRM process.

The IRS implementation of the AMPC requires new and revised tax forms and instructions that would be used first to process fiscal year and short-year tax returns ending during Calendar Year (CY) 2023.<sup>14</sup> In April 2023, the IRS released supplemental instructions for AMPC taxpayers requiring Form 7207, *Advanced Manufacturing Production Credit*, for 2023 short-year tax returns that begin in 2023 and end before December 31, 2023. This form was to be used to claim the AMPC under I.R.C. § 45X for eligible components produced and sold during the tax year in the taxpayer's trade or business to an unrelated person. Specifically, it instructs short-year filers required to file a return for a short tax year that ends in CY 2023 to use the Tax Year (TY) 2022 form because the TY 2023 form was not available at the time these taxpayers were required to file. Also, taxpayers were instructed to make all necessary modifications to the TY 2022 form, accounting for all tax law changes effective for the tax years beginning after CY 2022.

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<sup>11</sup> *Treasury Seeks Public Input on Implementing the Inflation Reduction Act's Clean Energy Tax Incentives*, Press Release dated October 5, 2022.

<sup>12</sup> The APA is a rulemaking process requirement applicable to all Federal agencies to respond to public comments notice-and-comment period. 5 U.S.C. § 553.

<sup>13</sup> REG-107423-23 clarified that the production of eligible components for which a taxpayer is claiming an I.R.C. § 45X credit *may begin* before December 31, 2022. Production of eligible components must be *completed*, and sales of eligible components must occur after December 31, 2022.

<sup>14</sup> See Appendix II for list of tax forms and instructions related to the AMPC and elective payment and transferability credits.



**Review of the Advanced Manufacturing Production Credit  
Implementation Identified Weaknesses in the Pre-Rulemaking Process**

The AMPC tax credit is claimed on Form 7207 and then is reported on the tax return as a general business credit on Form 3800, *General Business Credit*, Part III, line 1b.<sup>15</sup> Figure 4 shows where the AMPC tax credit should be claimed on the Form 7207, which was published as of January 2023 for fiscal year and short-year tax returns ending during CY 2023.

**Figure 4: Tax Return Form 7207 Line 9**

<b>Form 7207</b> (January 2023) Department of the Treasury Internal Revenue Service Name (as shown on your income tax return)	<b>Advanced Manufacturing Production Credit</b>  Go to <a href="http://www.irs.gov/Form7207">www.irs.gov/Form7207</a> for instructions and the latest information.	OMB No. 1545-2306  Attachment Sequence No. <b>207</b>
		Identifying number

<b>9 Advanced Manufacturing Production Credit</b>	
<b>a</b> Add amounts in column (e), lines 1 through 8. Estates and trusts, go to line 9b. Partnerships and S corporations, stop here and report this amount on Schedule K. <b>All others, stop here and report this amount on Form 3800, Part III, line 1b</b> . . . . .	<b>9a</b>
<b>b</b> Amount allocated to beneficiaries of the estate or trust (see instructions) . . . . .	<b>9b</b>
<b>c</b> Estates and trusts, subtract line 9b from line 9a. Report this amount on Form 3800, Part III, line 1b . . . . .	<b>9c</b>

Form **7207** (1-2023)

Source: IRS website, TY 2022 Form 7207 as of January 2023.

The form and instructions were revised as of January 2024. In general, the allowable portion of the credit from Form 3800 is used to offset taxes on the taxpayer's income tax return.

## **I.R.C. §§ 6417 and 6418**

I.R.C. §§ 6417 (elective payment of applicable credits) and 6418 (transfer of specific credits) were also added to the I.R.C. as part of the IRA and are effective for some energy projects with placed in service dates and production credits for sales occurring after December 31, 2022. On June 21, 2023, the IRS and the Treasury Department published temporary and proposed regulations entitled Pre-Filing Registration Requirements for Certain Tax Credit Elections regarding §§ 48D, 6417, and 6418; proposed regulations for § 6417 regarding elective payment of applicable credits; and proposed regulations under I.R.C. § 6418 regarding transfer of certain credits along with a list of frequently asked questions. Written public comments for the proposed regulations were solicited and due August 14, 2023.<sup>16</sup>

I.R.C. §§ 6417 and 6418 are intended to enhance financing available for renewable energy projects by increasing the pool of potential investors.<sup>17</sup> As of February 2024, the IRS had updated most of the tax return forms affected by I.R.C. §§ 6417 and 6418 provisions that are effective on or after January 1, 2023.<sup>18</sup> Specifically:

- Form 3800 is the key form for all elective payment and transfer of credits. These credits reduce a taxpayer's tax liability amount and are nonrefundable. Lines have been added

<sup>15</sup> A Form 3800 credit reduces a taxpayer's tax liability amount and is nonrefundable. Form 3800 for TY 2023 was revised in February 2024.

<sup>16</sup> A hearing was held on the proposed regulations for I.R.C. §§ 6417 and 6418 elections on August 21 and 23, 2023, respectively.

<sup>17</sup> See Appendix III for detailed definitions for I.R.C. §§ 6417 and 6418.

<sup>18</sup> Some instructions are still being finalized.

to the parent forms, *e.g.*, draft Form 1120, *U.S. Corporation Income Tax Return*, for elective payment and transfer of credits.

Form 3800 was revised for use in TY 2023 for I.R.C. §§ 6417 and 6418 as of February 2024. The I.R.C. § 45X AMPC tax credit is reported on Form 7207 and then is reported on the tax return as a General Business Credit on Form 3800.

When the IRA passed on August 16, 2022, the legislation expected to pay out \$270 billion in tax incentives for clean energy. According to the Joint Committee on Taxation, \$31 billion was estimated specifically for the AMPC for Fiscal Years 2022 through 2031. While I.R.C. § 45X AMPC became effective January 1, 2023, the IRS and the Treasury Department did not publish NPRM guidance for I.R.C. § 45X until December 15, 2023. Related I.R.C. §§ 6417 and 6418 guidance was published in June of 2023.

## **Results of Review**

### **The Office of Chief Counsel's Procedures for Processing Public Comments Need to Be Improved**

Notices 2022-47 and 2022-50 were issued on October 5, 2022, and requested comments from the public on the newly established I.R.C. §§ 45X, 6417, and 6418. Chief Counsel was not consistent in the way it handled the public comments that were received. Specifically, Chief Counsel used two separate methods for documenting its review and consideration of public comments for the two notices. This was mainly a consequence of Chief Counsel's lack of procedures for reviewing public comments.

#### **Procedures do not address the process Chief Counsel used for the AMPC**

The Chief Counsel Directives Manual (CCDM) contains the Chief Counsel Publication Handbook, which includes procedures for the published guidance process. Chief Counsel's written procedures regarding the use of notices for the request for comments process are limited. The CCDM provides instructions for the project drafting team regarding a process to review and consider submitted public comments. When a request for comments is solicited, prospective commenters are given specific information on how to submit comments, including a mailing address to send comments, an address to hand deliver comments, and an e-mail address.

The CCDM also references the process regarding the submission for comments including instructions to request that commenters include the identification number of the publication in both the body of the comment letter and on the e-mail subject line. However, these procedures do not provide detailed instructions for how Chief Counsel employees should consider and process the public comments. CCDM procedures simply state that steps should be taken to identify the source and content of the comments in materials that are reviewed, when appropriate. In addition, CCDM procedures that apply to processing public comments do not provide sufficient instructions to the project drafting team to ensure that Chief Counsel personnel reviewed and considered each comment submitted by stakeholders (in response to

Notices 2022-47 and 2022-50). CCDM procedures do not address how comments should be identified, accumulated, and controlled (see Appendix V).

As a result, Chief Counsel has no prescribed format for how the review of comment letter submissions through the request for comments process are documented, reviewed, and tracked. The format and method used is at the discretion of each project reviewer or drafting team of Chief Counsel's staff.<sup>19</sup>

In our interviews with Chief Counsel staff, we were informed there is not a technical name for this request for comments process that precedes the NPRM. They stated that it is not a new process, but rather a process that Chief Counsel uses on occasion when it wants additional input before issuance of guidance and is worked in coordination with the Treasury Department, with the Treasury Department having the final say in what goes into NPRM guidance and ultimately in the final regulations. The notice issued to request comments is published in the Internal Revenue Bulletin and not the Federal Register.

### **Public comment submissions pertaining to I.R.C. §§ 45X, 6417, and 6418 were not treated consistently by Chief Counsel**

Chief Counsel established two drafting teams to handle the comments received, one for I.R.C. § 45X and one for I.R.C. §§ 6417 and 6418. The primary method used for submitting comments was based on the instructions provided at the end of the notices to electronically submit comments via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). For example, commenters were instructed to type 'IRS-2022-0047' in the search field on the [regulations.gov](http://www.regulations.gov) home page to find the notice and submit comments. The instructions for submitting through [regulations.gov](http://www.regulations.gov) are not part of Chief Counsel's procedures and are Governmentwide procedures applicable to any Government agency notice.<sup>20</sup>

Chief Counsel received 280 public comment letter submissions pertaining to I.R.C. § 45X (in response to Notice 2022-47) and 219 public comment letter submissions pertaining to I.R.C. §§ 6417 and 6418 (in response to Notice 2022-50). The overwhelming majority of commenters submitted their comment letters through [regulations.gov](http://www.regulations.gov). We received the documentation that each of the two teams used to record and review these public comments. We considered this documentation to be Chief Counsel's comment summaries for its review of public comments.

Chief Counsel leadership acknowledged the lack of a formal process but explained that this provides the project team flexibility to address guidance based on the particular project. Chief Counsel leadership agreed that there is no set rule on how a project team addresses incoming comments during this stage. For instance, some drafting teams prefer to transcribe the comment letters in a word document, others prefer to use a spreadsheet. Additionally, our review of the comment summaries found [REDACTED]

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<sup>19</sup> See also TIGTA, Audit No. 202330827, *Review of the Corporate Alternative Minimum Tax Implementation Identified Weaknesses in the Pre-Rulemaking Process*, in which a similar pre-NPRM process was used and TIGTA identified the same issues.

<sup>20</sup> The eRulemaking program is managed by the General Services Administration. The eRulemaking Management Office leads the eRulemaking program and is responsible for the development and implementation of the [regulations.gov](http://www.regulations.gov) website.

Overall, CCDM procedures that applied to processing public comments do not provide for sufficient documentation requirements to support that Chief Counsel personnel reviewed and considered each comment submitted by stakeholders in response to Notices 2022-47 and 2022-50. As a result, Chief Counsel was not consistent in the way it handled the public comments pertaining to I.R.C. § 45X and §§ 6417 and 6418.

### **I.R.C. § 45X comment analysis**

The comment summary documenting Chief Counsel’s review of public comments pertaining to I.R.C. § 45X consisted of a word document in which the drafting team transcribed public comments from regulations.gov. We found that each comment letter could include several comments or suggestions. We reviewed all 280 comment letter submissions provided in response to the Notice 2022-47.

Our analysis included a reconciliation of the comment summary word document with the information that was on regulations.gov to ensure that all the comments were transcribed exactly as provided in the respective comment letters. We took note of comments we found that were not transcribed and missing from the comment summary word document. Figure 5 summarizes the number of comments reviewed and transcribed by Chief Counsel from incoming public comment letters to the comment summary word document for I.R.C. § 45X.<sup>21</sup>

**Figure 5: Summary of Comments on I.R.C. § 45X**

<b>Letter Submissions</b>	<b>Total Comments</b>	<b>Comments Transcribed</b>	<b>Comments Not Transcribed</b>	<b>Percentage Not Transcribed</b>
280	924	843	81	8.8%

*Source: TIGTA analysis of Chief Counsel’s comment summary word document.*

As noted in Figure 5, 81 (8.8 percent) of the 924 comments were not transcribed from the original comment letter to the comment summary word document. We discussed the lack of documentation regarding the 81 comments with the I.R.C. § 45X drafting team in January 2024 and again in February 2024. The team claimed that all comments had been read by someone on the drafting team. Chief Counsel stated that they are just reading, summarizing, and digesting the comments received, using the information in the comments to assist in developing the NPRM process, which is used to develop the NPRM. The I.R.C. § 45X drafting team stated that there were six Chief Counsel attorneys in the group, and the comments received are read by members of the drafting team. Some of the drafting team members transcribed the comments in a public comment summary matrix word document. Chief Counsel leadership said that no individual attorney decides on what to do with each comment. The comments received may be used to determine what Chief Counsel wants to include in an NPRM.

While it appears the comments may have been reviewed and considered, there is no documented comment summary or detailed workpapers maintained to validate the review of all

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<sup>21</sup> Transcribed refers to Chief Counsel making a written copy of the submitters comment in the comment letter as compared to summarizing the submitters comment, which involves the condensing of the commenters written words using Chief Counsel’s own words in a short and clear form.

submitted comments. Therefore, we can report only on verbal statements made by Chief Counsel that all comments were reviewed and considered. As such, Chief Counsel needs to improve the documentation of its review to ensure that the review and consideration of all taxpayer comments are documented and can be validated.

We also analyzed whether each comment included any written consideration within the word document. Figure 6 summarizes our analysis of how many comments included written consideration.

**Figure 6: Summary of Comments Considered for I.R.C. § 45X**

Comments Transcribed	Comments Consideration Documented	Percentage Consideration Documented
843	319	37.8%

*Source: TIGTA analysis of Chief Counsel's comment summary word document.*

As noted in Figure 6, for 843 comments that were transcribed for tracking purposes, 319 (38 percent) comments showed some sort of written Chief Counsel consideration on the comment summary word document. If the remaining comments were considered by Chief Counsel, the comment summary was not documented to support any consideration. The following are examples of entries made by the I.R.C. § 45X drafting team on the comment summary word document indicating Chief Counsel consideration:

[REDACTED] 22

[REDACTED]

[REDACTED]

[REDACTED]

When we presented these findings to Chief Counsel management regarding the lack of documentation and consideration of the 81 comments, they informed us of a tool used as part of the review process that we were not made aware of previously during our review. This tool was a litigation document review software. The software enables the user to conduct word searches on all comments simultaneously. Chief Counsel noted that conducting the search itself is a process that may require multiple iterations and refinement, including reading and reviewing the resulting comment letters, until the program user is satisfied that the search result captures all relevant and substantive comment letters for the issue of interest. Chief Counsel used this tool to quickly identify comments that may be relevant and to then review the actual comment letter to consider and determine if the issues were significant. Chief Counsel argued that the resulting software searches provide evidence of consideration of specific comment letters.

Overall, we found no standard process to document the use of the litigation document review software nor did we find any documentation of the use of this litigation document review software by the I.R.C. § 45X drafting team outside of our meeting. We were shown a log of the searches conducted and the document with excerpts from retrieved comment letters matching the search criteria. The software database does not contain any analysis document files that show what documents were reviewed or considered. These log files and other research documents are stored separately outside of the database by the user and cannot be accessed by all members of the project drafting team as part of a centralized record.

In our meeting with Chief Counsel management, they stressed that the Treasury Department played a significant and sometimes a deciding role in the guidance process, *e.g.*, type of guidance issued and policy decisions reflected in the guidance, even how the comment summaries were developed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] found they did not sufficiently document the review and consideration of all the submitted comments by stakeholders. As such, it is unknown what level of consideration some comments received.

### **I.R.C. §§ 6417 and 6418 comment analysis**

The comment summary documenting Chief Counsel's review of public comments pertaining to I.R.C. §§ 6417 and 6418 consisted of a spreadsheet in which the drafting team transcribed public comments from regulations.gov. We reviewed all 219 comment letter submissions provided in response to Notice 2022-50. Each comment letter may include multiple comments or suggestions.

Our analysis included a reconciliation of the comment summary spreadsheet with the information that was on regulations.gov to ensure that all the comments were transcribed to the comment summary spreadsheet as provided in the respective comment letters. We made note of comments we found that were not transcribed and were missing from the comment summary spreadsheet.<sup>23</sup> Figure 7 summarizes the number of comments reviewed and transcribed from incoming public comment letters to Chief Counsel's comment summary document for I.R.C. §§ 6417 and 6418.<sup>24</sup>

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<sup>23</sup> We reviewed the 216 comment letters on regulations.gov as of July 11, 2023. In addition, we reviewed three comment letters listed on Chief Counsel's spreadsheets but not uploaded to the Notice 2022-50 regulations.gov website. Chief Counsel provided these three comment letters in March and October 2023.

<sup>24</sup> Transcribed refers to Chief Counsel making a written copy of the submitters comment in the comment letter as compared to summarizing the submitters comment, which involves the condensing of the commenters written words using Chief Counsel's own words in a short and clear form.

**Figure 7: Summary of Comments on I.R.C. §§ 6417 and 6418**

Letter Submissions	Total Comments	Comments Transcribed	Comments Not Transcribed	Percentage Not Transcribed
219	1,327	1,163	164	12.4%

*Source: TIGTA analysis of Chief Counsel's comment summary spreadsheet.*

As noted in Figure 7, 164 (12.4 percent) of the 1,327 comments were not documented in the spreadsheet. Consistent with the results of our review of I.R.C. § 45X comments, there is no documented comment summary or detailed workpapers maintained to validate the review and consideration of all submitted comments. Therefore, we can report only on verbal statements made by Chief Counsel that all comments were reviewed and considered. Chief Counsel needs to improve the documentation of its review to ensure that the review and consideration of all taxpayer comments are documented and can be validated.

We also analyzed whether each comment included any written consideration within the spreadsheet. Figure 8 summarizes our analysis of how many comments included written consideration.

**Figure 8: Summary of Comments Considered for I.R.C. §§ 6417 and 6418**

Comments Transcribed	Comments Consideration Documented	Percentage Consideration Documented
1,163	6	0.5%

*Source: TIGTA analysis of Chief Counsel's comment summary spreadsheet.*

As noted in Figure 8, of the 1,163 comments that were transcribed for tracking purposes, only six (0.5 percent) comments showed some sort of Chief Counsel considerations on the document. The following are examples of entries made in the spreadsheet indicating Chief Counsel consideration:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The I.R.C. §§ 6417 and 6418 drafting team did not use the litigation document review software as a tool for reviewing comments, and the drafting team's other documentation associated with



the “pre-rulemaking files” were not present to ensure the review and consideration of the public comments. Overall, we found the review comment process completed in response to I.R.C. § 45X to be more comprehensive than the review conducted for I.R.C. §§ 6417 and 6418. While both processes have gaps, the I.R.C. § 45X process did include narrative supporting Chief Counsel’s consideration more frequently and included the use of the litigation document review software. The benefit of using the software is that it provides a method for identifying the specific comment letters that meet the search criteria. For example, all comments specific to a certain issue, such as a certain type of mineral, could be queried for review. The use of the litigation document review software should be expanded and used for all projects with large numbers of comments.

### **Some comments applicable to the I.R.C. sections of another notice were not referred to the related Notice team for review and consideration**

Our review of comments for I.R.C. § 45X AMPC identified 49 stakeholder comment issues concerning I.R.C. §§ 6417 and 6418 that were not referred to the related project drafting team. Similarly, our review of comments for I.R.C. §§ 6417 and 6418 identified 16 stakeholder comment issues concerning I.R.C. § 45X AMPC that were not referred to the related drafting team.

We also found comment letters coming in through the Form 7207 public comment solicitation, issued on May 1, 2023, were not forwarded to the I.R.C. § 45X drafting team for processing and consideration. In our review of Chief Counsel procedures, we found no written process requiring coordination with other drafting teams to ensure that comments submitted in response to other projects are referred to the corresponding team for consideration during the request for comments process.

In addition, we found no detailed procedures advising other functions, within the IRS or Chief Counsel, on what to do if they receive comment letters from the public during the request for comments process. For example, we located a letter on the website of the American Institute of Certified Public Accountants addressed to the Associate Chief Counsel (Passthroughs and Special Industries) regarding Notice 2022-50. Comments from this letter were not transcribed to I.R.C. §§ 6417 and 6418 spreadsheets. Chief Counsel stated the Publications and Regulations Branch did not receive the submission and the Passthroughs and Special Industries did not have a record of receiving the letter.<sup>25</sup> Because this letter could not be located by Chief Counsel, the American Institute of Certified Public Accountants’ comments responding to Notice 2022-50 were not considered by the Chief Counsel during the preparation of the proposed regulations.<sup>26</sup>

The Government Accountability Office *Standards for Internal Control in the Federal Government* states that, “Management should design control activities to achieve objectives and respond to risks.”<sup>27</sup> *Accurate and timely recording of transactions* is one control activity described in these Standards. This control activity maintains that “transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This

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<sup>25</sup> During a discussion with Chief Counsel, we were informed that the AICPA comment was recorded by the Treasury Department in its comment summary titled, *Comment summary by topic* and included in the deliberation of issues.

<sup>26</sup> [us.aicpa.org](https://us.aicpa.org/advocacy/tax/2022taxadvocacycommentletters.html), (October 18, 2023, 3:00PM), <https://us.aicpa.org/advocacy/tax/2022taxadvocacycommentletters.html>. See also the American Institute of Certified Public Accountants comment letter (IRS-2023-0029-0065), footnote 4, dated August 14, 2023.

<sup>27</sup> Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).



applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.”

In addition, the Standards states, “management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form.”

In our discussion with Chief Counsel key personnel, they stated they already have in place a system of checks and balances to ensure that all comments are properly identified, reviewed, and considered. Chief Counsel noted that there are procedures in the Chief Counsel Publication Handbook in the CCDM that it follows to ensure that it meets its legal obligations.

Based on our review of the CCDM, there are no procedures or process on what to do when they receive comment letters from the public in response to a notice.<sup>28</sup> Additionally, our review identified no documented evidence that all comments were provided the same consideration as those comments documented in the database, spreadsheet, or word document.

Chief Counsel should:

**Recommendation 1:** Provide for a written process that will track all comment letters submitted prior to the issuance of a notice of proposed rulemaking or other guidance to facilitate consideration of those comments by the Chief Counsel drafting team assigned to the project.

**Management’s Response:** Chief Counsel disagreed with this recommendation to the extent that it suggests that a written record that tracks consideration of comments should be required in all cases. Chief Counsel agreed that it is crucial to the rulemaking process to have a robust process to consider comments submitted prior to the issuance of the NPRM or other guidance and stated that its CCDM already provides written guidelines for consideration of comments. The CCDM currently provides attorneys with guidelines for their consideration of comments received during the drafting of published guidance. Specifically, the CCDM requires review and consideration of comments and provides for the flexibility as to the form in which the review and consideration of comments take place. While some projects will benefit from the creation of a document to track the consideration of comments, not all projects require such detailed documentation.

**Office of Audit Comment:** The written process described in Chief Counsel’s response does not apply to the pre-rulemaking process used for I.R.C. §§ 45X, 6417, and 6418. Our recommendation is intended to enhance the efficiency and effectiveness of the pre-rulemaking process. For instance, the Treasury Department and the IRS issued temporary regulations for I.R.C. §§ 6417 and 6418 during June 2023, effective immediately without a notice and comment period to enable the implementation of the prefiling registration system for use in the 2023 Filing Season, citing good cause. In this instance, Chief Counsel did not capture and track all comments during the notice pre-rulemaking process. Chief Counsel also skipped considerations of comments submitted during the NPRM

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<sup>28</sup> See Appendix V for CCDM sections.

process. A written process should be established to standardize the pre-rulemaking process to ensure that all comment letters submitted are considered in any comment solicitation process (whether pre-rulemaking or the NPRM).

**Recommendation 2:** Allow for the use of document review software as part of the written process to track comment letters for requests that receive a significant number of submissions.

**Management's Response:** Chief Counsel disagreed as stated above, to the extent Recommendation 1 suggests that a written record that tracks consideration of comments should be required in all cases. Accordingly, Chief Counsel similarly disagreed with this proposal to the extent it presupposes the creation of guidelines requiring such a written record. Chief Counsel agreed that it is important for the agency to have flexibility in the methods used to facilitate consideration of submitted comments and stated that its CCDM already provides written guidance that would encompass the flexibility to use document review software or other technology to review comments.

**Office of Audit Comment:** This recommendation is based on the comment review and documentation benefits of the document review software that Chief Counsel demonstrated during our audit. As noted in our report, the use of the document review software is limited, and this recommendation prompts Chief Counsel to leverage these benefits to improve the review process (particularly when large volumes of comments are submitted). The claim that the CCDM already provides sufficient guidelines is inconsistent with Chief Counsel's own actions as identified in this review.

## **Appendix I**

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

The overall objective of this audit was to evaluate the IRS and Chief Counsel's efforts to implement the AMPC and related provisions. To accomplish our objective, we:

- Assessed Chief Counsel and the IRS's process established to address comments by internal and external stakeholders. We reviewed all public comments submitted to Chief Counsel and the IRS regarding I.R.C. § 45X tax credit and related I.R.C. §§ 6417 and 6418 elective payment and transferability and determined whether Chief Counsel and the IRS appropriately considered those comments.
- Identified and evaluated Chief Counsel and the IRS's process used for implementing I.R.C. § 45X and related I.R.C. §§ 6417 and 6418 of the IRA.

#### **Performance of This Review**

This review was performed with information obtained from the Office of Chief Counsel and the Large Business and International Division located in Washington, D.C., and Taxpayer Services Division located in Atlanta, Georgia, during the period June 2023 through January 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Phyllis Heald London, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Frank O'Connor, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Timothy Greiner, Director; Lee Hoyt, Audit Manager; Reatsamay Ly, Lead Auditor; David Hartman, Senior Auditor; and Laura Christoffersen, Applied Research and Technology Data Analysis and Visualizations.

#### **Data Validation Methodology**

During this review, we evaluated the information contained in the word document and spreadsheet from which data were downloaded from regulations.gov by 1) performing a 100 percent review of Chief Counsel's comment summary matrix for I.R.C. §§ 45X, 6417, and 6418 and 2) 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: Chief Counsel and the IRS's tax

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regulatory process and procedures, including the CCDM; Internal Revenue Manual sections on updating tax forms, instructions, and publications; and Chief Counsel's methods of summarizing, transcribing, and tracking public comment matrix. We evaluated these controls by reviewing Chief Counsel's public comment matrix word document and spreadsheets and the CCDM, holding discussions with Chief Counsel key personnel and IRS management, and reviewing other relevant documentation obtained from Chief Counsel and the IRS.

## Appendix II

### List of Tax Forms and Instructions Related to the Advanced Manufacturing Production Credit and Elective Payment and Transferability Credits<sup>1</sup>

Forms	Instructions
Form 7207, <i>Advanced Manufacturing Production Credit</i>	7207
Form 3800, <i>General Business Credit</i>	3800
Form 1065, <i>U.S. Return of Partnership Income</i> , Schedule K-1, <i>Partner's Share of Income, Deductions, Credits, etc.</i>	Schedule K-1 (Form 1065)
Form 1120-S, <i>U.S. Income Tax Return for an S Corporation</i>	1120-S
Form 1120, <i>U.S. Corporation Income Tax Return</i>	1120
Form 1120-C, <i>U.S. Income Tax Return for Cooperative Associations</i>	1120-C
Form 1040, <i>U.S. Individual Income Tax Return</i>	1040

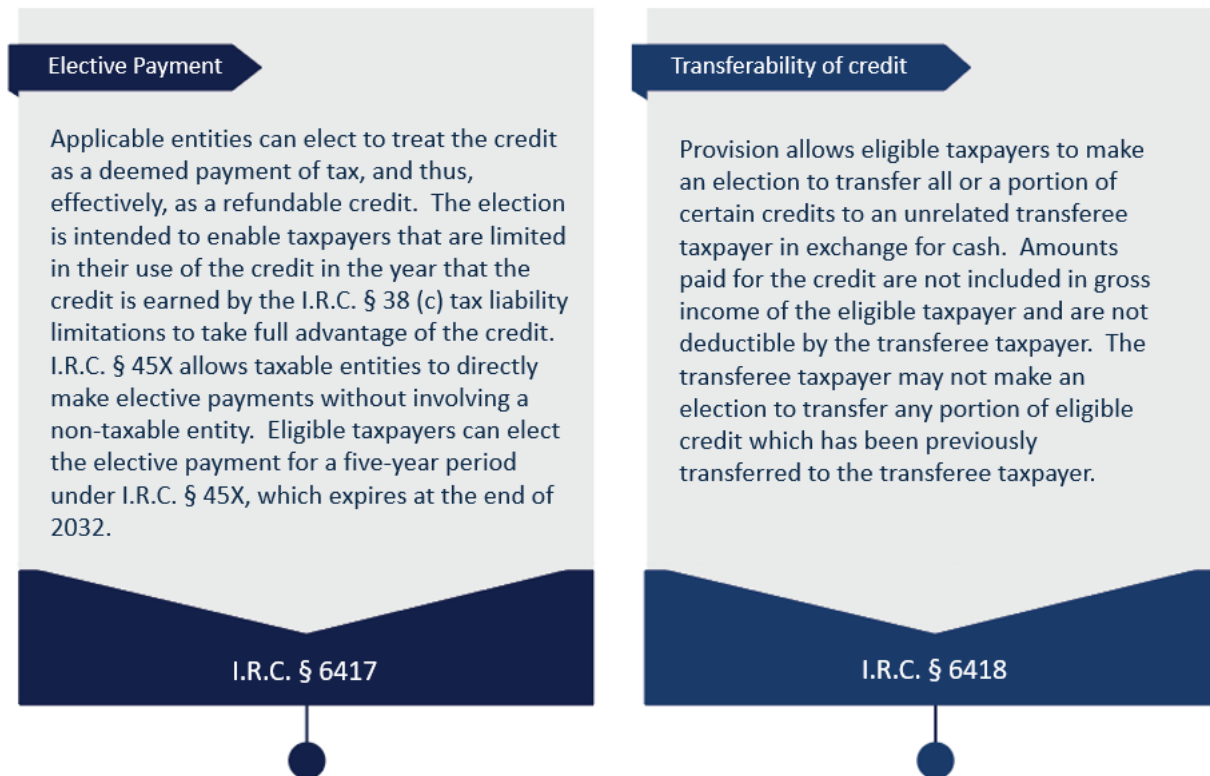
Source: TIGTA-created table with information from the IRS.

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<sup>1</sup> IRS implementation of the AMPC required new and revised tax forms and instructions that were used first to process fiscal year and short-year tax returns ending during CY 2023.

## Appendix III

### Summary of Internal Revenue Code §§ 6417 and 6418<sup>1</sup>



Source: The IRS and Treasury Department-issued Notice 2022-50, elective payment and elective credit transfer.

<sup>1</sup> The IRA added provision 13801 under I.R.C. §§ 6417 (*elective payment*) and 6418 (*elective credit transfer*). I.R.C. § 45X applies to I.R.C. §§ 6417 and 6418, in which a taxpayer may monetize the I.R.C. § 45X credit through an election under this code section. In addition to another 11 code sections subject to elective payments and transferability, which will be handled in a similar manner for elective payment and transferability purposes.

## Appendix IV

### IRS and Department of the Treasury Rulemaking Process<sup>1</sup>

#### ▼ NOTICE

A subregulatory guidance document that does not have the force and effect of law and is published in the Internal Revenue Bulletin. The purpose of this guidance is to provide taxpayers a much needed clarity and certainty concerning the legal interpretation that the IRS is to apply. This process is not subject to the APA.

#### ▼ ADVANCE NOTICE OF PROPOSED RULEMAKING

A request for comments document that an agency may choose to issue before it is ready to issue an NPRM. The Advance Notice of Proposed Rulemaking is used to obtain public participation at an early stage in the formulation of a regulatory change, before reaching a decision on a particular change. The NPRM is still required to be issued before issuing final regulations. The APA does not require the use of advance notices.

#### ▼ NOTICE OF PROPOSED REGULATIONS ISSUED

Issued in the Federal Register, with results subject to notice and comment period. Taxpayers may rely on the proposed regulations in taking tax positions on upcoming tax returns. Proposed regulations are published in the Federal Register for public comments and may include IRS-prepared corrections to NPRMs.

#### ▼ TEMPORARY REGULATIONS ISSUED

An interim final rule issued that becomes effective immediately without a notice and comment period, followed by a statement of good cause explaining the basis for the finding. Section 7805(e) requires the IRS to publish a cross-referencing NPRM when it publishes a temporary regulation. This section also provides that a temporary regulation expires (sunset) within three years of issuance.

#### ▼ CHANGES TO PROPOSED REGULATIONS

Announcing to the public that the IRS is considering modifying regulations as published in the Federal Register.

#### ● FINAL REGULATIONS

Issued with the force of law after the IRS responds to public comments on proposed regulations through the NPRM period.

*Source: The Treasury Department's Policy Statement on the Tax Regulatory Process (March 2019) and the CCDM.*

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<sup>1</sup> Note that this is an overview of the rulemaking process and that each of the processes described can happen without the other steps happening or at other points in the process.

## Appendix V

### Chief Counsel Directives Manual for Public Comment Processing and Definition

We did not identify any guidance in the CCDM regarding a process that ensures that all public comments received are treated in a consistent manner during the pre-Notice of Proposed Rulemaking process. There are instructions for the Publications and Regulations Branch to forward the comment letters submitted and posted on regulations.gov, but no instructions for the project drafting team regarding a process to review and consider the public comments.

#### **CCDM 32.1.7.2.1 Processing Incoming Comments**

- 1 The Publications and Regulations Branch stamps the date received on each written comment and screens the comments to ensure that they may be released to the public in their entirety. If any comment may not be released in its entirety, the Publications and Regulations Branch returns it, along with an explanation, to the person who submitted it.
- 2 The Publications and Regulations Branch sends the original of each comment to the drafting attorney, who should place the comment in the legal file for the regulation project. If the drafting attorney receives comments (including email) that did not come through the Publications and Regulations Branch, the drafting attorney must immediately forward the comments to the Publications and Regulations Branch for processing and distribution.
- 3 The Publications and Regulations Branch also sends copies to the reviewer of the regulation project. The Publications and Regulations Branch also retains a copy in its comment file.

#### **CCDM 32.2.8.6 Processing Public Comments**

On occasion the public is offered the opportunity to provide comments on proposed publications, usually proposed revenue rulings or proposed revenue procedures. The drafting attorney will consider any comments received during the development of the proposed publication.

When a request for comments is solicited (for example, in a notice or announcement) interested persons should be given the following information on how to submit comments:



**Mail:**

Internal Revenue Service  
CC: PA: LPD: RU (Notice 200x-xx), Room 5203  
P.O. Box 7604  
Ben Franklin Station,  
Washington, DC 20044

**Hand Delivery: (8:00am to 4:00pm)**

CC: PA: LPD: RU (Notice 200x-xx)  
Courier's Desk  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20044

**Email:**

[Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov)

Commenters should include the identification number of the publication in both the body of the comment and on the email subject line.

When considering public comments, steps should be taken to identify the source and content of the comments in materials that are reviewed, when appropriate. For example, it may be appropriate to make an entry in the Background Information Note (BIN) reflect public comments that are considered in the development of the project.

### **CCDM 32.2.2.3.3 Notice Defined**

A notice is a public pronouncement by the Service that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. Notices may be used in circumstances in which a revenue ruling or revenue procedure would not be appropriate. In addition, notices may be used to solicit public comments on issues under consideration, in connection with non-regulatory guidance, such as a proposed revenue procedure. A notice also can be used to relate what regulations will say in situations in which the regulations may not be published in the immediate future.

## Appendix VI

### Management's Response to the Draft Report



OFFICE OF THE CHIEF COUNSEL

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

MEMORANDUM FOR DANNY VERNEUILLE  
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Drita Tonuzi     Drita Tonuzi     Digitally signed by Drita Tonuzi  
Date: 2024.07.03 12:56:33 -04'00'  
Deputy Chief Counsel (Operations)

SUBJECT: Draft Audit Report – The Request For Comments Process Used  
For The Advanced Manufacturing Production Credit Pre-  
Rulemaking Needs to be Improved (Audit No.: 202330826)

Thank you for the opportunity to respond to this draft report. We appreciate TIGTA's recognition of the IRS's efforts to implement the new Advanced Manufacturing Production Credit under § 45X of the Internal Revenue Code (Code), and the related provisions under §§ 6417 (elective pay) and 6418 (transferability) of the Code, which were enacted as part of the Inflation Reduction Act (IRA). The IRS and the IRS Office of Chief Counsel (Office of Chief Counsel) have worked tirelessly to implement these provisions, including by issuing guidance, creating and updating tax forms, and creating new processes and procedures to assist taxpayers in claiming the credit. As part of that implementation process, the IRS and the Office of Chief Counsel have solicited, reviewed, and analyzed public comments to inform proposed rules to implement the law.

Section 45X provides a credit for the production (within the United States) and sale of certain eligible components including solar and wind energy components, inverters, qualifying battery components and applicable critical minerals. The Department of the Treasury (Treasury Department) and the IRS issued proposed regulations for § 45X in December 2023 after careful consideration of public feedback.

The IRA is a sweeping federal law that added over two dozen new provisions to the Code related to clean energy, including §§ 45X, 6417 and 6418. In recognition of the significance and complexity of §§ 45X, 6417 and 6418, the Office of Chief Counsel assigned one team of attorneys to develop guidance related to § 45X, and another team of attorneys to develop guidance related to §§ 6417 and 6418. Each team worked closely with Office of Chief Counsel executives and managers and personnel from the Treasury Department throughout the guidance process.

To understand the public's questions regarding the new clean energy provisions and to help identify issues to be considered in developing guidance, the Office of Chief Counsel, in coordination with the Treasury Department, solicited public input through nine notices requesting comments, including Notice 2022-47 and Notice 2022-50.

These notices—not required by the rulemaking process—provided an opportunity for an initial round of public input prior to the commencement of the rulemaking process governed by the Administrative Procedure Act.

Notice 2022-47 requested comments on § 45X (and I.R.C. § 48C). Notice 2022-50 requested comments on §§ 6417 and 6418. Specifically, each notice requested comments on specific questions that should be addressed in guidance and encouraged commenters to specify the issues on which guidance was most needed. Over 200 comment letters were received in response to each notice; these comments were vital to the development of the notices of proposed rulemaking under §§ 45X, 6417, and 6418.

The drafting teams, as well as Treasury Department personnel, fully reviewed and considered all public comments received in response to Notices 2022-47 and Notice 2022-50. Office of Chief Counsel managers supervised the drafting teams throughout this process.

As an initial step in the rulemaking process, the §§ 45X, 6417, and 6418 drafting teams reviewed and summarized all comment letters received in response to Notice 2022-47 and Notice 2022-50. Consistent with the Chief Counsel Directives Manual (CCDM), each drafting team determined how best to format and organize their comment summaries to best suit the team's needs in identifying and facilitating consideration of all important issues. These summaries helped enable team members to reference specific comment letters and commenter suggestions as the team analyzed the issues and considered options for addressing those issues. The summaries also helped the drafting team members to prepare numerous issues memoranda that laid out options, legal analysis, and recommendations by issue. The work of the drafting teams to organize, review, and analyze the comments facilitated discussions within the Office of Chief Counsel, as well as with the Treasury Department, the IRS, and other federal agencies, and ultimately provided the framework for the legal positions taken in the notices of proposed rulemaking.

The Office of Chief Counsel's consideration of the public comments received in response to Notice 2022-47 and Notice 2022-50 is extensively documented in the regulation files, which include the issues memoranda, outlines, and other documents. TIGTA did not review these regulation files. The preamble to the notice of proposed rulemaking issued under § 45X acknowledged consideration of all the public comments, and the preambles to the notices of proposed rulemaking under §§ 6417 and 6418 included extensive discussions of the public comments.

In short, although not required by the Administrative Procedure Act, the IRS solicited feedback before issuing proposed rules to implement the § 45X credit and the §§ 6417 and 6418 provisions, and then thoroughly reviewed and analyzed those public comments before issuing the proposed rules. This work is reflected in the notices of proposed rulemaking themselves, which were better informed as a result of this early round of public feedback.

The Office of Chief Counsel has an additional opportunity to receive public comment on the notices of proposed rulemaking. In the case of the §§ 6417 and 6418 regulations, the Office of Chief Counsel thoroughly reviewed and considered these comments prior to issuing final rules, and it is in the process of doing so with respect to the § 45X proposed regulations, in accordance with the rulemaking requirements of the Administrative Procedure Act. The Office of Chief Counsel has in place a robust process to analyze and respond to comments submitted in response to the proposed rules and will carefully consider all public feedback before issuing final rules. Consistent with that overall view, we have attached a response to TIGTA's specific recommendations.

If you have any questions, please contact me, or members of your staff may contact Judith Kindell, Special Counsel.

Attachment

**RECOMMENDATION 1:** The Office of Chief Counsel should provide for a written process that will track all comment letters submitted prior to the issuance of a notice of proposed rulemaking or other guidance to facilitate consideration of those comments by the Office of Chief Counsel drafting team assigned to the project.

**CORRECTIVE ACTION:** To the extent that this recommendation suggests that a written record that tracks consideration of comments should be required in all cases, the Office of Chief Counsel respectfully disagrees with the recommendation. The Office of Chief Counsel agrees that a robust process to consider comments submitted to the agency prior to the issuance of a notice of proposed rulemaking or other guidance is crucial to the rulemaking process, but underscores that the CCDM already provides written guidelines for consideration of comments. The CCDM currently provides attorneys with guidelines for their consideration of comments received during the drafting of published guidance.<sup>1</sup> Specifically, the CCDM requires review and consideration of comments; however, the CCDM provides flexibility as to the form in which the review and consideration of comments takes place. While some projects will benefit from the creation of a document to track the consideration of comments, not all projects require such detailed documentation.

**RESPONSIBLE OFFICIAL:** Associate Chief Counsel (Procedure & Administration)

**IMPLEMENTATION DATE:** N/A

**CORRECTIVE ACTION MONITORING PLAN:**  
N/A

**RECOMMENDATION 2:** The Office of Chief Counsel should allow for the use of document review software as part of the written process to track comment letters for requests that receive a significant number of submissions.

**CORRECTIVE ACTION:** As stated above, to the extent Recommendation 1 suggests that a written record that tracks consideration of comments should be required in all cases, the Office of Chief Counsel respectfully disagrees with the recommendation. Accordingly, the Office of Chief Counsel similarly disagrees with this proposal to the extent it presupposes the creation of guidelines requiring such a written record. The Office of Chief Counsel agrees that it is important for the agency to have flexibility in the methods used to facilitate consideration of submitted comments, but underscores that the CCDM already provides written guidance that would encompass the flexibility for the

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<sup>1</sup> CCDM 32.1 is the Chief Counsel Regulations Handbook and provides procedures for drafting and publishing regulations. CCDM 32.2 is the Chief Counsel Publications Handbook and provides procedures for drafting and published other published guidance.



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use of document review software or other technology to facilitate the review of comments.

**RESPONSIBLE OFFICIAL:** Associate Chief Counsel (Procedure & Administration)

**IMPLEMENTATION DATE:** N/A

**CORRECTIVE ACTION MONITORING PLAN:**  
N/A

## Appendix VII

### Glossary of Terms

Term	Definition
Calendar Year	Twelve consecutive months beginning January 1 and ending December 31.
Federal Register	A daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal department and agencies.
Fiscal Year	Any tax year other than a calendar year. It is 12 consecutive months ending on the last day of any month except December, <i>i.e.</i> , the commonly used fiscal year for C corporations ends in March, June, or September.
Internal Revenue Bulletin	The authoritative instrument for announcing official rulings and procedures of the IRS and for publishing Treasury Department Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest.
Internal Revenue Code	The body of law that codifies all Federal tax laws. These laws constitute Title 26 of the United States Code, which is a consolidation and codification by subject matter of the general and permanent laws of the United States.
Short Tax Year	A fiscal or calendar tax year of less than 12 months and may apply to entities that either are not in existence for an entire tax year or have a change in the accounting period.
Tax Year	A 12-month accounting period for keeping records on income and expenses used as the basis for calculating the annual taxes due. For most individual taxpayers, the tax year is synonymous with the calendar year.

## Appendix VIII

### Abbreviations

AMPC	Advanced Manufacturing Production Credit
APA	Administrative Procedure Act
CCDM	Chief Counsel Directives Manual
CY	Calendar Year
IRA	Inflation Reduction Act of 2022
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
NPRM	Notice of Proposed Rulemaking
TIGTA	Treasury Inspector General for Tax Administration
TY	Tax Year





**To report fraud, waste, or abuse,  
contact our hotline on the web at [www.tigta.gov](http://www.tigta.gov) or via e-mail at  
[oi.govreports@tigta.treas.gov](mailto:oi.govreports@tigta.treas.gov).**

**To make suggestions to improve IRS policies, processes, or systems  
affecting taxpayers, contact us at [www.tigta.gov/form/suggestions](http://www.tigta.gov/form/suggestions).**

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