

October 2006

# TAX ADMINISTRATION

## Little Evidence of Procedural Errors in Collection Due Process Appeal Cases, but Opportunities Exist to Improve the Program





Highlights of [GAO-07-112](#), a report to the Committee on Finance, U.S. Senate

## Why GAO Did This Study

As a result of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998, taxpayers facing liens or levies can request a Collection Due Process (CDP) appeal hearing with IRS's Office of Appeals (Appeals). By 2005, CDP cases represented about one-quarter of Appeals' workload.

GAO was asked to provide information on (1) whether the IRS Collection function (Collection) erred in processing liens and levies and how often CDP case results changed after the appeal, (2) the arguments raised and the communication between IRS and taxpayers, (3) the characteristics of CDP taxpayers, and (4) potential improvements to the CDP program. To develop this information, GAO analyzed a random sample of 208 CDP cases closed by Appeals during fiscal year 2004.

## What GAO Recommends

GAO makes recommendations to improve the efficiency of the CDP program. GAO also suggests that Congress consider amending the statute to remove CDP eligibility for selected categories of taxpayers if those taxpayers' inclusion is not consistent with the goal of ensuring due process. IRS generally agreed with two recommendations but disagreed that it could require taxpayers seeking a collection alternative to submit additional information with their hearing requests. GAO then revised those recommendations to be a matter for congressional consideration.

[www.gao.gov/cgi-bin/getrpt?GAO-07-112](http://www.gao.gov/cgi-bin/getrpt?GAO-07-112).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Michael Brostek at (202) 512-9110 or [brostekm@gao.gov](mailto:brostekm@gao.gov).

# TAX ADMINISTRATION

## Little Evidence of Procedural Errors in Collection Due Process Appeal Cases, but Opportunities Exist to Improve the Program

### What GAO Found

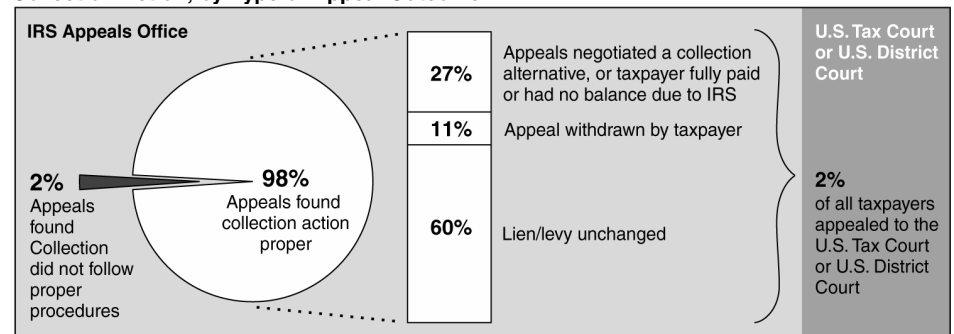
GAO estimates that Appeals found Collection did not follow proper procedures in 2 percent of CDP cases closed during fiscal year 2004. About 27 percent of taxpayers received a different outcome than the lien filing or levy after appealing, including those that negotiated collection alternatives or ended up with no balance due to IRS. For about 60 percent of taxpayers, Appeals upheld the collection action often because taxpayers did not file all the required tax returns necessary to qualify for a collection alternative.

GAO's estimates show that nearly 90 percent of CDP taxpayers raised arguments permitted by statute with both Collection and Appeals, such as requesting a collection alternative. An estimated 5 percent of taxpayers raised frivolous arguments—arguments without legal basis per IRS guidance—with either Collection or Appeals. When taxpayers raised the same argument with Collection and Appeals, Appeals reached the same conclusion as Collection in more than 80 percent of cases. In general, the median number of IRS-initiated contacts with taxpayers was twice as high as the median number of taxpayer-initiated contacts with IRS.

CDP taxpayer characteristics varied among individual and business filers. Both did not pay taxes for multiple return filing periods. Total tax liability varied considerably, with trust fund recovery penalty and employment tax cases having the highest liabilities.

Allowing certain taxpayers like those that offer arguments without a legal basis to use the CDP program may not be consistent with the program's goal of ensuring due process. Also, Appeals resources are not used efficiently when taxpayers request collection alternatives yet have not (1) submitted financial documentation with their CDP requests, (2) worked with specialized Collection units, or (3) filed all required tax returns needed to qualify for a collection alternative. IRS has taken steps to revise the CDP regulations and hearing request form, but has not established responsibility for analyzing program outcome data to determine if these changes will be effective.

**Estimated Percentage of CDP Cases in Which Appeals Found an Improper or Proper Collection Action, by Type of Appeal Outcome**



Source: GAO analysis of IRS data.

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## Abbreviations

ABA	American Bar Association
ACDS	Appeals Centralized Database System
ACS	Automated Collection System
AGI	adjusted gross income
CAP	Collection Appeals Program
CDP	Collection Due Process
CISO	Centralized Innocent Spouse Operation
CPA	certified public accountant
DCI	data collection instrument
EH	equivalent hearing
FPLP	Federal Payment Levy Program
IA	installment agreement
ICS	Integrated Collection System
IRS	Internal Revenue Service
OIC	offer-in-compromise
PFD	Permanent Fund Dividend
SITLP	State Income Tax Levy Program

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United States Government Accountability Office  
Washington, DC 20548

October 6, 2006

The Honorable Charles E. Grassley  
Chairman  
The Honorable Max Baucus  
Ranking Minority Member  
Committee on Finance  
United States Senate

In fiscal year 2005, the Internal Revenue Service (IRS) issued more than 3 million notices of federal tax liens and levies representing more than \$10 million in delinquent taxes owed to IRS. The Internal Revenue Service Restructuring and Reform Act of 1998 (Restructuring Act)<sup>1</sup> expanded the appeal rights available to taxpayers facing the filing of notices of federal tax liens or levies for the collection of delinquent taxes. With the passage of the Restructuring Act, Congress authorized the right to Collection Due Process (CDP) appeals, which provides taxpayers with an independent review of filed liens and levies by IRS's Office of Appeals (Appeals) and by the U.S. Tax Court or U.S. District Court. By 2005, taxpayers requesting CDP hearings accounted for more than one-quarter of the workload within Appeals, about 28,000 cases annually. IRS reported that in fiscal year 2004, Appeals devoted about \$8.2 million in salary costs to resolve CDP cases.

Liens and levies arise when taxpayers fail to pay their taxes and IRS takes action to collect those outstanding tax liabilities. A lien is a legal claim against a taxpayer's property as security for the payment of the delinquent tax. A levy is a legal seizure of a taxpayer's property to satisfy the tax liability. Liens and levies identify the amount of tax owed by tax period, and the period varies by the type of tax. Individuals, for example, file individual income tax returns on an annual basis, so the period would equal 1 year. Businesses file certain tax returns, such as employment taxes, on a quarterly basis, so the period would equal 3 months. When IRS issues a Notice of Federal Tax Lien, Notice of Intent to Levy, or other

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<sup>1</sup>Pub. L. No. 105-206, 112 Stat. 685 (July 22, 1998).

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notice related to automated levy programs,<sup>2</sup> taxpayers are also informed of their due process rights, including the right to request a CDP hearing. IRS may include multiple delinquent tax periods in one notice. In their CDP appeals, taxpayers may raise issues related to the existence or amount of the liability; seek a collection alternative to the lien filing or levy, such as an installment agreement (IA)<sup>3</sup> or offer-in-compromise (OIC);<sup>4</sup> or both.

Based on your request, this report's objectives are to provide information on (1) the extent to which Appeals found the IRS Collection function (Collection)<sup>5</sup> had made errors in processing liens and levies and how often CDP case results changed after a taxpayer requested a CDP appeal hearing; (2) the nature of the arguments presented by taxpayers seeking relief from liens or levies and the amount of communication between IRS and taxpayers; (3) the characteristics of the taxpayers that availed themselves of the CDP appeal process, such as the amount of their total liabilities; and (4) whether opportunities exist to improve the operations of the CDP program while protecting taxpayer rights.

To develop the information for these objectives, we analyzed a random sample of 208 CDP appeal cases, drawn from a population of 32,241 cases closed by Appeals during fiscal year 2004. For each of the cases in our sample, we requested the Appeals closed office file and reviewed the documentation in the files to determine case characteristics, such as the ultimate outcome of the CDP appeal process. We also requested the Collection administrative file associated with each of our sample CDP cases to assess what transpired between the taxpayer and IRS after

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<sup>2</sup>The State Income Tax Levy Program (SITLP) matches a master file database of delinquent taxpayers eligible to be levied against a database of state tax refunds for each state participating in SITLP. The Federal Payment Levy Program interfaces with the Treasury Offset Program as a means for IRS to collect delinquent taxes by levying federal payments disbursed or administered through Treasury's Financial Management Service.

<sup>3</sup>When taxpayers are unable to pay their tax liabilities in a single payment, IRS and taxpayers can enter into IAs that allow the taxpayers to pay their outstanding liabilities over time, generally through equal monthly payments.

<sup>4</sup>When taxpayers are unable to fully pay their tax liabilities, they can request OICs from IRS to pay what they can afford. IRS writes off the rest of the liability. In 2005, IRS wrote off about \$1 billion associated with OICs. See GAO, *IRS Offers in Compromise: Performance Has Been Mixed; Better Management Information and Simplification Could Improve the Program*, [GAO-06-525](#) (Washington, D.C.: Apr. 20, 2006).

<sup>5</sup>Collection is responsible for collecting unpaid tax liabilities from taxpayers that have balances due to IRS.

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Collection issued the notice of a lien filing or levy. We supplemented the information obtained through documentary case file review with information from IRS databases. We used the results of our case file review to make estimates for the entire population of taxpayers whose CDP appeal cases were closed by Appeals during fiscal year 2004. Since our estimates are based on a sample, we express our confidence in our estimates as a 95 percent confidence interval, plus or minus a margin of error, which is the interval that would contain the actual population value for 95 percent of the samples we could have selected. Unless otherwise stated, we express our particular sample's results as a 95 percent confidence interval, less than plus or minus 8 percentage points. In some instances, we report our sample estimates as medians. All medians based upon the results of our sample have a relative standard error of less than 30 percent unless otherwise stated.<sup>6</sup> In addition, we reviewed IRS program guidance on the CDP process and interviewed knowledgeable agency officials. We also interviewed representatives from other external stakeholder organizations knowledgeable about the CDP appeal process. We conducted our review from January 2005 through September 2006 in accordance with generally accepted government auditing standards. (See app. I for a more detailed description of our scope and methodology.)

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## Results in Brief

Our review of CDP cases closed in fiscal year 2004 indicates that Appeals found evidence in a small percentage of cases that Collection erred in handling taxpayer cases. As shown in figure 1, we estimate that in about 2 percent of CDP cases Appeals concluded that Collection had not followed proper procedures. Although Appeals did not identify any instances in our sample where the applicable legal and administrative procedural requirements were not met, our case file review did identify instances where Appeals detected other types of procedural errors during the collection phase of the cases, which we included as evidence of detection of improper procedures. Nevertheless, even if some taxpayers received a different outcome after appealing to IRS, Appeals did not necessarily disagree with the lien filing or levy. In an estimated 27 percent of CDP cases, taxpayers received a different outcome after they appealed the lien filing or levy, including those that (1) negotiated collection alternatives, such as IAs (16 percent), and (2) fully paid their liabilities or no longer had balances due to IRS (11 percent). In addition, in approximately 11 percent

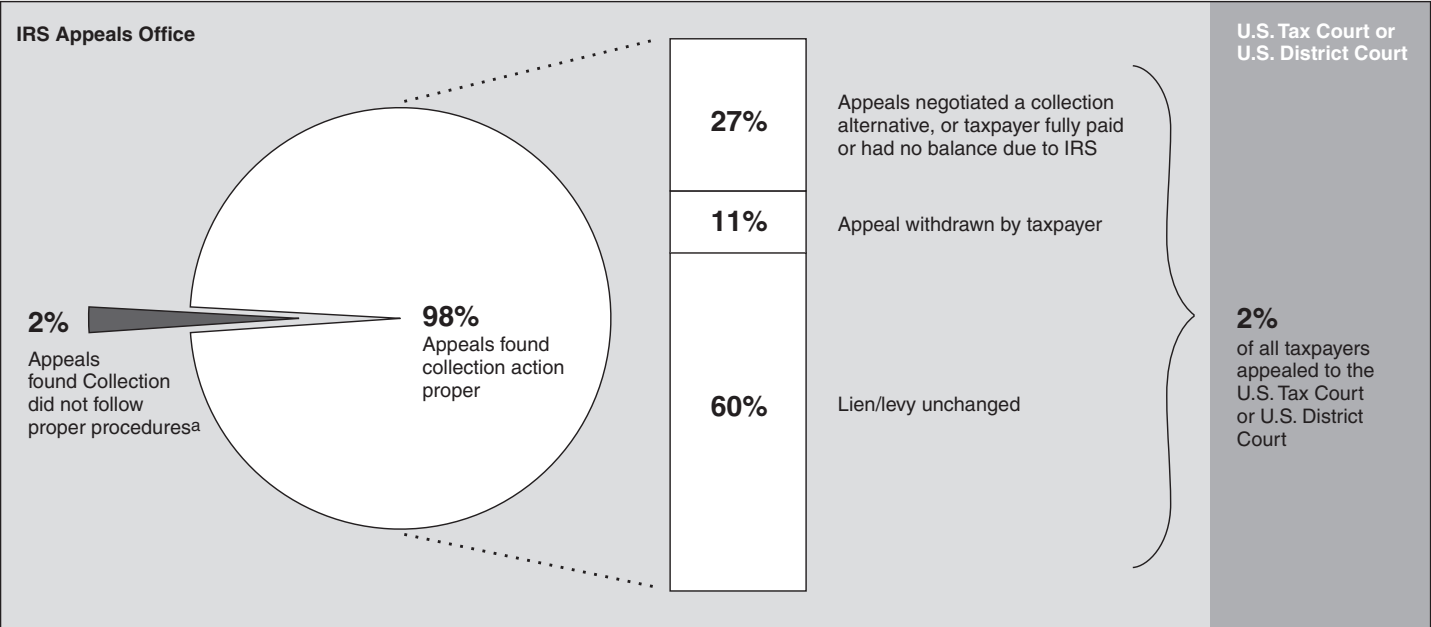
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<sup>6</sup>To measure the relative standard error associated with median values, we divided the standard error of the median by the median and multiplied by 100 to get a percentage.



of CDP cases, taxpayers formally withdrew their CDP appeal requests. Finally, in an estimated 60 percent of CDP cases, Appeals upheld the lien filing or levy and did not reach a different result for taxpayers often because those who sought collection alternatives were not eligible for an alternative. They were not eligible because they had not filed required returns, had not paid certain taxes, or both. Other major reasons for no change upon appeal were that Appeals determined the amount of the liability to be correct, the taxpayer had not responded to Appeals' request for information, or both. An estimated 2 percent of all taxpayers that requested CDP appeals hearings disputed the Appeals determination and petitioned the U.S. Tax Court or U.S. District Court.

**Figure 1: Estimated Percentage of CDP Cases in Which Appeals Found an Improper or Proper Collection Action, by Type of Appeal Outcome for Cases Closed in Fiscal Year 2004**



Source: GAO analysis of IRS data.

<sup>a</sup>We are 95 percent confident that the true value would be between 1 percent and 6 percent.

Taxpayers seeking relief from liens or levies generally raised allowable arguments to claim they did not owe some or all of the tax or to seek collection alternatives. More than 90 percent of these taxpayers had raised one or more legally allowed arguments permitted by the Restructuring Act for CDP hearings with both Collection and Appeals. When challenging the lien filing or levy, about 37 percent of taxpayers questioned the existence

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of the tax liability. Almost one-third of taxpayers requested collection alternatives, such as OICs. In addition, more than one-quarter of taxpayers questioned the appropriateness of the collection action, for example, raising personal hardships arguments such as illness or bankruptcy. An estimated 5 percent of taxpayers raised frivolous arguments—arguments without legal basis per IRS guidance—with either Collection or Appeals. When taxpayers raised the same arguments with Collection and Appeals, Appeals reached the same conclusions as Collection that the taxpayers' argument lacked merit in an estimated 81 percent of the cases. When Appeals reached a different conclusion it was for reasons such as the taxpayer not providing requested information or providing different information to Appeals than to Collection. After IRS issued the lien filing or levy notice, IRS (Collection and Appeals) had various types of contacts with the taxpayer in the effort to resolve the liability. IRS sent a median of 3.6 letters and made a median of 3.2 phone calls. IRS had face-to-face contact with about 28 percent of taxpayers. In general, the median number of IRS-initiated contacts with taxpayers was twice as high as the median number of taxpayer-initiated contacts with IRS.

Both individuals and businesses that receive lien or levy notices can exercise their due process rights to CDP appeals. Most taxpayers that requested CDP appeals—about 87 percent—were individuals, the remaining 13 percent of taxpayers were businesses. Both business and individual taxpayers were delinquent (did not pay taxes) on multiple periods. Businesses with employment tax liabilities were delinquent on more than twice as many periods—nearly six quarterly periods on average—while individuals with income tax liabilities were delinquent for approximately three annual periods on average. In calendar terms, this means that on average businesses that requested a CDP appeal for delinquent employment taxes had not paid for nearly 1-½ years, while individuals were delinquent on paying their income taxes for 3 years. Total tax liability also varied considerably, with trust fund recovery penalty cases having the highest median liability amount followed by employment tax cases. For example, individuals' median total trust fund recovery penalty tax liability appealed was nearly \$45,000, while the median for total employment tax liability was about \$30,000. The total median liability for individuals with income tax cases was nearly \$13,000. Over half of all individual taxpayers who requested CDP appeals had most recently reported an adjusted gross income of less than or equal to \$50,000 prior to their appeals. Overall, taxpayers chose to represent themselves before Appeals about 56 percent of the time, although individuals represented themselves more often, about 61 percent of the time.

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The results of our case file review and interviews with IRS officials have raised concerns about whether certain types of taxpayers have used the CDP program in a manner that may be inconsistent with the goal of ensuring due process. Our case file review enabled us to provide quantitative estimates on the extent to which these certain situations were present among CDP cases closed by Appeals during fiscal year 2004. Neither the law nor the legislative history makes any distinctions with respect to the type of taxpayer, type of tax liability, or method of liability determination that was intended to be included in due process appeal cases. Rather, the Restructuring Act permits any taxpayer who receives a lien or levy notice to request a CDP hearing. However, since implementation of the program, some concerns have been expressed regarding potential abuse. Cases of concern include those where taxpayers may not have been serious about working with Appeals because they offered frivolous arguments in their appeals (about 4 percent for cases closed in fiscal year 2004)<sup>7</sup> or did not respond or responded only initially to Appeals (about 20 percent). Some taxpayers questioned the existence or amount of the liabilities (about 38 percent) even though the majority did not claim that they were not properly notified. Other taxpayers self-reported their tax liabilities and therefore were aware of their outstanding obligations to IRS (about 47 percent). Other taxpayers that contested collection of either employment or unemployment taxes (about 13 percent) had often failed to pay their taxes for long periods of time. Because the law makes no distinctions in this regard, these concerns cannot be addressed through regulatory changes.

IRS also raised concerns that other types of cases have resulted in an inefficient use of Appeals' resources. These include cases where taxpayers that requested OICs or IAs did not submit overdue tax returns, provide supporting financial information, or provide the OIC application form (if appropriate) necessary for Appeals to consider their requests. In these cases, Appeals staff had to devote time to getting taxpayers to file required returns and obtaining basic financial information necessary to determine whether the taxpayers were even eligible for either of these alternatives. One option in these situations would be to require taxpayers that request only a collection alternative to provide the necessary supporting financial information or OIC application form (if appropriate) within a set period

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<sup>7</sup>Percentages cited in this paragraph indicate the portion of cases that exhibited each specific characteristic. However, cases could include multiple characteristics, so these categories are not mutually exclusive. As a result, the percentages do not add to 100 percent.

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and proceed to make a final case determination at that time on the basis of the information available. In addition, some taxpayers requesting OICs from Appeals had not previously worked with IRS's specialized unit that was established to screen and process OICs quickly and efficiently. IRS also raised concerns that Appeals spent time attempting to bring taxpayers into filing compliance—that is, securing delinquent returns from taxpayers—in order to assist taxpayers in meeting the most basic eligibility criterion for either an OIC (about 23 percent were ineligible because of noncompliance) or IA (about 21 percent were ineligible because of noncompliance). Although the Restructuring Act does not specifically address this issue, IRS officials said that a statutory change would be needed to require taxpayers to file all the required returns before transferring cases to Appeals for review. IRS has proposed making changes to the CDP hearing request form as well as to the regulations that govern the CDP program. The proposed changes to the regulations are intended to clarify processes generally related to requesting and conducting a CDP appeal hearing, as well as to clarify what issues or arguments taxpayers may raise. Although these changes may improve the CDP program, IRS has not established responsibility for analyzing future CDP program outcome data in order to determine if these changes will result in achieving the desired objectives.

While the proposed revisions to CDP regulations may improve program operations, additional operational changes not addressed in the regulations may help achieve further efficiencies. To that end, this report includes three recommendations to IRS to help ensure that Appeals' resources are more efficiently devoted to its mission of resolving disputes by (1) determining—for taxpayers seeking only a collection alternative—a reasonable amount of additional time beyond the current 30-day period for requesting a CDP hearing for these taxpayers to submit the required supporting financial information necessary for Appeals to consider the alternative of choice, and the OIC application form if appropriate; (2) instructing Appeals to transfer OIC cases to IRS's specialized processing unit for investigation and evaluation of OICs before consideration by Appeals; and (3) establishing responsibility for analyzing CDP appeal case outcome data in order to determine whether revisions to the hearing request form and program regulations result in meeting their objectives. This report also includes three matters Congress should consider to help ensure CDP appeal hearings meet the goal of ensuring due process to taxpayers while excluding certain specific categories of taxpayers or issues that Congress may now deem to be inconsistent with that intent. Specifically, Congress should consider (1) amending the statute to remove eligibility for CDP appeal for selected categories of

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taxpayers if it judges that that taxpayers have characteristics deemed inconsistent with the Restructuring Act's goal of providing due process; (2) amending the statute to require taxpayers seeking collection alternatives such as OICs or IAs and that raise no other issues to meet the basic eligibility criteria, that is, file all outstanding tax returns due, before Appeals reviews the case; and (3) requiring taxpayers that raise only collection alternatives to submit the supporting financial information needed to consider the alternative of choice, and the OIC application form if appropriate, within a reasonable amount of time following the request for a CDP hearing.

In commenting on a draft of this report, the Commissioner of Internal Revenue agreed that our recommendation on transferring cases where taxpayers request OICs as a collection alternative to one of IRS's specialized processing units for consideration before Appeals considers the cases merited further study. IRS also agreed with the recommendation to establish responsibility for evaluating CDP outcome data to assess whether changes to the hearing request form and proposed regulation changes are effective. IRS did not agree with our draft recommendations that it should require taxpayers seeking collection alternatives to submit supporting financial information with their CDP appeal hearing request or requiring taxpayers seeking an OIC to submit the OIC application form because it lacks the authority to do so. In response to IRS's concerns, we revised our recommendations to present these issues as a matter for congressional consideration. In the event that Congress decides to take action on this matter, we added a recommendation to the agency. Specifically, IRS should determine the reasonable amount of additional time that taxpayers seeking collection alternatives should be allowed in order to provide the supporting financial information and OIC application form (if appropriate) following their CDP hearing requests.

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## Background

When Congress passed the Restructuring Act, it created new and expanded taxpayer rights, including the right to CDP hearings and judicial review to challenge IRS's liens and levies. IRS's Collection Appeals Program (CAP), established before the Restructuring Act, allows taxpayers to appeal several IRS collection actions. However, taxpayers that do not agree with CAP's determination cannot go to court because CAP's decisions are not subject to judicial review. According to a Senate Finance Committee report, CDP was intended to afford taxpayers with protection from IRS collection methods similar to the protection they have in dealing with any other creditor. The report stated that IRS should

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provide taxpayers with adequate notice of collection activity and a meaningful hearing.<sup>8</sup>

IRS issues several different types of collection notices that also inform taxpayers of their due process rights, including the right to request a CDP hearing. IRS issues a Notice of Federal Tax Lien (lien notice) to establish the priority of the tax lien over other liens against the taxpayer's assets for the amount of unpaid tax liability.<sup>9</sup> IRS issues a Notice of Intent to Levy (levy notice) to inform taxpayers that failure to pay their tax liabilities could result in an IRS levy on the taxpayers' assets held by financial institutions or other parties.<sup>10</sup> Lien or levy notices may be issued by IRS's Automated Collection System (ACS) or Collection Field Function (Field Collection).<sup>11</sup> Taxpayers may also request CDP hearings in response to notices received related to automated levy programs, specifically the State Income Tax Levy Program (SITLP), the Federal Payment Levy Program (FPLP), or the Alaska Permanent Fund Dividend (PFD) Program.<sup>12</sup> In addition, some taxpayers request and receive CDP hearings based on multiple due process collection notices, such as a combination of lien and levy notices. Taxpayers are given a CDP hearing after a levy on a state income tax refund, and a levy is issued when the IRS finds collection of the tax is in jeopardy.

Any taxpayer that receives a lien or levy notice has the right to dispute the action by filing a written request for a CDP hearing within 30 days of the date of the notice. Taxpayers that file for CDP hearings within the 30-day period are granted hearings with a right to judicial review from the U.S. Tax Court or U.S. District Court if they do not agree with Appeals' determination. Taxpayers that file a request for CDP hearings after the 30-

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<sup>8</sup>Senate Committee on Finance Report, S. Rep. 105-174, April 22, 1998, p. 67.

<sup>9</sup>A federal tax lien arises upon the taxpayer's failure to pay tax liabilities after a demand for payment and attaches to all of the taxpayer's property, I.R.C. § 6321.

<sup>10</sup>Levies are issued under IRS's authority to seize delinquent taxpayers' assets, I.R.C. § 6331.

<sup>11</sup>ACS is a computerized system that maintains balance due accounts and return delinquency investigations. With some exceptions, balance due accounts and return delinquency investigations are sent to ACS at the conclusion of normal collection notice routines. Examples of exceptions, which are available for assignment to the Field Collection area, include complex cases, "high-risk" cases, and high-dollar cases.

<sup>12</sup>The Alaska PFD Program matches a master file database of delinquent taxpayers against a database of PFD applicants. PFD is provided to eligible Alaska residents and is the result of the state's oil wealth investment, which belongs to all residents of the state of Alaska.

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day period will be given an equivalent hearing (EH), but have no right to judicial review. Once IRS receives a CDP hearing request, all tax collection efforts are generally suspended until Appeals issues its determination to the taxpayer. Under the EH process, IRS may continue to enforce collection efforts although IRS's policy is generally to suspend collection during an EH. Interest and penalties continue to accrue during the hearing period for both EH and timely CDP hearings.

By statute, during CDP hearings, taxpayers may raise issues related to (1) the appropriateness of the lien filing or levy; (2) offers of collection alternatives, such as IAs, OICs, and posting bonds or substitution of other assets; (3) appropriate spousal defenses; and (4) challenges to the existence or amount of the tax, but only in cases where they did not receive statutory notice of deficiency<sup>13</sup> or did not otherwise have an opportunity to dispute the tax liability. The *Internal Revenue Manual* allows the taxpayer to raise issues related to a hardship determination.<sup>14</sup> However, a taxpayer may not raise an issue that was raised previously and considered at a prior administrative or judicial hearing if the taxpayer participated meaningfully in that hearing or proceeding.

Once IRS receives a CDP request, Collection attempts to work with the taxpayer for approximately 45 to 90 days to resolve the issue prior to transferring the case to Appeals. If Collection is successful in resolving the case with the taxpayer, the taxpayer can formally withdraw from CDP. When Collection is unsuccessful in resolving the case with the taxpayer, it forwards the case file to Appeals for its independent review. However, in certain situations, Collection immediately forwards the taxpayer's case to Appeals, such as when collection alternatives have already been explored and discussions are at an impasse, the taxpayer raises frivolous or constitutional issues, the taxpayer appears to be using CDP as a delaying tactic because the taxpayer is not responding to requests for information,

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<sup>13</sup> A statutory notice of deficiency is IRS's determination of a taxpayer's income, estate, gift, or certain excise tax deficiencies sent to the taxpayer by certified or registered mail. The notice of deficiency consists of a letter explaining the purpose of the notice, the amount of the deficiency and the taxpayer's options, a waiver if the taxpayer should decide to agree to the additional tax liability, a statement showing how the deficiency was computed, and an explanation of the adjustments. A taxpayer that does not agree with the adjustments may file a petition with the U.S. Tax Court within 90 days of the notice date.

<sup>14</sup> IRS can classify an account as Currently Not Collectible if the taxpayer cannot be located or contacted, payment would cause significant financial hardship to the taxpayer, the taxpayer is bankrupt, a business taxpayer no longer exists, or an individual taxpayer is deceased.

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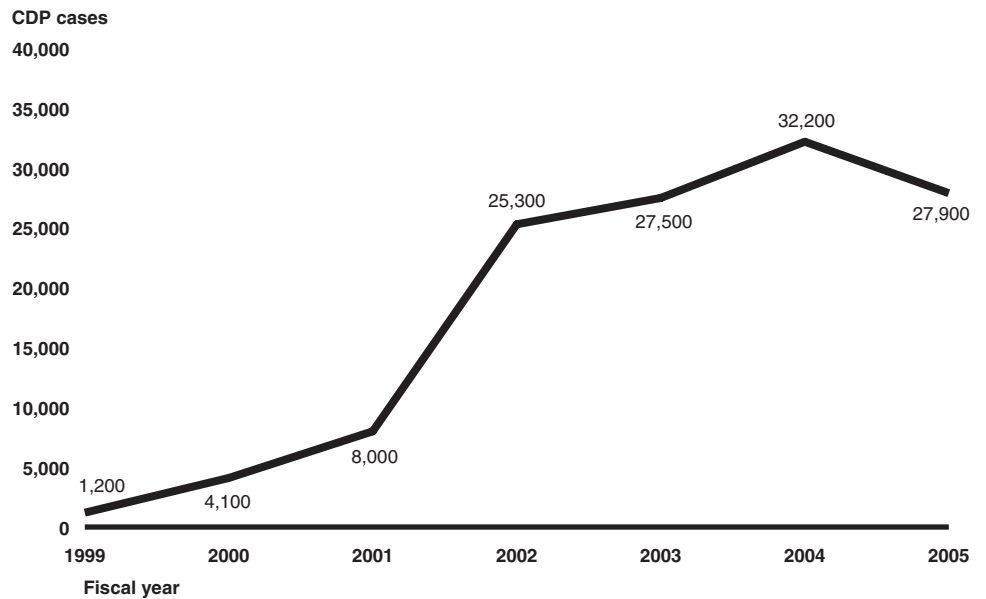
or the taxpayer does not want to work with Collection after requesting the CDP hearing.

Appeals' mission is to independently resolve tax disputes prior to litigation on a basis that is fair and impartial to both the government and the taxpayer. By statute, when Collection forwards the case to Appeals, Appeals will (1) verify that the requirements of any applicable law and administrative procedures have been met, (2) consider any relevant issues relating to the unpaid tax or the levy, and (3) determine whether any lien filing or levy balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection be no more intrusive than necessary. Appeals then renders a decision on the case in which it may either agree that the lien filing or levy is appropriate (that is, "sustain" or uphold the collection action) or not appropriate (that is, "not sustain" the collection action). Appeals may also include in its final determination a description of the terms for any collection alternative negotiated with the taxpayer, such as an OIC or IA.

As shown in figure 2, the volume of CDP case closures has increased steadily from the inception of the CDP program from fiscal year 1999 through fiscal year 2004 and then declined in fiscal year 2005. In fiscal year 2005, CDP cases accounted for more than one-quarter of Appeals' annual caseload.



**Figure 2: CDP Cases Closed by Appeals, Fiscal Years 1999 through 2005**



Source: IRS.

## CDP Appeals Identified Few Errors by Collection, but Some Taxpayers Received a Different Outcome

Our case file review indicates that during the CDP review process Appeals found evidence that Collection had not followed proper procedures in an estimated 2 percent of the cases closed in fiscal year 2004. For reasons unrelated to an error by Collection, in an estimated 27 percent of cases, taxpayers emerged from the CDP hearing process with a different outcome than the lien filing or levy action. Of these, Appeals agreed to a collection alternative for an estimated 16 percent of all taxpayers, and approximately 11 percent of all taxpayers fully paid their tax liabilities or no longer had balances due to IRS. In addition, an estimated 11 percent of all taxpayers withdrew from the CDP process. Finally, in about 60 percent of cases, Appeals upheld the lien filing or levy for a variety of reasons, including because taxpayers did not file required returns, had not paid their taxes for certain periods, or both.

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## Appeals Rarely Found Evidence of Procedural Errors by Collection

As previously shown in figure 1, Appeals found evidence that Collection had not followed proper procedures in an estimated 2 percent of CDP cases. Although Appeals did not identify any instances in our sample where “requirements of applicable law and administrative procedure” were not met,<sup>15</sup> our case file review did identify instances where Appeals detected other types of procedural errors during the collection phase of a case. For example, in one case IRS misapplied a payment to the taxpayer’s ex-spouse. Appeals reapplied the payment to the taxpayer’s account and did not uphold the lien filing and levy because there was no balance due. We included these types of cases in our estimation of procedures not followed as they represented other examples of situations where taxpayers utilized the CDP appeal process consistent with the provisions of the Restructuring Act—that is, as an opportunity to correct any errors made by Collection.

Of approximately 27 percent of CDP cases that resulted in a different outcome after taxpayers appealed, Appeals negotiated a collection alternative with taxpayers in about 16 percent of the cases. However, when Appeals negotiates a collection alternative, it is not necessarily disagreeing with the lien filing or levy. Appeals may accept a taxpayer’s collection alternative but sustain the filing of the lien in order to protect the government’s lien priority in the event of default. In addition, taxpayers may present Appeals with new information not previously provided to Collection for consideration. For example, in one of our cases, the taxpayer requested an IA with both Collection and Appeals. After submitting requested financial information and a down payment with Appeals, the taxpayer qualified for an IA. The taxpayer benefited from the CDP process by negotiating a collection alternative with Appeals. In an estimated 11 percent of all CDP cases, Collection’s lien filing or the levy was no longer appropriate because the taxpayer had since fully paid the liability or had no balance due. In these cases, the lien or levy was no longer necessary because the taxpayer no longer owed any tax to IRS. Appeals officials stated that some taxpayers file for CDP to delay imminent collection action while they find revenue sources to pay off their

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<sup>15</sup>The Restructuring Act requires Appeals to verify that the requirements of any applicable law or administrative procedure have been met. In conjunction with this, Appeals will verify that an assessment was made in accordance with I.R.C. § 6201, that a notice and demand for payment was issued to the taxpayer in accordance with I.R.C. § 6303, and that a balance due existed at the time the lien was filed or the CDP levy notice was issued. Appeals will also verify that other pre-lien/levy requirements were met.

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unpaid liabilities. For example, one taxpayer in our sample obtained a loan during the hearing process to fully pay the liabilities owed.

In addition, in about another 11 percent of all CDP cases, taxpayers withdrew from the CDP process after their cases reached Appeals, so Appeals neither upheld nor overturned the liens or levies. For example, one taxpayer continued to work with Collection while the case was transferred to Appeals. Collection negotiated an IA with the taxpayer, and then the taxpayer withdrew the CDP request from Appeals. We did not track the final outcome of cases after taxpayers withdrew from the CDP hearing process.

Of all CDP cases, approximately 6 percent of taxpayers negotiated a collection alternative while in Collection but failed to formally withdraw from the CDP program, resulting in their cases being forwarded to Appeals. According to Appeals officials, in these situations Appeals will generally agree with the proposed collection alternatives unless the taxpayers' situations change so much that they can no longer comply with the agreements reached with Collection. Appeals officials also said that some professional representatives advise clients not to withdraw from CDP even though they resolved the issue at the Collection level because they want to preserve their clients' right to judicial review.

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### Appeals Upheld the Majority of Liens and Levies, Often Because of Taxpayer Noncompliance

In an estimated 60 percent of cases where Appeals determined the lien or levy was appropriate, Appeals upheld the lien filing or levy 46 percent of the time because Appeals determined that taxpayers did not comply with filing requirements, did not pay their liabilities for certain tax periods, or both, as shown in table 1. For example, to be eligible for an OIC, a business taxpayer must file all required federal tax returns, file and pay any required employment taxes on time for the two quarters prior to filing the OIC, be current with deposits for the quarter in which the OIC was submitted, pay any required estimated tax for the current period, and not be a debtor in a bankruptcy case. To be eligible for an IA, an individual taxpayer must file all required tax returns currently due and make all required estimated tax payments on the current period prior to the commencement of the IA.

**Table 1: Reasons Why Appeals Upheld the Lien Filing or Levy for Cases Closed in Fiscal Year 2004**

Reasons Appeals agreed with Collection	Percentage of CDP cases <sup>a</sup>
Noncompliance in filing, payment, or both	46 <sup>b</sup>
Amount of the liability was not in question	38 <sup>c</sup>
No response from taxpayer	30 <sup>d</sup>

Source: GAO analysis of IRS data.

<sup>a</sup>Percentages do not add up to 100 percent because the categories are not mutually exclusive.

<sup>b</sup>We are 95 percent confident that the true value would be between 38 percent and 55 percent.

<sup>c</sup>We are 95 percent confident that the true value would be between 30 percent and 47 percent.

<sup>d</sup>We are 95 percent confident that the true value would be between 22 percent and 39 percent.

In addition to noncompliant taxpayers, Appeals upheld the lien filing or levy for a variety of other reasons, including when taxpayers questioned the amount of the tax liability but Appeals determined the liability to be correct (an estimated 38 percent) and when taxpayers did not respond to Appeals (an estimated 30 percent). With respect to nonresponsive taxpayers, Appeals officials stated that they attempt to communicate with taxpayers at least twice by correspondence before issuing determination letters.

About 2 percent of all taxpayers that requested CDP appeal hearings contested the Appeals determination in the U.S. Tax Court or U.S. District Court. Officials in IRS's Office of Chief Counsel said that based on their experience with docketed cases, Appeals is upheld a majority of the time. When the courts overturn the Appeals determination, IRS Chief Counsel officials said that it does not necessarily mean that Appeals erred. Some taxpayers provide additional or new information considered by the courts but not presented to Appeals, leading to reversed decisions.

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## The Majority of Taxpayers Raised the Same Arguments with Both Collection and Appeals, Received the Same Determination, and Had Multiple Contacts with IRS

During fiscal year 2004, most taxpayers raised arguments permitted by statute to Appeals, while we estimated that 5 percent of taxpayers raised arguments considered frivolous under IRS guidance with either Collection or Appeals.<sup>16</sup> When a taxpayer raised the same argument in both Collection and Appeals, in an estimated 81 percent of the cases Appeals agreed with Collection on the merits of the taxpayer's argument. During the CDP process, Collection and Appeals initiated multiple communications with the taxpayer, including letters, telephone discussions, and face-to-face meetings.

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## Most Taxpayers Raised Permissible Arguments, but Some Presented Frivolous Arguments

Taxpayers raised various arguments permitted by the Restructuring Act in more than an estimated 90 percent of CDP cases. After their cases were transferred to Appeals, about 41 percent of taxpayers requested an OIC and about 37 percent of taxpayers requested an IA. Less than 3 percent of taxpayers requested innocent spouse relief as permitted under the Restructuring Act during their CDP hearings in Appeals.

Approximately 38 percent of taxpayers questioned the existence of the tax liability. Under the Restructuring Act, a taxpayer may challenge the existence or dollar amount of the tax liability at the CDP hearing if the taxpayer did not receive a statutory notice of deficiency for the liability or did not otherwise have an opportunity to dispute the tax liability. Seven out of the 80 taxpayers in our sample challenging the existence of a liability claimed they did not receive the statutory notice of deficiency. The remaining 73 out of the 80 taxpayers raised existence of the liability for a variety of other reasons, including contesting the amount of the liability. One Appeals official suggested that some taxpayers without professional representation (pro se) may not understand the definition of questioning "the existence or amount of the liability" under the Restructuring Act. IRS has drafted a revised CDP appeal hearing request form in an effort to assist taxpayers in determining what types of collection alternatives are available and what types of arguments are allowed. The revised hearing request form is intended to more clearly

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<sup>16</sup> IRS has published detailed guidance on 39 different types of frivolous arguments that IRS will not accept. This guidance includes a section specifically devoted to frivolous arguments prevalent in CDP cases. See "The Truth About Frivolous Arguments" available on IRS's Internet site, [http://www.irs.gov/pub/irs-utl/friv\\_tax.pdf](http://www.irs.gov/pub/irs-utl/friv_tax.pdf).

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explain what it means to dispute the existence or amount of the liability and the taxpayer's ability to question the liability under CDP.

While their cases were in Appeals, an estimated 38 percent of taxpayers questioned the appropriateness of the lien filing or levy and presented hardship arguments. According to guidance issued by IRS Counsel, taxpayers may argue that a lien or levy is inappropriate because payment would cause hardship, for example, if the taxpayer has no disposable income or assets. The primary hardship issue taxpayers cited during the CDP process was illness (about 11 percent). Other hardship issues taxpayers reported included bankruptcy, unemployment, and death in the family.

An estimated 5 percent of taxpayers requesting a CDP appeal presented a frivolous argument to either Collection or Appeals. According to IRS, taxpayers raising frivolous issues consume a disproportionately large amount of time because Appeals personnel must often read lengthy frivolous submissions in search of any substantive issue that might be contained within the case file. In addition, according to IRS, delays result when taxpayers use face-to-face meetings as a venue for frivolous oration and harassment of Appeals personnel. IRS has proposed changes to the CDP regulations, which clarify that Appeals will not offer face-to-face meetings if the taxpayers or their representatives raise only frivolous arguments.<sup>17</sup> However, representatives from an external stakeholder group expressed concerns that IRS may misclassify cases as frivolous and deny face-to-face meetings although the taxpayer is raising arguments permitted under the Restructuring Act. For example, one stakeholder suggested that a pro se taxpayer's argument may be misclassified as frivolous if the taxpayer uses the word protest on the CDP request form. Prior to the Restructuring Act IRS could designate certain taxpayers, such as those using arguments that had been repeatedly rejected by the courts, as "illegal tax protesters." As a result, taxpayers using the term protest might be equated with taxpayers offering frivolous arguments. The act prohibited IRS from using this or any similar designation.<sup>18</sup>

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<sup>17</sup>70 Fed. Reg. 54681, September 16, 2005.

<sup>18</sup>Prior to the Restructuring Act, taxpayers could be designated in the IRS master file and other records as illegal tax protesters when their tax returns or other correspondence with IRS contained certain specific indicators of noncompliance with the tax laws, such as the use of arguments that had been repeatedly rejected by the courts.

**In Cases Where Taxpayers Raised the Same Arguments in Appeals as in Collection, Appeals Agreed with Collection the Majority of the Time**

Nearly 90 percent of taxpayers raised the same argument permitted by the Restructuring Act with both Collection and Appeals. IRS encourages taxpayers to discuss the issues they want to appeal with Collection because the matter may be resolved without the need for Appeals' involvement. As shown in table 2, Appeals agreed with Collection that a taxpayer's argument lacked merit in more than an estimated 80 percent of the cases where taxpayers raised the same argument in both Collection and Appeals. For example, taxpayers argued that they qualified for collection alternatives but were not in compliance with requirements for filing tax returns for prior periods, paying taxes for certain periods, or both.

**Table 2: Estimated Percentage and Number of Taxpayers Raising Restructuring Act Arguments in Both Collection and Appeals and Cases Where Appeals Agreed with Collection for Cases Closed in Fiscal Year 2004**

Arguments raised by taxpayer permitted by the Restructuring Act	Raised in both Collection and Appeals		Percentage of cases where Appeals reached same conclusion as Collection	
	Percentage of all CDP cases	Number of taxpayers	Percentage	Number of taxpayers
Offer-in-compromise	31	10,075	88 <sup>a</sup>	8,835
Existence of the liability	37	11,780	89 <sup>b</sup>	10,540
Installment agreement	27	8,680	84 <sup>c</sup>	7,285
Appropriateness of the lien filing or levy	26	8,525	83 <sup>d</sup>	8,370
Innocent spouse <sup>e</sup>	—	—	—	—
All arguments permitted by the Restructuring Act	89	28,676	81	23,251

Source: GAO analysis of IRS data.

Notes: The arguments do not sum to 100 percent because some taxpayers raised more than one argument permitted by the Restructuring Act. In addition, the percentage of cases where Appeals reached the same conclusion as Collection for all arguments permitted by the Restructuring Act is lower than the percentages for individual argument categories as it includes innocent spouse category data. This category had a lower percentage of cases where Appeals agreed with Collection on the merits of the argument.

<sup>a</sup>We are 95 percent confident that the true value would be between 77 percent and 95 percent.

<sup>b</sup>We are 95 percent confident that the true value would be between 80 percent and 95 percent.

<sup>c</sup>We are 95 percent confident that the true value would be between 72 percent and 92 percent.

<sup>d</sup>We are 95 percent confident that the true value would be between 72 percent and 91 percent.

<sup>e</sup>Results are not shown for innocent spouse arguments because of the small number of cases with this characteristic.

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More than half of the taxpayers that requested an IA (about 61 percent)<sup>19</sup> or OIC (about 56 percent)<sup>20</sup> in Appeals were not compliant for tax periods in addition to the period under CDP review. Appeals officials added that when a taxpayer requests an OIC in Appeals, Appeals staff often spend a lot of time developing the case by requesting and reviewing documentation needed to determine the taxpayer's compliance and eligibility. Our review of the case files for the estimated 31 percent of taxpayers that asked both Collection and Appeals for an OIC indicated that Appeals staff spend time building cases. Appeals requested the OIC form from an estimated 33 percent<sup>21</sup> of these taxpayers, and an estimated 24 percent<sup>22</sup> provided the form. Appeals also requested supporting financial documents from an estimated 37 percent<sup>23</sup> of these taxpayers, and an estimated 24 percent<sup>24</sup> of taxpayers that requested an OIC in both Collection and Appeals provided the requested information. IRS voiced concerns that many taxpayers are raising the same issues with Appeals that were rejected by Collection in what appeared to be efforts to delay collection of the liabilities.

In an approximately 19 percent of the cases where taxpayers raised arguments permitted by the Restructuring Act, Appeals reached a different conclusion than Collection on the merits of the taxpayer's argument, but may have upheld the lien filing or levy. For example, in one case Appeals approved an IA rejected by Collection but upheld the lien to protect the government's interests in case the taxpayer defaulted. Appeals differed from Collection on the merits of the taxpayer's arguments for a variety of reasons, including a change in the taxpayer's circumstances or information. When Appeals differed from Collection on the merits of the

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<sup>19</sup>We are 95 percent confident that the true value would be between 50 percent and 73 percent.

<sup>20</sup>We are 95 percent confident that the true value would be between 45 percent and 67 percent.

<sup>21</sup>We are 95 percent confident that the true value would be between 19 percent and 49 percent.

<sup>22</sup>We are 95 percent confident that the true value would be between 12 percent and 39 percent.

<sup>23</sup>We are 95 percent confident that the true value would be between 23 percent and 53 percent.

<sup>24</sup>We are 95 percent confident that the true value would be between 12 percent and 39 percent.



taxpayer’s argument, in an estimated 20 percent<sup>25</sup> of these cases the taxpayer provided different information to Appeals than to Collection. In addition, in an estimated 11 percent<sup>26</sup> of the cases when Appeals reached a different conclusion than Collection it was because the taxpayer did not provide requested information to Collection, but provided the information to Appeals.

IRS Initiated  
Communication with CDP  
Taxpayers Multiple Times,  
Primarily by Telephone  
and Letter

After sending the lien or levy notice, IRS (Collection and Appeals) contacted the taxpayer multiple times using different methods. The range of communication between IRS and the taxpayers in our sample varied. For example, the maximum number of phone calls in a single case was 34 and the maximum number of letters was 17. The estimated median number of letters IRS sent to the taxpayers was 3.6 and the estimated median number of phone calls was 3.2.<sup>27</sup> As shown in table 3, in general the median number of IRS-initiated contacts with taxpayers—letters, telephone conversations, and formal meetings—was twice as high as the median number of taxpayer-initiated contacts with IRS.

**Table 3: Estimated Median Number of Total and IRS- and Taxpayer-Initiated Contacts after Lien/Levy Notice Issuance for Cases Closed in Fiscal Year 2004**

IRS area	Total contacts	IRS-initiated contacts	Taxpayer-initiated contacts
Collection	4.6	2.9	1.2
Appeals	6.6	3.5	1.5

Source: GAO analysis of IRS data.

After IRS sent the lien or levy notice, about 28 percent of taxpayers had at least one face-to-face contact, including meetings and drop-in visits, with Collection or Appeals. Most external stakeholders we interviewed stated that face-to-face CDP hearings were preferable, although a few

<sup>25</sup>We are 95 percent confident that the true value would be between 6 percent and 34 percent.

<sup>26</sup>We are 95 percent confident that the true value would be between 3 percent and 27 percent.

<sup>27</sup>The median, the midpoint in a series of numbers, was selected to represent the typical amount of contact initiated by IRS, the taxpayer, or both, because the total amount of contacts varied greatly among taxpayers. All medians based upon the results of our sample have a relative standard error of less than 30 percent unless otherwise stated.

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representatives favored telephone conferences. Members of the National Association of Enrolled Agents, for example, said they preferred face-to-face meetings because they could review all documents and reach agreement in writing. In contrast, members of the American Institute of Certified Public Accountants stated that teleconferences were the most efficient way to handle CDP hearings.

The September 2005 proposed changes to the CDP regulations describe specific circumstances under which Appeals will not offer a face-to-face conference to taxpayers or their representatives because it determines that a conference will not serve a useful purpose. Under the proposed changes, a face-to-face conference will not be granted if the taxpayer does not provide the required information in the written request for a CDP hearing or if the taxpayer proposes collection alternatives that would not be available to other taxpayers in similar circumstances. For example, because IRS does not consider OICs from taxpayers that have not filed required returns or made certain required deposits of tax, face-to-face conferences will not be offered to taxpayers that request an OIC but have not fulfilled those obligations. In addition, a face-to-face conference will not be held at the location closest to the taxpayer's residence or principal place of business if all Appeals officers or employees at that location are considered to have prior involvement with the taxpayer.

The National Taxpayer Advocate (Advocate) and American Bar Association (ABA) expressed concern about the potential reduction in face-to-face hearings that may result from the proposed changes in the CDP regulations. The Advocate noted that certain taxpayers may need a face-to-face meeting with an Appeals officer who is familiar with local economic conditions, such as a business's payroll provider that went bankrupt. In our sample, an estimated 2 percent of taxpayers requested that Appeals transfer the CDP hearing to another location and Appeals accommodated all of these requests. However, we did not collect data on whether the relocation was to accommodate a face-to-face hearing. The Advocate also expressed concern that the centralization of Appeals activities to IRS campuses will result in only certain taxpayers receiving face-to-face hearings, such as those with representation. ABA representatives stated that the proposed regulations will grant Appeals more ability to deny face-to-face hearings, which would adversely affect pro se CDP taxpayers. They also said that Appeals cases can be more quickly resolved in person than through correspondence and phone hearings.

Both Individuals and Businesses Used CDP, but Case Characteristics Varied

Individuals constituted the majority of taxpayers that requested a CDP appeal hearing, although business entities also exercised their right to request an appeal hearing. When compared to individual taxpayers with income tax liabilities, businesses with employment taxes liabilities had more delinquent periods. The majority of individuals requesting a CDP appeal were lower-income taxpayers.

Most Taxpayers That Requested CDP Appeal Were Individuals, although Businesses Also Used the Program

Individuals constituted about 87 percent of all taxpayers that exercised CDP appeal rights. Of these individuals, approximately 79 percent filed a CDP appeal related to individual income tax liability. Business entities constituted the remaining 13 percent of all taxpayers that requested CDP appeals, with business-related liabilities such as employment and unemployment tax. See table 4 for more detail on the types of taxpayers requesting CDP appeal.

**Table 4: Type of Taxpayer Requesting CDP Appeal for Cases Closed in Fiscal Year 2004**

Type of taxpayer based on income reporting requirement	Type of liability appealed in CDP	Estimated percentage of population requesting CDP appeal
All individual		87
Individual	Income <sup>a</sup>	79
Individual	Trust fund recovery penalty <sup>b</sup>	8
All business <sup>c</sup>	Employment and unemployment	13
<b>Total</b>		<b>100</b>

Source: GAO analysis of IRS data.

<sup>a</sup>Includes sole proprietors. A sole proprietor is an unincorporated business that is owned by one individual. Although the majority of sole proprietors had income liability issues in CDP, there were also a small number that had business-related liabilities.

<sup>b</sup>Trust fund recovery penalties may be assessed against any person who is responsible for collecting and paying withheld income and employment taxes, or for paying collected excise taxes, and willfully fails to collect and pay them to IRS.

<sup>c</sup>Includes corporations, S corporations, and a small number of other “flow-through” entities, such as partnerships and trusts, and cases where a taxpayer appealed the collection of multiple types of liabilities, such as a business appealing both an employment tax and excise tax liability. An S corporation is a flow-through entity that distributes net income—as well as losses—to shareholders who are subsequently required to report the net income or loss on their individual tax returns and to pay any applicable taxes. Although flow-through entities do not generally pay taxes on income, they may still incur other types of tax liabilities, such as employment or unemployment taxes.

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Both the ACS and Field Collection areas of IRS generate lien and levy notices, which may lead to eventual CDP appeals. ACS issued the vast majority of notices related to individual cases, about 88 percent. Our sample data suggest that Field Collection issued the majority of notices related to business cases, about 78 percent. However, because of a small sample size we cannot conclude that this observed level of notice issuance is statistically different from the level of notices issued to individuals. IRS procedures specify that simpler cases are usually handled by ACS. Field Collection handles complex, high-risk, high-dollar, and certain other types of collection cases.

Although taxpayers are afforded CDP appeal rights for lien and levy notices, about 64 percent of all CDP appeals resulted from a levy notice. ACS issued levy notices for an estimated 49 percent of all cases, while Field Collection issued levy notices for about 15 percent of all CDP cases. Lien notices, which may be issued by either ACS or Field Collection, accounted for about 29 percent of all cases. For the remaining estimated 7 percent of cases, taxpayers either received both a lien and levy notice on the same liability amount and tax periods<sup>28</sup> or a different type of levy notice, such as SITLP or FPLP.

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### Businesses with Employment Tax Liabilities Had More Delinquent Periods Than Individuals with Income Tax Liabilities

Business entities that appealed proposed collection of quarterly employment tax liabilities had on average over twice as many delinquent periods included in their appeals as individual taxpayers with income tax liabilities.<sup>29</sup> As shown in table 5, these businesses had on average nearly 6 delinquent periods included in their appeals. In calendar terms, this means that on average businesses that requested a CDP appeal for failure to pay employment tax liabilities were delinquent for nearly 1-½ years. The number of delinquent periods included in the CDP appeal for these taxpayers ranged from a low of 1 to a high of 26 quarters, or in calendar terms, from 3 months to 6-½ years. In contrast, individuals who appealed

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<sup>28</sup>IRS may issue lien and levy notices simultaneously on the same liability amounts and tax periods to a taxpayer.

<sup>29</sup>When issuing a lien or levy notice, IRS may include multiple delinquent tax periods in one notice. As a result, taxpayers may appeal the lien or levy on not just one but several delinquent periods. Individuals file returns and pay their income taxes on an annual basis, so the tax period is a calendar year. Businesses file returns and pay employment taxes on a quarterly basis, or a tax period of 3 months. Unemployment taxes are also paid on a quarterly basis unless the amount due is less than \$500, in which case unemployment taxes may be paid annually.

the lien filing or levy on income tax liabilities in CDP had on average 2.6 delinquent periods, or years, included in their appeals. For individual income tax liabilities the number of multiple periods involved ranged from a low of 1 to as many as 9 years per case.

**Table 5: Average and Range of Number of Delinquent Tax Periods by Type of Tax Liability**

Type of tax liability	Number of delinquent tax periods		
	Estimated average	Range	
		Minimum	Maximum
Employment (quarterly)	5.7 <sup>a</sup>	1	26
Unemployment (quarterly)	2.0 <sup>b</sup>	1	8
Trust fund recovery penalty (quarterly)	3.3 <sup>c</sup>	1	9
Individual (annual)	2.6 <sup>d</sup>	1	9

Source: GAO analysis of IRS data.

<sup>a</sup>We are 95 percent confident that the true value would be between 3.6 and 7.8 periods.

<sup>b</sup>We are 95 percent confident that the true value would be between 0.8 and 3.2 periods.

<sup>c</sup>We are 95 percent confident that the true value would be between 1.8 and 4.8 periods.

<sup>d</sup>We are 95 percent confident that the true value would be between 2.3 and 2.9 periods.

Similarly, the estimated amount of the tax liability associated with CDP appeals varied widely and was associated with the type of tax liability involved. The highest median tax liability was associated with trust fund recovery penalty cases, followed by employment tax liabilities, as shown in table 6.

**Table 6: Estimated Median of Total Liability by Type of Tax Liability in CDP for Cases Closed in Fiscal Year 2004**

Type of tax liability	Total median liability (dollars)
Trust fund recovery penalty	\$44,941
Employment	30,403 <sup>a</sup>
Individual	12,916
Unemployment	1,237 <sup>b</sup>

Source: GAO analysis of IRS data.

<sup>a</sup>The relative standard error for this estimate is 38 percent.

<sup>b</sup>The relative standard error for this estimate is 46 percent.

In general, taxpayers represented themselves more than half of the time in CDP appeal cases, an estimated 56 percent of the time. Individual taxpayers represented themselves even more frequently, about 61 percent of the time. Individuals engaged the services of a professional representative, such as a tax attorney, certified public accountant (CPA), or enrolled agent,<sup>30</sup> during CDP about 30 percent of the time. Our sample data suggest that 50 percent of businesses retained professional representation; however, because of our small sample size we cannot conclude that this observed level of representation is statistically different from the level of professional representation for individuals.

Most Individuals Were Lower-Income Taxpayers with Varied Liability Amounts

More than an estimated 50 percent of individual taxpayers who requested a CDP appeal had most recently reported an adjusted gross income (AGI)<sup>31</sup> of less than or equal to \$50,000 prior to their CDP appeals. The estimated median tax liability associated with these cases varied somewhat when compared to income level, as shown in table 7.

Table 7: Estimated Adjusted Gross Income Level versus Median Tax Liability for Individual Taxpayers Requesting CDP Appeal for Cases Closed in Fiscal Year 2004

Adjusted gross income level (dollars)	Percentage of taxpayers requesting CDP <sup>a</sup>	Median tax liability (dollars)
Zero or negative (under \$1)	3	44,941 <sup>b</sup>
\$1 to \$25,000	26	7,935
\$25,001 to \$50,000	25	15,278
\$50,001 to \$75,000	15	8,415
\$75,001 to \$100,000	7	15,224 <sup>c</sup>
\$100,001 to \$300,000	12	32,835
Over \$300,001 <sup>d</sup>	—	—

Source: GAO analysis of IRS data.

<sup>a</sup>Does not total to 100 percent because of exclusion of cases where data were unavailable.

<sup>b</sup>The relative standard error for this estimate is 38 percent.

<sup>30</sup>Like attorneys and CPAs, an enrolled agent is an individual who has earned the privilege of practicing, or representing taxpayers, before IRS. To become an enrolled agent, a person must demonstrate technical expertise with tax matters by either passing a written examination or through past service and technical experience with IRS.

<sup>31</sup>AGI is defined as the sum of total income less certain types of allowed expense deductions, such as moving expenses, alimony, or student loan interest expenses. Negative AGI indicates taxpayers whose reported deductions exceeded their total income.

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<sup>c</sup>The relative standard error for this estimate is 41 percent.

<sup>d</sup>The relative standard error was greater than 50 percent.

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## Appeals Devoted Many Staff Hours to Resolving CDP Cases That May Not Be Consistent with Goals of the Program or an Efficient Use of Resources

The results of our case file review and interviews with IRS officials have raised concerns that certain types of taxpayers have used CDP in a manner that may be inconsistent with the goal of the Restructuring Act to ensure due process. IRS also raised concerns that taxpayers have used CDP in a manner that resulted in an inefficient use of Appeals' resources. Our case file review enabled us to develop quantitative estimates of the extent to which cases with selected characteristics of concern were present among cases closed by Appeals during fiscal year 2004. IRS devotes a significant amount of its resources to resolving CDP appeals cases. Changing the CDP process could release a significant amount of Appeals' resources for other purposes. In operating the CDP program, IRS must balance efficient resource utilization against the goal of protecting taxpayer rights.

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## Concerns about Certain Types of CDP Cases

The Restructuring Act permits any taxpayer who receives a lien or levy notice to request a CDP appeal hearing. The act makes no distinction with respect to the type of taxpayer, type of tax liability, or whether the liability is self-reported or asserted by IRS. According to the legislative history, the Senate Committee on Finance believed that following procedures designed to afford taxpayers due process in collections would increase fairness to taxpayers. However, the results of our case file review and interviews with IRS officials raised concerns that certain taxpayers are using CDP in ways that may be inconsistent with the goal of the Restructuring Act to ensure due process. These would include the following:

**Frivolous arguments:** As discussed earlier, an estimated 5 percent of taxpayers requesting a CDP appeal presented a frivolous argument to either Collection or Appeals. An estimated 4 percent of CDP taxpayers raised a frivolous argument to Appeals alone. IRS has publicized those arguments that are considered frivolous and that will not be considered as a basis for contesting tax liabilities. IRS officials said that taxpayers that submit frivolous arguments may simply be delaying collection efforts. In the budget submissions for fiscal years 2005 to 2007, the administration submitted a legislative proposal that would increase the penalty for filing frivolous income tax returns from \$500 to \$5,000. The proposal would permit IRS to dismiss requests for CDP hearings (as well as IAs and OICs) if they are based on frivolous arguments or are intended to delay or impede tax administration. In 2005, IRS's Office of Chief Counsel also

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issued guidance encouraging Counsel staff to coordinate with Collection staff in order to file a motion to levy during CDP proceedings where a taxpayer raises solely frivolous arguments.

**Nonresponsive taxpayers:** About an estimated 20 percent of taxpayers requesting a CDP hearing in fiscal year 2004 did not respond at all or responded initially and then became nonresponsive to attempts by Appeals to contact them for additional information.<sup>32</sup> IRS officials questioned whether taxpayers that requested CDP hearings but did not respond to Appeals' efforts to contact them were serious about resolving a lien or levy. According to Appeals' procedures, taxpayers are provided at least two opportunities by correspondence to schedule the CDP hearing or discuss the case. While it is possible that nonresponsive taxpayers may no longer reside at the most recent address on file with IRS, Appeals makes efforts to contact the taxpayers using the most recent information it has available. In addition, the taxpayer can initiate contact with IRS to inform it of a new address and continue the CDP hearing. If the taxpayer does not respond, Appeals will issue a final determination on the lien or levy. For cases closed during fiscal year 2004, nonresponsive taxpayers that requested a CDP hearing experienced an estimated average cycle time of 314 calendar days<sup>33</sup> from the time they requested a CDP hearing until the time the final determination was issued by Appeals. As previously discussed, IRS generally suspends all collection efforts during CDP until the final determination is issued.

**Basis for questioning the existence of the liability:** As discussed earlier, taxpayers challenged the existence or amount of the liability with both Collection and Appeals about 37 percent of the time. An estimated 38 percent of taxpayers raised the issue with Appeals alone. In addition, Appeals agreed with Collection's evaluation of the merits of the argument an estimated 89 percent of the time. However, as discussed earlier, in only 7 of 80 cases in our sample where the taxpayer raised the existence of the liability with Appeals during CDP was the taxpayer claiming not to have received a statutory notice of deficiency from IRS.<sup>34</sup> The remaining 73 out

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<sup>32</sup>This includes both taxpayers that were completely nonresponsive to all attempts at contact by Appeals as well as taxpayers that may have responded initially to Appeals, but in whose final case determination Appeals cited overall taxpayer nonresponsiveness as one of the deciding factors.

<sup>33</sup>We are 95 percent confident the true value would be between 265 and 363 days.

<sup>34</sup>The seven cases are presented as descriptive information, not an inferential statistic. The sample size is not large enough to project this result.



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of the 80 taxpayers raised existence of the liability for a variety of other reasons, including contesting the amount of the liability. IRS intends to clarify the circumstances under which a taxpayer may appropriately dispute the existence or amount of the liability in CDP when it revises the hearing request form.

**Self-reported liabilities:** Taxpayers that self-reported their liabilities accounted for nearly an estimated 50 percent of Appeals' total CDP caseload for cases closed during fiscal year 2004.<sup>35</sup> Of these taxpayers, nearly one-quarter raised the existence of the liability issue during their CDP appeals.<sup>36</sup> The Restructuring Act states that taxpayers can use the CDP process to appeal the underlying tax liability in limited circumstances. IRS initially interpreted the language as meaning an additional tax assessment by IRS, not a liability reported by the taxpayer on the return. In 2004, the U.S. Tax Court rejected this interpretation and concluded that the term underlying tax liability referred to self-assessed amounts as well as amounts assessed under deficiency procedures. The U.S. Tax Court held that petitioners generally could dispute their self-reported tax liability because they had not received a notice of deficiency and had no other opportunity to challenge the merits of the disputed tax liability.<sup>37</sup>

**Employment and unemployment taxes:** In previous reports GAO has discussed the unique problems associated with ensuring business taxpayers comply with their employment tax deposit requirements.<sup>38</sup> IRS also expressed concern about business taxpayers who use CDP to appeal collection action for employment and unemployment taxes because many of them continue to incur additional liabilities by not filing subsequent returns or paying related taxes, often referred to as "pyramiding." As previously discussed, businesses that requested CDP appeal for employment taxes were on average delinquent for 6 quarterly periods, or behind on their payments for 1-½ years. For example, in one case the

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<sup>35</sup>We are 95 percent confident that the true value is between 40 percent and 53 percent.

<sup>36</sup>We are 95 percent confident that the true value is between 17 percent and 35 percent.

<sup>37</sup>*Montgomery v. Commissioner*, 122 T.C. 1 (2004).

<sup>38</sup>GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, [GAO-04-95](#) (Washington, D.C.: Feb. 12, 2004). See also GAO, *Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence*, [GAO-05-637](#) (Washington, D.C.: June 16, 2005).

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business requested a CDP appeal hearing to contest collection of employment taxes dating back over 26 quarterly periods, or 6-½ years. The administration has submitted a legislative proposal with its fiscal year 2007 budget to amend CDP procedures for employment tax liabilities. In contrast to most other CDP cases, the proposal would allow IRS to levy businesses with delinquent employment tax liabilities first, and then provide the taxpayer with the opportunity for a postlevy CDP appeal hearing within a reasonable period of time. This proposal is similar to the postlevy hearing established by the Restructuring Act for levies issued to collect a federal tax liability from state tax refunds under SITLP and for levies where IRS has made a finding that the collection of tax is in jeopardy.

IRS also raised concerns that other types of cases result in an inefficient use of Appeals' resources. These include the following:

**Offers-in-compromise:** In 2001, IRS established two centralized OIC processing centers to reduce inventory, processing times, and costs. IRS officials said that some taxpayers fail to work with these specialized units and instead go directly to Appeals to seek OICs. In addition, when making its determination about the acceptability of an OIC, Appeals in most cases does not refer the OIC to the specialized processing units or a Field Collection offer specialist for investigation or for a recommendation on acceptance or rejection. In contrast, Appeals refers CDP cases involving innocent spouse issues to either IRS's Centralized Innocent Spouse Operation (CISO) or a field examination office for investigation and evaluation. Appeals will delay its ruling on any other issues or collection alternatives until the CISO or field examination area issues a preliminary determination on the innocent spouse issue. As a result of taxpayers that seek OICs directly from Appeals instead of working with the specialized processing centers, Appeals deviates from its mission of settling disputes between taxpayers and Collection and instead spends time doing original case-building work, such as trying to get taxpayers to file overdue returns for prior periods, an important eligibility criterion for OICs.

IRS also said that many taxpayers who apply for a collection alternative do not (1) meet the basic requirement of having filed all necessary tax returns or (2) provide with their CDP requests the necessary supporting documentation or a completed OIC application for Appeals to consider, causing further delay and consuming more staff resources. As discussed earlier, for those taxpayers that asked both Collection and Appeals for an OIC, Appeals requested the OIC application form and other supporting

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financial documentation from about an estimated one-third of the taxpayers.

One option for ensuring that taxpayers timely provide overdue tax returns, supporting financial information, or a completed OIC application with their requests for a collection alternative would be to require taxpayers to provide this information before IRS accepts the request for a CDP hearing. However, according to officials from IRS's Office of Chief Counsel, under the current statute IRS may not deny a taxpayer's request for a CDP hearing even if the taxpayer only wants a collection alternative and has not met basic filing compliance requirements.<sup>39</sup> Similarly, IRS said that it also lacks authority to deny a request for a CDP hearing to taxpayers seeking an alternative that fail to submit the supporting financial information or OIC application form. IRS also stated that most taxpayers would be unable to provide this information within the 30 days they have to request a CDP hearing.

Another option would be to require taxpayers to provide the information within a reasonable time following the request for the CDP hearing and for IRS to proceed to make a final determination at that time on the basis of whatever information the taxpayer had provided. This would be similar to IRS's current practice of proceeding to make a final determination when taxpayers have not been responsive to IRS's request for information. At the time we completed our review, however, IRS had not determined whether it could do this without a statutory change.

**Installment agreements:** As with OIC cases, IRS also said that many taxpayers do not provide the necessary documentation for Appeals to even consider an IA with their CDP requests. Instead of concentrating on dispute resolution, Appeals officers instead must attempt to bring noncompliant taxpayers into filing compliance in order to meet the basic

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<sup>39</sup>The Restructuring Act does not specifically address this issue. However, the statute as currently written permits taxpayers to submit collection alternatives, such as an IA or OIC, during the CDP hearing. In addition, Appeals is required to do more than consider a taxpayer's request for a collection alternative during the CDP hearing. Appeals must verify that all legal and administrative requirements have been satisfied and must balance the government's need for efficient tax collection with the taxpayer's legitimate concern that the collection action be no more intrusive than necessary. Therefore, IRS believes that where a taxpayer raises no other allowable arguments to the lien filing or levy except a collection alternative, IRS may not administratively require that taxpayer to comply with the same basic eligibility requirements that are imposed on non-CDP taxpayers before the case can be forwarded to Appeals for review of its acceptability.

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eligibility criteria for the alternative, and then develop the IAs, including requesting application forms and the necessary financial information from the taxpayers.

**Low liability cases:** For cases closed during fiscal year 2004, about 3 percent of the taxpayers, or approximately 1,100, requested a CDP hearing for liabilities totaling less than \$500. One Appeals official stated that small liability cases may not be the most efficient use of Appeals' resources. However, establishing a dollar threshold would deny some taxpayers the right to appeal the lien filing or levy at the judicial level while taxpayers with perhaps slightly higher liabilities would retain that right. In addition, for some lower-income taxpayers, an improperly assessed liability of \$500 may represent a significant amount of money. The median for the most recently reported AGI for taxpayers in our sample with a liability of less than \$500 was estimated at approximately \$36,000,<sup>40</sup> with a range from as low as about \$11,000 a year to a high of more than \$200,000 a year.

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### Changing the CDP Process Could Free Up a Significant Amount of Appeals' Resources

Restricting CDP appeals rights for certain kinds of taxpayers or implementing other processing changes, such as requiring taxpayers to submit documentation for collection alternatives following the CDP hearing request, could release a significant amount of Appeals' resources for other purposes. According to IRS records, in fiscal year 2004, Appeals allocated more than 285,000 direct staff hours, or about 23 percent of all direct case time charges, to resolve about 32,000 CDP cases. We estimate that this cost was approximately \$8.2 million.

Table 8 shows the resources devoted to selected types of CDP cases. However, the data on direct case time charges and salary costs for each type of CDP cases may overstate the potential resource savings of changing the CDP process. First, the table represents the resources devoted to cases that exhibited the specific characteristic, but other characteristics could also be present, so the categories are not mutually exclusive. A case with a self-reported liability may also be an employment/unemployment tax case, and the resources devoted to that case would be included in each category. As a result, the potential staff hour savings to be realized from excluding more than one category of cases from CDP cannot be estimated by totaling the salary costs associated with each category. For example, suppose taxpayers with self-

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<sup>40</sup>The relative standard error for this estimate is 47 percent.

reported liabilities and employment/unemployment taxes were deemed ineligible for the CDP process. The table shows that Appeals devoted about 135,000 staff hours to cases with self-reported taxes and about 34,000 hours to cases with employment/unemployment taxes. However, the total staff hours that would be released by deeming both categories ineligible would not be the sum of those two categories (169,000 staff hours) because some of employment/unemployment taxes are also self-reported. The actual total would be less. Second, although we obtained the total direct time charges involved in resolving each case in our sample, we could not isolate the amount of direct time Appeals expended in requesting and obtaining documentation in order to develop collection alternatives. (For more detail on the confidence intervals associated with the estimated hours and salary costs shown in table 8, see app. I.)

**Table 8: Estimated Data on Selected Characteristics of All CDP Cases by Direct Hours Worked and Percentage of Caseload for Cases Closed in Fiscal Year 2004**

Selected characteristics of CDP case	Average number of additional characteristics	Direct hours worked by Appeals	Salary costs	Percentage of CDP caseload <sup>a</sup>
Frivolous arguments <sup>b</sup>	0.75	—	—	4
Nonresponsive to Appeals	1.24	45,571	1,308,343	20
Self-reported liabilities	1.13	135,203	3,881,678	47
Existence of the liability questioned by taxpayer	1.09	110,441	3,170,761	38
Employment/unemployment taxes	1.89	34,140	980,159	13
OIC raised by noncompliant taxpayer	1.60	63,474	1,822,339	23
IA raised by noncompliant taxpayer	1.91	58,437	1,677,726	21
Total liability less than \$500	1.43	7,440	213,602	3

Source: GAO analysis of IRS data.

<sup>a</sup>Percentages do not add up to 100 percent because the categories are not mutually exclusive.

<sup>b</sup>Results are not shown for frivolous arguments because of the small number and large variability in cases with this characteristic.

## IRS Has Taken Some Steps to Improve the CDP Program

IRS has taken some steps to improve the CDP program. IRS has drafted a revised CDP hearing request form in an effort to assist taxpayers in determining what types of collection alternatives are available. In addition, in 2005, IRS issued proposed revisions to the CDP program regulations intended to allow Appeals to effectively and fairly handle the cases of taxpayers that raise issues of substance. Included in these proposed changes is a provision stating that Appeals will not offer a face-to-face meeting with a taxpayer when Appeals staff determine that the conference

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would not serve a useful purpose, such as with a taxpayer that offers only frivolous arguments. Further, the proposed changes state that a face-to-face conference need not be granted if a taxpayer does not provide the reasons for disagreeing with the lien filing or levy on the written CDP request. As previously discussed, stakeholder groups, including the Advocate and the ABA, voiced concerns about whether Appeals would have the ability under the proposed revised regulations to deny face-to-face hearings to taxpayers in need of assistance and thereby adversely affect taxpayer rights.

In issuing the proposed regulatory changes for the CDP program, IRS asserted as its goal to increase efficiency without compromising the quality and fairness of review. Appeals anticipates collecting detailed information on CDP case outcomes as a result of planned enhancements to its information management system. IRS guidance lays out a seven-step process for data collection and analysis, the last of which is that managers should use data to follow up and monitor the effectiveness of a course of action. However, we found that IRS has not clearly assigned responsibility for analyzing future CDP outcome data to assess whether the revised hearing request form or updated program regulations achieve their objectives or whether further corrective actions will be necessary.

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## Conclusions

Providing taxpayers with the ability to appeal unfair lien filings or levies is an important consideration in ensuring IRS continues to respect taxpayer rights as it collects tax revenue. However, Appeals devotes a significant amount of resources to CDP cases and decision makers need to weigh the value of the existing program against the value of potentially redirecting those resources to serve other taxpayers better.

The results of our case file review and interviews with IRS officials raised concerns about whether Appeals is devoting a large share of its resources to providing temporary relief from collection action to taxpayers that Congress may not have intended to benefit from the CDP process. The statute currently affords all taxpayers the protection of due process appeal, even those that raise frivolous arguments or that do not respond to Appeals after requesting a hearing and may not be serious about working with IRS. For those taxpayers, which collectively may represent as much as approximately 24 percent of the total CDP workload, the delay in collection activity until Appeals issues its final determination may be an incentive to request an appeal, even though penalties and interest continue to accrue during the time the case is with Appeals. Other types of CDP cases represent those that may involve an inefficient use of Appeals'

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resources, such as taxpayers that are seeking OICs or IAs but are not in compliance with basic tax return filing requirements.

IRS has taken some steps that may improve CDP program operations. Appeals anticipates collecting more detailed CDP case outcome data as a result of planned enhancements to its information system. However, IRS has not established responsibility for analyzing future program outcome data to determine if these changes will be effective. Given the significant share of Appeals staff resources dedicated to resolving CDP cases, balancing the need to employ these resources efficiently versus the goal of protecting taxpayer rights as required by the Restructuring Act has been, and will likely continue to be, a challenge for IRS.

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## Recommendations for Executive Action

We are making three recommendations to the Commissioner of Internal Revenue to ensure that Appeals uses its resources in line with its mission as well as more efficiently. Specifically, we recommend that the Commissioner

- determine—for taxpayers seeking only a collection alternative—a reasonable amount of additional time beyond the current 30-day period for requesting a CDP hearing for these taxpayers to submit the required supporting financial information necessary for Appeals to consider the alternative of choice, and if seeking an OIC, to submit the OIC application form;
- instruct Appeals to transfer CDP cases where taxpayers seek an OIC as a collection alternative and raise no liability issues to IRS's specialized processing units for investigation and evaluation of OICs before consideration by Appeals; and
- establish responsibility for analyzing future CDP appeal case outcome data in order to determine whether revisions to the hearing request form and program regulations will result in meeting their objectives.

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## Matters for Congressional Consideration

Since the Restructuring Act permits any taxpayer who receives a lien or levy notice to request a CDP hearing, Congress should consider amending the statute to remove eligibility for CDP appeal for selected categories of taxpayers or types of cases if it judges that they have characteristics that are inconsistent with the Restructuring Act's goal of ensuring due process. These categories may include self-reported tax liabilities, including employment and unemployment taxes, or other categories deemed inconsistent with the goal of the Restructuring Act provisions. In order to leverage IRS resources more efficiently, Congress should consider

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requiring taxpayers that seek collection alternatives, such as OICs or IAs, and that raise no other allowable issues to comply with the basic eligibility criteria, that is, file all required tax returns before Appeals reviews their cases. In addition, Congress should consider requiring taxpayers that raise only collection alternatives to submit the supporting financial information needed to consider the alternative of choice, and if seeking an OIC without raising any liability issues, to submit the OIC application form within a reasonable time following their CDP request.

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## Agency Comments and Our Evaluation

The Commissioner of Internal Revenue provided written comments on a draft of this report in a September 20, 2006, letter, which is reprinted in appendix II. The Commissioner agreed that our findings would assist IRS in its effort to improve CDP program operations, and provided technical comments and clarifications that we have incorporated throughout this report where appropriate.

With regard to our recommendation on transferring cases where taxpayers request OICs as a collection alternative to one of IRS's specialized processing units for consideration before Appeals considers the cases, IRS agreed that our recommendation merited consideration, although IRS concluded that additional study is needed to assess the advantages and disadvantages of such a change in order to achieve the proper balance between agency resource allocation and imposing unnecessary delays in processing OICs. IRS also agreed with our recommendation regarding establishing responsibility for evaluating CDP outcome data in order to determine if the changes to the hearing request form and proposed regulatory changes will achieve desired objectives. IRS expressed support for our matter for congressional consideration related to suggesting that Congress consider amending the statute to remove eligibility for CDP appeal for selected categories of taxpayers or types of cases, noting that IRS has submitted several legislative proposals in past years aimed at limiting taxpayer access to CDP.

In our draft report we recommended that IRS require taxpayers seeking a collection alternative to submit supporting financial information with their requests for a CDP hearing in order to consider the alternative of choice. We also recommended that IRS require each taxpayer seeking an OIC that raises no liability issues to submit the OIC application form with the hearing request. IRS disagreed with both of these recommendations. While IRS agreed that having this information would be desirable to facilitate consideration of taxpayers' requests for collection alternatives, IRS believes that most taxpayers would be unable to provide this information



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within the 30-day period taxpayers are provided to request a CDP appeal hearing. Further, IRS stated that it does not currently have statutory authority to deny CDP hearings to taxpayers who fail to submit financial information forms or the OIC application form. IRS believes that congressional action would be required to enable it to impose these requirements on taxpayers. We incorporated this information into the body of our report. Given IRS's concerns, we revised our report to say that taxpayers should be given a reasonable amount of time after filing a CDP request to provide supporting financial information and OIC applications. If taxpayers do not provide the materials within that time, IRS would proceed to make a final determination on the basis of available information. Further, because at the time we completed our review IRS had not decided if this could be done without a statutory change, we made this a matter for congressional consideration. Finally, we also added a recommendation that IRS should determine what a reasonable amount of additional time would be for taxpayers to assemble and submit this information since IRS would be in a position to make this determination.

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As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its date. At that time, we will send copies of this report to the Secretary of the Treasury, the Commissioner of Internal Revenue, and other interested parties. Copies will be made available to others upon request. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-9110. I can also be reached by e-mail at [brostekm@gao.gov](mailto:brostekm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.



Michael Brostek  
Director, Tax Issues  
Strategic Issues Team

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# Appendix I: Objectives, Scope, and Methodology

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Our objectives were to provide information on (1) the extent to which the Internal Revenue Service's (IRS) Office of Appeals (Appeals) found the IRS Collection function (Collection) had made errors in processing liens and levies and how often Collection Due Process (CDP) case results changed after a taxpayer requested a CDP appeal hearing; (2) the nature of the arguments presented by taxpayers seeking relief from a lien filing or levy and the amount of communication between IRS and taxpayers; (3) the characteristics of the taxpayers that availed themselves of the CDP appeal process, such as the amount of their total liability; and (4) whether opportunities exist to improve the operations of the CDP program while protecting taxpayer rights.

To develop information addressing our objectives, we interviewed stakeholder groups with an interest in CDP, both within and outside of IRS. Within IRS we interviewed officials in Appeals as well as from the Collection area of the compliance divisions where CDP appeal cases originate. We also interviewed officials in the Office of Chief Counsel and the Office of the National Taxpayer Advocate. Outside of IRS, we met with representatives from organizations whose members provide professional representation to taxpayers during CDP appeals, including the American Institute of Certified Public Accountants, the American Bar Association, and the National Association of Enrolled Agents.

We reviewed the Appeals Centralized Database System (ACDS) to determine whether it contained sufficient case results information to address our objectives. In conjunction with another GAO study addressing the operations of IRS Appeals, we tested the reliability of the data in ACDS. Based on this assessment, we found that data in ACDS were not sufficiently reliable for our use.<sup>1</sup> Therefore, we collected data through a random probability sample of CDP cases closed by Appeals during fiscal year 2004 using IRS case files. The sample of 208 cases was drawn from a population of 32,241 cases. Results from this sample are generalizable to all cases closed in the CDP program in fiscal year 2004.

For each of the cases in our sample, we requested the Appeals closed office file and reviewed the documentation in the files to determine case characteristics, such as the ultimate outcome of the CDP appeal process,

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<sup>1</sup>GAO, *Tax Administration: Opportunities to Improve Compliance Decisions and Service to Taxpayers through Enhancements to Appeals' Feedback Project*, [GAO-06-396](#) (Washington, D.C.: Mar. 24, 2006).

including whether a case was “sustained” or “not sustained.” We reviewed documents available in the file, including the taxpayer’s Request for CDP Hearing, the Case Activity Record (documented notes on the case history recorded by the Appeals officer), and the Appeals Case Memorandum (a summary memorandum outlining the Appeals officer’s findings at the conclusion of the hearing process). Based on the documents available, we determined the nature of the arguments raised by each taxpayer, including whether the taxpayer sought a collection alternative, such as an offer-in-compromise (OIC) or installment agreement (IA).

Through our case file review we also determined whether Appeals identified any evidence of improper procedures or errors that occurred during the Collection phase of the case. Based on the Internal Revenue Service Restructuring and Reform Act of 1998, as part of each case determination, Appeals is legally required to verify that the requirements of any applicable law or administrative procedure have been met. Specifically, Appeals will verify that Collection met legal and procedural requirements by reviewing whether (1) an assessment was made in accordance with the Internal Revenue Code, which requires IRS to make inquiries, determinations, and assessments of taxes;<sup>2</sup> (2) a notice and demand for payment was issued to the taxpayer;<sup>3</sup> and (3) the taxpayer had a balance due at the time the notice of lien or levy was issued. In addition to reviewing cases to determine if Appeals found any instances where Collection did not comply with these requirements, we also identified cases where all of these legal conditions may have been met, but Appeals identified some other type of procedural error or problem. We used this broader, more inclusive definition of improper procedures when compiling and reporting our results.

We also requested access to the Collection administrative file associated with each of our sample CDP cases in order to assess what transpired between the taxpayer and IRS during the collection phase of the case prior to the CDP appeal. We sought access to these files so we could develop additional case characteristics, such as the nature of the arguments raised by the taxpayer with IRS Collection, as well as the extent to which the taxpayer and the IRS employee working the collection case actively initiated communication with each other to resolve the collection dispute. Of the 208 cases in our sample, 162 originated from the Automated

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<sup>2</sup>I.R.C. § 6201.

<sup>3</sup>I.R.C. § 6303.

Collection System (ACS) area.<sup>4</sup> When documents were missing from the Collection administrative files for ACS cases, we supplemented the file information by reviewing the ACS history transcript for the case. The remaining 46 cases in our sample originated in the Field Collection area of IRS. IRS Field Collection officials were concerned that providing GAO with access to the complete case file for our sample cases would be burdensome and potentially disruptive in cases where collection enforcement was ongoing. In response to this concern, we agreed to consider using case history information stored in the Integrated Collection System (ICS).<sup>5</sup> We tested the reliability of ACS and ICS history transcripts by comparing the information on issues raised and communication contacts documented in the collection administrative file to the information in ICS for a subsample of cases. We found that the information in both systems generally agreed with the administrative case file data and was therefore sufficient for our data-gathering purposes. While we relied on ACS transcripts as a supplement to the collection case file documentation, for CDP cases that originated in the Field Collection area, we relied exclusively on reviewing the detailed ICS case history transcript.

To record the descriptive data obtained from case file review for our sample cases, we developed a detailed data collection instrument (DCI). We refined this DCI through extensive pretesting, and also shared an interim draft of the instrument with officials from both IRS Appeals and Office of Chief Counsel to ensure that it was technically accurate. To ensure that the data entered on the DCI conformed to GAO's data quality standards, each completed DCI was subject to secondary review by at least one other GAO analyst. Reviewers compared the data recorded on the DCI to the data in the case files to determine whether they concurred with the interpretation of the case files and the way the data were recorded on the DCI. When there were differing perspectives, the analysts met and reconciled them.

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<sup>4</sup>ACS is a computerized system that maintains balance due accounts and return delinquency investigations. With some exceptions, balance due accounts and return delinquency investigations are issued to ACS at the conclusion of normal service center notice routines. Examples of exception cases, which are available for assignment to the Field Collection area, include complex, "high-risk," and high-dollar cases.

<sup>5</sup>ICS is a computerized system that maintains balance due accounts and return delinquency investigations for cases that have been assigned to Field Collection.

We input the data recorded on the DCIs into a computer data collection program. To ensure the accuracy of the transcribed data, each electronic DCI entry was compared to its corresponding paper DCI by analysts other than those who electronically entered the data. If the reviewers found any errors, changes were made to the electronic entries, and the entries were reviewed again to ensure that all data were transcribed accurately.

To tabulate and analyze the results of the compiled DCI information, we used a standardized statistical software package. All cross-tabulation analyses of case file characteristic data were based on computer programs that were reviewed by a second independent data analyst.

Because we followed a probability procedure based on random selection, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval, less than plus or minus 8 percentage points unless otherwise noted. This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. In some instances, we report our sample estimates as medians. The median, or midpoint in a series of numbers, was selected in certain instances because the total number of observations for a given characteristic varied greatly across the population. To determine the reliability of median estimates, we calculated the relative standard error associated with each estimate by dividing the standard error of the median by the median and multiplied by 100 to get a percentage. All medians based upon the results of our sample have a relative standard error of less than 30 percent unless otherwise stated. In instances where our sample estimate included a fraction, we rounded the estimate up if the fraction was greater than or equal to 0.50.

To estimate the salary costs associated with selected types of CDP cases with specific characteristics shown in table 8, we estimated the total direct hourly time charges based on the sample cases that had the characteristic of interest. We multiplied direct hourly time charges by a weighted hourly salary rate that was based on Appeals data for time charged to working CDP cases during fiscal year 2004. Each of the figures for direct hours worked and salary costs, as well as the average number of additional case characteristics present for each category, have their own confidence intervals, which are shown in tables 9, 10, and 11.

**Table 9: Confidence Intervals for Table 8—Average Number of Additional Characteristics**

Selected characteristics of CDP case	Average number of additional characteristics	Confidence intervals	
		Lower bound	Upper bound
Frivolous arguments	0.75	0.20	1.30
Nonresponsive to Appeals	1.24	0.93	1.55
Self-reported liabilities	1.13	0.93	1.33
Existence of the liability questioned by taxpayer	1.09	0.88	1.30
Employment/unemployment taxes	1.89	1.57	2.21
OIC raised by noncompliant taxpayer	1.60	1.32	1.88
IA raised by noncompliant taxpayer	1.91	1.65	2.17
Total liability less than \$500	1.43	0.97	1.89

Source: GAO analysis of IRS data.

**Table 10: Confidence Intervals for Table 8—Direct Hours Worked by Appeals**

Selected characteristics of CDP case	Direct hours worked by Appeals	Confidence intervals	
		Lower bound	Upper bound
Frivolous arguments <sup>a</sup>	—	—	—
Nonresponsive to Appeals	45,600	30,900	60,200
Self-reported liabilities	135,200	107,700	162,700
Existence of the liability questioned by taxpayer	110,400	87,000	133,900
Employment/unemployment taxes	34,100	20,200	48,100
OIC raised by noncompliant taxpayer	63,500	44,200	82,800
IA raised by noncompliant taxpayer	58,400	39,100	77,800
Total liability less than \$500	7,400	200	14,700

Source: GAO analysis of IRS data.

Note: Estimates and confidence intervals have been rounded up to the nearest 100 and are expressed at the 95 percent level of confidence.

<sup>a</sup>Because of the wide variation in hours per case, the estimates for total direct hours and related confidence intervals are not projectable.

**Table 11: Confidence Intervals for Table 8—Salary Costs**

Selected characteristics of CDP case	Salary costs <sup>a</sup>	Confidence intervals <sup>b</sup>	
		Lower bound	Upper bound
Frivolous arguments <sup>c</sup>	—	—	—
Nonresponsive to Appeals	\$1,308,000	\$888,000	\$1,729,000
Self-reported liabilities	3,882,000	3,092,000	4,671,000
Existence of the liability questioned by taxpayer	3,171,000	2,496,000	3,846,000
Employment/unemployment taxes	980,000	579,000	1,381,000
OIC raised by noncompliant taxpayer	1,822,000	1,269,000	2,376,000
IA raised by noncompliant taxpayer	1,678,000	1,122,000	2,233,000
Total liability less than \$500	214,000	6,000	421,000

Source: GAO analysis of IRS data.

Note: Estimates and confidence intervals have been rounded up to the nearest 1,000 and are expressed at the 95 percent level of confidence.

<sup>a</sup>Salary costs for each category were estimated by multiplying the direct hours worked (table 10) by a weighted hourly salary rate based on Appeals workload data.

<sup>b</sup>Confidence interval boundaries were estimated by multiplying the confidence intervals for direct hours worked (table 10) by the weighted hourly salary rate based on Appeals workload data.

<sup>c</sup>Because of the wide variation in hours per case, the estimates for salary costs and related confidence intervals are not projectable.

# Appendix II: Comments from the Internal Revenue Service



COMMISSIONER

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

September 20, 2006

Mr. Michael Brostek  
Director, Tax Issues  
Strategic Issues Team  
United States Government Accountability Office  
Washington, DC 20548

Dear Mr. Brostek:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled "*Tax Administration: Little Evidence of Procedural Errors in Collection Due Process Appeal Cases, but Opportunities Exist to Improve the Program*," (GAO-06-1060). The findings of the GAO will prove to be a valuable resource as we continue our efforts to improve the Collection Due Process (CDP) program.

The report includes a recommendation that taxpayers seeking a collection alternative be required to submit financial information with the request for a CDP hearing. Similarly, it also recommends that taxpayers seeking an offer-in-compromise (OIC) be required to submit the application form with the hearing request. While we agree that it would be beneficial to secure this information early in the process, most taxpayers seeking a collection alternative would be unable to provide this information within the current 30-day period they are given under Internal Revenue Code §§ 6320 and 6330 to submit a request for a hearing.

We are studying the draft report's recommendation to have Appeals transfer OIC cases to one of the centralized OIC processing units for investigation and evaluation prior to Appeals consideration. Now that section 7122 has been amended to provide that an OIC is deemed accepted if not rejected within 24 months of being submitted, we need to ensure that any shift in the handling of OICs submitted during CDP hearings does not result in unnecessary delay.

We agree with the recommendation to establish responsibility for analyzing future CDP case outcomes to determine whether proposed revisions to the hearing request form and proposed changes to the CDP regulations will meet our objective of increasing efficiency without compromising the quality and fairness of review. We are still in the process of determining the office responsible for analyzing the effectiveness of these changes and expect the assignment to be made in the near future.

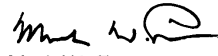


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Finally, the draft report recommends that Congress consider amending the CDP statutory provisions to remove eligibility for CDP appeal for selected categories of taxpayers or cases. As you know, the Department of the Treasury supports the enactment of certain legislative proposals designed to exclude or limit access of certain taxpayers to the CDP hearing process.

More detailed comments on the draft report's recommendations are enclosed. If you have any questions, please contact me or Karen Ammons, Deputy Chief, Appeals at (202) 435-5600.

Sincerely,



Mark W. Everson

Enclosure

Enclosure

Our comments on the report's specific recommendations follow:

**Recommendations 1 and 2(a): Require taxpayers seeking a collection alternative to submit with their CDP request form the supporting financial information needed to consider the alternative of choice; and require taxpayers who are seeking an offer-in-compromise (OIC) and who have raised no liability issues to submit an OIC application form with their initial CDP request.**

While desirable, most taxpayers seeking a collection alternative would be unable to provide this information within the current 30-day period taxpayers are given under Internal Revenue Code §§ 6320 and 6330 to submit a request for a hearing. Also, there are limits on the authority of the IRS under those sections. Therefore, as discussed further below, we cannot agree with these recommendations.

The IRS, including the Office of Appeals, requires, in most instances, the submission of financial information as a condition to its consideration of a collection alternative, such as an installment agreement or OIC. This information must be provided on a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, or Form 433-B, Collection Information Statement for Businesses. Each of the Forms 433-A and B is six pages long with at least 39 individual questions (45 for Form 433-B) requiring detailed answers about the taxpayer's assets, liabilities and expenses. Each of the forms also requires the submission of documentation substantiating the assets and liabilities reported, such as financial account statements for the past three months and statements from secured lenders. If a taxpayer is seeking an OIC, a Form 656, Offer in Compromise (the OIC application form), must also be submitted.<sup>1</sup> The IRS must have the information required by these forms to determine the acceptability of the requested collection alternative.

Our experience over the last seven years is that many taxpayers have difficulty providing the minimal information currently required by the regulations to be included in the CDP hearing request. Based on this experience, and because of the detailed information required by Forms 433-A or B and 656, we do not believe taxpayers realistically will be able to submit these completed forms within the 30-day period for requesting a CDP hearing.

There are also limits under sections 6320 and 6330 on the authority of the IRS to require through regulations that these forms be submitted as part of the CDP hearing request. The CDP regulations could be amended to impose this requirement but the regulations could not provide that the failure to provide this information would prevent the taxpayer from receiving a CDP hearing, even if the taxpayer is only seeking a collection alternative. Section 6330(c)(2)(A) gives taxpayers the unqualified right to

<sup>1</sup> Although Form 9465, Installment Agreement Request, is available for taxpayers to request payment of tax liabilities in installments, it is not required.

submit collection alternatives, such as an installment agreement or OIC, during the CDP hearing. In addition, the CDP statutory provisions, as currently written, require Appeals to do more than consider a taxpayer's request for a collection alternative. Appeals must verify that all legal and administrative procedural requirements for the collection action have been satisfied and must balance the government's need for efficient tax collection with the taxpayer's legitimate concern that the collection action be no more intrusive than necessary. Similarly, the CDP regulations cannot be amended to require taxpayers seeking collection alternatives to file all required tax returns as a condition to receiving a CDP hearing.<sup>2</sup> Congressional action would be required to permit the IRS to deny a CDP hearing to taxpayers who fail to submit Form 433-A or B, and where applicable Form 656, or who fail to file all required tax returns.

**Recommendation 2(b): Authorize Appeals to transfer OIC cases to one of the Internal Revenue Service's two specialized Centralized Offer in Compromise (COIC) processing units for investigation and evaluation prior to consideration by Appeals.**

The IRS is concerned that complete adoption of this recommendation could delay Appeals in making a determination about the acceptability of OICs during CDP hearings. The prevention of such delays is now receiving renewed priority due to the newly-enacted amendment to section 7122, which provides that an OIC is deemed accepted if not rejected within 24 months of being submitted. For certain categories of cases, the investigation and evaluation of an OIC by a COIC processing unit or Collection Field function prior to Appeals consideration could reduce the delay in the ultimate determination by Appeals about the acceptability of an OIC.<sup>3</sup> On the other hand, there are many cases in which referral of an OIC to a COIC processing unit or Field Collection for investigation and evaluation could lengthen the time it would take Appeals to make a determination. Appeals and Collection will continue to discuss this recommendation to determine how best to achieve the proper balance between effectively allocating Appeals' resources and preventing delay in making determinations about the acceptability of OICs.

**Recommendation 3: Establish responsibility for analyzing CDP appeal case outcome data in order to determine whether revisions to the hearing request form and program regulations will result in meeting with their stated objective.**

We agree with the third recommendation to establish responsibility for analyzing future CDP case outcomes to determine whether proposed revisions to the hearing request form, Form 12153, and proposed changes to the CDP regulations will meet our objective of increasing efficiency without compromising the quality and fairness of

<sup>2</sup> As you highlight in your draft report, the IRS will not consider a collection alternative unless a taxpayer has filed all returns required to be filed on or before the date the alternative is submitted.

<sup>3</sup> For example, under current procedures, the Collection Field function assists Appeals in investigating and evaluating OICs in which the taxpayer's financial information is complex.

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review.<sup>4</sup> The IRS is still in the process of determining the office responsible for analyzing the effectiveness of these changes and expects the assignment to be made in the near future.

The draft report also recommends that Congress consider amending the CDP statutory provisions to remove eligibility for CDP appeal for selected categories of taxpayers or cases. As you know, the Department of the Treasury supports the enactment of the following three legislative proposals designed to exclude or limit access of certain taxpayers to the CDP hearing process.

First, Congress should enact legislation to curb frivolous submissions and filings made to impede or delay tax administration by increasing the fines for such actions and giving the IRS the authority to disregard such submissions and filings.<sup>5</sup> Taxpayers who submit CDP hearing requests making only frivolous arguments or who are otherwise attempting to delay collection should be denied a hearing.

Second, Congress should amend section 6330 to allow the IRS to levy on payments to Federal contractors without first issuing a notice of the right to a CDP hearing. Payments to Federal contractors would be treated in the same manner as state tax refunds, with the taxpayer having the right to a hearing after a levy is made.<sup>6</sup> Currently, Federal contractor payments are part of the Federal Payment Levy Program (FPLP) and are subject to levy only after the contractor has been given an opportunity for CDP hearing. This pre-levy hearing right diminishes the effectiveness of the FPLP with respect to those federal contractors who are able to receive payment before their challenge to the proposed levy action can be resolved.

Third, Congress should amend section 6330 to permit levy to collect Federal employment tax liabilities prior to issuing a notice of the right to a hearing.<sup>7</sup> Taxpayers owing employment tax liabilities would be offered a post-levy CDP proceeding, treating them in a manner similar to the current procedures applicable to levies issued to collect a State tax refund. Employment taxes represent nearly one-fifth of the IRS's total inventory of unpaid taxes. Frequently, an employer that fails to satisfy its payroll tax liability for one period will also fail to satisfy its ongoing employment tax liabilities for successive periods, resulting in a "pyramiding" of unpaid taxes. As your draft report emphasizes, pyramiding taxpayers make frequent use of the CDP hearing process. The existing framework for CDP procedures compounds the pyramiding problem by allowing these employers to continue operating without meeting their Federal

<sup>4</sup> The proposed regulations have not become final and the revised form has not yet been issued.

<sup>5</sup> This legislative proposal was part of the Administration's Fiscal Year 2006 Revenue Proposals.

<sup>6</sup> This amendment was recommended in an October, 2004 report by the Federal Contractor Tax Compliance Task Force to the Permanent Subcommittee on Investigations of the Senate Committee on Homeland Security & Government Affairs.

<sup>7</sup> This legislative proposal was part of the Administration's Fiscal Year 2007 Revenue Proposals.

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employment tax obligations. For this reason, taxpayers with employment tax liabilities should be afforded post-levy hearing opportunities.

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Michael Brostek, (202) 512-9110 or brostekm@gao.gov

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## Acknowledgments

In addition to the contact named above, Jonda Van Pelt, Assistant Director; Carl Barden; Keira Dembowski; Evan Gilman; Shirley Jones; Laurie King; Edward Nannenhorn; Bryan Rogowski; Ellen Rominger; Susan Sato; Sam Scrutchins; and Michael Trujillo made key contributions to this report.

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