

MSP  
#16**IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation****RESPONSIBLE OFFICIALS**

Peggy Bogadi, Commissioner, Wage and Investment Division  
 Faris Fink, Commissioner, Small Business/Self-Employed Division  
 Karen Hawkins, Director, Office of Professional Responsibility

**DEFINITION OF PROBLEM**

Taxpayers generally have a right to representation before the IRS when they appoint certified public accountants (CPAs), attorneys, enrolled agents (EAs), or other authorized persons to advocate on their behalf.<sup>1</sup> Taxpayers appoint these representatives by completing and signing Form 2848, *Power of Attorney and Declaration of Representative*, and giving it to their representatives, who will mail, fax, or submit the form electronically to an IRS function or a Centralized Authorization File (CAF) unit.<sup>2</sup> The CAF units record and track Form 2848 authorizations to help IRS employees identify represented taxpayers, and to provide representatives with notice of adverse IRS actions against their clients. The IRS also provides e-Services and the Practitioner Priority Service (PPS) phone line to assist authorized representatives with account-related issues. However, if the CAF units do not timely process Forms 2848, systems and employees that generate notices to taxpayers will not be able to send these notices to the right representatives or addresses. Further, IRS employees may assume the taxpayer is unrepresented and contact him or her directly, or disclose information to an unauthorized representative, both of which violate taxpayers' fundamental rights to representation and privacy. When the IRS fails to process Form 2848 properly, it effectively shuts the door to the right to representation set forth in the IRC.<sup>3</sup>

While Form 2848 filings increased by 89 percent between fiscal years (FY) 2004 and 2012, the number of employees dedicated to processing per 100,000 forms decreased by 34 percent.<sup>4</sup> The IRS may have become more efficient in processing Forms 2848 since 2010, yet the processing time allowed by the IRS per Form 2848 increased 233 percent, from three calendar days to a maximum of ten days — increasing the risk that taxpayers will not

<sup>1</sup> Internal Revenue Code (IRC) §§ 6304(a)(2) and 7521(b)(2). Publication 1, *Your Rights as a Taxpayer* (Sept. 2012), generally provides information to taxpayers regarding the right to representation during examination, collection, or appeal of a tax liability.

<sup>2</sup> IRS, *Instructions for Form 2848* (Mar. 2012). Form 2848, *Power of Attorney and Declaration of Representative* (Mar. 2012), also permits the representative's access to the taxpayer's account information. The Centralized Authorization File (CAF) unit also processes Form 8821, *Tax Information Authorization*, which only permits the representative's or other person's access to taxpayer's account information. This report focuses primarily on Form 2848 processing.

<sup>3</sup> Represented taxpayers have additional rights under the Code. IRC § 6304(b)(2) provides that the IRS may not communicate with a represented taxpayer in collection matters, unless the representative fails to respond within a reasonable time, or consents to direct communication with the taxpayer. IRC § 7521(c) provides that taxpayers have the right to be represented in interviews.

<sup>4</sup> IRS response to TAS information request (Aug. 10, 2012). IRS email updating response to TAS information request (Oct. 10, 2012). IRS, Compliance Data Warehouse (CDW), Integrated Data Retrieval System (IDRS), analysis of IDRS business master file (BMF) and individual master file (IMF) transaction code (TC) 960 for FY 2004 through FY 2012.

receive the benefit of representation during critical periods.<sup>5</sup> Further, the IRS has discontinued its CAF unit help lines, reallocated help line staffing to processing, and directed practitioners to use the PPS line for Form 2848 authorization issues, even though PPS call assistants answered only 73 percent of their calls in FY 2012.<sup>6</sup>

The National Taxpayer Advocate identified IRS Form 2848 authorization policies and procedures as a most serious problem for taxpayers and made actionable recommendations to improve the program in her 2009 and 2010 Annual Reports to Congress. Concerns remain over the IRS's failure to adopt these recommendations and improve its program and services for taxpayers and their representatives. Chief among these concerns:

- Practitioners lose valuable time resubmitting Forms 2848 when IRS employees use archaic systems and do not confirm manual input of the forms into the CAF;
- Taxpayers' information may be disclosed to the wrong representative, because the IRS does not verify Form 2848 authorizations on its e-Services system;
- The IRS's elimination of CAF unit help lines and additional burden on the PPS phone line could put taxpayer information in the wrong hands or deny representation when representatives are unable to submit or revoke Form 2848 authorizations;
- Low Income Taxpayer Clinics (LITCs) lack a reliable processing system in the CAF units to provide seamless representation for their clients; and
- The IRS improperly bypasses taxpayers' representatives and offers no remedies or explanations to the taxpayers.

## ANALYSIS OF PROBLEM

### Background

Taxpayers generally appoint CPAs, attorneys, or EAs to act on their behalf by completing and signing Form 2848 or its equivalent, and giving it to the representative, who will mail, fax, or electronically send the form directly to an IRS function or CAF unit.<sup>7</sup> Practitioners who hold a valid Form 2848 can represent a taxpayer by submitting correspondence or speaking directly to an IRS agent on all matters before the IRS, even if the taxpayer is not

<sup>5</sup> National Taxpayer Advocate 2010 Annual Report to Congress 171, 179. See IRS response to TAS information request (Aug.10, 2012). In 2010, the average Form 2848 processing rate per hour was 12.7. The rate rose to 13.8 per hour in 2011, and through June 2012, the average processing rate was 14.8 per hour, a 16.5 percent increase from 2010.

<sup>6</sup> IRS, Servicewide Electronic Research Program (SERP), *Alert 12A0555: Centralized Authorization File (CAF) Help-line* (Oct. 2, 2012), generally diverted help line calls to the applicable Individual or Business Accounts toll free phone line. Internal Revenue Manual (IRM) 3.42.8.8.6.1, *Rejected TDS* (Oct. 1, 2012) and IRM 3.42.8.8.4.3, *CAF Unit Faxing* (Oct. 1, 2012) provides that practitioners call the PPS line to assist with Form 2848 authorization issues. See also <http://www.irs.gov/Tax-Professionals/Practitioner-Priority-Service> (last visited Nov. 19, 2012), the PPS line is "practitioners' first point of contact for assistance regarding taxpayers' account-related issues." IRS, Joint Operations Center, *Snapshot Reports: PPS* (weeks ending Sept. 30, 2011 and Sept. 30, 2012). Level of Service (LOS) reflects the percentage of calls that reached telephone assistants among all calls attempted by practitioners.

<sup>7</sup> IRS, *Instructions for Form 2848* (Mar. 2012). The IRS is also authorized to accept a power of attorney other than a Form 2848, *Power of Attorney*, provided that it includes (1) the name and address of the taxpayer; (2) taxpayer identification number of the taxpayer; (3) name and address of the recognized representative; (4) description of the matter for which representation is authorized (*i.e.*, type of tax, form number, specific years or periods involved); (5) clear expression of taxpayer's intent to be represented on the matter; (6) signature of the taxpayer and the date of signing; and (7) a signed declaration of representative. However, the power of attorney must be accompanied by a completed Form 2848 to be recorded on the CAF. Treas. Reg. § 601.503.

present. Further, authorized practitioners may use IRS e-Services and the PPS phone line to resolve their cases, in addition to all the services a taxpayer would be entitled to use. IRS e-Services provides registered practitioners Internet access to file Form 2848 authorizations, generate taxpayer transcripts, and correspond with the IRS electronically.<sup>8</sup> The PPS line is a nationwide toll-free telephone line dedicated to assisting authorized practitioners with their clients' account-related issues.<sup>9</sup> Thus, Form 2848 is the doorway to effective representation.<sup>10</sup>

### Archaic Systems and CAF Units' Delays Harm Taxpayers.

The CAF units receive Form 2848 authorizations by correspondence or fax, and an examiner manually records the documents into an IRS database with links to the appropriate taxpayer accounts and tax modules in the Integrated Data Retrieval System (IDRS). CAF examiners input a Power of Attorney (POA) indicator on the taxpayer's master file account on IDRS, and various online tools and inventory management systems remind employees to check the master file to determine if a representative is authorized to practice before the IRS on a specific matter.<sup>11</sup> However, various failures often impede this process, leaving taxpayers without representation.

First, the IRS does not process Forms 2848 promptly. In 2010, the CAF units experienced significant delays in processing authorizations and extended processing timeframes from two business days for fax receipts and five business days for mailed receipts to 15 calendar days for all submissions.<sup>12</sup> The current processing time set by IRS procedures is ten calendar days or less, due to the CAF units' ineffective and outdated systems.<sup>13</sup>

Second, the multiple high-speed fax machines that the CAF units use to receive over half of their inventory do not function properly. That inventory consists of Form 2848 authorizations and disclosure consents on Form 8821, *Tax Information Authorization*.<sup>14</sup> The fax machines occasionally fail to transmit all pages, frequently break down, and sometimes do not receive an authorization sent by a taxpayer, which means the taxpayer loses the right to

<sup>8</sup> IRM 3.42.8.1(1) (Oct. 1, 2012). E-Services also permit practitioners and electronic return originators (ERO) to file Forms 8821, *Tax Information Authorization*, electronically. EROs who have e-filed five or more accepted returns are also eligible to file Form 2848 authorizations, to obtain taxpayer transcripts, and to correspond with the IRS electronically. Reporting agents who e-file may gain access to e-Services to obtain taxpayer transcripts, and to correspond with the IRS electronically. See <http://www.irs.gov/Tax-Professionals/e-services---Online-Tools-for-Tax-Professionals> (last visited Oct. 2, 2012).

<sup>9</sup> IRM 3.42.8.1(4) (Oct. 1, 2012).

<sup>10</sup> Represented taxpayers have additional rights under the IRC. IRC § 6304(b)(2) provides that the IRS may not communicate with a represented taxpayer in collection matters, unless the representative fails to respond within a reasonable time, or the representative consents to direct communication with the taxpayer. IRC § 7521(c) provides that taxpayers have the right to be represented in interviews.

<sup>11</sup> IRM 21.3.7.1.4 (Oct. 1, 2008). CAF examiners will record a Form 2848 into the file as long as the taxpayer's identity, the representative's identity, the type of tax return, the tax periods, the taxpayer's signature and date, and the representative's designation, jurisdiction, signature, and date are provided. IRM 21.3.7.5.2 (Aug. 25, 2009). See, e.g., IRM 5.19.5.3.6(2) (Dec. 1, 2007). In the Automated Collection System (ACS), a CAF indicator displays on the employee's computer screen if there is a representative authorized to practice before the IRS.

<sup>12</sup> The IRS maintains CAF units in its Philadelphia, Ogden, and Memphis campuses. IRM 21.3.7.1.3 (Oct. 1, 2012). IRM 21.3.7.1.7 (Oct. 1, 2008).

<sup>13</sup> IRM 21.3.7.1.4 (Sep. 23, 2011).

<sup>14</sup> IRS response to TAS information request (Aug. 10, 2012). This report focuses primarily on Form 2848 processing.

## IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation

representation until the practitioner learns the IRS has not processed the form and successfully resubmits it.<sup>15</sup>

Lastly, the IRS sometimes misplaces or fails to record authorizations it does receive. The IRS does not know how many Forms 2848 are not processed, because it does not record or track incomplete or misplaced receipts. Because the IRS does not acknowledge receipt of a Form 2848 authorization or advise the submitter that the Form 2848 is complete and recorded, the submitter has no way of knowing the IRS has accepted and processed the form. The IRS maintains that submitters should rely on confirmations printed by their fax machines to show successful transmission.<sup>16</sup> However, confirmation that a submitter faxed a Form 2848 does not prove the CAF unit processed it.<sup>17</sup> TAS cannot confirm how often this happens, because the IRS does not track receipts. Until representatives can confirm processing of the Form 2848 authorization, some will fax duplicate Forms 2848, meaning the CAF units may be creating their own backlogs.<sup>18</sup>

**The IRS Has No Plans to Fully Automate Recording of Form 2848 Authorizations, Despite Seeking Solutions to Track Receipts.**

The IRS has attempted to improve efficiency and accuracy within the CAF units and is exploring technology that could improve processing of faxed and mailed Forms 2848. To their credit, the CAF units have increased the number of Forms 2848 processed per hour by 16.5 percent since 2010.<sup>19</sup> Yet as Figure 1.16.1 below shows, Form 2848 receipts are outpacing CAF units' staffing, preventing a return to the pre-2010 processing time of two to three calendar days from the current ten days or less.

<sup>15</sup> When receipts are dated and time-stamped by its fax machines, the IRS requires no further action as evidence of receipt. IRM 21.3.7.1.4(4) (Sep. 23, 2011).

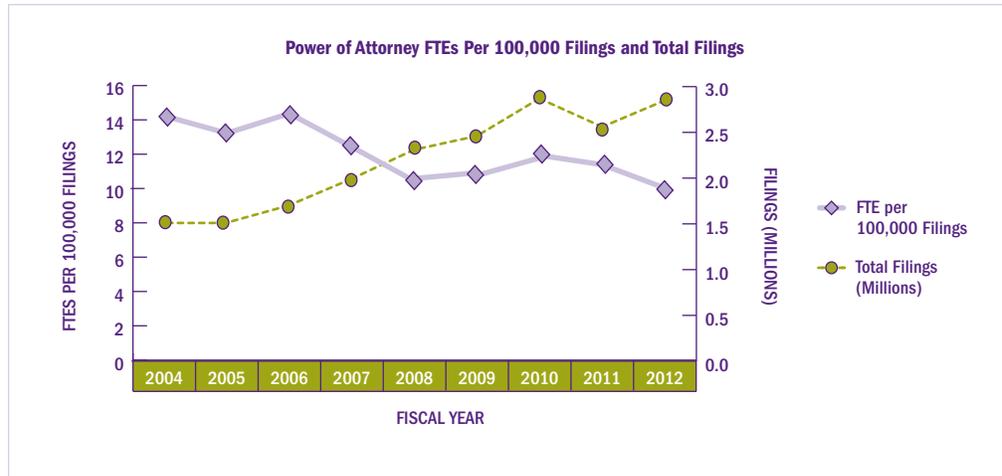
<sup>16</sup> IRS response to TAS information request (Aug.10, 2012).

<sup>17</sup> See, e.g., IRS, Issue Management Resolution System (IMRS) Issue 11-0001415, *Multiple attorneys on one Form 2848* (Feb. 2011).

<sup>18</sup> See, e.g., IRS IMRS Issue 11-0001525, *Form 2848 processing delays* (Feb. 2012). The submitter requested that the IRS modify the IRM to reduce overall CAF processing to five days since resubmitting the Form 2848 authorization to the PPS or Automated Collection System is burdensome and costly to both practitioners and the government.

<sup>19</sup> IRS response to TAS information request (Aug.10, 2012). In 2010, the average Form 2848 processing rate per hour was 12.7. The average rate increased to 13.8 per hour in 2011, and through June 2012, the average processing rate was 14.8 per hour, a 16.5 percent increase from 2010.

**FIGURE 1.16.1, Full-time Employees Per 100,000 Form 2848 Authorizations Filed in the CAF and Total Forms 2848 Filed (In Millions) by Fiscal Year<sup>20</sup>**



The IRS needs to improve its archaic systems and automate manual processing to expedite handling of Forms 2848. The IRS is considering an enterprise fax storage (EFS) solution that would receive and inventory faxed Forms 2848 in a computerized format, and distribute them to employees for processing. The IRS is still gathering requirements for EFS, and expects only incremental implementation between late FY 2013 and FY 2015.<sup>21</sup> (The CAF units have not scheduled any implementations at this time). Until the IRS fully and effectively automates the CAF units and generates Form 2848 acknowledgements, current processing will continue to undermine tax compliance and contribute to the CAF units’ backlogs.

The National Taxpayer Advocate recommended in her 2010 Annual Report to Congress that the IRS implement a Correspondence Imaging System (CIS) to prevent CAF unit processing delays and actions that could harm taxpayers. The IRS already uses CIS as an inventory system, scanning all its Accounts Management (AM) receipts into digital images and working the cases from those images. Using CIS for correspondence and EFS for faxes would improve the receipt and control of all Form 2848 authorizations. However, because these systems will rely on employees’ manual input of Forms 2848 to the CAF and IDRS, they would not fully automate the authorization process, alleviate the CAF units’ staffing shortfalls, or expedite processing.

<sup>20</sup> IRS response to TAS information request (Aug.10, 2012). IRS email updating response to TAS information request (Oct. 10, 2012). IRS, CDW, IDRS, analysis of IDRS BMF and IMF transaction code (TC) 960 for FY 2004 through FY 2012.

<sup>21</sup> IRS response to TAS information request (Aug.10, 2012).

## IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation

### **The IRS Must Protect Taxpayers' Rights as It Automates Form 2848 Processing.**

The IRS e-Services disclosure authorization permits authorized representatives to electronically complete and file Form 2848 authorizations, view and modify existing forms, and receive acknowledgement of accepted submissions immediately — all online.<sup>22</sup> The IRS requires representatives submitting Forms 2848 electronically to retain the original signed form.<sup>23</sup>

In 2011, approximately 240,000 users filed almost 300,000 authorizations through e-Services.<sup>24</sup> However, the Treasury Inspector General for Tax Administration (TIGTA) surveyed these representatives and their clients, and found 20 percent of representatives could not produce the original signed Form 2848, and four percent of taxpayers did not give permission to submit the authorization.<sup>25</sup> The National Taxpayer Advocate is concerned that the IRS may have given some representatives unauthorized access to taxpayer information, or some practitioners may have represented taxpayers without authorization. Even as the IRS addresses these problems, however, it should continue to explore and develop electronic submission of Form 2848 authorizations to reduce manual processing, and retrain its employees to improve e-Service controls.

### **IRS's Elimination of CAF Unit Help Lines and Decline in PPS Service Could Place Taxpayer Information in the Wrong Hands and Deny Representation.**

The IRS generally sends copies of all taxpayer correspondence to taxpayers' authorized representatives as provided by the CAF program, and indicated on the IDRS.<sup>26</sup> Taxpayers may revoke an authorization by

- Submitting a signed statement of revocation;
- Writing "revoke" on and signing a copy of the Form 2848 naming the representative to be revoked; or
- Giving a Form 2848 authorization to a new representative to file with the IRS.<sup>27</sup>

Further, representatives may change their address of record by submitting a signed statement to a CAF unit. When a CAF unit prolongs processing a change of address, revocation, or new Form 2848, the IRS continues to send taxpayer information to the previous address or representative.

Reduction of services and lengthy processing could lead to unauthorized disclosure of taxpayer information, or to taxpayers not receiving the representation they expected.

<sup>22</sup> See <http://www.irs.gov/Tax-Professionals/What-are-the-e-services-products%3F10/> (last visited Oct. 5, 2012).

<sup>23</sup> IRS, *Instructions for Form 2848* (Mar. 2012).

<sup>24</sup> IRS response to TAS information request (Aug. 10, 2012).

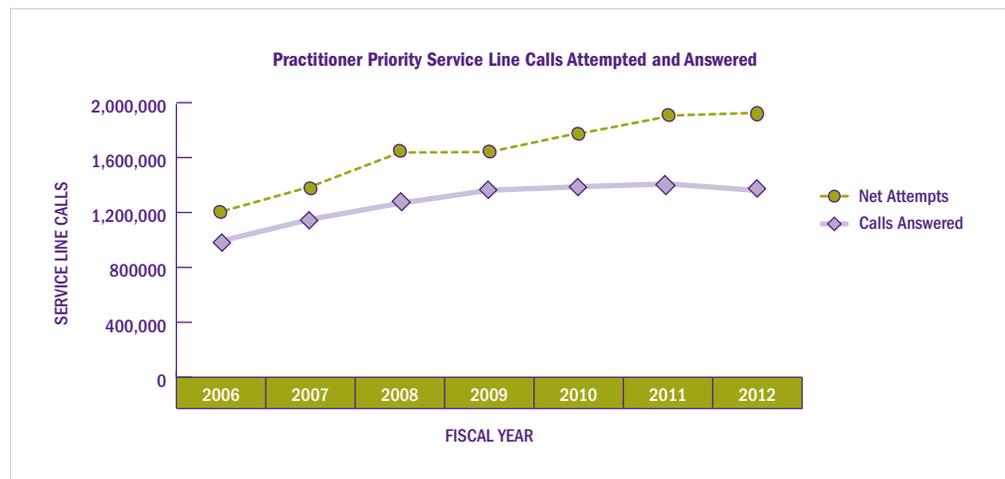
<sup>25</sup> TIGTA, Ref. No. 2012-40-071, *Insufficient E-Services Controls May Put Taxpayer Information at Risk* 6-7 (June 29, 2012).

<sup>26</sup> Treas. Reg. § 601.506(a).

<sup>27</sup> IRS, *Instructions for Form 2848* 2 (Mar. 2012). The statement of revocation must indicate that the authority of the power of attorney is revoked, list the matters and periods involved, and must be signed and dated by the taxpayer.

However, the IRS has increased the risk of harm to taxpayers by increasing CAF units' processing time for a Form 2848, from two to five business days to ten calendar days or less, and by eliminating the CAF help lines.<sup>28</sup> The CAF help lines accepted calls from taxpayers to verbally authorize disclosure, and from practitioners to change their addresses, resolve authorization issues in the transcript delivery system, or follow up on Form 2848 filings.<sup>29</sup> The IRS now instructs practitioners to contact the PPS phone line for CAF unit inquiries.<sup>30</sup> As shown in Figure 1.16.2 below, the PPS phone line's level of service (the percentage of total calls answered) has declined steadily from 90 percent in FY 2006 to 73 percent in FY 2012, even as attempted calls have increased by 60 percent.<sup>31</sup>

**FIGURE 1.16.2, Calls Attempted by Practitioners and Calls Answered by PPS Assistors for FY 2006 through 2012<sup>32</sup>**



The PPS line assistors may provide taxpayers' transcripts of accounts to authorized practitioners, and receive faxes of Forms 2848 and address change requests. However, assistors do not have direct access to the CAF program, and must forward Forms 2848 or address change requests to the CAF units for processing. Under the IRS's current system, this extra step is unavoidable and creates additional delays in processing these time-sensitive forms and requests. The IRS maintains:

<sup>28</sup> National Taxpayer Advocate 2010 Annual Report to Congress 171-186 (Most Serious Problem: *Persistent Breakdowns in Power of Attorney Processes Undermine Fundamental Taxpayer Rights*). IRS SERP, Alert 12A0555: *Centralized Authorization File (CAF) Help-line* (Oct. 2, 2012)

<sup>29</sup> IRM 21.3.7.4.2, *Third Party Record Updates* (Oct. 1, 2008). IRM 21.3.7.6.7, *Oral Taxpayer Information Authorization (OTIA) Processing* (Oct. 1, 2008). IRM 3.42.8.8.6.1, *Rejected Transcript Delivery System (TDS)* (Oct. 1, 2010).

<sup>30</sup> See, e.g., IRM 3.42.8.8.6.1, *Rejected TDS* (Oct. 1, 2012); IRM 3.42.8.8.4.3, *CAF Unit Faxing* (Oct. 1, 2012).

<sup>31</sup> LOS was 90 percent in FY 2006 for 1,095,241 net attempts (1,206,183 attempts less 110,942 attempts abandoned by callers), and 73 percent in FY 2012 for 1,747,217 net attempts (1,926,076 attempts less 178,859 attempts abandoned by callers). See IRS, Joint Operations Center, *Snapshot Reports: PPS* (weeks ending Sept. 30, 2006 and Sept. 30, 2012).

<sup>32</sup> See IRS, Joint Operations Center, *Snapshot Reports: PPS* (weeks ending Sept. 30, 2006, Sept. 30, 2007, Sept. 30, 2008, Sept. 30, 2009, Sept. 30, 2010, Sept. 30, 2011, and Sept. 30, 2012).

## IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation

Submission of a POA [Form 2848 authorization] to the CAF is not a requirement for representation before the IRS. Any recognized representative may represent a taxpayer before any officer or employee of the IRS by providing that officer or employee with a copy of a valid POA, regardless of whether the POA has been recorded on the CAF. Recording a POA on the CAF is intended to enable IRS personnel who do not have access to the actual POA to act upon the POA (See Conference and Practice Requirements, Statement of Procedural Rules § 601.506(d)).<sup>33</sup>

Yet if the CAF units do not timely process Forms 2848, systems and employees that generate notices to taxpayers will not be able to send these notices to the right representatives or addresses. The National Taxpayer Advocate is concerned that elimination of the CAF unit help lines and increased burden on the PPS line will lead to further processing delays and unauthorized disclosures, and will deprive taxpayers of the representation they intended.

### Taxpayers Are Harmed When LITCs Cannot Provide Timely Service.

When Congress created the LITC program, it recognized the need for low income taxpayers to have access to representation before the IRS and the courts.<sup>34</sup> The clinics, which are independent from the IRS, represent low income taxpayers before the IRS and assist them in audits, appeals, and collection disputes for free or no more than a nominal fee.<sup>35</sup> Each clinic determines whether prospective clients meet income eligibility guidelines and other criteria before agreeing to represent them. Further, LITCs operate under the scrutiny of TAS, the Government Accountability Office (GAO), and TIGTA, and are required to attend an annual conference conducted by TAS.<sup>36</sup>

Clinical programs operated by accredited law, business, or accounting schools and tax exempt organizations may use students to represent low income taxpayers in controversies with the IRS.<sup>37</sup> The students practice under the supervision of an attorney, CPA, or licensed EA who is authorized to represent taxpayers before the IRS.<sup>38</sup> To accommodate student practice, the IRS Office of Professional Responsibility (OPR) has been responsible for issuing an authorization for a special appearance, which must be submitted with the Form 2848 whenever a taxpayer authorizes a student who works in a LITC to be his or

<sup>33</sup> National Taxpayer Advocate 2010 Annual Report to Congress 180 (*IRS Comments to Most Serious Problem: Persistent Breakdowns in Power of Attorney Processes Undermine Fundamental Taxpayer Rights*).

<sup>34</sup> IRC § 7526; Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), § 3601(a), Pub. L. No. 105-206, 112 Stat. 758 (1998). The LITC program serves individuals whose income is below a certain level and require assistance with the IRS. Some LITCs only provide education and outreach, rather than representation, for individuals whose native languages are not English.

<sup>35</sup> IRC § 7526(b)(2). See Publication 4134, *Low Income Taxpayer Clinic List* (Mar. 2012) for a listing of LITCs.

<sup>36</sup> Publication 3319, *Low Income Taxpayer Clinics Grant Application Package Book* (May 2012).

<sup>37</sup> IRC § 7526(b)(2). The IRS also has a program, pre-dating the LITC program, known as the Student Tax Clinic Program, which provides free tax assistance to taxpayers who need representation before the IRS on federal tax matters. Student Tax Clinics (STCs) are staffed by law, business, or accounting students. The key difference between LITCs and STCs is that LITCs are funded by federal grants provided in the Code, while the STCs do not receive federal grants. IRM 1.25.3.7(2) (June 1, 2010).

<sup>38</sup> Treas. Dept. Cir. No. 230, 31 CFR, Subt. A, Pt. 10 (Circular 230) provides the rules for practice before the IRS.

her representative.<sup>39</sup> Effective December 5, 2012, the Acting Commissioner re-delegated the authority to issue student practice letters to the Director of the LITC Program Office in TAS.<sup>40</sup>

Student representatives typically participate in LITCs through the duration of the semester, and sometimes for longer periods in order to provide continuous service throughout the calendar year. Due to the nature of the academic calendar, new students enroll in clinics each semester or academic year. By contrast, resolution of a tax case can often take several months or even years. Although the clinic director provides continuity in taxpayer representation from semester to semester, multiple student representatives may assist a client during the life of the case. Form 2848 provides instructions on how to substitute representatives during an open case.

Line 5 of Form 2848 contains a box the taxpayer can check to authorize substitution or addition of representatives.<sup>41</sup> If a taxpayer signs an original Form 2848 with the substitution box checked, he or she is authorizing the representative to substitute a different representative without obtaining additional consent. In the case of LITCs operated by academic institutions, this procedure to authorize substitution of representatives is essential to ensure seamless and continuous representation. As discussed above, multiple student representatives may work on a client's case from the time the taxpayer retains the LITC until the problem is resolved. Further, low income clients of LITCs may be difficult to contact and it may not be feasible for them to make successive trips to the LITC office to sign additional forms.

If a taxpayer has checked box 5, the Form 2848 instructions call for the new representative to submit to the IRS a copy of the original Form 2848, signed by the taxpayer and authorizing substitution, along with the new Form 2848, which the taxpayer does not need to sign. In the case of students, the clinic must submit a copy of the special appearance authorization letter as well.

Despite the fact that student representatives are clearly authorized by IRC § 7526 to represent taxpayers, and IRS procedures authorize substitution of representatives, the clinics still encounter problems with the IRS's processing of Forms 2848 appointing student representatives. The CAF units often reject Forms 2848 listing student representatives, even when the clinics submit all of the proper forms. Some improper rejections may stem from the paper-driven environment of the CAF units that handle a large volume of Form

<sup>39</sup> Circular 230 §10.7(d). Pursuant to longstanding practice dating back to the inception of STCs, OPR generally issued special order letters to the LITC director, who submitted the names of the student representatives, the tax coursework completed or in the process of being completed for each student, and the name and resume of the LITC director. IRM 1.25.3.7 (June 1, 2010). Students must attach a copy of a Special Appearance Authorization letter from OPR when submitting a Form 2848 to the CAF unit for processing. IRM 21.3.7.8.4 (Oct. 1, 2012).

<sup>40</sup> Delegation Order 25-18 (Dec. 5, 2012).

<sup>41</sup> Form 2848, *Power of Attorney and Declaration of Representative* (Mar. 2012).

## IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation

2848 receipts. A clinic director seeking to substitute a new student representative for a graduating representative must submit three documents:

1. The original Form 2848, signed by the taxpayer and authorizing substitution of representatives;
2. The new Form 2848, detailing the substitution but not requiring a taxpayer signature; and
3. A copy of the special appearance authorization letter.

Any one of these documents submitted without the other two will cause the IRS to reject the request. Further, the IRS e-Services system is not equipped to accept Forms 2848 that have the substitution box on line 5 checked, making paper submission the only option. Yet if the clinic director submits the documents to the CAF unit by fax, a CAF employee may inadvertently separate one page from the others when pulling pages from the fax machine, causing the IRS to reject the request improperly.

When the CAF unit rejects a Form 2848, it paralyzes the student representative's ability to work a case. The IRS will not disclose taxpayer return information to the student representative unless a valid POA is in effect. This leaves the clinic director as the only clinic member who can communicate with the IRS on the taxpayer's behalf, which undermines the mission and structure of student clinics. A clinic director cannot personally handle all ongoing cases and the student is either not able to advocate on the taxpayer's behalf or complete work towards academic credit. As a result, the low income taxpayer is left without sufficient representation, the very deficiency Congress sought to remedy by authorizing student representation in IRC § 7526.<sup>42</sup> The National Taxpayer Advocate recommends creating a more reliable processing system in the CAF units to handle multiple document submissions to help alleviate this problem.

IRS operating divisions, which include the Automated Collection System (ACS) and AM, often deny properly authorized student representatives the right to advocate on a taxpayer's behalf. Even in cases where a student representative has a validly recorded Form 2848 on file, an IRS employee may be unaware of the statutory authorization for student representation and decline to discuss the case. While an abundance of caution in seeking to protect the taxpayer's confidential tax return information most likely motivates this action, the end result is to harm the taxpayer.

The student representation program affects a relatively small number of representatives, but it provides an invaluable service by affording free or nominal fee representation to taxpayers who cannot afford representation and who otherwise would be much less likely to obtain appropriate resolutions of their problems. The IRS already has procedures to accommodate statutorily authorized student representation. Now it needs to ensure those

<sup>42</sup> S. REP. No. 105-174, at 99 (1998). *IRS Restructuring: Hearings Before the S. Comm. on Finance on H.R. 2676*, 105th Cong. 124-126 (1998) (statement of Nina E. Olson, Executive Director, Community Tax Law Project).

procedures are properly implemented and raise awareness of the student representation program among IRS employees so its procedures are followed.

### **IRS Employees Do Not Always Adhere to IRC § 7521 Direct Contact Provisions.**

The IRC and regulations generally prohibit the IRS from contacting represented taxpayers if a valid Form 2848 or other power of attorney authorization is on file.<sup>43</sup> If the IRS improperly bypasses a taxpayer's representative, the taxpayer may seek damages from the government by civil action under IRC § 7433 or report the IRS employee to TIGTA. However, the IRS provides no other relief or apology for violations of this rule, for example, by unwinding certain agreements or actions undertaken without the representative's involvement.

IRS employees are specifically required to obtain their immediate supervisors' approval to contact the taxpayer instead of the representative if the representative is unreasonably delaying an audit or investigation.<sup>44</sup> Violations of these rules have two causes:

1. A direct contact bypass occurs when an employee deliberately bypasses a representative to contact a taxpayer directly.
2. A systemic bypass is caused by an inadequate or malfunctioning IRS system.

TIGTA has examined systemic and direct contact bypasses to determine if the IRS violated taxpayer rights. For example, TIGTA reviewed a sample of Collection Field function (CFF) cases closed between April 1, and September 30, 2011 for direct contact bypasses, and estimated that revenue officers negatively affected the rights of 4,845 taxpayers by not following procedures and deliberately bypassing their representatives.<sup>45</sup> TIGTA recommended that the IRS provide greater assurance that its field collection employees afford taxpayers their rights to representation. IRS management agreed to issue a memorandum reinforcing the need for CFF personnel to follow procedures, and to clarify the Internal Revenue Manual (IRM) for adherence to these procedures when conducting case reviews.<sup>46</sup>

In 2009, TIGTA recommended that the IRS avoid certain bypasses by systemically uploading CAF data to the Automated Lien System (ALS) to ensure taxpayer representatives receive timely notice of lien filings and taxpayers' rights to appeal the lien action at a Collection Due Process (CDP) hearing.<sup>47</sup> The filing of a Notice of Federal Tax Lien (NFTL)

<sup>43</sup> IRC § 6304(a)(2) prevents the IRS from directly contacting represented taxpayers in collection matters. IRC § 7521(c) provides that an IRS employee may not require a taxpayer to accompany a representative to an interview in the absence of an administrative summons issued to the taxpayer. Treas. Reg. § 601.506(b) prohibits an IRS employee from directly contacting a represented taxpayer unless a recognized representative has unreasonably hindered or delayed an examination, collection, or investigation by failing to furnish, after repeated requests, needed nonprivileged information.

<sup>44</sup> IRC § 7521(b)(2) and (c).

<sup>45</sup> TIGTA, Ref. No. 2012-30-089, *FY 2012 Statutory Review of Restrictions on Directly Contacting Taxpayers 5* (Sept. 4, 2012).

<sup>46</sup> *Id.* at 6.

<sup>47</sup> TIGTA, Ref. No. 2010-30-072, *Additional Actions Are Needed to Protect Taxpayers' Rights During the Lien Due Process* (July 9, 2010). After filing the Notice of Federal Tax Lien (NFTL) in the public records, the IRS sends the taxpayer Letter 3172, *Notice of Federal Tax Lien (NFTL) Filing and Your Right to a Hearing Under IRC 6320*, including the NFTL filed, Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, and other publications concerning the collection and appeals processes.

## IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation

may significantly affect a taxpayer's credit history, while giving the taxpayer only 30 days to appeal the filing to receive Tax Court review.<sup>48</sup>

Unlike other IRS notices that generate from the IDRS, lien notices come from the ALS, which is not linked to the IDRS or the CAF. The IRS significantly harms taxpayers' right to representation when it fails to provide time-sensitive hearing notices to representatives, as it has no authority to grant an additional hearing for review of the court.<sup>49</sup> However, the IRS delayed the corrective action, and in May of 2011, TIGTA estimated the IRS adversely affected 32,552 taxpayers by not notifying them and their representatives of hearing rights concerning liens.<sup>50</sup> On December 29, 2011, the Director of Collection Policy in the Small Business/Self-Employed (SB/SE) Division asked to have the corrective action rescheduled, which may occur before TIGTA reevaluates systemic bypasses in the ALS for FY 2013.

Again on May 29, 2012, TIGTA reported the IRS adversely affected an estimated 43,817 taxpayers because it did not notify their representatives of CDP hearing rights as required.<sup>51</sup> The IRS concurred with the number of taxpayers affected and agreed to corrective actions, but disagreed that the failure to notify representatives violated the taxpayers' rights because the IRS notified the taxpayers.<sup>52</sup>

The National Taxpayer Advocate strongly disagrees with the IRS's view that these actions did not violate taxpayer rights. She reminds the IRS that a representative cannot advocate for a taxpayer as requested, or provide representation in the taxpayer's absence as intended by Congress, unless the representative receives IRS notices. Especially in the context of Collection Due Process hearings, where the taxpayer has only 30 days to request the hearing and protect the right to challenge collection actions in the U.S. Tax Court, failure to provide the taxpayer's representative with a copy of the hearing notice can severely impede the taxpayer's access to fundamental statutory protections.<sup>53</sup>

In her 2010 Annual Report, the National Taxpayer Advocate recommended the IRS establish a process of gathering and tracking taxpayer and representatives' complaints about

<sup>48</sup> National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance and Unnecessarily Harm Taxpayers*). IRC § 6320 provides that a taxpayer may request a hearing in writing within the 30-day period beginning the day after five business days from the filing of the first NFTL in relation to a specific tax debt. If a taxpayer timely requests a hearing, the taxpayer may seek U.S. Tax Court review of the notice of determination within 30 days after its issuance by Appeals.

<sup>49</sup> Treas. Reg. § 301.6320-1(i) permits a taxpayer to request an equivalent hearing up to one year after the five business day period after the lien filing has passed. However, the taxpayer may not seek U.S. Tax Court review of the decision letter issued after the equivalent hearing. The court's jurisdiction under IRC § 6320 depends upon the issuance of a valid determination letter and the filing of a timely petition for review. *Kennedy v. Comm'r*, T.C. Memo. 2008-33.

<sup>50</sup> TIGTA, Ref. No. 2011-30-051, *Challenges Remain When Processing Undelivered Mail and Preventing Violations of Taxpayers' Rights During the Lien Due Process* (May 20, 2012).

<sup>51</sup> TIGTA, Ref. No. 2012-30-057, *Problems Persist When Processing Undelivered Lien Notices and Notifying Taxpayers' Representatives* (May 29, 2012).

<sup>52</sup> TIGTA, Ref. No. 2011-30-051, *Challenges Remain When Processing Undeliverable Mail and Preventing Violations of Taxpayers' Rights During the Lien Due Process*; TIGTA, Ref. No. 2012-30-057, *Problems Persist When Processing Undelivered Lien Notices and Notifying Taxpayers' Representatives* (May 29, 2012).

<sup>53</sup> IRC § 6330(d)(1); Treas. Reg. §§ 301.6320-1(f)(1)-(1)(i)(1) and 301.6330-1(f)(1)-(1)(i)(1).

direct contact violations and provide mandatory annual training for all contact employees.<sup>54</sup> The National Taxpayer Advocate renews her recommendation, and further recommends that TAS and the IRS form a workgroup to address improper systemic bypasses of taxpayers' representatives, provide taxpayer remedies for bypass violations, and specifically correct problems that deny taxpayers their fundamental right to representation.

## CONCLUSION

In conclusion, the National Taxpayer Advocate preliminarily recommends that the IRS take the following steps:

1. The IRS should implement a comprehensive system to record, track, and automatically update the CAF and the IDRS to shorten Form 2848 processing time to two or three calendar days or less.
2. The CAF units should timely acknowledge the processing of all Form 2848 authorizations to prevent costly rework when a representative cannot determine if the IRS processed his or her request in a reasonable time.
3. The IRS should encourage practitioners to electronically file Form 2848 authorizations and retrain some of its employees to implement e-Service controls.
4. The IRS should reinstate the CAF unit help lines to enable representatives to update addresses and fix processing problems, and provide taxpayers the ability to make verbal authorizations.
5. The IRS should revise its e-Services system to allow submission of LITC student Form 2848 authorizations and LITC student representation substitutions.
6. The IRS should take measures to increase awareness of the student representation program among IRS operating divisions to help ensure that student representatives are appropriately recognized.
7. The IRS should gather and track taxpayer and practitioner complaints about direct contact POA bypass violations.
8. The IRS should provide mandatory annual training for all contact employees on how to avoid direct contact POA bypass violations.
9. The IRS should form a workgroup with TAS to address improper systemic bypasses of taxpayers' representatives, provide taxpayer remedies for bypass violations, and specifically correct problems that deny taxpayers their fundamental right to representation.

<sup>54</sup> National Taxpayer Advocate 2010 Annual Report to Congress 186.

## IRS COMMENTS

The IRS shares the interest of protecting taxpayers' rights to representation and supports improvement efforts upon identification of areas of deficiency in our operations. We have a number of policies and procedures in place to ensure taxpayers are afforded their right to designate a qualified representative to act on their behalf in dealing with IRS personnel in a variety of tax matters. These policies and procedures include official policy statements, IRM guidance, taxpayer publications, quality measurement reviews, and managerial oversight.

These policies and procedures are routinely reinforced through updates to the IRM and issuance of memoranda to front-line staff. For example, a memorandum was issued the week of November 25, 2012, reinforcing the need for field collection personnel to follow procedures and afford taxpayers their right to appropriate and effective representation throughout the field collection process. In addition, we recently revised language in field examination initial contact letters, Letter 2205 series, to make it clear that authorized representatives can attend all audit appointments on behalf of the taxpayer. The IRS will continue to take steps to ensure our employees and taxpayers are aware of direct contact provisions.

An authorized third party may represent a taxpayer before an officer or employee of the IRS by providing that officer or employee with a copy of a valid POA, regardless of whether the POA has been recorded on the CAF. Nonetheless, the IRS acknowledges that it experienced delays in the processing of POA and Tax Information Authorizations (TIA) in prior years due to increased receipts and limited resources. The IRS evaluated the CAF program to determine ways to reduce current processing timeframes. Based on the analysis, the IRS cross-trained additional employees on CAF processing. Additional resources will be applied to the program for the 2013 filing season. In order to track and further analyze the results of these efforts, we are exploring ways to systemically capture cycle time data. In the meantime, a manual reporting process was established. The most recent report shows the average days to process is four calendar days. Based on cross-training efforts and 2013 hiring allocations, we expect the improvement in processing time to continue.

The IRS discontinued the CAF Unit Help Lines in Ogden and Memphis. These toll lines were not able to provide the full level of customer service available to taxpayers. The CAF telephone numbers did not meet the general government criteria for help numbers such as having a quality review process in place and the fact that account related calls came to CAF assistors who were not fully trained to resolve them. To improve the level of customer service and allocate resources to the correct product lines, callers seeking assistance with CAF issues are now directed to the applicable individual or business account toll free telephone lines. This ensures all of the callers' issues are resolved and allows the CAF unit staff to focus solely on processing third party applications. CSRs staffing individual and business account lines are fully trained to respond to questions related to completion and filing of POAs and TIAs, as well as account related issues.

Further, the IRS is making improvements through technology. The e-Services Disclosure Authorization is available to qualified practitioners and provides for real time submission and acknowledgement of POAs and TIAs. We have taken steps to encourage more qualified practitioners to take advantage of the e-Services products available to them. We have also engaged the Internal Revenue Service Advisory Council (IRSAC) to assist in redirecting practitioners to IRS Automated Applications, and during 2012, the IRSAC reviewed the current situation and made recommendations for encouraging more practitioners to utilize automated services.

The IRS has also procured and installed new high-speed network printers in its three CAF Units, thus improving the efficiency of faxed receipts. This change has been transparent to the taxpayer, and has enabled CSRs to more competently assist taxpayers. If the new equipment should fail, the taxpayer is not harmed. Since the submission or recordation of a POA to the CAF is not a requirement for representation before the IRS, the authorized third party may represent a taxpayer before the IRS by providing a copy of a valid POA to the IRS officer or employee.

With respect to LITCs, the importance of LITCs and student representatives is widely understood within the IRS. Since TAS first identified a problem many years ago, the IRS has invested in training and guidance to ensure proper recognition for student representatives. This multi-year effort included revisions to the Form 2848, its instructions, and CAF processes, as well as numerous changes to relevant IRM sections. We believe that the problems LITCs have experienced in this area have been reduced significantly.

In order to protect taxpayer data as required by IRC § 6103, the IRS has strict requirements for clinic directors seeking to substitute a student representative. LITC students are unlicensed individuals who, because of special appearance authorizations, are permitted to practice before the IRS. The students have not, by definition, completed the training and background checks that other Circular 230 practitioners have undergone in order to obtain their licenses.

With respect to the recommendation of the National Taxpayer Advocate that the IRS shorten Form 2848 processing time to two or three calendar days, the IRS is actively working to identify improvement opportunities for electronic submissions of third party authorizations. Disclosure Authorization is available to qualified practitioners and provides for real time submission and acknowledgement of POAs and TIAs. Until a systemic process is established to track processing time, we have implemented a manual reporting process for measuring cycle time.

The IRS does not believe that timely acknowledgement of Forms 2848 would reduce duplicate submissions, or rework. The IRS has invested time and resources to reduce processing time, a major driver in timely acknowledgements. Concurrently, Accounts Management convened a team to evaluate the cause of duplicate submissions and other rework conditions.

## IRS Processing Flaws and Service Delays Continue to Undermine Fundamental Taxpayer Rights to Representation

With respect to encouraging practitioners to electronically file Form 2848, we have taken steps to encourage more qualified practitioners to take advantage of the e-Services products available to them. We have engaged the IRSAC to assist in redirecting practitioners to IRS Automated Applications, and during 2012, the IRSAC reviewed the current situation and made recommendations for encouraging more practitioners to utilize automated services.

Based on recommendations from the IRSAC group, the IRS added four announcements that play during PPS wait/queue time promoting e-Services products available to practitioners. Electronic Products and Services Support is coordinating with W&I communications and the practitioner community on a comprehensive e-Services marketing plan to expand the promotion of e-Service capabilities, through multi-media and print methods. IRS is committed to increasing usage of e-Services Disclosure Authorization and will continue to promote the use of this automated system to practitioners during various presentations and speaking engagements coordinated through the Stakeholder Liaisons Office.

The National Taxpayer Advocate recommends that the IRS reinstate the CAF Unit Help Lines for CAF related issues. CSRs on the toll-free lines are trained to assist taxpayers with CAF related issues such as address changes, processing problems and completing verbal authorizations. Resources previously used to staff the CAF Help Line have been redirected solely to process third party applications.

The National Taxpayer Advocate recommends that the IRS allow LITC student representatives to use e-Services and increase awareness of the program in IRS operating divisions. While we acknowledge that “seamless” representation may be beneficial, such “seamlessness” cannot come at the expense of security of information and protection of taxpayer or practitioner data. The e-Services suite of products is designed for practitioners to help them communicate electronically with the IRS about their clients’ issues. LITC students are unlicensed individuals who, because of special appearance authorizations, are permitted to practice before the IRS. The students have not completed the training and background checks that other Circular 230 practitioners have undergone to obtain their licenses. Because of the ever-growing threat of identity theft, it would be unwise to circumvent the e-Services system limitations and open e-Services to this population.

The importance of LITCs is widely understood within the IRS. The IRS has invested in training and guidance to ensure proper recognition for student representatives for many years, including revisions to the Form 2848, its instructions, and CAF processes, as well as numerous changes to relevant IRM sections.

The National Taxpayer Advocate recommends that the IRS track practitioner complaints regarding POA bypass violations and provide internal training on how to avoid such violations. Although even one violation of the provisions of IRC § 7521 is a matter of concern, the IRS has significant policies and procedures in place to mitigate the risk of inappropriate bypass. Given our continued efforts to ensure our employees adhere to the established policies and procedures, the IRS believes that establishing a separate and dedicated system

to gather and measure complaints on this issue would entail significant costs that outweigh the potential benefits. The IRS already conducts annual customer satisfaction surveys using a commercial vendor, which includes statistical data used to improve services. The Collection survey routinely queries taxpayers on whether they were treated fairly and the degree of courtesy and professionalism they received. Also, the survey includes a blank for comments from the taxpayer. These surveys do capture issues and/or complaints regarding direct contact issues, which the IRS analyzes and acts upon. In addition, taxpayers have the ability to file complaints regarding such abuses through Treasury Inspector General for Tax Administration TIGTA. Since direct contact provisions are statutory in nature, TIGTA can receive, respond to, and analyze such complaints. We will continue to provide guidance to our contact employees on the rules regarding adherence to POA procedures. In addition, we continue to solicit feedback from our external stakeholders for improvement opportunities.

The IRS provides multiple training portals for employees and managers that ensure they have appropriate guidance. We update the IRM and issue guidance memoranda to reinforce the importance of adhering to the processes designed to recognize taxpayer representation. We emphasize taxpayer rights with respect to direct contact provisions in training. In response to TIGTA findings, Field Collection plans to include additional emphasis on direct contact provisions in the upcoming FY 2013 Revenue Officer Continuing Professional Education (CPE). In addition, the campus operations will review CPE training material for their contact employees to ensure it includes information on how to avoid direct contact POA bypass violations. We believe our efforts in this area provide the appropriate guidance for our employees.

The IRS shares the interest of protecting taxpayers' rights to representation and supports improvement efforts upon identification of areas of deficiency in our operations. The IRS will continue to work with TAS in this effort. We will continue to monitor the issue and will make additional improvements as appropriate.

## Taxpayer Advocate Service Comments

The National Taxpayer Advocate is pleased that the IRS is interested in protecting taxpayers' rights to representation and wants to improve operational deficiencies in its programs. We commend the IRS for issuing a memorandum in November about POA policies and procedures, but we encourage the IRS to consult with TAS on these important taxpayer rights as required in the IRM.<sup>55</sup> Similarly, we applaud the IRS's commitment to developing and conducting training about POA policies but we request that the IRS share this training with the National Taxpayer Advocate for comment prior to delivery. As the statutory "voice of the taxpayer" inside the IRS, TAS brings a unique perspective to these matters.

The National Taxpayer Advocate also commends the IRS for creating a process to report the timeliness of Form 2848 processing in the CAF units, and for organizing a team to evaluate the cause of duplicate submissions and other rework. However, the IRS seeks to minimize its accountability for untimely processing by stating, "An authorized third party may represent a taxpayer before an officer or employee of the IRS by providing that officer or employee with a copy of a valid POA, regardless of whether the POA has been recorded on the CAF." While this may be technically true, the harsh reality is that failure to timely record Forms 2848 on the CAF greatly increases the risk that taxpayers' representatives will not receive notice of imminent enforcement actions with short due-dates, including the Statutory Notice of Deficiency and Collection Due Process notices.

Taxpayers who have exercised their fundamental right to be represented by counsel or other tax professionals have the reasonable expectation the IRS will honor that right by informing the representative of all government action or pending actions against the taxpayer — otherwise the right to representation is meaningless. The IRS cannot avoid this responsibility by holding the taxpayer accountable for telling its representative about government action about which the government itself has publicly stated it will inform the representative. This sort of circular reasoning does not stand, and it violates the taxpayer's right to representation.

The IRS also avoids accountability for the CAF units' processing by eliminating the help lines that practitioners and taxpayers could use to follow up on Form 2848 problems. The IRS explains that those lines did not provide the "full level of customer service available to taxpayers," because they had no quality review process and the assistors were not fully trained to handle account-related calls. However, the CAF unit help lines provided practitioners and taxpayers firsthand contact with IRS personnel who processed Forms 2848 or taxpayer information authorizations. Callers with account-related issues could have easily been transferred to account-related lines immediately after CAF unit issues were addressed. The National Taxpayer Advocate is disappointed that the IRS unilaterally shut down the help lines without vetting the decision with TAS, or with the practitioners and taxpayers

<sup>55</sup> IRM 1.11.9.4 (Nov. 1, 2011).

who may have used this important service. We are not convinced that a general help line, acting as an intermediary to the CAF units, will effectively resolve all CAF-related issues or provide the highest level of taxpayer service.

The National Taxpayer Advocate commends the IRS for attempting to redirect practitioners to use e-Services to file Forms 2848, and supports the updating of equipment to improve the processing of faxed forms. However, she disagrees that taxpayers are not harmed when new equipment fails. As noted above, if the IRS does not timely process a taxpayer's Form 2848 or revocation of Form 2848, the taxpayer may lose valuable time to appeal an IRS determination, may have his or her information given to an unauthorized practitioner, or an IRS employee. Further, a practitioner whose Form 2848 is not processed may waste valuable time proving he or she represents the taxpayer despite submitting a proper Form 2848 to the CAF unit. For these reasons, the IRS needs to acknowledge processing of Forms 2848.

In its response, the IRS asserts that "LITC students are unlicensed individuals who, because of special appearance authorizations, are permitted to practice before the IRS." In fact, it is not the IRS that has granted students in academic LITCs the authority to practice before the IRS. Rather, Congress statutorily authorized students to practice before the IRS under IRC § 7526(b)(2)(A), which defines a clinic as, among other things, "a clinical program at an accredited law, business, or accounting school in which students represent low-income taxpayers in controversies arising under this title...."

Thus, the ability of students to represent taxpayers before the IRS as part of an academic clinical program is a unique and a special privilege *granted by Congress*. The LITC Program Office in TAS awards LITC grants to academic and other institutions, and as part of that process, TAS determines whether the academic program provides adequate education, supervision, and safeguards for student representation.<sup>56</sup> Once the LITC Program Office makes that determination and enters into a grant agreement with the clinic, the IRS's issuance of Student Practice Letters is a formality — an important one, but a formality nonetheless. Continuing oversight of the academic clinic with the terms of the grant — including education and supervision of its students — rests in the LITC Program Office. It is for this reason that the Acting Commissioner re delegated the authority to issue Student Practice Letters from OPR to the Director of the LITC Program Office in TAS.<sup>57</sup>

As Congress intended, special appearance authorizations for student practice confer on the student the authority to represent taxpayers before any IRS office, and students authorized to practice can perform any and all acts listed on a Form 2848. Therefore, students should be treated the same as other practitioners.

<sup>56</sup> See Publication 3319, *Low Income Taxpayer Clinics Grant Application Package Book* (May 2012).

<sup>57</sup> Delegation Order 25-18 (Dec. 5, 2012).

Among the goals of the clinic experience are to teach students the proper way to practice in a controlled environment, to help them identify and resolve ethical issues in tax practice, and to comply with standards of professional conduct, such as confidentiality requirements. The LITCs have adequate safeguards to ensure the integrity of that mission. The LITC director or other responsible clinic official, who is himself or herself authorized to practice as an attorney, CPA, or enrolled agent, has the primary and absolute responsibility to monitor student POAs and a duty of care to their clients and the IRS according to Circular 230.<sup>58</sup> Moreover, the LITCs operate under the careful watch of TAS, the Government Accountability Office, and TIGTA.<sup>59</sup> For all of these reasons, as well as the mission of the clinics, LITCs require special rules to protect taxpayers without placing additional burden on the clinics or the CAF units.

The IRS has expressed reservations about expanding student access to e-Services because it is concerned the confidentiality of sensitive taxpayer information may be jeopardized. While the National Taxpayer Advocate acknowledges that identity theft is a growing problem for taxpayers and the IRS, access to e-Services by student practitioners would not increase the risk of identity theft. Whether a student practitioner or any other authorized practitioner processes authorizations or obtains taxpayer account information electronically through e-Services or from other IRS sources, the risk of unauthorized disclosure remains the same. Balancing the advantages that e-Services would provide to LITCs, student representatives, and the vulnerable taxpayers they represent, against the risk of potential unauthorized disclosure, should weigh in favor of allowing LITCs to use the e-Services system to allow submission of LITC student Form 2848 authorizations and LITC student representation substitutions.

The National Taxpayer Advocate does not believe that the IRS's policies and procedures to mitigate the risk of improper POA bypass are adequate to prevent continued violations of taxpayers' right to representation. The IRS has no way of knowing the impact of these violations without a system or process to record and report violations when they occur. It is highly unlikely that a customer satisfaction survey that queries taxpayers on whether they were treated fairly and the degree of courtesy and professionalism they received will identify these violations. By the time the survey is given, taxpayers may have been harmed by the inappropriate bypass of their representative through the filing of liens, levies, or other enforcement actions. While taxpayers' representatives can identify bypass violations, this may come too late to file a timely appeal or otherwise act to remedy the situation. Although TIGTA may be able to punish IRS employees for violations, the taxpayer will still have no way to restore rights that have been violated. The National Taxpayer Advocate commends the IRS for updating the IRM, issuing memoranda, and providing training to

<sup>58</sup> Circular 230. A copy of the special order authorizing practice before the IRS must be attached to the power of attorney form (Form 2848) and submitted to the CAF unit. See IRM 21.3.7.9.6 (Oct. 26, 2009); IRM 5.1.10.5.2 (Aug. 21, 2006).

<sup>59</sup> TAS oversight includes an extensive application process, including checks for suspension or disbarment and tax compliance of the sponsoring organization, reviews of interim and annual reports, and site assistance visits at least once every three years to identify best practices and assure compliance with the LITC grant award and program guidelines.

avoid these violations. However, the IRS should track bypass violations and give TAS a seat at the table to advocate for taxpayers and provide the taxpayers' perspective on protecting their rights.

## Recommendations

The National taxpayer Advocate recommends that:

1. The IRS implement a comprehensive system to record, track, and automatically update the CAF and the IDRS to shorten Form 2848 processing time to two or three calendar days or less.
2. The CAF units timely acknowledge the processing of all Form 2848 authorizations to prevent costly rework when a representative cannot determine if the IRS processed his or her request in a reasonable time.
3. The IRS encourage practitioners to electronically file Form 2848 authorizations and retrain some of its employees to implement e-Service controls.
4. The IRS reinstate the CAF unit help lines, along with quality controls and the ability to transfer calls in and out, to enable representatives to update addresses and fix processing problems, and provide taxpayers the ability to make verbal authorizations.
5. The IRS revise its e-Services system to allow submission of LITC student Form 2848 authorizations and LITC student representation substitutions.
6. The IRS work with the National Taxpayer Advocate to increase awareness of the student representation program among IRS operating divisions to help ensure that student representatives are appropriately recognized.
7. The IRS gather and track taxpayer and practitioner complaints about direct contact POA bypass violations.
8. The IRS collaborate with TAS to provide mandatory annual training for all contact employees on how to avoid direct contact POA bypass violations.
9. The IRS form a workgroup with TAS to address improper systemic bypasses of taxpayers' representatives, provide taxpayer remedies for bypass violations, and specifically correct problems that deny taxpayers their fundamental right to representation.