

paid return preparer, 79 percent were prepared by non-credentialed paid return preparers.⁹⁴ Further, of those prepared returns with Schedule EIC that were subject to audit, over 92 percent of the total audit adjustments (in dollars) occurred on returns prepared by non-credentialed paid return preparers.⁹⁵ To protect taxpayers from the harm caused by untrained or unscrupulous paid return preparers, it is crucial that Congress provide the IRS the authority to impose minimum competency standards on paid return preparers.

Objective 15 for FY 2024 – TAS will continue to advocate for the need to provide the IRS authority to impose minimum competency standards on paid return preparers of federal tax returns.

- Activity 1: Meet with congressional members and staff throughout the year, including at TAS’s Congressional Affairs Program conference, to discuss the Purple Book legislative recommendation authorizing the IRS to establish minimum competency standards for paid return preparers.
- Activity 2: Conduct research to identify additional statistical data supporting the need for minimum competency standards for paid return preparers.

16. IMPROVE THE STAFFING AND CULTURE OF THE IRS INDEPENDENT OFFICE OF APPEALS

A review by the IRS Independent Office of Appeals (Appeals) represents taxpayers’ last, and often best, chance to settle their cases administratively within the IRS. However, case delays, inflexible policies, inexperienced Appeals Officers (AOs), and a perceived lack of independence are hampering this process.⁹⁶ A timely appeal in a fair and unbiased forum, carrying the perception and reality of independence, is an essential aspect of taxpayer rights and quality tax administration. During FY 2024, TAS will continue working with Appeals as it attempts to address its staffing and training issues and better safeguard its independence.

Appeals has struggled with increasing cycle times⁹⁷ for years: from FY 2017 to FY 2022, cycle times have increased 103 percent, and this trend was already occurring before the COVID-19 pandemic exacerbated existing inefficiencies.⁹⁸ Appeals’ overall staffing fell by approximately 40 percent from FY 2010 to FY 2017, which has left remaining personnel overwhelmed with heavy caseloads and, at the same time, cost Appeals substantial expertise.⁹⁹ A case arriving at Appeals sits for approximately 48 days before Appeals even assigns it to an AO; during that interim period, taxpayers have no point of contact who can update them about the status of their cases.¹⁰⁰ Appeals has been working hard to reverse these trends, and they do seem to be slowing, but it will take a significant effort to bring staffing levels back up and cycle times back down, as well as to provide training and experience for their new employees.

While Appeals can address these issues over time, it can and should deal more directly and expeditiously with those policies that cause taxpayers to question the office’s objectivity. Appeals must be free from interference or influence from other parts of the IRS, including examination and collection functions. Appeals must have the authority, real and perceived, to make independent decisions without fear of retribution or retaliation and must be transparent with taxpayers about the basis for those decisions.

94 IRS, CDW, IRTF TYs 2018-2021; IRS, CDW, Preparer Tax Identification Number Table TYs 2018-2021; IRS, CDW, Audit Information Management System Table TYs 2018-2021 (Sept. 2022).

95 *Id.*

96 National Taxpayer Advocate 2022 Annual Report to Congress 141-156 (Most Serious Problem: *Appeals: Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_09_Appeals.pdf.

97 “Cycle time” refers to the amount of time between Appeals opening and closing a case.

98 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS request for fact check (Nov. 25, 2022).

99 Government Accountability Office (GAO), GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* 22 (2018), <https://www.gao.gov/assets/gao-18-659.pdf>.

100 IRS response to TAS information request (Aug. 24, 2022).

Currently, at the conclusion of some cases, Appeals will draft an Appeals Case Memorandum (ACM), which sets forth the reasoning for and implications of the settlement.¹⁰¹ Appeals sends the ACM to Compliance, and on some occasions, Appeals will hold a post-settlement conference with Compliance as well.¹⁰² Appeals does not give taxpayers access to the ACM or the post-settlement conference, even though they specifically address the taxpayer's own case. TAS will keep pressing Appeals to provide taxpayers with the ACMs whenever they are drafted and to invite taxpayers to post-settlement conferences, even if in the capacity of an observer.

In addition to providing taxpayers with clear and concise explanations of Appeals decisions, Appeals should work with the IRS to help ensure that tools, such as coordination of issues and the designation of cases for litigation, are used in only the most essential of situations. As a practical matter, these mechanisms limit the discretion of assigned AOs and can be extremely frustrating for taxpayers and practitioners. Rather than receiving the unbiased and objective case review they seek, taxpayers are left with the impression that their cases are being controlled, and sometimes decided by, the same institution with which they have already disagreed. This perceived lack of independence also arises when AOs invite Counsel and Compliance to participate in large-case Appeals conferences. Appeals can facilitate this participation, even against the wishes of taxpayers. In FY 2024, TAS will continue to urge Appeals to revise this practice to better fulfill its role as an independent decision-maker.

Objective 16 for FY 2024 – TAS will advocate for improvements and increased independence within Appeals.

- Activity 1: TAS-Appeals liaisons will hold a meeting with Appeals to advocate for providing taxpayers with the ACMs whenever they are drafted and inviting taxpayers to post-settlement conferences, even if in the capacity of an observer.
- Activity 2: TAS-Appeals liaisons will hold a meeting with Appeals to reiterate to Appeals the negative impact on independence of including Counsel and Compliance in Appeals conferences without taxpayer consent.
- Activity 3: TAS-Appeals liaisons will hold a meeting with Appeals to encourage Appeals to collect and analyze data, such as settlement percentages and cycle times, that it can use to create fair and transparent Appeals policies and to ensure that these policies are consistently applied.
- Activity 4: TAS subject matter experts will offer to review Appeals' IRMs and training materials to assess potential recommendations for improving Appeals' independence.
- Activity 5: TAS-Appeals liaisons will hold a meeting with Appeals to encourage Appeals to provide service to the taxpayer in a reasonable timeframe and to give TAS cases priority.

17. REDUCE COMPLIANCE BARRIERS FOR OVERSEAS TAXPAYERS

Overseas taxpayers face numerous and significant challenges complying with their U.S. tax obligations.¹⁰³ This population of taxpayers includes U.S. citizens and resident aliens residing abroad in addition to foreign individuals and businesses with U.S.-source income or operations. The challenges these taxpayers face include difficulty understanding applicable tax laws, meeting their filing and payment obligations, accessing online resources, and interacting with the IRS. For example, overseas taxpayers face barriers in obtaining Taxpayer Identification Numbers, electronically filing tax and information returns, and receiving mailed correspondence from the IRS. Moreover, there is only one telephone line for taxpayers abroad, and it is not toll-free. To protect taxpayer rights and improve voluntary compliance for this population, it is essential that the IRS

¹⁰¹ IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs) (Aug. 17, 2017).

¹⁰² IRM 8.1.10.4.1.4, Post-Settlement Conferences (June 21, 2012).

¹⁰³ National Taxpayer Advocate 2022 Annual Report to Congress 157-173 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.