



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.2.7

JUNE 29, 2017

EFFECTIVE DATE

(06-29-2017)

PURPOSE

- (1) This transmits revised IRM 4.2.7, General Examining Procedures, Ex Parte Communication Procedures.

MATERIAL CHANGES

- (1) Added IRM 4.2.7.1, Program Scope and Objectives.
- (2) Incorporated information in IRM 4.2.7.1, Overview, into the new IRM 4.2.7.1, Program Scope and Objectives.
- (3) Added Taxpayer Bill of Rights (TBOR) information to IRM 4.2.7.1.3.
- (4) Added items to IRM 4.2.7.2 to clarify types of communications that are not ex parte.
- (5) Rearranged information in IRM 4.2.7.3 for clarity purposes.
- (6) Renamed IRM 4.2.7.4, Sending the Administrative File to Appeals.
- (7) Rewrote IRM 4.2.7.4 for clarity, deleted duplicative information already existing in other IRMs, and added link to the other IRM sites.
- (8) Added EO letter reference to IRM 4.2.7.4.1.
- (9) Rewrote IRM 4.2.7.5 for clarity, deleted duplicative information already existing in other IRMs, and added links to the other IRM sites.
- (10) Renamed IRM 4.2.7.7, Communicating with Appeals on Closed Cases and added information regarding post-settlement conferences.
- (11) This manual has been written to comply with the Plain Writing Act. For additional information on the Plain Writing Act, see <http://www.plainlanguage.gov/>.
- (12) The table below provides a listing of old sections of IRM 4.2.7 and the corresponding new sections.

Old Section	New Section
4.2.7.1, Overview	IRM 4.2.7.1, Program Scope and Objectives
4.2.7.7, Dissenting Memoranda	IRM 4.2.7.7, Communicating with Appeals on Closed Cases

EFFECT ON OTHER DOCUMENTS

This manual supersedes IRM 4.2.7, Ex Parte Communication Procedures, dated October 25, 2013.

AUDIENCE

SB/SE, LB&I, TE/GE, and W&I Compliance Examination

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4.2.7

Ex Parte Communication Procedures

Table of Contents

4.2.7.1 Program Scope and Objectives

4.2.7.1.1 Background

4.2.7.1.2 Authority

4.2.7.1.3 Responsibilities

4.2.7.1.4 Program Controls

4.2.7.1.5 Acronyms

4.2.7.2 Definitions

4.2.7.3 Responsibility for Compliance with the Provisions of the Restructuring and Reform Act (RRA) 98
Section 1001(a)(4)

4.2.7.4 Sending the Administrative File to Appeals

4.2.7.4.1 Rebuttals of the Taxpayer's Protest

4.2.7.4.2 Examination of Years After Transmission to Appeals

4.2.7.5 Review of New Information or Evidence Submitted to Appeals

4.2.7.6 Refund Claims During the Appeals Process

4.2.7.7 Communicating with Appeals on Closed Cases

4.2.7.1
(06-29-2017)
Program Scope and Objectives

- (1) *Purpose:* This manual focuses on ensuring communication between IRS and Appeals employees doesn't compromise or appear to compromise Appeals independence. Topics include:
 - a. Compliance with the Restructuring and Reform Act (RRA) 98 Section 1001(a)(4)
 - b. Sending the administrative file to Appeals
 - c. Reviewing new information on a case in Appeals
 - d. Communicating with Appeals on closed cases
- (2) *Audience:* The procedures in this manual apply to all IRS Examination employees, except for Appeals. Appeals employees' procedures are in IRM 8.1.10, Appeals Function, Ex Parte Communications.
- (3) *Policy Owner:* Director, Exempt Organizations
- (4) *Program Owner:* Exempt Organizations

4.2.7.1.1
(06-29-2017)
Background

- (1) The purpose of this program is to ensure the independence of Appeals while maintaining open lines of communication between Appeals and the taxpayer/representative. This program is committed to avoiding the appearance of compromising Appeals independence.
- (2) This program provides guidelines defining *ex parte communications* and communication between IRS Examination employees and Appeals.

4.2.7.1.2
(06-29-2017)
Authority

- (1) IRS must maintain an independent Appeals function and prohibit ex parte communication between Appeals and other IRS employees. (Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law No. 105-206, 112 Stat. 685 (RRA))
- (2) The initial guidance was provided in Rev. Proc. 2000-43, 2000-2 C.B. 404. Rev. Proc. 2012-18, 2012-10 I.R.B. 455, superseded Rev. Proc. 2000-43.

4.2.7.1.3
(06-29-2017)
Responsibilities

- (1) All IRS employees share the responsibility to ensure that communications with Appeals do not compromise or appear to compromise the independence of Appeals.
- (2) This includes oral and written communications.
- (3) Taxpayer Bill of Rights: In June of 2014 the IRS adopted the Taxpayer Bill of Rights (TBOR). Consider these rights during the course of carrying out your duties. For additional information refer to *Policy 1-236* and Taxpayer Bill of Rights (TBOR) at <https://www.irs.gov/taxpayer-bill-of-rights>.

4.2.7.1.4
(06-29-2017)
Program Controls

- (1) IRS employees should consult the following sources to ensure adherence to these guidelines:
 - Section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law No. 105-206, 112 Stat. 685
 - Rev. Proc. 2012-18

4.2.7.1.5
(06-29-2017)
Acronyms

- (1) The table lists commonly used acronyms and their definitions.

Acronym	Definition
ATE	Appeals Technical Employee
EO	Exempt Organizations
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business and International
RRA	Restructuring and Reform Act
SB/SE	Small Business/Self Employed
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt/Government Entities
W&I	Wage & Investment

4.2.7.2
(06-29-2017)
Definitions

- (1) “Ex Parte Communication” is a communication between any Appeals employee and employees of other IRS functions without the taxpayer/representative having an opportunity to participate in the communication.
- (2) “Communications” includes oral or written (manually or electronically generated).
- (3) Appeals employee includes, but is not limited to, the following:
- Appeals Officers
 - Appeals Team Case Leaders
 - Appeals Tax Computation Specialists
- (4) “Ex Parte Communication” does not include:
- Database inquiries (such as account inquiries, transcript requests and other similar inquiries conducted in an electronic environment). This exception doesn’t apply to the administrative file, which may be in electronic format.
 - Communication solely between or among Appeals employees.
 - Communication with other governmental entities.
 - Communication in which the taxpayer or representative is given an opportunity to participate.
 - Communication about ministerial, administrative, or procedural matters.
 - Communication as part of the Fast Track Settlement process.
 - Non-case specific communication between Appeals and other IRS functions.
- (5) “Ex Parte Communication” generally doesn’t include communication between Appeals and IRS functions other than originating functions. However, all IRS employees, consultants and experts, including Counsel and Criminal Investigation employees, must avoid communications with Appeals that may appear to compromise its independence, as described in Rev. Proc. 2012-18 Sections 2.06 and 2.07, and IRM 4.2.7.3, below.

- (6) “Originating Function” is an organization within the IRS that makes a determination subject to the Appeals process. This includes:
- Examination
 - Collection
 - Service Center (Campus functions)
 - A successor organization
- (7) The “Administrative File” that the originating function sends to Appeals lists the boundaries of the dispute between the taxpayer and the IRS. This file forms the basis for Appeals to assume jurisdiction of a case. The administrative file contains the following types of items:
- Proposed determination
 - Taxpayer’s protest
 - Rebuttal memorandum that was shared with the taxpayer/representative

Note: See IRM 8.1.10.3.2, Administrative File, for further information and examples.

4.2.7.3
(06-29-2017)
**Responsibility for
Compliance with the
Provisions of the
Restructuring and
Reform Act (RRA) 98
Section 1001(a)(4)**

- (1) All IRS and Counsel employees share the responsibility to ensure that communications do not appear to compromise the independence of Appeals.
- (2) All IRS employees will make every effort to promptly end any communications not permitted by the ex parte communication rules.
- (3) The prohibition against ex parte communications applies to communications between any Appeals employee and any originating function employee, including but not limited to:
- Area Managers
 - Group Managers
 - Review Managers
 - Reviewers
 - Revenue Agents
 - Revenue Officers
 - Tax Computation Specialists
 - Technical Specialists
 - Engineers
 - Appraisers
 - International Specialists
- (4) An originating function employee must request their group manager’s approval before communicating with an Appeals officer or Appeals manager.
- (5) The following table describes the originating function group manager’s responsibilities respecting any request to communicate with Appeals.

IF the originating function group manager decides the communication is:	THEN the originating function group manager will:
Not necessary	Deny the request
Necessary and is not a prohibited ex parte communication	Approve the request
Necessary and is a prohibited ex parte communication	Approve the request and provide instructions for including the taxpayer in the communication

- (6) If an Appeals officer contacts an originating function employee and the information requested appears to be a prohibited ex parte communication, first discuss this concern with the Appeals officer and the group manager before providing any information.

Note: If it is questionable whether a proposed communication would be prohibited under RRA 98, invite the taxpayer to participate in the communication. Also seek Counsel's guidance.

Note: There are restrictions on certain communications between Appeals and Counsel. See IRM 8.1.10.3.4, Communications with Counsel.

- (7) See IRM 8.1.10.5, Curing Ex Parte Communication Breaches, if a breach occurs.
- (8) Certain alternative dispute resolution (ADR) programs, such as fast track settlement, involve the use of Appeals employees to facilitate settlement while the case is still in Examination's jurisdiction. See Section 2.05(1) of Rev. Proc. 2012-18.
- The prohibition against ex parte communications between Appeals employees and other IRS employees does not apply because Appeals employees are not acting in their traditional Appeals' settlement role.
 - Consequently, Appeals employees may have ex parte communications with an originating function in connection with any Fast Track or similar ADR proceedings.
 - Employees can refer also to IRM 4.46.1 regarding pre-appeals conferences.

4.2.7.4 (06-29-2017) **Sending the Administrative File to Appeals**

- The originating function compiles the administrative file using established procedures, or as otherwise directed by the reviewer(s) assigned to the case. Generally, the administrative file the originating function sends to Appeals is not considered to be an ex parte communication.
- Functions can't send any documents, statements or comments to Appeals that are not normally generated in the ordinary course of developing the case if the reason to include it is to influence Appeals. This includes recommendations regarding what Appeals should consider or how Appeals should resolve the case.

- (3) Originating functions must share documents that contain any statements or comments that may be construed as prohibited ex parte communications with the taxpayer/representative at the time the administrative file is sent to Appeals.
 - (4) See IRM 8.1.10.3.2, Administrative File, for further information and examples.
- 4.2.7.4.1
(06-29-2017)
Rebuttals of the Taxpayer's Protest
- (1) If the function prepares a rebuttal to a taxpayer's protest, it must be shared with the taxpayer/representative at the time the administrative file is sent to Appeals.
 - (2) Use Letter 5072, Examiner's Rebuttal, as a cover for the rebuttal. EO employees should use Letter 5326, Rebuttal Letter - EO Examinations.
- 4.2.7.4.2
(10-25-2013)
Examination of Years After Transmission to Appeals
- (1) If an auditor is assigned a subsequent year audit of an open case in Appeals, the auditor should review the administrative file for past audit findings.
 - (2) Do not discuss the strengths and weaknesses of the following with Appeals because it could appear to compromise Appeals independence:
 - a. Proposed adjustments in the year(s) that are in Appeals.
 - b. Proposed adjustments for any subsequent year under examination.
- 4.2.7.5
(06-29-2017)
Review of New Information or Evidence Submitted to Appeals
- (1) Appeals gives the originating function the opportunity to review and comment on significant new information or evidence presented by the taxpayer/representative during the Appeals proceedings. "Significant new information" is information of a nonroutine nature that, in Appeals' judgement, may affect the originating function's findings or that may impact Appeals' independent evaluation of the strengths and weaknesses of the issues, including the litigating hazards for those issues.
 - (2) The function or Appeals employee who keeps jurisdiction over the case must communicate and provide the results of the originating function's review to the taxpayer/representative.
 - (3) See IRM 8.2.1.5, Returning a Case to Examination - ATE, as well as IRM 8.4.4, Appeals Docketed Cases, Examination Assistance Requests for further information about cases returned to the originating function.
- 4.2.7.6
(10-25-2013)
Refund Claims During the Appeals Process
- (1) Refund claims filed during the Appeals process generally are referred to the originating function with a request for expedited review.
 - (2) When Appeals refers these refund claims to the originating function, Appeals shouldn't discuss the strengths and weaknesses of the issue, and thus, fall within the ministerial, administrative, or procedural matters exception to the definition of ex parte communications.
 - (3) Appeals must timely notify the taxpayer/representative when they refer the refund claim to the originating function.
 - (4) The function or Appeals employee who keeps jurisdiction over the case must communicate and provide the originating function's review results to the taxpayer/representative.

4.2.7.7
(06-29-2017)

**Communicating with
Appeals on Closed
Cases**

- (1) An originating function's dissenting memorandum to Appeals stating its disagreement with Appeals' settlement of a case is not a prohibited ex parte communication if all Appeals' actions on the case are finished before the memorandum is given to Appeals. See IRM 8.6.4.1.9, Disagreements to Appeals Determinations, for more information.

Note: A dissenting memorandum must be approved by the Area Manager/Territory Manager/Field Operations Manager before sending to Appeals.

- (2) A post-settlement conference with Appeals and the originating function after Appeals closes the case is not an ex parte communication as long as discussion is limited to the issues in the closed case.

Note: "Closed" for ex parte communication purposes means Appeals rendered its decision in the case and issued the necessary closing documents formalizing that decision, and no additional changes may be made by Appeals.

- (3) See IRM 8.1.10.3.1.4, Post-Settlement Conferences, for further information.