



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

13.1.5

JUNE 14, 2023

## EFFECTIVE DATE

(06-14-2023)

## PURPOSE

- (1) This transmits a revised IRM 13.1.5, Taxpayer Advocate Case Procedures, Taxpayer Advocate Service (TAS) Confidentiality.

## MATERIAL CHANGES

- (1) IRM 13.1.5.1.5 Incorporated IPU 21U0622 issued 04-19-2021 IRM 13.1.5.1.5, TBOR content updated based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
- (2) IRM 13.1.5.2 Incorporated IPU 21U0622 issued 04-19-2021. TBOR content updated based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
- (3) IRM 13.1.5.5 Removed duplicate FOIA content and linked to IRM 13.1.10.13, Freedom of Information Act.
- (4) IRM 13.1.5.4(3) Incorporated Question Resolution Information System (QRIS), New AMS Enhancements for TAS
- (5) IRM 13.1.5.7(3) Incorporated QRIS 10658, Confidentiality of TAS Contact.
- (6) IRM 13.1.5.8.1 Incorporated QRIS 10503, OARs on AMS and TAS Confidentiality.
- (7) IRM 13.1.5.8.3.1 Updated section title to, Disclosure to Prevent Serious Bodily Harm or Harm to the Public Health or Safety.
- (8) IRM 13.1.5.8.3.4(2) Added bullet list to clarify Non Standard Disclosure considerations
- (9) IRM 13.1.5.10(3) Added two notes to clarify considerations given when working various Non Standard Disclosures cases.
- (10) IRM 13.1.5.10(5) Incorporated IPU 21U1136 issued 10-01-2021. Updated note to correct hyperlink for Attorney Advisor Group and update contact procedures.
- (11) IRM 13.1.5.11(5) Incorporated IPU 21U0622 issued 04-19-2021. Added Criminal Investigation (CI) mailbox for nonstandard disclosure process.
- (12) Grammar, punctuation, and minor wording changes throughout the IRM.

## EFFECT ON OTHER DOCUMENTS

The IRM 13.1.5, dated August 27, 2020, is superseded. IRM Procedural Update (IPU) 21U0622, issued April 19, 2021 and IPU 21U1136, issued October 1, 2021 have been incorporated into this IRM.

**AUDIENCE**

Taxpayer Advocate Service employees

Jennifer K. Cones, Acting Executive Director Case Advocacy,  
Intake and Technical Support

13.1.5

Taxpayer Advocate Service (TAS) Confidentiality

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13.1.5.1  
(06-14-2023)  
**Program Scope and Objectives**

- (1) *Purpose:* This section explains the Local Taxpayer Advocate's (LTA's) discretion not to disclose certain information to the IRS pursuant to Internal Revenue Code (IRC) 7803(c)(4)(A)(iv).
- (2) *Audience:* These procedures primarily apply to LTAs and Case Advocates (CAs). However, all TAS employees should reference this IRM when addressing confidentiality and disclosure questions.
- (3) *Policy Owner:* The National Taxpayer Advocate is the owner of the policies contained in this IRM.
- (4) *Program Owner:* The EDCA-ITS is responsible for the administration, procedures, and updates related to this program.

13.1.5.1.1  
(06-14-2023)  
**Background**

- (1) IRC 7803(c)(4)(A)(iv) provides that each LTA, **may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.**
- (2) Any reference to a taxpayer in this chapter also includes a taxpayer's authorized representative, as IRC 7803(c)(4)(A)(iv) extends to contact with and information provided by representatives.
- (3) TAS plays an important role in protecting taxpayer rights and promoting taxpayer confidence in the integrity and accountability of the IRS. TAS employees resolve taxpayer problems and disputes between taxpayers and the IRS. To succeed, TAS employees must be viewed, both in perception and reality, as an independent and impartial voice for the taxpayer within the IRS. To promote such independence, IRC 7803(c)(4)(B) requires each local office of the Taxpayer Advocate to maintain a separate telephone, facsimile, and electronic communication access, as well as a separate post office address. Confidentiality plays an important role in promoting TAS's independence.

13.1.5.1.2  
(06-14-2023)  
**Authority**

- (1) IRC 7803(c)(4)(A)(iv) provides LTAs with the authority not to disclose to the IRS contact with or information provided by the taxpayer.
- (2) Other laws may supersede this discretion and may require LTAs to disclose taxpayer contact or taxpayer-provided information. See IRM 13.1.5.3.
- (3) If information is not provided by the taxpayer, then the confidentiality procedures described in this chapter do not apply. See IRM 13.1.5.7.
- (4) If information is to be disclosed to a party other than the IRS, then the confidentiality procedures described in this chapter do not apply. See IRM 13.1.5.5 (5).

13.1.5.1.3  
(08-27-2020)  
**Responsibilities**

- (1) LTAs may exercise the discretion not to disclose information to the IRS or determine if disclosure may be warranted. See IRM 13.1.5.5.
- (2) Deputy Executive Directors Case Advocacy (DEDCA) will have discussions with LTAs before the LTA exercises this discretion in nonstandard disclosure situations.
- (3) The National Taxpayer Advocate or designee will review LTA and DEDCA recommendations and make a confidentiality determination in nonstandard disclosure situations. See IRM 13.1.5.10.

13.1.5.1.4  
(08-27-2020)  
**Program Reports**

- (1) Reports to monitor the quality of TAS cases are derived from TAMIS and the TAS Case Quality Review System (CQRS). The CQRS generates monthly and fiscal year cumulative reports as well as specific queries for data analysis.
- (2) TAS performs managerial reviews designed to ensure TAS employees are taking advocacy focused actions to facilitate case resolution.

13.1.5.1.5  
(06-14-2023)  
**Terms**

- (1) The following contains a list of terms used throughout this IRM.

Term	Definition
Alternative Dispute Resolution	The use of methods such as mediation, arbitration, and negotiation to resolve a dispute instead of litigation.
Confidentiality	Confidentiality is the protection of personal information. Each LTA may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, a taxpayer (or a taxpayer's authorized representative).
Emergency Disclosure	An emergency disclosure is where TAS discloses taxpayer provided information to the IRS when the taxpayer is likely to be immediately harmed if the IRS does not take prompt action or cease an action ( <i>e.g.</i> , release a levy), and TAS is unable to contact the taxpayer to obtain consent to disclose information to the IRS.
Nonstandard Disclosure	A nonstandard disclosure is when no other type of disclosure to the IRS applies ( <i>e.g.</i> , standard or emergency disclosure) and TAS discloses taxpayer provided information to the IRS. There are three types of nonstandard disclosures: disclosure to prevent harm to health or safety, disclosure to address a systemic problem, and other disclosures, including disclosures to address noncompliance.

Term	Definition
Ombud(s)	Person(s) to whom taxpayers may come with complaints and questions and who resolve disputes between taxpayers and the IRS without litigation.
Standard Disclosure	A standard disclosure is one where TAS discloses taxpayer provided information to the IRS with the taxpayer's consent to obtain relief for the taxpayer.
Systemic Advocacy Management System (SAMS)	SAMS is an online portal through which taxpayers, practitioners, and IRS and TAS employees submit systemic issues to TAS.
Taxpayer Advocate Management Information System (TAMIS)	TAS uses TAMIS to record, control, and process cases and to analyze the issues that bring taxpayers to TAS.

13.1.5.1.6  
(08-27-2020)

#### Acronyms

- (1) The following table contains a list of acronyms and their definitions used throughout this IRM.

Acronym	Definition
ABA	American Bar Association
ACS	Automated Collection System
ADR	Alternative Dispute Resolution
CA	Case Advocate
CCDM	Chief Counsel Directives Manual
CFR	Code of Federal Regulations
CI	Criminal Investigation
CNC	Currently Not Collectible
Cong. Rec.	Congressional Record
DEDCA	Deputy Executive Director Case Advocacy
Dept.	Department
DNTA	Deputy National Taxpayer Advocate
DOJ	Department of Justice

Acronym	Definition
EDCA	Executive Director Case Advocacy
EITC	Earned Income Tax Credit
ESI	Electronically Stored Information
Fed. Reg.	Federal Register
FOIA	Freedom of Information Act
GAO	Government Accountability Office
GLS	General Legal Services
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ITIN	Individual Taxpayer Identification Number
IVO	Integrity & Verification Operations
LTA	Local Taxpayer Advocate
No.	Number
NTA	National Taxpayer Advocate
OAR	Operations Assistance Request
OPR	Office of Professional Responsibility
PGLD	Privacy, Governmental Liaison and Disclosure
Pub. L. No.	Public Law Number
RPO	Return Preparer Office
RRA 98	Internal Revenue Service Restructuring and Reform Act of 1998
SAMS	Systemic Advocacy Management System
SB/SE	Small Business/Self-Employed Division
SSN	Social Security Number
TAG	Technical Analysis and Guidance
TAMIS	Taxpayer Advocate Management Information System
TAO	Taxpayer Assistance Order



Acronym	Definition
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TIGTA	Treasury Inspector General for Tax Administration
Treas. Reg.	Treasury Regulation
U.S.C.	United States Code

13.1.5.1.7  
(06-14-2023)

#### Related Resources

- (1) Additional Advocacy Tools information is located on the TAS “Welcome Screen” under the TAS Technical topics tab. Direct links to the Confidentiality Questionnaires and Routing Slip are shown below:
  - *NTA Confidentiality Determination*
  - *Confidentiality Questionnaire Routing Slip*
  - *Case Advocate Confidentiality Questionnaire*
  - *Local Taxpayer Advocate Confidentiality Questionnaire*
  - *Systemic Advocacy Confidentiality Questionnaire*
- (2) The NTA Attorney Advisor for Confidentiality may change periodically. You can contact the Supervisory Attorney Advisor for current attorney advisor contact information. See, *National Office Attorney Advisor Listing* at [https://organization.ds.irsnet.gov/sites/tas/SiteAssets/TAS\\_Dir\\_Page.aspx?dir=National%20Office,%20Attorney%20Advisor](https://organization.ds.irsnet.gov/sites/tas/SiteAssets/TAS_Dir_Page.aspx?dir=National%20Office,%20Attorney%20Advisor).
- (3) The Office of the Division Counsel/Associate Chief Counsel (NTA Program) is available if you need guidance about how IRC 7803(c)(4)(A)(iv) applies in your casework.

13.1.5.2  
(06-14-2023)

#### Why Confidentiality is Important to Taxpayers and TAS

- (1) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>. Under these rights taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information. The discretion not to disclose under IRC 7803(c)(4)(A)(iv) is one of the statutes that underlie the Right to Confidentiality found in the TBOR. The IRS Commissioner and the National Taxpayer Advocate announced the IRS adoption of the TBOR on June 10, 2014. On December 18, 2015, Congress added new paragraph (a)(3) to IRC 7803 to require the Commissioner to ensure IRS employees are familiar with, and act in accordance with, the TBOR. See Pub. L. No. 114-113, Division Q, section 401. For more information about other statutes that protect the Right to Confidentiality and the other nine rights in TBOR, see *What the Taxpayer Bill of Rights Means for You* at <https://www.irs.gov/newsroom/taxpayer-bill-of-rights-8>.

- (2) Confidentiality is often viewed as essential to any relationship in which one party is charged with representing, advocating on behalf of, or negotiating for another party. See, e.g., IRC 7525 (extending the traditional attorney-client confidentiality privilege to communications between taxpayers and federally authorized tax practitioners). Senator John Breaux, a sponsor of RRA 98 in the Senate, explained the importance of TAS confidentiality as follows:

*"We are really trying to build some walls between the IRS and the Taxpayer Advocate and their work with the taxpayers, the American citizens of this country, to make sure that they, the taxpayers, know the person they are dealing with is independent, has their interests at heart, and doesn't have to go report to the Internal Revenue Service district director about what he or she has discussed or talked about with the taxpayer who is seeking assistance.... There will be someplace they can go, which will be independent of the IRS, which will have as their first, second, third, and last mission to help that taxpayer. They can be comfortable there will not be communication or sharing of information of their discussions with the Taxpayer Advocate with the Internal Revenue Service. I think this is a very important part of the bill that is before the Senate today." Cong. Rec. S4239, S4240 (May 5, 1998) (Statement of Senator John Breaux).*

- (3) TAS employees function as "ombuds" - persons to whom taxpayers may come with complaints and questions and who resolve disputes between taxpayers and the IRS without litigation. When TAS employees resolve disputes, they provide a form of alternative dispute resolution (ADR).
- (4) TAS modeled its confidentiality policies and procedures after guidance developed and published by the Federal ADR Steering Committee and the American Bar Association (ABA). Confidentiality is a key element of ADR. See Administrative Dispute Resolution Act of 1996 (ADR Act), 5 U.S.C. 574. Further, confidentiality is considered an essential characteristic of ombuds offices. Both the ADR Act and the ABA Standards for the Establishment and Operation of Ombuds Offices explicitly acknowledge the role confidentiality plays in bringing parties in a dispute to resolution. See, Revised Standards for the Establishment and Operation of Ombuds Offices, 14 (adopted Feb. 9, 2004) located at: <https://www.prearesourcecenter.org/sites/default/files/library/abaadoptedbythehouseofdelegatesfeb92004.pdf> (last visited May 1, 2019); Federal Alternative Dispute Resolution Council, Department of Justice, Confidentiality in Federal Alternative Dispute Resolution Programs, 65 Fed. Reg. 83,085 (Dec. 29, 2000). The ABA Standards provide:

*An ombuds does not disclose and is not required to disclose any information provided in confidence, except to address an imminent risk of serious harm. Records pertaining to a complaint, inquiry, or investigation are confidential and not subject to disclosure outside the ombuds's office. An ombuds does not reveal the identity of a complainant without that person's express consent. An ombuds may, however, at the ombuds's discretion disclose non-confidential information and may disclose confidential information so long as doing so does not reveal its source. An ombuds should discuss any exceptions to the ombuds's maintaining confidentiality with the source of the information.*

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*Confidentiality is an essential characteristic of ombuds that permits the process to work effectively. Confidentiality promotes disclosure from reluctant complainants, elicits candid discussions by all parties, and provides an increased level of protection against retaliation to or by any party. Confidentiality is a further factor that*

*distinguishes ombuds from others who receive and consider complaints such as elected officials, human resource personnel, government officials, and ethics officers.*

- (5) TAS's discretion not to disclose taxpayerprovided information to the IRS serves the following purposes:
  - a. To strengthen TAS's independence and neutrality.
  - b. To encourage taxpayers to trust and seek help from TAS without fear of retaliation by other IRS employees.
  - c. To encourage taxpayers to freely communicate with TAS in order to resolve their problems with the IRS.
  - d. To calm taxpayers' fears that information provided to TAS will be used to harm them.

13.1.5.3  
(06-14-2023)  
**Other Federal Laws or Policies Relevant to TAS's Disclosure of Taxpayer's Information When Working a TAS Case**

- (1) IRC 6103 and the Privacy Act of 1974 (5 U.S.C. 552a) generally protect taxpayer returns and return information from disclosure, subject to statutory exceptions. See IRM 9.3.1, Criminal Investigation, Disclosure and Publicity, Disclosure, IRM 11.3.1, Introduction to Disclosure, and IRM 10.5.6, Privacy Act.
- (2) The Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, provides for public access to records and information maintained by federal agencies. The FOIA applies to records either created or obtained by an agency and under agency control at the time of the FOIA request. All existing TAS records are subject to FOIA requests, including records maintained by the NTA and headquarters employees. The FOIA contains numerous exemptions and exclusions under which records may be withheld. See IRM 11.3.13, Freedom of Information Act (FOIA), and IRM 13.1.10.13, Freedom of Information Act.
- (3) The failure to report a felony can be a "misprision of felony," which is a federal crime under 18 U.S.C. 4. A person is guilty of misprision of felony if he or she has knowledge of the actual commission of a felony, conceals it, and does not make it known to a person in authority as soon as possible. Generally, under federal law and in many states, a felony is any crime punishable by imprisonment for more than one year. This statute may be invoked when it relates to some other tax, money laundering, or currency violation. See IRM 9.1.3.4.3, 18 U.S.C. 4 - Misprision of Felony. No TAS employee will conceal a felony. If TAS employees are unsure whether something is a felony, they should seek advice from the Office of Chief Counsel per IRM 13.1.10.2, Obtaining Legal Advice from Chief Counsel. TAS employees who follow the nonstandard disclosure procedures in IRM 13.1.5.10 to report their knowledge of a felony to their LTA as soon as possible will be deemed to meet their obligation to make it known to a person in authority.

**Caution:** Although it is a crime to not report a felony, in some situations IRC 6103 will prohibit TAS employees from reporting certain crimes to the appropriate law enforcement agency. For example, see the identity theft example in IRM 13.1.5.11 (3).

- (4) IRC 7214(a)(8) requires all Federal employees acting in connection with internal revenue laws who have knowledge or information of violations of such laws, or knowledge of fraud committed under such laws, to report such violations in writing to the Secretary of the Treasury. (Treas. Reg. 301.7214-1 states

the violation should be reported to the Commissioner.) Failure to report such violations could result in termination, fines, or imprisonment. Mere suspicion of fraud is not enough; employees must have a firm indication of fraud to trigger the IRC 7214(a)(8) reporting requirement.

- a. The policies and procedures established by the NTA for implementing IRC 7803(c)(4)(A)(iv) require the reporting of criminal violations and fraud committed under the internal revenue laws, consistent with IRC 7214(a)(8).
- b. If a TAS employee believes that a taxpayer has committed (or will commit) a criminal or fraudulent violation of an internal revenue law, and the taxpayer has declined to work with TAS to bring the violation to the IRS's attention (or prevent the violation), and the TAS employee received any of the information about the alleged fraud or offense from the taxpayer, the employee will follow nonstandard disclosure procedures in IRM 13.1.5.10 to report the violation (or potential violation) of an internal revenue law to the NTA for appropriate action. By reporting the violation (or potential violation) to the NTA using the nonstandard disclosure procedures in IRM 13.1.5.10, the CA and the LTA have complied with IRC 7214(a)(8) even if the NTA determines no disclosure to the Commissioner is warranted. Thus, in certain situations, IRC 7803(c)(4)(A)(iv) will take precedence over IRC 7214(a)(8).

**Note:** Do not use the nonstandard disclosure procedures if the TAS employee did not receive the information about the alleged fraud or offense from the taxpayer. Instead, see IRM 13.1.5.7.

- c. The requirement to report criminal violations and acts of fraud arises when a taxpayer refuses to work with TAS to achieve compliance (or avoid noncompliance) with the internal revenue laws. See IRM 13.1.5.8.3.3. However, even if the taxpayer continues to work with TAS, employees should follow the nonstandard disclosure procedures if the taxpayer does not act in a timely fashion, especially if there is an imminent threat of financial harm to the IRS or another taxpayer.
- d. Fraud is defined as an intentional wrongdoing designed to evade tax believed to be owing. The IRS must prove this fraudulent intent, but direct proof is rarely available. The IRS uses indicators or badges of fraud (identified via court precedent) to establish circumstantial evidence of fraudulent intent. These indicators include omission of entire sources of income, concealment of bank accounts or other property, substantial overstatement of deductions, presenting false or altered documents to claim credits, and maintaining multiple sets of books or records. See IRM 25.1.2.3, Indicators of Fraud, and IRM 25.1.6.4, Evidence of Fraud, for additional examples.
- e. The IRS must meet a much higher standard to establish fraudulent intent than it does to show mere negligence or substantial understatement. For example, in Cheek v. United States, 498 U.S. 192 (1991), the United States Supreme Court held that a good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Thus, if the court credits the taxpayer's assertion that he truly believed an incorrect interpretation of the Internal Revenue Code, the Government has not carried its burden to prove willfulness, however unreasonable a court might deem such a belief. Of course, in deciding

whether to credit the taxpayer's claim, the court is free to consider any admissible evidence showing that the taxpayer had knowledge of his legal duties.

- f. TAS employees who identify an emerging scheme affecting multiple taxpayers will submit a summary of the scheme on the Systemic Advocacy Management System (SAMS) as soon as possible. Include "refer to Task Force 24194" in the submission description. Describe the nature of the scheme and badges of fraud, but do not enter any personally identifiable information in the summary. Include TAMIS case number examples if available. You will receive an acknowledgement, but no further contact unless Systemic Advocacy needs further information. TAS employees who timely follow this SAMS process meet their obligation to report emerging schemes.
- (5) Treasury Dept. Circular No. 230 (Circular 230) [31 CFR Part 10] provides the rules of practice applicable to persons representing taxpayers before the IRS, including sanctions for violating any of those rules. Section 10.53(a) of Circular 230 provides that if an IRS officer or employee has reason to believe a practitioner has violated any of the rules of practice, the officer or employee must make a written report to the appropriate IRS Office(s) responsible for administering/enforcing Circular 230 (*i.e.*, report to the Office of Professional Responsibility (OPR) or the Return Preparer Office (RPO) regarding the suspected violation). How TAS employees comply with section 10.53(a) of Circular 230 will depend on whether TAS has consent of the taxpayer to make the report. If the taxpayer consents to revealing the representative's actions to OPR/RPO, the TAS employee will make a standard disclosure to OPR or RPO per IRM 13.1.5.8.1. If the taxpayer does not consent to the disclosure, follow the nonstandard disclosure procedures in IRM 13.1.5.10 to report the matter to the NTA, who will then make the written report to OPR or RPO. See IRM 13.1.5.12 for an example of when reporting a suspected violation may be appropriate, and IRM 13.1.23.5, Complaints from Taxpayers About Representatives, for additional information.
  - (6) The discretion not to disclose under IRC 7803(c)(4)(A)(iv) does not apply to persons other than the IRS. This means requests from the Treasury Inspector General for Tax Administration (TIGTA), Government Accountability Office (GAO), the Department of Justice (DOJ), the United States Attorney's Office, or persons requesting information pursuant to the FOIA are not subject to the confidentiality provision in IRC 7803. Similarly, the discretion not to disclose does not apply in the context of litigation. Follow the procedure described in IRM 13.1.5.5 (5) and IRM 13.1.5.9 when dealing with these requests.
  - (7) TAS employees must report bomb threats and similar emergency situations immediately. See <http://serp.enterprise.irs.gov>, under the link for Emergency Info at the top of the screen for procedures employees should use in various emergency situations. In addition, see IRM Exhibit 10.2.8-1, Incidents To Be Reported to SAMC, for a detailed list of incidents that must be reported.
  - (8) TAS employees must also report to TIGTA and other appropriate law enforcement personnel:
    - a. Threats of serious bodily harm or injury to self or others;
    - b. Employee crimes or other official misconduct as described by RRA 98 1203(b); and



- c. Any request by a taxpayer that TAS assist in defrauding the United States, conspire against the United States, or participate in or further any violation of the internal revenue laws.

**Note:** Violations of the internal revenue laws may require disclosure to TIGTA, the IRS's Criminal Investigation Division, or the DOJ.

## 13.1.5.4

(06-14-2023)

**Principles to Guide  
TAS's Exercise of  
Discretion under IRC  
7803(c)(4)(A)(iv)**

- (1) To protect TAS independence, TAS policy generally favors nondisclosure, except in cases involving standard disclosures, emergency disclosures, and disclosures to avoid harm to health or safety. These types of disclosure are explained in IRM 13.1.5.8.

- (2) TAS's exercise of discretion should:

- a. Promote broad expectation of confidentiality among taxpayers, TAS personnel, and other IRS personnel.
- b. Protect documents and statements (oral or written) received from *the taxpayer*.

**Note: Identify where the information came from. If the information did not come from the taxpayer or TAS confidentiality procedures under IRC 7803(c)(4)(A)(iv) are not applicable.**

- c. Protect notes (*e.g.*, TAMIS history) and TAS work products that contain *taxpayer provided* information or the identity of a taxpayer.
- d. Recognize exceptional situations where strong legal and policy concerns require disclosure.

- (3) In those instances where TAS discloses contact with a taxpayer or taxpayer-provided information *to the IRS*, disclosure should be limited to the information necessary to achieve the desired objective. See the second example in IRM 13.1.5.8.1.

- a. TAS personnel must avoid disclosing TAMIS history to the IRS. Even in rare cases where TAS discloses information to the IRS, TAS will not allow the IRS direct access to TAMIS and will not provide the IRS with a complete copy of the TAMIS history; in rare situations, after consultation with Counsel to the NTA, relevant excerpts from TAMIS may be provided. See IRM 13.1.5.8.1 (2) and the second example in IRM 13.1.5.8.3.3. Although certain IRS employees have access to reports that contain TAMIS information, that access is very limited, and they do not have access to TAMIS history. For example, Wage and Investment Operations Assistance Request (OAR) Liaisons have access to the OAR Reports allowing them to compile information about the status of OARs TAS sent to them, but they are unable to access TAMIS history.
- b. The Account Maintenance Services (AMS) TAS comment feature allows TAS to add histories on AMS that can be viewed by anyone with AMS access. There are 6 pre-approved, pre-written options, which will generate a TAS approved history:
  - TAS-Call Transferred to CCI-Non-Criteria
  - TAS-Contact meets IPSU Referral Eligibility
  - TAS-Direct Contact to TAS Office-Non-Criteria
  - TAS-Met TAS Criteria-Resolved with Self-Help
  - TAS-e-911 Not TAS Criteria-Frivolous Claim
  - TAS-e-911 Not TAS Criteria-Returned to BOD
 These are the only types of AMS history entries TAS employees can

make that will be visible to non-TAS IRS employees. TAS employees may use the Add Narrative button to add detailed history, but only TAS employees will see what was written.

13.1.5.5  
(06-14-2023)  
**Discretion Not to  
Disclose: IRC  
7803(c)(4)(A)(iv)**

- (1) In response to a request from an IRS employee, an LTA may exercise discretion not to disclose contact with, or information provided by, the taxpayer or the taxpayer's representative. The LTA must complete the LTA Confidentiality Questionnaire and follow the procedures in IRM 13.1.5.10 if the LTA either wants to exercise such discretion or believes a nonstandard disclosure is warranted.
- (2) TAS's discretion not to disclose information to the IRS may also be exercised by every intervening line supervisory position above the LTA up to and including the NTA. See IRM 1.11.4.5.2, Documenting Intervening Position Authority in Delegation Orders.
- (3) Any determination by an LTA to either withhold from or disclose to the IRS contact with, or information provided by, the taxpayer will be reviewed in accordance with the procedures provided in IRM 13.1.5.10.
- (4) Although TAS will usually honor a taxpayer's request to keep taxpayer-provided information confidential, TAS is not required by IRC 7803(c)(4)(A)(iv) to honor such a request.
- (5) TAS may withhold information **from the IRS** (including the Criminal Investigation Division) pursuant to IRC 7803(c)(4)(A)(iv). See IRM 13.1.5.8.3.3. This discretion does not apply to requests for information from anyone other than the IRS. This means requests from TIGTA, GAO, the DOJ, the United States Attorney's Office, or persons requesting information pursuant to the FOIA are not subject to the confidentiality provision in IRC 7803(c)(4)(A)(iv).

**Caution:** CAs should never disclose tax returns or return information to non-IRS personnel without prior approval except when disclosure is necessary to prevent serious bodily harm or harm to the public health or safety.

Identify who is requesting the information. When a CA receives a request from someone outside the IRS, the CA should immediately advise the LTA, who will contact the DEDCA. The CA and LTA Questionnaires do not need to be used for this type of request. The DEDCA will then contact Counsel to the NTA for advice and notify the NTA, DNTA, and EDCA. Consultation with the Disclosure Office may be appropriate in some cases.

**Exception:** Taxpayers should send FOIA requests to Disclosure as described in IRM 13.1.10.13, Freedom of Information Act. See IRM 13.1.20.7, Release of TAOs and Written IRS Responses, for additional information.

13.1.5.6  
(06-14-2023)  
**Communicating  
Confidentiality Rules to  
Taxpayers and  
Taxpayers'  
Representatives**

- (1) In the first contact with a taxpayer or the taxpayer's representative, TAS personnel must explain the confidentiality rule of IRC 7803(c)(4)(A)(iv). TAS personnel should also tell taxpayers (or their representatives) they will generally need to provide information to IRS personnel to resolve the taxpayer's problem.
- (2) The following is an example of what TAS employees could tell a taxpayer or taxpayer's representative when he or she contacts TAS:

*The Internal Revenue Code gives the Taxpayer Advocate Service the discretion not to disclose certain information to the IRS. To provide you the assistance or relief you are requesting, however, the Taxpayer Advocate Service will likely have to disclose to the IRS at least some of the information you provide. If you ask me not to disclose to the IRS what you tell me, the Taxpayer Advocate Service will generally honor your request.*

- (3) When TAS personnel need to expand the scope of what they disclose to the IRS beyond what the taxpayer or his or her representative agreed to in order to assist the taxpayer, TAS policy requires they seek consent from the taxpayer or taxpayer's representative, unless such disclosure is required by law or permitted pursuant to emergency or nonstandard disclosure procedures, which are described in IRM 13.1.5.8.2 or IRM 13.1.5.8.3.

13.1.5.7  
(06-14-2023)  
**Information Subject to  
Nondisclosure to the  
IRS**

- (1) Information subject to nondisclosure under IRC 7803(c)(4)(A)(iv) includes:
  - a. The fact that a taxpayer contacted TAS.

**Note:** TAS does not explicitly tell the IRS we are working with a taxpayer. However, TAS takes some routine actions like inputting STAUPS, adding TAS control bases, and adding the entity level TAS IDRS markers that indicate to the IRS that we're working with the taxpayer. These actions are taken because the NTA has determined the benefits to taxpayers outweigh the disclosure concerns.

  - b. Information (including documents) provided to TAS by a taxpayer.
  - c. TAMIS information, notes, and internal TAS memos or analysis containing *taxpayer-provided* information or the identity of a taxpayer who contacted TAS.

**Note:** Identify where the information came from. If the information comes to TAS from the taxpayer, TAS has discretion not to disclose. If, however, the same information comes to TAS from a third party or from IRS records, IRC 7803(c)(4)(A)(iv) does not apply.

- (2) If TAS decides to make a fraud referral, report the violation of internal revenue laws, or report the possible commission of a felony, then the nonstandard disclosure procedures in IRM 13.1.5.10 **must be** used if TAS gains information about the alleged fraud or offense from the taxpayer. In contrast, if TAS gains information about the alleged fraud or violation from a source other than the taxpayer, and the information is **not already known to the IRS**, then TAS makes the referral by completing Form 3949, Information Report Referral, without going through the nonstandard disclosure procedures in IRM 13.1.5.10.

**Note:** Generally, the employee who discovers the fraud or alleged violation will complete Form 3949 and forward to the appropriate function after review and approval by LTA.



13.1.5.8  
(06-14-2023)  
**Types of Disclosure to the IRS**

- (1) IRC 7803(c)(4)(A)(iv) determinations to disclose to the IRS information described in IRM 13.1.5.7 are made as follows:
  - a. Standard Disclosures may be made by (CAs without prior approval.
  - b. Emergency Disclosures require pre-approval by an LTA.
  - c. Nonstandard Disclosures require approval by the NTA (or designee) unless immediate disclosure is necessary to prevent serious bodily harm or harm to the public health or safety.

13.1.5.8.1  
(06-14-2023)  
**Standard Disclosure**

- (1) Standard disclosure is the most frequent type of disclosure. A standard disclosure is one where TAS discloses taxpayer provided information to the IRS with the taxpayer's consent to obtain relief for the taxpayer. The CA should disclose to the IRS only the information **necessary** for TAS to obtain the appropriate relief. CAs typically make standard disclosures through the Operations Assistance Request (OAR) process described in IRM 13.1.19. Completion of the Case Advocate Confidentiality Questionnaire discussed in IRM 13.1.5.10 is not necessary.

**Example:** The taxpayer is requesting an audit reconsideration (see IRM 4.13.1, Audit Reconsideration). The only way TAS can assist the taxpayer is to provide other IRS employees with the information the taxpayer provided to TAS so the IRS can re-evaluate the results of a prior audit and possibly adjust the taxpayer's account based upon the information. The CA may make a standard disclosure of such information to assist the taxpayer, provided TAS informed the taxpayer a disclosure may be necessary, and the taxpayer has not asked TAS to refrain from disclosing the information. The CA does not need approval from the LTA to disclose the information.

**Note:** Once TAS discloses information to the IRS it is no longer subject to TAS confidentiality rules. For example, TAS may send information necessary to support the creation of a partial pay agreement that reveals a levy source the IRS could later use if the taxpayer defaults on the agreement.

- (2) Not all information provided to TAS needs to be disclosed to the IRS to resolve a taxpayer's case. Keep in mind the taxpayer's right to privacy and only disclose the relevant information. TAS employees should not provide copies of TAMIS history (or any other access to TAMIS) to an IRS Operating Division.

**Example:** The CA asks a taxpayer for financial information and expense verification to send to the Automated Collection System (ACS) to support a request for Currently Not Collectible (CNC) status. The CA explains this information will be disclosed to the IRS so TAS can advocate for this relief. Upon receipt of the information, the CA discovers none of the allowable expenses exceed local or national standards, so TAS does not need to advocate for allowing an expense amount exceeding the standards. Based on the amount of the taxpayer's unpaid balance, current ACS guidance requires expense verification only if the expenses exceed the local or national standards. The CA makes a standard disclosure by sending an OAR to ACS recommending CNC status. The OAR includes the financial information secured from the taxpayer, but not the expense verification (receipts for medical expenses, etc.). The CA

## 13.1 Taxpayer Advocate Case Procedures

discloses to the IRS only the information necessary to advocate for relief. The CA does not need to consult with or seek approval from the LTA to disclose the information.

### 13.1.5.8.2 (06-14-2023) Emergency Disclosure

- (1) When the taxpayer is likely to be ***immediately harmed*** if the IRS does not take prompt action or cease an action (e.g., release a levy), and TAS is ***unable to contact*** the taxpayer to obtain consent to disclose information to the IRS, an LTA may authorize a CA to make an emergency disclosure of information necessary to resolve the taxpayer's problem. Standard disclosure may not be available because the taxpayer requested assistance in writing and TAS is unable to reach the taxpayer to inform him or her that such information may need to be disclosed to the IRS.

**Example:** TAS received a Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), containing a financial statement (Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals), and a letter, explaining a wage levy was in place and a paycheck is scheduled for the following week. The taxpayer also provided a copy of an eviction notice, stating if the taxpayer does not make a rent payment within ten days, the taxpayer will be evicted. The taxpayer did not provide a phone number on the form, and the telephone directory does not contain a listing for the taxpayer. The only method available to contact the taxpayer is by letter. If TAS does not disclose taxpayer-provided information to the IRS, the taxpayer is likely to be immediately harmed by the levy (i.e., the taxpayer will be evicted). To avoid such harm, TAS needs to contact an ACS employee to negotiate a release of the levy because TAS has no authority to release a non-systemic levy (see IRM 13.1.4, TAS Authorities). The CA should promptly recommend to the LTA that TAS disclose the taxpayer's financial statement to ACS so TAS can negotiate release of the levy.

- (2) In general, pre-approval for the emergency disclosure should be obtained from the LTA in writing. When time is of the essence, however, oral approval for the emergency disclosure may be given, but the CA must document in the TAMIS history that oral approval was obtained.

### 13.1.5.8.3 (06-14-2023) Nonstandard Disclosure

- (1) When no other type of disclosure to the IRS applies (e.g., standard or emergency disclosure), nonstandard disclosure procedures should be used. There are three types of nonstandard disclosures, discussed below:
  - Disclosure to prevent serious bodily harm or harm to the public health or safety;
  - Disclosure to address a systemic problem; and
  - Other disclosures, including disclosures to address noncompliance.

#### 13.1.5.8.3.1 (06-14-2023) Disclosure to Prevent Serious Bodily Harm or Harm to the Public Health or Safety

- (1) If a taxpayer has taken steps or threatened to take steps to cause serious bodily harm to the public health or safety, then TAS personnel should use common sense in disclosing this information to TIGTA or appropriate law enforcement personnel (including IRS security, if appropriate). TAS personnel should report such circumstances immediately to IRS security or TIGTA pursuant to IRM 10.2.8.2, Incident Report, in accordance with local proce-

dures. See <http://serp.enterprise.irs.gov> Emergency Info at the top of the screen for procedures employees should use in various emergency situations.

- (2) If disclosure is necessary to prevent harm to health or safety, although prior approval is not required, TAS personnel must also report such incidents to their manager. TAS personnel do not need to use the *Confidentiality Questionnaires* in such circumstances.

**Example:** The taxpayer came into a TAS office because he was being audited and believed the Examiner was taking an unreasonable position. During the visit the taxpayer stated he would shoot the Examiner. Even if the taxpayer asked the CA not to tell the IRS, the CA should alert TIGTA immediately in accordance with IRM 10.2.8.2, Incident Report, and IRM 21.1.3.10, Safety and Security Overview, and then report to a TAS manager.

13.1.5.8.3.2  
(06-14-2023)

**Disclosure to Address a Systemic Problem**

- (1) IRM 13.1.11.2.1.3(4), Documenting Analysis, IRM 13.1.21.2.1.1, Relief Codes, requires TAS employees to report identified systemic problems on SAMS. IRM 13.1.5.3(4)(f) explains how TAS employees report emerging refund fraud schemes affecting multiple taxpayers.
- (2) If TAS identifies a systemic problem with an IRS process, and the IRS Operating Division requests specific case examples to assist in solving the problem, the NTA may approve disclosure of taxpayer-provided information to the Operating Division after weighing the potential benefits of disclosure to the IRS against the importance of protecting TAS independence and maintaining the confidence of taxpayers in future cases.

**Example:** TAS learns IRS personnel are working a particular type of case incorrectly. The IRS Operating Division has been unable to validate this problem using its own quality review process. The IRS Operating Division requests that TAS provide specific examples where the Operating Division employees erred so that management can get a better understanding of how and when such errors occur. Redacted information would not be useful because the Operating Division would not be able to pull up information about the cases in its case processing databases. The Operating Division agrees that the taxpayer-specific information will not be disclosed to IRS employees currently working on the cases identified by TAS. After weighing the potential benefits of disclosure to the IRS against the importance of protecting TAS independence and maintaining the confidence of taxpayers in future cases, the NTA may approve disclosure of taxpayer provided information to the Operating Division.

13.1.5.8.3.3  
(06-14-2023)

**Other Disclosures, Including Disclosures to Address Noncompliance**

- (1) If a taxpayer declines to take the steps necessary to come into compliance with federal tax laws, or the CA believes that taxpayer-provided information should be disclosed to the IRS and the taxpayer disagrees, the CA must follow the procedures in IRM 13.1.5.10 to determine whether disclosure may be made.

**Example:** The taxpayer contacted TAS because he did not receive his EITC refund. The taxpayer had been working with Exam but believes it has taken too long to get his refund. In discussions with the taxpayer, the CA learns that the taxpayer and his wife have both been filing as Head of

Household and claiming the EITC on separate returns for the past five years. The CA informed the taxpayer of the filing requirements and asked the taxpayer to prepare amended returns for all open years. The taxpayer then declined further assistance from TAS. This is a nonstandard case because the taxpayer no longer wants assistance from TAS and has refused to file amended returns, which would bring the past violation to the IRS's attention. The CA must elevate the nonstandard disclosure question to the LTA in accordance with the procedures in IRM 13.1.5.10.

- (2) TAS may receive requests from the IRS Criminal Investigation (CI) Division for information about a TAS case. If the request is in connection with a DOJ case and CI is assisting DOJ, TAS has no discretion to withhold the information. See IRM 13.1.5.5 (5) and IRM 13.1.5.9. If the CI request is not in connection with litigation, then TAS follows the nonstandard disclosure procedures in IRM 13.1.5.10 to determine whether to disclose to CI.

**Example:** The Integrity & Verification Operation (IVO) is holding a taxpayer's refund. The CA completed the initial contact with the taxpayer by telephone, during which the CA requests documentation from the taxpayer to verify wages and withholding. While the CA is waiting for the taxpayer to send this documentation, a local CI special agent contacts the CA. The special agent advises the CA that CI opened an investigation of the taxpayer, and the agent noticed TAS has an open control on the account. The special agent asks the CA for a copy of the case file to assist in their investigation. After determining the CI request is part of a CI investigation but CI has not yet made a referral to DOJ, the CA and LTA follow the nonstandard disclosure procedures per IRM 13.1.5.10.

13.1.5.8.3.4  
(06-14-2023)

**Considerations in a  
Nonstandard Disclosure  
Case**

- (1) In making determinations about nonstandard disclosures, TAS will consider first whether such disclosure is necessary to prevent the following:
- a. a manifest injustice;
  - b. a violation of law;
  - c. economic harm to the public or another person; or
  - d. serious bodily harm or harm to the public health or safety.
- (2) If the disclosure is necessary per the factors above, TAS will determine whether the need for such disclosure outweighs the importance of protecting TAS's independence and maintaining taxpayer confidence in TAS in the future. This consideration will include:
- a. Was the information provided by the taxpayer, discovered by TAS, or did the IRS contact TAS requesting information?
  - b. What role did TAS play, if any, in the events that gave rise to the need to consider disclosing information to the IRS?
  - c. Does the IRS already have access to or the ability to identify this information?
  - d. What is the likelihood of the IRS identifying the issue with its normal processes, independent of TAS?
  - e. Would disclosure give the appearance that TAS is performing enforcement activity?

**Note:** For nonstandard cases involving situations a through c, above, TAS will evaluate the information using the Confidentiality Questionnaires. When disclosure is necessary to prevent harm to health or safety, as described in factor d, however, TAS personnel do not need to use the Confidentiality Questionnaires. Instead, TAS personnel should immediately follow disclosure procedures provided in IRM 10.2.8.2, Incident Report, and IRM 21.1.3.10, Safety and Security Overview.

- (3) In addition to weighing these factors, other federal laws legally limit TAS discretion to not disclose. See IRM 13.1.5.3 for details.

13.1.5.9  
(06-14-2023)  
**Disclosure to Counsel,  
DOJ, or the U.S.  
Attorney's Office**

- (1) To assist taxpayers, TAS employees may need to seek legal advice from the IRS Office of Chief Counsel. TAS employees can disclose taxpayer-provided information to the IRS Office of Chief Counsel, even if the taxpayer has not agreed to disclosure. Disclosure to Counsel is not considered disclosure to the IRS within the meaning of IRC 7803(c)(4)(A)(iv). Further, Counsel cannot disclose to the IRS (including CI) any information subject to nondisclosure pursuant to IRC 7803(c)(4)(A)(iv) (including the identity of the taxpayer seeking TAS's assistance) that TAS discloses during these consultations. See IRM 13.1.10.2, Obtaining Legal Advice from Chief Counsel, and CCDM 33.1.2.4.3.3.2, Role of Counsel in the Section 7803(c)(4)(A)(iv) Context, for additional information.

**Note:** When seeking Counsel advice, let Counsel know in writing and orally that you are not disclosing taxpayer-provided information to the IRS, and that Counsel should refrain from disclosing to any other function within the IRS any information provided by the taxpayer (or representative), including the identity of the taxpayer seeking TAS's assistance. Be sure to remind Counsel of the requirement of keeping the taxpayer's information confidential. See IRC 7803(c)(4)(A)(iv). If a TAS employee learns that Counsel has not adhered to the requirement of keeping the taxpayer's information confidential, the TAS employee should immediately report the disclosure to the Counsel to the NTA.

- (2) IRC 7803(c)(4)(A)(iv) does not authorize an LTA to protect information when the IRS is required to produce information in connection with litigation. These requests could arise in a variety of contexts, including civil tax litigation in which the DOJ represents the government, or criminal litigation in which the United States Attorney's Office represents the government. LTAs must disclose the pertinent information to the appropriate government attorney handling the case **after obtaining advice from the Counsel to the NTA**. See IRM 13.1.5.5 (5) for more information. Before turning over any information in a litigation matter, TAS employees should ask for a written statement (email is acceptable) from the government attorney handling the litigation, detailing the name of the case, docket number, court, and the information being sought from TAS. Provide this written statement to the Counsel to the NTA.

**Note:** Criminal Investigation (CI) may ask for information on behalf of DOJ, in which case the confidentiality procedures do not apply. If CI requests information in connection with an investigation that has not yet been referred to DOJ, the nonstandard disclosure procedures in IRM 13.1.5.10 apply. Also see the second example in IRM 13.1.5.8.3.3.



- (3) When litigation is initiated or is reasonably anticipated, the Office of Chief Counsel may issue a “litigation hold” notice via email to any IRS employee who may possess information relevant or potentially relevant to the litigation. A TAS employee who receives a litigation hold notice must ensure that all documents and electronically stored information (ESI) that may be relevant or potentially relevant to the litigation are collected and preserved (even if that means retaining them beyond the normal record retention period). Upon receipt of a litigation hold notice, a TAS employee should inform his or her manager, and then respond to the Chief Counsel attorney within seven business days. The response must indicate receipt of the notice, and an understanding that all relevant or potentially relevant documents must be preserved. If the TAS employee had no involvement with the subject of the litigation hold notice, the TAS employee must inform the Chief Counsel attorney of the lack of involvement in the matter. TAS employees do not need to provide the documents or ESI upon receipt of the litigation hold notice; as the litigation proceeds, the Chief Counsel attorney will contact the affected TAS employees if sending the documents or ESI becomes necessary. The CA and the LTA should not use the nonstandard disclosure procedures when responding to a litigation hold notice, or when providing the documents or ESI. Any questions about the litigation hold notice should be directed to the Chief Counsel attorney who issued it or to the Counsel to the NTA. Before providing any documents and ESI in response to the litigation hold, contact the Counsel to the NTA for advice.
- (4) The IRS may ask TAS for taxpayer-provided information in connection with a personnel action or proceeding (*e.g.*, disciplinary/adverse actions, suitability determinations, and other personnel decisions). IRC 6103(l)(4)(B) authorizes the disclosure of returns and return information to employees of the Department of the Treasury for use in any personnel action or proceeding (or in preparation for a personnel action or proceeding) if the disclosure is necessary to advance or protect the interests of the United States. Typically, an attorney from the General Legal Services (GLS) division of the Office of Chief Counsel will be representing the interests of the United States. The CA and the LTA should not use the nonstandard disclosure procedures for these types of requests; the LTA must disclose the pertinent information to the GLS attorney handling the action or proceeding **after obtaining advice from the Counsel to the NTA**.
- (5) Occasionally, TAS employees may receive a request for testimony in a litigation matter. Such requests may come from the taxpayer, DOJ, or the United States Attorney’s Office. These requests are not subject to the confidentiality provision in IRC 7803(c)(4)(A)(iv). The CA and the LTA should not use the nonstandard disclosure procedures for these types of requests. Instead, **the LTA must obtain advice from the Counsel to the NTA whenever he or she receives a request for a TAS employee’s testimony**. See IRM 13.1.10.2.6, Requests for TAS Employees to Testify or Produce IRS Records or Information.
- a. If the TAS employee’s testimony is necessary, a testimony authorization may be required, depending on who requested the testimony (government, taxpayer, or third party), whether the government is a party to the case, and whether the testimony relates to “IRS matters,” “non-IRS matters,” and “IRS congressional matters.” See CCDM 34.9.1, Disclosure, Testimony, and the Production of Documents, and IRM Exhibit 1.2.2-2. Local SB/SE Counsel may need to prepare the testimony autho-

rization in accordance with IRM 11.3.35, Requests and Demands for Testimony and Production of Documents. A testimony authorization is always required if a person other than the government (*i.e.*, taxpayer or third party) has subpoenaed the employee to testify, regardless whether the testimony relates to an IRS matter, a non-IRS matter, or an IRS congressional matter.

- b. It may not be necessary for a TAS employee to testify if the information sought is available from other sources. The subpoena can be quashed or withdrawn, and TAS can work with the local Disclosure Office to provide the information. Discuss the feasibility of this option with the Counsel to the NTA.
- c. When a TAS employee's testimony is necessary in a criminal case, the employee's manager may receive a "Henthorn" request from the Special Agent in Charge. See United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991). The Special Agent in Charge may request information contained in the TAS employee's personnel file relating to the employee's credibility, or other exculpatory or impeachment material. See IRM 9.6.3.7.1.1, Henthorn Requests, for additional information.

13.1.5.10  
(06-14-2023)  
**Handling a Nonstandard  
Disclosure Case**

- (1) If disclosure is required to prevent serious bodily harm to the public health or safety, the CA should immediately follow disclosure procedures provided in IRM 10.2.8.2, Incident Report, and IRM 21.1.3.10, Safety and Security Overview.
- (2) If disclosure is proposed to address a systemic issue or to address a specific case in which a Systemic Advocacy employee is assisting a CA, as described in IRM 13.1.5.8.3.2, the proposal should be elevated to the NTA in the following manner. Systemic Advocacy personnel complete a Systemic Advocacy Confidentiality Questionnaire and a proposed NTA Confidentiality Determination. See IRM 13.1.5.1.7 for a link to an electronic fill-in version of both forms. Seek input from the TAS Attorney Advisor handling confidentiality matters, who will consult with the Counsel to the NTA. The TAS Attorney Advisor will then send both documents to the NTA, with a copy to the Executive Director of Systemic Advocacy. The NTA (or designee) will make the final disclosure decision and revise the proposed NTA Confidentiality Determination accordingly. The NTA (or designee) will confirm the decision by returning signed copies of the NTA Confidentiality Determination.
- (3) When no other type of disclosure to the IRS applies, (e.g., standard or emergency disclosure), the CA must complete a CA Confidentiality Questionnaire and forward the Questionnaire to the LTA. See IRM 13.1.5.1.7 for a link to an electronic fill-in version of the CA Questionnaire.

**Note:** When working a nonstandard disclosure case, remember no two cases are alike. In completing the Confidentiality Questionnaires consider and address all of the factors in IRM 13.1.5.8.3.4 (2).

**Note:** If the situation involves multiple taxpayers a single set of CA and LTA questionnaires may be submitted for all taxpayers only if their fact patterns are so similar that the questionnaires would be identical if submitted separately.

- (4) Upon receipt of a Case Advocate Confidentiality Questionnaire, the LTA reviews the CA's recommendation, completes the LTA Confidentiality Question-

naire (see below), and then forwards his or her recommendation to the DEDCA along with the Confidentiality Questionnaire Routing Slip (see below) and a proposed NTA Confidentiality Determination (see below). See IRM 13.1.5.1.7 for a link to electronic fill-in versions of the CA Questionnaire, LTA Questionnaire, NTA Confidentiality Determination, and the Confidentiality Questionnaire Routing Slip.

- (5) The DEDCA ensures the LTA's determination is fully developed in accordance with TAS's confidentiality procedures. The DEDCA then forwards the LTA's forms and recommendation to the NTA's Attorney Advisor handling confidentiality matters.

**Note:** The NTA Attorney Advisor for Confidentiality may change periodically. You can contact the Supervisory Attorney Advisor for current attorney advisor's contact information. See *TAS Directory for Attorney Advisors* at [https://organization.ds.irsnet.gov/sites/tas/SiteAssets/TAS\\_Dir\\_Page.aspx?dir=National%20Office,%20Attorney%20Advisor](https://organization.ds.irsnet.gov/sites/tas/SiteAssets/TAS_Dir_Page.aspx?dir=National%20Office,%20Attorney%20Advisor).

- (6) The NTA's Attorney Advisor will consult with Counsel to the NTA and then send a recommendation to the NTA.
- (7) The NTA (or designee) will make the final disclosure decision and revise the proposed NTA Confidentiality Determination accordingly. The NTA (or designee) will confirm the decision by sending signed copies of the NTA Confidentiality Determination to the DEDCA and LTA who will ensure the determination is made part of the case file.
- (8) The nonstandard disclosure questionnaire processing timeframes (except for the Systemic Advocacy Confidentiality Questionnaire) are as follows.

Action	Normal Process Timeframes
CA prepares Case Advocate Confidentiality Questionnaire and submits to the LTA with the case file.	Within two business days.
LTA prepares Local Taxpayer Advocate Confidentiality Questionnaire and forwards to the DEDCA.	Within two business days.
DEDCA reviews and makes recommendation to the NTA Attorney Advisor.	Within two business days.
NTA Attorney Advisor consults with Counsel to the NTA and then makes a recommendation to the NTA.	Within five business days.



Action	Normal Process Timeframes
The NTA makes the disclosure decision, forwards it to the DEDCA and the LTA, and provides copies to the DNTA, EDCA, NTA Attorney Advisor, and Counsel to the NTA.	Within five business days.
Total processing time	Sixteen business days.

13.1.5.11  
(06-14-2023)  
**Confidentiality and  
Disclosure in the  
Identity Theft Context**

- (1) Identity theft occurs when someone uses an individual's personal information, such as name, Social Security number (SSN), or other identifying information without permission to commit fraud or other crimes. For general information about identity theft and the documentation necessary to establish identity theft occurred, see IRM 25.23.2, Identity Protection and Victim Assistance - General Case Processing. Questions involving disclosure and identity theft can often be complex; LTAs and DEDCAs should consult with the NTA's Attorney Advisor handling confidentiality matters if they have questions.
- (2) TAS employees may encounter the following scenarios:
  - a. Scenario A: Taxpayer X is an undocumented worker, not eligible for an SSN. Taxpayer X uses another taxpayer's SSN to obtain employment.
  - b. Scenario B: Taxpayer Y files an individual income tax return using another taxpayer's name and SSN. The return is fictitious and Taxpayer Y is filing solely to claim a fraudulent refund.
  - c. Scenario C: Taxpayer Z files an individual income tax return for refund using his own name and SSN. Later, Taxpayer Z files a second tax return for the same year and claims an identity thief filed the first tax return in order to receive a second refund.
- (3) In scenario A, if Taxpayer X filed a return using an individual taxpayer identification number (ITIN) and is paying taxes on the wages he earned, Taxpayer X has not violated the internal revenue laws. Thus, the LTA has no obligation to report anything under IRC 7214(a)(8). Even though using someone else's SSN to obtain employment is a non-tax felony, IRC 6103(i)(3)(A) doesn't support disclosure to another federal agency (*e.g.*, Immigration and Customs Enforcement) for non-tax law enforcement purposes in this situation.
- (4) In contrast, if Taxpayer X is attempting to evade tax, or willfully fails to file a return or pay tax on wages earned while using another taxpayer's SSN and refuses to work with TAS to bring the violation to the IRS's attention per IRM 13.1.5.8.3.3, Taxpayer X may be violating laws under the Internal Revenue Code (*e.g.*, IRC 7201, IRC 7203). In that situation, follow the nonstandard disclosure procedures in IRM 13.1.5.10 to report the potential violation to the NTA for appropriate action, consistent with IRC 7214(a)(8). See IRM 13.1.5.3 for additional information.
- (5) In scenario B, the fictitious return filed by Taxpayer Y to obtain a fraudulent refund is not a valid return. The use of another taxpayer's identity in this fashion is a possible violation of the internal revenue laws and a possible felony under 18 U.S.C. 1028(a)(7) (use, without lawful authority, of a means of identification of another person with the intent to commit an activity that

violates federal law). Any information TAS has about the true identity of Taxpayer Y and about the inappropriate use of another taxpayer's name and SSN should be reported as both a potential fraud referral to CI (to comply with IRC 7214), and a referral to Disclosure (to comply with 18 U.S.C. 4). Per Delegation Order 11-2 Rev. 3 (found in IRM 1.2.2.11.2), only Disclosure has the delegated authority to disclose information to non-IRS federal law enforcement officials. See IRM 13.1.5.3 for additional information. If TAS gained any of the information from communication with Taxpayer Y or his representative, the referrals must be made using the nonstandard disclosure procedures in IRM 13.1.5.10. Once a referral to CI has been approved by the NTA through the nonstandard disclosure process, the referral can be sent to the CI mailbox at *&CI-HQ-RC-S&A EMP* to be addressed.

- (6) In scenario C, Taxpayer Z seeks relief through TAS by claiming to be a victim of identity theft, even though the taxpayer filed both tax returns under his own SSN. The second return is not an attempt to correct or amend the original return. If the CA discovers the taxpayer fraudulently filed the second tax return in an attempt to receive a second refund, and the taxpayer refuses to work with TAS to bring the violation to the IRS's attention per IRM 13.1.5.8.3.3, the CA follows the nonstandard disclosure procedures in IRM 13.1.5.10 to report the suspected fraud to the NTA for appropriate action, consistent with IRC 7214(a)(8). See IRM 13.1.5.3 for additional information.

13.1.5.12  
(06-14-2023)

**Disclosure Regarding  
Practitioner or Preparer  
Misconduct**

- (1) Unfortunately, there are some unscrupulous individuals assisting taxpayers, either through representation or preparation of returns. In certain situations, a referral to the Office of Professional Responsibility (OPR) or the Return Preparer Office (RPO) may be appropriate. See IRM 13.1.23.5, Complaints from Taxpayers About Representatives, IRM 25.24, Return Preparer Misconduct Program, and IRM 1.25.4.2, Referrals to the Office of Professional Responsibility, for additional information.

**Example:** A taxpayer seeks TAS assistance because she has not received her refund. The taxpayer informs the CA an individual prepared the taxpayer's return and filed it electronically, requesting direct deposit of the refund. The taxpayer shows the CA the printed copy of the return the preparer provided. Through account research, the CA learns a larger refund was direct deposited, but discovers the bank account number, routing information, and itemized deductions on the return filed do not match the copy of the return given to the taxpayer. It appears the preparer changed the account number, routing information, and itemized deductions on the filed return to divert a higher refund into a bank account controlled by the preparer. If the taxpayer consents to disclosure to the IRS of Forms 14157 and 14157-A completed by the taxpayer, then TAS makes a standard disclosure to advocate for the taxpayer, and per IRM 25.24.2.3.5, Return Preparer Office Notification Requirements, the IRS forwards the complaint to RPO. If the taxpayer does not consent to the disclosure, and TAS possesses information about the preparer's violation of the rules of practice, TAS employees follow the nonstandard disclosure procedures in IRM 13.1.5.10 to appropriately refer the matter to OPR or RPO in accordance with IRM 13.1.5.3 (5).

- (2) Form 8484, Report of Suspected Practitioner Misconduct, is used to make referrals to the OPR. Form 14157, Return Preparer Complaint, is used to make referrals to RPO.