

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:WI:SDMurray
PRES-106428-20

UILC: 6061.00-00, 6064.00-00, 6103.02-06, 6103.03-00

date: November 09, 2020

to: David M. Tyree, III
Chief, Technical Support Section
Specialty Programs Branch
Submission Processing (Wage & Investment)

from: Joanne B. Minsky /s/
Division Counsel
(Wage & Investment)

subject: Automation of the IRS's Income Verification Express Service (IVES)

This memorandum responds to your request for assistance dated September 14, 2020. This advice may not be used or cited as precedent.

ISSUE

Whether the IRS Information Technology's planned "Solution Concept" for automation of IVES (1) meets the requirements of section 2201 of the Taxpayer First Act (TFA) or (2) conforms to the "legislative intent" underlying section 2201.

CONCLUSION

[REDACTED]

FACTS

The IVES Program is principally used by lenders, others in the financial community, and governmental entities to confirm a taxpayer's income, most often to facilitate the

processing of a loan application. See [Main IRS.gov/IVES Site; https://www.irs.gov/individuals/international-taxpayers/income-verification-express-service](https://www.irs.gov/individuals/international-taxpayers/income-verification-express-service). Your branch within W&I administers the program for the IRS, including communicating with those in the program and conducting regularly scheduled meetings with a subgroup of participants that largely represent the views and interests of the mortgage and lending industry, which has expressed its expectations and needs related to the automated program required by section 2201.

To register for IVES, a prospective user completes and submits Form 13803, *Application to Participate in the Income Verification Express Service (IVES) Program*. Applicants identify their organizational status on the form, including a corporation, partnership, limited liability company, sole proprietorship, or government agency, as well as their reasons for using IVES (which can be multiple), including mortgage services, background or credit checks, banking services, and issuing licenses. Form 13803 informs the applicant that the IRS conducts “a suitability check on the applicant, and on all Principals listed on the application to determine the applicant's suitability to be an IVES participant.”

IVES participants must comply with Publication 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*, which in part describes the requirement on financial institutions to comply with the Federal Trade Commission's Safeguards Rule (16 C.F.R. Part 314) that requires these entities to design and implement a security plan to protect the consumer information they collect.

IVES participants are able to obtain certain transcripts of taxpayers' and passthrough entities'¹ Master File accounts and transcripts of data from several types of information returns, such as Forms W-2 and 1099 series. Participants obtain the transcripts via a written consent (or synonymously, a request) of the taxpayer authorizing the disclosure of the information.

I. Current Process for IVES's Disclosures

IVES requests are made on a form in the Form 4506 series, such as Form 4506-T, *Request for Transcript of Tax Return*, or Form 4506-T-EZ, *Short Form Request for Individual Tax Return Transcript*. The standard process entails an IVES participant faxing a completed prior version of Form 4506-T (Rev. 3-2019)² or Form 4506-T-EZ, after it's been signed and dated by the taxpayer (or authorized representative), to a designated Return and Income Verification Services (RAIVS) Unit. In September 2020, the IRS released Form 4506-C, *IVES Request for Transcript of Tax Return*, which replaces use of Forms 4506-T and T-EZ for IVES requests and serves the same purpose (Forms 4506-T and T-EZ can still be used until March 1, 2021).

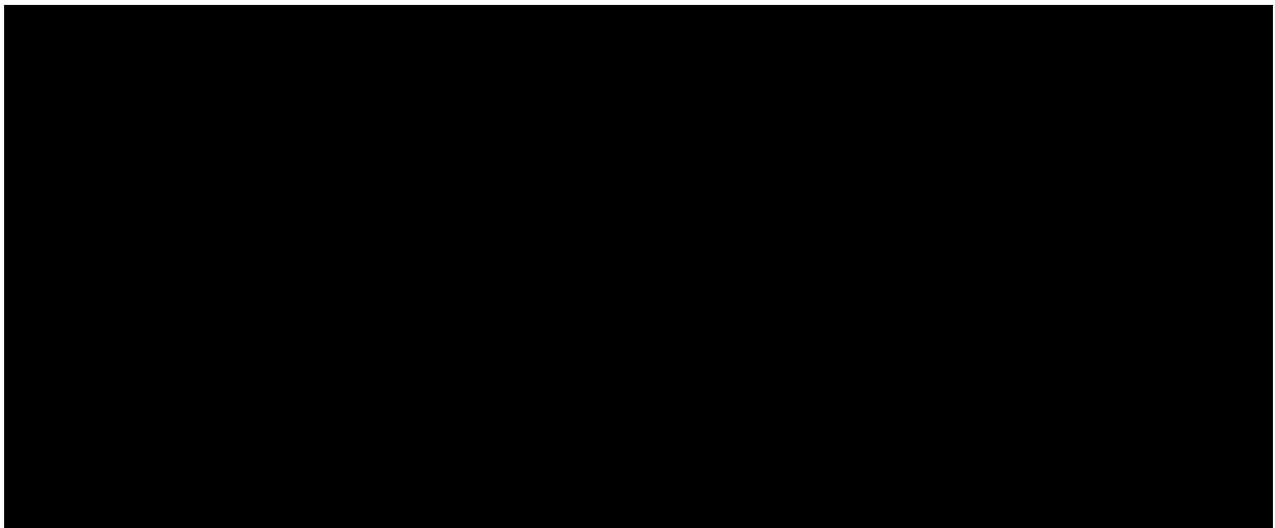
¹ Information maintained on partnerships and other passthrough entities is confidential tax information (“return information”). I.R.C. § 6103(b)(1), (b)(2)(A).

² The IRS will only accept Forms 4506-T or Forms 4506T-EZ that have a revision date of September 2018 or March 2019.

The forms are submitted in batches, of either “qualified disclosures” defined in TFA § 2201 (discussed below) or non-qualified disclosures. The RAIVS unit processes the batches, retains the forms, and transmits the transcripts, using the Transcript Delivery Service, to a Secure Object Repository accessible to the IVES participant through their e-Services Secure Access online account. Participants pay a user fee for each transcript requested.

Taxpayers have been able to sign the forms in the 4506 series that are used for IVES with a handwritten “wet” signature or with certain electronic signatures (e-signatures), such as a PIN (see [IVES Electronic Signatures](#) page on IRS.gov for more details).

II. Section 2201 “Solution Concept”



LAW AND ANALYSIS

I. Law

- The Taxpayer First Act

The TFA was enacted on July 1, 2019 (Pub. L. No. 116-25). Section 2201 of the Act is centered on “qualified disclosures.” Subsection (a) requires the IRS, by January 1, 2023 to:

- [I]mplement a program to ensure that any qualified disclosure—
 - (1) is fully automated and accomplished through the Internet; and
 - (2) is accomplished in as close to real-time as is practicable.



Subsection (b) defines a “qualified disclosure” as “a disclosure under [I.R.C.] section 6103(c) . . . of returns or return information . . . to a person seeking to verify the income or creditworthiness of a taxpayer who is a borrower in the process of a loan application.”

Under subsection (c), the IRS must “ensure that the program described in subsection (a) complies with applicable security standards and guidelines.” Finally, subsection (d)(1) authorizes the agency to charge a user fee for qualified disclosures at rates sufficient to cover the costs of implementing the new program, “including the costs of any necessary infrastructure or technology.” The user fee can be charged for two years beginning six months after the date of enactment—i.e., starting January 1, 2020—and is in addition to the standard user fee already collected for processing disclosure requests.

- Authentication and Electronic Signatures in General

Section 6061(a) of the Code provides the general rule that “any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations.” Treasury Regulation § 301.6061-1(b) provides that the IRS may prescribe the method of signing in forms, instructions, or other appropriate guidance. Section 6061(b) provides that the IRS must “develop procedures for the acceptance of signatures in digital or other electronic form” and until it does so it may “waive the requirement of a signature” or “provide for alternative methods of signing” a document. These methods are valid “[n]otwithstanding any other provision of law.” In addition, the IRS may implement a waiver or alternative method by publishing guidance. I.R.C. § 6061(b)(3)(A). Any decision to adopt an alternative signature method should be weighed against the risk of the signer successfully disavowing the signature. Pursuant to section 6064, an individual’s signature on “a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.”

Because the internal revenue laws do not require any particular form of signature, whether to adopt any method other than an original wet ink signature is a business decision. IRM 10.10.1, *Identity Assurance, IRS Electronic Signature (e-Signature) Program*, sets forth IRS requirements applicable to making that decision. As noted in this IRM section, the decision must be made on a form-by-form basis. Different forms have different associated risks.

IRM 10.10.1.3 states that an e-signature may be used to sign an IRS form or other document, and it will satisfy the requirements of I.R.C. § 6061(b) and Treas. Reg. § 301.6061-1 if the signature is made using the permitted electronic signing process for that specific IRS document. The IRM section sets forth five requirements for a proper e-signature process. The requirements include use of one of the acceptable forms of e-signature described in 10.10.1.3.2 (e.g., a password or PIN or a scanned or digitized image of a handwritten signature attached to an electronic record) and a means to identify and authenticate an individual as the signer.

- Disclosure to IVES Participants as Third-Party Designees

Code section 6103(c) states in part:

The Secretary may, subject to such requirements and conditions . . . prescribe[d] by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to . . . persons as the taxpayer may designate in a request for or consent to such disclosure However, return information shall not be disclosed . . . if the Secretary determines that such disclosure would seriously impair Federal tax administration.

[Regulations](#) at 26 C.F.R. § 301.6103(c)-1 implement this provision by requiring a taxpayer to submit a written, signed and dated request that includes: (i) the taxpayer's identifying information, (ii) the designee's identity, and (iii) the type of return or return information to be disclosed and the associated tax years or periods. The IRS must receive the request within 120 days of the date on which it was signed and dated by the taxpayer. *Id.* § 301.6103(c)-1(b)(2).

Section 6103(c) and the underlying regulations do not specify or require any particular manner of authentication. The rules require, instead, that a taxpayer manifest consent to the IRS to make a disclosure. Under the existing IVES Program, IVES participants authenticate taxpayers who use e-signatures. The IRS requires these IVES participants to adhere to certain criteria in their authentication protocols, including maintaining audit logs and engaging an independent party to conduct quality reviews of their e-signature process. The IRS takes note of that framework when judging whether a specific taxpayer has, in fact, authorized disclosure, as required under § 6103(c).

II. Analysis

As with any statute, well established rules of statutory construction apply to TFA section 2201. The most fundamental rule is that statutory language is applied using its plain, ordinary meaning whenever possible. When the meaning is clear, the interpretation ends. *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, 2364 (2019); *Matal v. Tam*, 137 S.Ct. 1744, 1756 (2017). The “plain meaning rule” assumes that a statute's words have the same meaning to those who authored it as to those who read it. *2A Sutherland Statutory Construction* § 46:1 (7th ed. 2007). The rule further assumes the legislature knew the plain and ordinary meanings of the words it chose to include in a statute. *Smith v. Meridian-Lauderdale Cty. Pub. Library*, No. 3:17-CV-501-CWR-FKB, 2019 WL 454597, at *4 (S.D. Miss. Feb. 5, 2019); *see also New York v. National Highway Traffic Safety Admin.*, No. 19-2395-AG, — F.3d —, 2020 WL 5103860, at *4 (2d Cir. Aug. 31, 2020) (stating that in assessing “ordinary meaning,” a statute's words are considered to have their commonly understood meaning at the time Congress enacted the statute and their place in the overall statutory scheme). Federal agencies and courts should give words, phrases and clauses their common, contemporary and approved usage. *United States v. Cox*, 963 F.3d 915, 920 (9th Cir. 2020); *United States v. Lehman*, 225 F.3d 426, 428 (4th Cir. 2000); *Bisio v. City of Vill. of Clarkston*, No. 158240, — N.W.2d —, 2020 WL 4260397, at *4 (Mich. Jul. 24, 2020).

Nevertheless, statutory terms are not always applied literally, such as when it would lead to an absurd result or there is clear evidence of contrary legislative intent. *United States v. DBB, Inc.*, 180 F.3d 1277, 1281 (11th Cir. 1999). Another example is when the plain meaning of the act's words is at variance with the policy of the statute as a whole. *Escobar Ruiz v. INS*, 838 F.2d 1020, 1023 (9th Cir. 1988), *abrogated on other grounds*, *Ardestani v. INS*, 502 U.S. 129 (1991). Similarly, particular legislative language is also not applied in isolation, without regard to the overall context and statutory scheme. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000); *Smith v. Zachary*, 255 F.3d 446, 448 (7th Cir. 2001).

[REDACTED] *Board of County Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 965 F.3d 792, 804 (10th Cir. 2020) (citing to the rule that statutory language is ambiguous when it can be understood by reasonably well-informed persons in two or more different senses); *Monzon v. De La Roca*, 910 F.3d 92, 101 (3d Cir. 2018) (referring to disputed language “reasonably susceptible to different interpretations”) (emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *United States v. Lazarenko*, 624 F.3d 1247, 1251 (9th Cir. 2010) (explaining that when “a literal application of the plain text leads to absurd results, the plain text does not control”); see also *Caraco Pharmaceutical Laboratories, Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 416 (2012) (holding that the “mere possibility of clearer phrasing cannot defeat the most natural reading of a statute”).

[REDACTED] When interpreting a provision of a statute, consideration is given to the statute as a whole. *Gundy v. United States*, 139 S.Ct. 2116, 2126 (2019); *Iverson v. United States*, 973 F.3d 843, 847-48 (8th Cir. 2020). The Committee on Ways and Means described the “purpose” of the legislation as improving IRS operations and the administration of the tax laws by “strengthening taxpayer rights, *enhancing customer service*, [and] *advancing information technology*” (as well as restructuring the agency). H.R. Rep. No. 116-39, 116th Cong., 1st Sess., 26 (Apr. 9, 2019) (emphasis added).⁶ The reasons for requiring a fully automated IVES program for electronic submissions and electronic responses are to “reduce operational costs and reduce paperwork burdens for borrowers” and “increase small business access to capital, thereby making borrowing more affordable, easier, and safer for consumers and small business.” *Id.* at 84. The automated process should “be as close to real time as possible while providing the same data fields currently provided by the non-automated version.” *Id.*

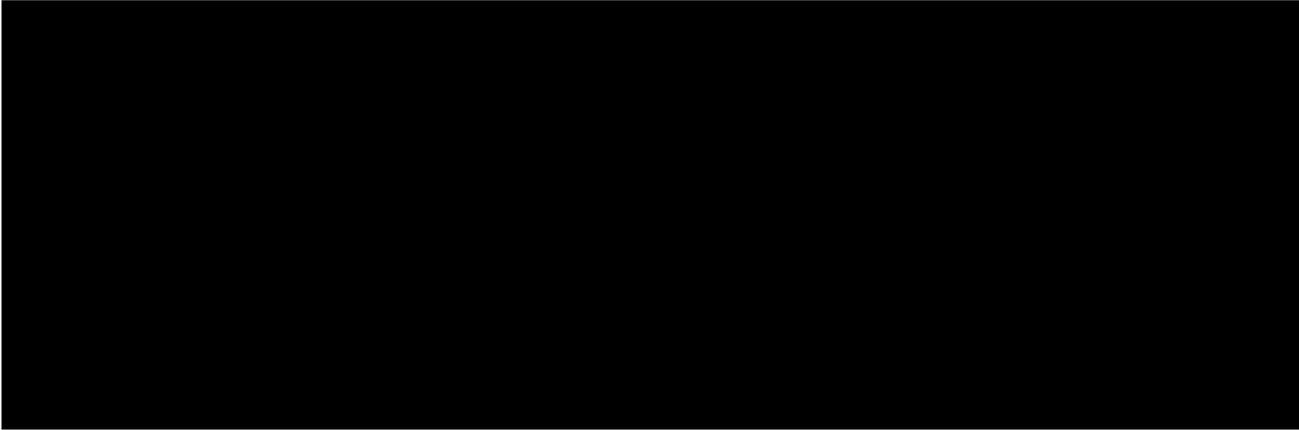
At the same time, Congress was careful to emphasize that security must be integrated into the automated program [REDACTED]

While convenience is important, the Committee also wants to emphasize that convenience should not compromise the security of information within the system. Therefore, the Committee *believes it is appropriate* that the Secretary ensure that the program comply with applicable security standards, *such as* regulations and guidance provided by the National Institute of Standards and Technology.

[REDACTED]

⁶ Technically, the House Report, from April 2019, relates to a bill that did not pass, but for reasons that are unnecessary to explain here, for all intents and purposes, the report is legislative history of the TFA.

H.R. Rep. at 84 (emphasis added); see also Joint Comm. on Taxation, JCX-15-19, *Description of H.R. 1957, the "Taxpayer First Act of 2019"* (Apr. 1, 2019), at 55 (stating more tersely, "The program is to comply with applicable security standards and guidelines.").



[REDACTED] In the current process, and if it were to be replicated in the automated program, the IRS relies on the lender or IVES participant to verify a taxpayer's identity.

[REDACTED] As explained above, an applicant and all principals undergo authentication. The details of the authentication process are available if needed. Thus, the IRS currently allows IVES participants to obtain e-signatures from taxpayers, subject to the IVES [electronic signature requirements](#). Again, they include authentication of the taxpayer signing the authorization form: "IVES participants must validate that the signer is who they say they are and that the document has made it into the correct hands."



⁷ Although the Act does not define "applicable security standards," the IRS adheres to the standards set forth in IRM 10.10.1 [REDACTED] when implementing an electronic signing process.



[REDACTED]

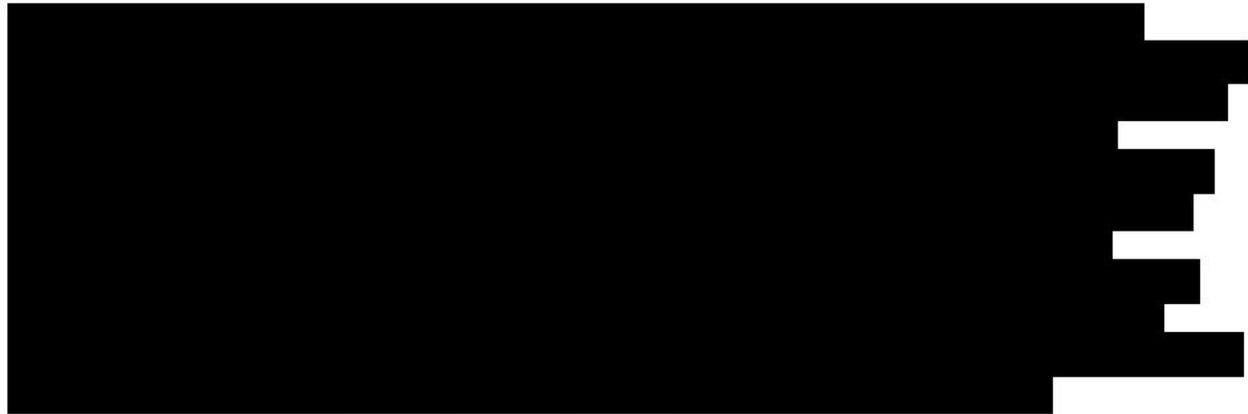
[REDACTED]

[REDACTED]

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[REDACTED]

[REDACTED]



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Please contact Stuart Murray at (202) 317-6333 if you have any questions.

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