



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

7.40.1

AUGUST 26, 2020

EFFECTIVE DATE

(08-26-2020)

PURPOSE

- (1) This transmits revised IRM 7.40.1, LB&I Initiatives with Other Business Units, Industry Issue Resolution (IIR) Program.

BACKGROUND

- (1) The Industry Issue Resolution (IIR) Program is a multi-functional process to address frequently disputed and burdensome tax issues that affect a significant number of taxpayers and other entities under the jurisdiction of the Large Business and International (LB&I), Small Business and Self-Employed (SB/SE) and the Tax Exempt and Government Entities (TE/GE) operating divisions through the issuance of published legal and/or administrative guidance. The issues addressed are selected from issues submitted by industry representatives for the IIR Program. This IRM defines roles and responsibilities and provides procedures for conducting the Industry Issue Resolution Program.

MATERIAL CHANGES

- (1) Organizational titles, citations and minor editorial corrections.

EFFECT ON OTHER DOCUMENTS

IRM 7.40.1, dated March 17, 2017, is superseded.

AUDIENCE

LB&I, TE/GE, SB/SE, Appeals, and Chief Counsel

John V. Cardone
Assistant Deputy Commissioner Compliance Integration
Large Business and International Division

7.40.1

Industry Issue Resolution (IIR) Program

Table of Contents

7.40.1.1 Program Scope and Objectives

7.40.1.1.1 Background

7.40.1.1.2 Authority

7.40.1.1.3 Responsibilities

7.40.1.1.4 Program Objectives and Review

7.40.1.1.5 Related Resources

7.40.1.2 IIR Project Selection

7.40.1.2.1 Issue Identification

7.40.1.2.2 Issue Screening and Selection

7.40.1.2.2.1 Receipt of Applications and Initial Screening

7.40.1.2.2.2 Operating Division Project Selection

7.40.1.2.2.2.1 TE/GE Procedures

7.40.1.2.2.2.2 LB&I Procedures

7.40.1.2.3 Issue Notification

7.40.1.3 IIR Planning and Organization

7.40.1.3.1 Establishing an IIR Team

7.40.1.3.2 IIR Team and Industry Orientation

7.40.1.3.2.1 IIR Team Orientation – Part 1

7.40.1.3.2.1.1 IIR Process and Targeted Completion Date

7.40.1.3.2.1.2 Letter of Understanding with NTEU

7.40.1.3.2.1.3 IIR Work Plan

7.40.1.3.2.1.4 IIR Administrative Tasks

7.40.1.3.2.1.4.1 IIR Meetings

7.40.1.3.2.1.4.2 IIR Project Briefings

7.40.1.3.2.1.4.3 IIR Reports

7.40.1.3.2.1.4.4 Contracting with Outside Experts

7.40.1.3.2.1.4.5 Organization and Maintenance of IIR Records

7.40.1.3.2.1.5 Federal Advisory Committee Act

7.40.1.3.2.2 IIR Orientation - Part 2

7.40.1.3.2.2.1 IIR Issue Review

7.40.1.3.2.2.2 Finalize Plans for the Industry Orientation

7.40.1.3.2.2.3 Develop IIR Issue Work Plan

7.40.1.3.2.3 IIR Industry Orientation

7.40.1.3.2.3.1 IIR Team's Role

7.40.1.3.2.3.2 Industry's Role and FACA

-
- 7.40.1.3.2.3.3 Maintaining Meeting Minutes
 - 7.40.1.3.2.3.4 Fact Finding and Analysis Process
 - 7.40.1.3.2.3.5 Next Steps
 - 7.40.1.4 IIR Fact Finding and Analysis
 - 7.40.1.4.1 Fact Finding
 - 7.40.1.4.2 Analysis
 - 7.40.1.5 IIR Teams Reaching Agreement on Resolution
 - 7.40.1.5.1 IIR Published Guidance
 - 7.40.1.5.2 IIR Administrative Guidance
 - 7.40.1.6 IIR Approval, Communications, and Evaluation
 - 7.40.1.6.1 Approval of IIR Team Recommendations
 - 7.40.1.6.1.1 Issue Owner Approval
 - 7.40.1.6.1.2 Briefing Outside Stakeholders
 - 7.40.1.6.1.3 Published Guidance Clearance
 - 7.40.1.6.1.4 Administrative Guidance Clearance
 - 7.40.1.6.2 Communication of IIR Guidance
 - 7.40.1.6.2.1 Notification of Issue Requesters and Other External Participants
 - 7.40.1.6.2.2 Communications Plan
 - 7.40.1.6.3 Questions from Internal and External Stakeholders

Exhibits

- 7.40.1-1 NTEU Letter of Understanding
- 7.40.1-2 Federal Advisory Committee Act
- 7.40.1-3 Interacting with Outside Stakeholders - Frequently Asked Questions
- 7.40.1-4 Lessons Learned from Prior Industry Issue Resolution Teams

7.40.1.1
(03-17-2017)
Program Scope and Objectives

- (1) The Industry Issue Resolution (IIR) Program is designed to address frequently disputed or burdensome tax issues that affect a significant number of taxpayers and other entities under the jurisdiction of the Large Business and International (LB&I), Small Business and Self Employed (SB/SE), and Tax Exempt and Government Entities (TE/GE) Operating Divisions (collectively referred to in this IRM as “taxpayers”) through the issuance of published guidance or administrative guidance. The issues addressed are selected from issues suggested by taxpayers, representatives, associations, and other interested parties. For each issue selected for the program, a resolution team, generally composed of IRS, Chief Counsel and Treasury personnel, is assembled to gather and analyze relevant information and recommend a resolution of the issue.

7.40.1.1.1
(03-17-2017)
Background

- (1) The IIR program first began as a pilot program in 2000. The program was made permanent in 2002 and was expanded to include issues common to small businesses as well as large businesses. Revenue Procedure 2003-36 allowed issues to be submitted at any time for consideration under this program and limited the applicability to LB&I and SB/SE taxpayers. With the issuance of Rev. Proc. 2016-19, the IIR program has been expanded to include TE/GE taxpayers.

7.40.1.1.2
(03-17-2017)
Authority

- (1) Rev. Proc. 2016-19 (or its successor) provides guidelines for the program.

7.40.1.1.3
(08-26-2020)
Responsibilities

- (1) LB&I , TE/GE and SB/SE operating divisions share operational responsibility for the IIR program. Appeals, Chief Counsel and Treasury also have major roles in the program. Executive oversight of this initiative is through the LB&I Compliance Strategy Council, which includes representatives from LB&I, Appeals, National NTEU, and, as appropriate, SB/SE or TE/GE. The LB&I Assistant Deputy Commissioner, Compliance Integration (ADCCI), Strategy, Policy and Governance (SPG) manages the program with the assistance of IIR Coordinators. Many other stakeholders also have roles and responsibilities in an IIR.

7.40.1.1.4
(08-26-2020)
Program Objectives and Review

- (1) The goal of the IIR Program is to issue guidance on frequently disputed tax issues that establishes a consistent position and reduces administrative burden for IRS and taxpayers. The IIR process is designed to be expeditious and foster communications between the IRS and outside stakeholders. The IIR process consists of three stages with required actions or steps to ensure guidance is issued in a timely manner.
 - a. **Stage I: Issue Identification and Selection-** This stage consists of steps 1 through 3 of the IIR process. These steps include identification of issues by external stakeholders, screening and selection of issues by internal stakeholders, and notification of issues reviewed and selected for the program.
 - b. **Stage 2: Planning and Analysis** - This stage consists of steps 4 through 7 of the IIR process. These steps include activities pertaining to planning and organization, fact finding and analysis, and recommendation of a proposed resolution.
 - c. **Stage 3: Approval, Communication, and Evaluation** - This stage consists of steps 8 through 10 of the IIR process. These steps include

the clearance of the proposed guidance, communication of approved guidance, and solicitation and evaluation of feedback on the IIR process.

- (2) The overall IIR program goal is to issue guidance as expeditiously as possible with the optimal goal of within nine months of notification of the IIR selection. However, target timeframes are set by each team and may be shorter or longer depending on the complexity of the issue.
- (3) While issues are being considered under the IIR program, examinations of selected IIR issues are not to be suspended to await potential new guidance.
- (4) Be aware of our responsibility to ensure fairness and integrity to the taxpaying public, ensure an equitable process for all taxpayers, and ensure fairness to each taxpayer in administering this program. See Policy Statement 1-236 in IRM 1.2.1.2.36 for additional information.

7.40.1.1.5
(08-26-2020)

Related Resources

- (1) Additional IIR program information can be found at the following web sites:

Internal- LB&I IIR Web
Site:
Industry Issue Resolution

External-
*[https://www.irs.gov/businesses/
industry-issue-resolution-program](https://www.irs.gov/businesses/industry-issue-resolution-program)*

7.40.1.2
(11-01-2004)

IIR Project Selection

- (1) The IIR program process begins with issue identification followed by review, selection and notification of the IIR projects.

7.40.1.2.1
(03-17-2017)

Issue Identification

- (1) Revenue Procedure 2016-19 provides procedures for submission of tax issues by taxpayers, representatives, associations, and other interested parties for resolution under the IIR program. Issues may be submitted at any time.
- (2) In general, a requester should be an organization or a group of entities that represents a significant number and cross section of the entities with the particular tax issue or issues. For example, a retail industry group that represents large, nationwide retailers as well as independent retailers might request pre-filing guidance through the IIR Program on an IRC 263(a) capitalization issue common to all member retailers.
- (3) Tax issues appropriate for IIR generally will have at least two or more of the following characteristics:
 - The proper tax treatment of a common factual situation is uncertain.
 - The uncertainty results in frequent, often repetitive examinations of the same issue.
 - Uncertainty results in taxpayer burden.
 - Frequent, and often repetitive, examinations require significant resources from both the IRS and impacted entities.
 - The issue is significant and impacts a large number of entities.
 - The issue requires extensive factual development.
 - Collaboration would facilitate proper resolution of the tax issues by promoting an understanding of entities' views and business practices.
- (4) Tax issues that are not appropriate for IIR include:

- Issues unique to one or a small number of taxpayers
- Issues under jurisdiction of business operating divisions other than LB&I, TE/GE or SB/SE
- Transactions lacking bona fide business purpose or transactions with significant purpose of improperly reducing or avoiding federal taxes
- Transfer pricing or international treaty issues

- (5) See Notice 2005-59 for additional criteria for evaluating proposed IIR program issues for accountable plans.
- (6) Outreach efforts should be made by IRS (executives, subject matter experts, revenue agents, etc.) to encourage outside stakeholders to suggest problematic issues for resolution under IIR.
- (7) No particular format is required for submission of issues. Each submission should include a brief description of the proposed issue, an explanation of why there is a need for guidance, information on the number of taxpayers impacted by issue, contact information and may recommend a resolution to the issue.

7.40.1.2.2
(03-17-2017)
Issue Screening and Selection

- (1) LB&I, SB/SE and/or TE/GE will review the issues submitted. A determination will be made regarding whether the issue should be selected for the IIR program. The following are activities that take place in screening issues and selecting IIR projects.

7.40.1.2.2.1
(03-17-2017)
Receipt of Applications and Initial Screening

- (1) Submissions of issues for inclusion in the IIR program are received through the IIR mailbox at *IIR@irs.gov* and forwarded to the appropriate office. Any issues clearly outside of LB&I, TE/GE, SB/SE or the IIR program jurisdiction will be excluded from IIR consideration and the requester will be notified by the appropriate IIR coordinator within five business days.

7.40.1.2.2.2
(03-17-2017)
Operating Division Project Selection

- (1) If the issue is not excluded as described in IRM 7.40.1.2.2.1, the submission will be reviewed and a decision on whether to select will be made per the business unit's processes.

7.40.1.2.2.2.1
(03-17-2017)
TE/GE Procedures

- (1) The TEGE IIR Coordinator will forward a copy of the IIR Program request to the Technical Advisor(s) for the TEGE function with jurisdiction over the submitting industry group for the issue in the submission. The TEGE IIR Coordinator and the applicable Technical Advisor(s) will review and consider the submission and prepare a short cover memo summarizing the issue and the presence or absence of the factors in Rev. Proc. 2016-19 (or its successor).
- (2) The IIR Coordinator will schedule a call for the Commissioner, TEGE; the appropriate TEGE Director; and TE/GE Division Counsel to determine if the IIR is ready for acceptance. The appropriate Technical Advisor(s) will also participate.
- (3) The TEGE IIR Coordinator will monitor the status of the IIRs under consideration.

7.40.1.2.2.2.2
(08-26-2020)
LB&I Procedures

- (1) Upon the receipt of an IIR submission, the LB&I IIR Analyst will forward a copy of the IIR submission, with a summary to the SPG team manager. The SPG team manager will forward the IIR submission to the SPG program manager and the Assistant Deputy Commissioner for Compliance Integration (ADCCI).

- (2) The IIR submission and the summary will also be sent to Division Counsel and the appropriate practice area(s) for review. Each of the parties will be asked to provide (via email) analysis, comments, and a recommendation on acceptance to the LB&I IIR Analyst generally within two (2) weeks.
- (3) After a decision is made, the ADCCI executive assistant (EA) will advise the LB&I IIR analyst. The LB&I IIR analyst will prepare a letter for the ADCCI to sign and send to the requester notifying them that the IIR has been accepted or rejected.

7.40.1.2.3
(03-17-2017)
Issue Notification

- (1) The appropriate LB&I, TE/GE or SB/SE executive (or designee) will notify the requester when the IRS decides to accept or reject an IIR program request. For those issues selected, the executive should begin discussing plans for the industry orientation/meetings with the requester.
- (2) A news release will be issued to notify the general public of the IIR selections. A brief description of issues selected (including contact information) will be posted to the web sites listed in IRM 7.40.1.1.5; generally within 5 days of acceptance.
- (3) While the IIR project is in process, communications with outside stakeholders and internal communications regarding the project should be approved by the IIR team executive.
- (4) Copies of the IIR guidance requests will be placed in the IRS Headquarters FOIA Reading Room for public inspection and copying by interested parties as provided in Revenue Procedure 2016-19. The IRS FOIA Reading Room is located at 1111 Constitution Avenue, NW, Room 1621, Washington, DC.

7.40.1.3
(11-01-2004)
IIR Planning and Organization

- (1) During the planning and organization process, an IIR team is formed for each issue, orientation sessions are held for both the team and industry concerning the IIR process, and a work plan is developed for addressing the issue.

7.40.1.3.1
(03-17-2017)
Establishing an IIR Team

- (1) For each IIR selected an IIR team executive will be appointed to provide oversight and leadership. The IIR team executive will select an IIR team manager for the IIR team. The executive will work with the IIR team manager to assemble the team.
- (2) Additional team members generally may include (but are not limited to) the following personnel:
 - LB&I, TE/GE and/or SB/SE field person (revenue agent, tax law specialist, engineers, etc.)
 - LB&I, TE/GE and/or SB/SE subject matter expert, tax law specialist or technical advisor
 - LB&I, TE/GE and/or SB/SE division counsel attorney
 - Issue Specialist Program (ISP) appeals officer
 - Associate Chief Counsel subject matter expert
 - Treasury Office of Tax Policy tax specialist
- (3) If the IIR Team determines that the guidance needed is administrative, not published guidance, the team may not include a Treasury Office of Tax Policy tax specialist.

- (4) Employees/specialists may be assigned to the team on a full time or ad hoc basis as needed. The IIR team may also decide to secure the services of outside experts.
- (5) Selection of the Service's team members is made by the IIR team executive. IRS Bargaining Unit team members are identified in accordance with the Letter of Understanding (LOU) with NTEU, as applicable. See Exhibit 7.40.1-1.
- (6) Time should be charged by IIR team members as follows:

IIR Team Member	IIR Time
LB&I Field personnel and subject matter experts	Activity code 527, Industry Issue Resolution Program
LB&I Managers	Activity code 675, Compliance Outreach
SB/SE TEC Employees	Strategy 6, OP1-Establish Burden Reduction Program (Project Type 06001)
SB/SE Compliance Field Employees	Activity code 527, Industry Issue Resolution Program
SE/SE Compliance Managers	Activity code 675, Compliance Outreach
TE/GE	As directed by IIR team manager
Appeals	Industry Specialization (line 6)
Counsel	Guidance project - IIR workload item

- (7) The IIR team assignment is a collateral duty assignment (not a full time position) for team members. However, it should be considered priority work. If, as a result of participation in the IIR program, a Service employee believes that an adjustment in his/her case inventory or workload may be required, the employee should discuss this issue with his/her manager. Adjustments may be made on a case by case basis.

7.40.1.3.2 (03-17-2017) IIR Team and Industry Orientation

- (1) An IIR team orientation/training session will be held to review and start the IIR process. It is recommended that two days be planned for the IIR team orientation. Following the IIR team orientation, an IIR industry orientation session will be held to explain the IIR process, how outside stakeholders will participate in the process, and receive feedback from industry. It is recommended that an IRS facilitator be used for both the team and industry orientations.

7.40.1.3.2.1 (03-17-2017) IIR Team Orientation – Part 1

- (1) The first part of the session should include the following IIR procedural topics:
 - IIR process and timeline
 - Letter of Understanding with NTEU, as applicable
 - Roles and responsibilities of IIR team members
 - Establishing ground rules for the team

- IIR work plan and administrative tasks
- Explanation of Federal Advisory Committee Act

7.40.1.3.2.1.1
(03-17-2017)

**IIR Process and
Targeted Completion
Date**

- (1) The IIR process, including the different stages and required tasks, should be discussed at the team orientation.
- (2) The IIR targeted completion date established for the project and the importance of meeting this date should be discussed. It is important for team members to understand the priority nature of their assignment and the reason for the aggressive timeline. While the timeline may require adjustment during the IIR process depending on the complexity of the issue, the IIR process must be expeditious to provide timely service to IRS customers.

7.40.1.3.2.1.2
(03-17-2017)

**Letter of Understanding
with NTEU**

- (1) An overview of the provisions of the Letter of Understanding (LOU) with NTEU should be provided to the bargaining unit team members, who are covered by the LOU, during the team orientation. See Exhibit 7.40.1-1 for the LOU with NTEU.

7.40.1.3.2.1.3
(03-17-2017)

IIR Work Plan

- (1) The Team Work Plan identifies the tasks of the team, the team member(s) responsible for each task, and the time lines associated with the tasks.

7.40.1.3.2.1.4
(11-01-2004)

IIR Administrative Tasks

- (1) Each IIR team will need to develop and follow a plan to establish responsibility for the following administrative tasks set forth below.

7.40.1.3.2.1.4.1
(11-01-2004)

IIR Meetings

- (1) IIR team and industry meetings will be held throughout the IIR process. The team will need to determine responsibilities and processes for conducting meetings, preparing minutes and distributing the minutes.
 - Conducting Meetings - The team may need to conduct meetings in a variety of formats/locations, i.e., via conference calls, video conferencing, and on-site meetings. These meetings work best when all parties have access to the agenda and relevant documents to be discussed prior to the meeting. Teams may want to have a facilitator initially or when contentious or complex issues are being discussed.
 - Recording Meetings-Notes of internal and external meetings should be taken but do not need to be in-depth. It is suggested that agendas be prepared showing the topics to be covered, by whom and purpose. Notes associated with the meetings could then be used to confirm that the topics were covered, capture key points raised and record planned actions and activities. A meeting recorder should be designated. Specific taxpayer information should not be included, and personal notes by team members, other than the recorder, should be kept to a minimum. Actions and assignments should be reviewed at the end of the meeting to ensure clarity.

7.40.1.3.2.1.4.2
(03-17-2017)

IIR Project Briefings

- (1) Each IIR team should determine early in the process when briefings should be held with Chief Counsel, Treasury, Appeals, LB&I, TE/GE and SB/SE leadership. Responsibility should be assigned to team members for setting up and conducting briefings.

7.40.1.3.2.1.4.3
(08-26-2020)
IIR Reports

- (1) The IIR team is responsible for completing a monthly report for the responsible IIR analyst/coordinator. The form to be used is on the IIR webpage: *Industry Issue Resolution*. The LB&I IIR analyst will use these reports to prepare a monthly report.

7.40.1.3.2.1.4.4
(03-17-2017)
Contracting with Outside Experts

- (1) The IIR team must determine if outside experts are needed as soon as possible. IRM 4.46.10 contains procedures for requesting outside experts. Requests should be submitted as follows:
 - a. Requests for LB&I outside expert funds are submitted through the local engineer managers.
 - b. Requests for SB/SE outside expert funds are submitted through the local estate and gift tax managers.
 - c. Requests for TE/GE outside expert funds are submitted through the IIR team executive for evaluation on a case-by-case basis.
- (2) Upon approval, an assigned team member(s) will work with LB&I, TE/GE or SB/SE contracting officer representative to draft statement of work and to obtain experts.

7.40.1.3.2.1.4.5
(11-01-2004)
Organization and Maintenance of IIR Records

- (1) The IIR team is required to maintain binders/files which will include the following records:
 - Reports (See IRM 7.40.1.3.2.1.4.3)
 - Contact logs/emails/letters
 - Meeting agendas and minutes
 - Outside expert contracting documents
 - Information requested and received
 - Draft positions
 - IIR recommended guidance package and sign-off
 - Final published and/or administrative guidance
 - Communication documents
- (2) At the end of the IIR process, the binders/files will be sent to issue owner for record retention.

7.40.1.3.2.1.5
(11-01-2004)
Federal Advisory Committee Act

- (1) FACA was enacted to control the growth and standardize the operations of committees, and similar groups established to advise executive branch agencies. The establishment of federal advisory committees is subject to ceilings established by GSA, and FACA requires advisory committees to comply with certain procedural requirements, e.g., filing of a charter with GSA and Congress showing balanced committee membership, and publishing timely notice of meetings in the Federal Register. For more information about FACA, see Exhibit 7.40.1-2.
- (2) It is not intended that federal advisory committees be formed for the IIR process. Therefore, in meeting and interacting with the industry and other interested external stakeholders, IIR teams need to be aware of the provisions of FACA and operate in such a way to not trigger FACA requirements.
- (3) In meeting with the industry, IIR teams may do the following without triggering the procedural requirements of FACA:
 - a. have a single meeting;

- b. have a meeting for outside groups to voice their concerns, propose solutions, and raise issues that IRS may need to address;
 - c. have a meeting to provide facts and information to outside groups on a particular IRS policy or initiative;
 - d. have a meeting for the industry to provide information to IRS about industry practices; or
 - e. seek or accept industry comments on a particular IRS policy or initiative .
- (4) In meeting and interacting with the industry, IIR teams should not do the following as such actions may trigger the procedural requirements of FACA:
- a. enter into negotiations with the industry;
 - b. direct outside groups to draft revenue rulings, revenue procedures or other published guidance; or
 - c. direct the membership, agenda, or structure of outside groups.

7.40.1.3.2.2
(11-01-2004)
IIR Orientation - Part 2

- (1) The second part of the session will start the resolution process and include the following topics:
- IIR Issue Review
 - Industry Orientation Planning
 - Development of IIR Issue Work Plan

7.40.1.3.2.2.1
(11-01-2004)
IIR Issue Review

- (1) The IIR team should review the outside stakeholder's submission, information gathered during screening, and any clarifying information the Team Executive or other members have received. An open discussion should be held to ensure everyone is clear on the issue to be resolved.

7.40.1.3.2.2.2
(11-01-2004)
Finalize Plans for the Industry Orientation

- (1) The IIR Team Executive will start planning the industry orientation prior to the formal team orientation. The dates and a basic agenda will have already been given to the industry. At the team orientation meeting, the agenda for the industry orientation will be finalized and each team member will be assigned a role for the industry orientation.

7.40.1.3.2.2.3
(11-01-2004)
Develop IIR Issue Work Plan

- (1) The IIR Issue Work Plan is a step-by-step plan for the team to work the issue. The Issue Work Plan should be flexible in nature and will change as the issue is developed. The plan should follow the agreed upon timeline.

7.40.1.3.2.3
(11-01-2004)
IIR Industry Orientation

- (1) The industry orientation provides an opportunity for the IIR team and industry to build a mutual understanding of each other's interests, objectives, priorities, resources and time constraints.
- (2) The IIR team will also begin to identify information/data needs, potential sources and timeframes for obtaining it. Industry orientation participants include:
- IIR team executive (lead)
 - IIR team
 - Industry association or other IIR requester(s)
 - Other interested outside stakeholders
- (3) Industry Orientation Agenda will include:

- IIR process and time frames
- IIR team's role
- Industry's role in the IIR process and an explanation of Federal Advisory Committee Act provisions
- Meeting minutes and records of meetings with externals
- External issue resolution proposal(s) as outlined in the application submission documents, suggested by other external stakeholder, e.g., taxpayers, industry and representatives and any differences in the issue that was accepted for the program.
- Presentation by the requester and other stakeholders of the issue, factual situations, and explanation of their positions and points of view - facts and law.
- Fact finding and analysis process
- Next steps

7.40.1.3.2.3.1
(11-01-2004)

IIR Team's Role

- (1) The IIR team's role is to analyze the issue and to recommend a resolution of the issue. The Associate Chief Counsel representative on the IIR team will serve as the subject matter expert and the primary drafter of proposed published guidance. Published guidance issued under the IIR Program is issued and approved in the same manner as other published guidance.

7.40.1.3.2.3.2
(11-01-2004)

Industry's Role and FACA

- (1) The Industry has the following role in the IIR process:
 - Propose industry issues for the IIR program
 - Identify other industry groups that may be impacted or have relevant facts and information relevant to the issue
 - Provide factual information to the IIR team relevant to the issue
 - Provide input during analysis of proposed solution
 - Provide information on data to measure the program's success
 - Communicate resolution to industry taxpayers, clients, etc.
 - Provide feedback for evaluation of IIR
- (2) The team should cover some of the frequently asked questions pertaining to the industry roles and participation in the IIR process during the industry orientation. See Exhibit 7.40.1-3, Interacting with Outside Stakeholders - Frequently Asked Questions.
- (3) An overview on FACA and its impact on how the team would interact with external stakeholders should be provided to the industry participants.
- (4) The team should be aware of and comply with the requirements of IRC 6103 with respect to any information exchanged with industry participants.

7.40.1.3.2.3.3
(03-17-2017)

Maintaining Meeting Minutes

- (1) Written meeting minutes will be maintained by the IRS but not distributed to industry representatives. However, industry participants may take their own notes and will not be required to share their notes with the Service.
- (2) No tape or video recordings of meetings by industry representatives or the Service will be permitted (Rev. Proc. 2003-1 provides an analogous position reference.)

7.40.1.3.2.3.4
(11-01-2004)

**Fact Finding and
Analysis Process**

- (1) To enable parties to reach an expeditious conclusion of the Fact Finding phase of IIR, the following should be discussed with the industry at the orientation:
 - Establish an agreed response time for requests for information or documents.
 - Confidential financial or trade secret Information submitted to the team should be designated by the requester as not to be released under FOIA per 5 U.S.C. 552 (b)(4) exemption at the time of submission. This exemption refers to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." If the information is so designated, the Service is required to give notice to the requester prior to releasing, 31 C.F.R. 1.6(b), (c), and there would then be an opportunity for the requester to administratively or judicially block disclosure, 31 C.F.R. 1.6(d), (e).
 - Discuss possible site visits by the IIR team to gather facts on industry operations.
 - Provide feedback on the team's progress and respond to emerging questions or problems about gathering facts (remember FACA guidelines).
 - Coordinate the review of records and/or facilities (e.g., travel requirements and scheduling).
 - Share the Team Work Plan with the Industry.
- (2) The analysis of the issue will be conducted independently by the IIR team. The IIR team may discuss their thinking and potential resolutions of the issue in meetings with outside stakeholders but may not discuss or provide proposed published guidance to outside stakeholders. These meetings with outside stakeholders provide the opportunity for receiving outside views and input consistent with the provisions of FACA. However, the team may not enter into negotiations with the industry regarding the resolution of the issue.

7.40.1.3.2.3.5
(11-01-2004)

Next Steps

- (1) Conclude the orientation by reviewing process agreements and understandings reached. Identify items to be accomplished before next meeting (including any due dates) and logistical arrangements. Acknowledge the Industry's efforts to support the IIR program.

7.40.1.4
(11-01-2004)

**IIR Fact Finding and
Analysis**

- (1) The Fact Finding and Analysis process begins during the IIR Team and Industry orientation sessions and is expected to last between two to four months. This process consists of gathering, verifying and validating relevant facts and analyzing law while considering the external stakeholders' facts and positions on the issue. See Exhibit 7.40.1-4, Lessons Learned from Prior Industry Issue Resolution Teams, for tips in conducting fact finding and analysis.
- (2) Fact Finding and Analysis are two steps in the process. However, these actions are not completely independent of each other. Some members of the IIR team will still be conducting fact finding while others will start preparing legal analysis based on the facts compiled to date. After these steps are completed, the team will be able to recommend a resolution through published or administrative guidance.

7.40.1.4.1
(03-17-2017)
Fact Finding

- (1) The IIR team must define the issue to be resolved. Actions to accomplish this may include the following:
 - Review issue description as accepted and proposed by the requester.
 - Discuss issue with Team members to ensure consensus in understanding of the issue.
 - Discuss with outside stakeholders to gain better understanding of the issue.
 - Explore outside stakeholders' interest in the issue and why the issue is problematic.
 - Identify similar issues in other industries and find out how they are handled.
 - Discuss issue with other industry/trade associations that may be affected by the Issue.
 - Estimate annual revenue impact of the issue (average tax adjustment times number of taxpayers affected).
- (2) The IIR team must determine the Service's "examination practices" for the issue. Actions to accomplish this may include the following:
 - Determine the magnitude of the issue and how it is being resolved in examinations.
 - Discuss examination practices with team members.
 - Discuss examination practices with industry requesters and other outside participants.
 - Identify and review existing documents which address the issue (Coordinated Issue Paper, Technical Advice Memorandum, Appeals Settlement Guidelines, etc.).
 - Review the initial screening information gathered.
 - Review issue management systems
 - Survey audit teams/groups and other IRS personnel (Appeals/Counsel) to determine who is currently involved with the issue.
 - Discuss with audit teams or examiners currently working the issue.
 - Discuss with other IRS personnel (Appeals / Counsel).
 - Estimate time/dollars spent examining the issue.
- (3) The IIR team must determine industry practices for the issue. Actions to accomplish this may include the following:
 - Study the industry accounting procedures and methods, computer files, commercial framework, tax return preparation methodology, standard industry practices, language and terminology.
 - Ask industry how they are treating the issue for tax purposes.
 - Ask industry how they are treating the issue for book purposes.
 - Ask industry how and what records are being maintained.
 - Research written sources (AICPA articles, etc.) and web sites for information on industry practices.
 - Research what accounting association (AICPA, etc.) guidance there is on the issue.
 - Ask industry and examiners if the issue involves a transaction that is being marketed by external parties.
 - Attend presentations regarding industry techniques, problems and economic factors that impact on tax considerations.
 - Contact other sources (university professors, outside experts, etc.) for information regarding industry practices.
 - Meet with other related groups within the industry.

- (4) The IIR team will develop the facts surrounding the issue. Actions to accomplish this may include the following:
- Identify types and number of taxpayers affected.
 - Discuss the known facts gathered with team members.
 - Discuss the facts in the submission or industry presentation with industry representatives.
 - Identify method (request to requester, survey, etc.) for obtaining additional information.
 - Identify and obtain information/internal experts needed to determine facts.
 - Identify and obtain outside expertise if needed to validate facts.
 - Conduct site visits, as needed to see issue first hand, and interview appropriate parties to ensure all facts and activities are identified and validated.
- (5) When conducting surveys to gather facts the following rules must be followed:
- a. Internal - Survey of bargaining unit employees must be sent to NTEU in advance per National Agreement Article 8, Section 8A.
 - b. External - The Paperwork Reduction Act requires all government agencies to obtain OMB approval for activities involving more than nine taxpayers on the same topic. This would not preclude external stakeholders from gathering data from their own members to present during the IIR process.

7.40.1.4.2
(03-17-2017)
Analysis

- (1) The IIR team will research the tax law and court decisions pertaining to the issue. Actions to accomplish this may include the following:
- Review legal analysis provided by industry.
 - Identify tax law to be reviewed.
 - Research law and court cases.
 - Identify pending litigation.
 - Discuss with team members.
 - Discuss with other subject matter experts in LB&I, TE/GE, SB/SE, Chief Counsel, Appeals and Justice, as appropriate.
 - Discuss with industry.
- (2) The IIR team will determine the status of pending legislation impacting the issue. Actions to accomplish this may include the following:
- Discuss with team members and industry.
 - Ask team members and Industry to keep each other informed of any legislation updates.
 - Ask Associate Chief Counsel representative on the Team to follow-up internally on any pending legislation.
 - Review the Congress.gov web site (successor to the Thomas web site) <http://Congress.gov> periodically to determine if there is any legislative activity.
- (3) The IIR team will review change in accounting methods law and procedures. Actions to accomplish this may include the following:
- Review prior IIR guidance on change in accounting provisions.
 - Review Change of Accounting Method (CAM) administrative guidance (e.g. current revenue procedures for Voluntary Method Changes, Automatic Method Changes, Involuntary Method Changes).

- Discuss with CAM subject matter expert(s).
- Discuss with team members and industry.

7.40.1.5
(11-01-2004)
**IIR Teams Reaching
Agreement on
Resolution**

- (1) All team members should participate in the recommendation of guidance to resolve the issues. In general, an in-person meeting should take place with all members present. If possible, a facilitator should also be present to assist in resolving disagreements among team members. The goal is to have IIR team consensus on the recommended resolution. However, if a consensus cannot be reached all minority positions should be discussed in the briefing paper.

7.40.1.5.1
(03-17-2017)
IIR Published Guidance

- (1) IIR team resolution analysis should start with deciding on whether a Revenue Procedure or another form of published guidance is the appropriate vehicle for communicating the guidance. The team should also decide if supplemental internal guidance is warranted.
- (2) Next, the team should discuss and agree on the recommended technical position and guidance needed. The team discussion and recommendations should address the following:
 - a. Whether the proposed guidance impacts other taxpayers, IRS business operating divisions, and other government agencies. If so, what coordination/actions will be necessary or can the scope be narrowed?
 - b. Whether the proposed guidance impacts other guidance. If so, will the published guidance need to be revised or revoked? Will internal guidance need to be revised ?
 - c. Whether a safe harbor provision is warranted, feasible, and likely to be adopted by industry.
 - d. Whether guidance will be retroactive or prospective. If prospective, whether audit protection should be given.
 - e. If applicable, how should Change of Accounting method provision be handled.
- (3) Prior to drafting published legal guidance, a briefing should be conducted (either individually or as a Team) with Chief Counsel, Treasury, LB&I, TE/GE and/or SB/SE leadership on the technical position and/or safe harbor being recommended.
- (4) If no major concerns are raised, the IIR team will prepare the guidance package consisting of a briefing paper, proposed published guidance, and any proposed administrative guidance. The Associate Chief Counsel subject matter expert is the primary drafter of the proposed published guidance with assistance from the team. Drafts disseminated in hard copy or by email to any Service employee either outside or within the IIR team should be marked "Draft" and contain the following language: "This document includes statements subject to privilege. This document should not be disclosed to anyone. You are hereby notified that any disclosure, copying, or distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. The positions set forth in this document should not be interpreted as official positions of the IRS."
- (5) The contents of the "Briefing Paper" should include the following:
 - Background Information -IIR Issue, IIR process and Industry practice
 - Industry Impact
 - General discussion on the legal analysis

- Teams recommendation and deliberation
- Any, alternative positions and minority positions
- Industry recommendation
- Comparison of Team's and Industry's suggested resolution
- How the issue is treated for book purposes
- Compliance considerations and record keeping requirements
- Impact on other taxpayers, IRS business operating divisions, and other government agencies
- Impact on other guidance
- Assessment of the industry's adoption of any safe harbor provision(s).

- (6) The proposed published guidance must be prepared in accordance with all procedural requirements and submitted for review and clearance through the Associate Chief Counsel with primary subject matter jurisdiction. The guidance should be ready to go forward for formal clearance when completed and reviewed by the team. Drafts may be freely shared among team members. Drafts do not constitute Chief Counsel Advice for the purposes of IRC 6110(i).
- (7) Drafts of the published guidance can be shared with other Service personnel, with Team Executive approval, if their input is helpful in the development of the guidance product, and providing a copy of the draft is the most effective manner of obtaining that input. The IIR team should ensure that the copies of draft documents shared for this purpose are returned to the team or destroyed by the recipient.
- (8) If the team decides that administrative guidance is needed, the guidance should be drafted and released at the same time or shortly after the published guidance is issued. Internal guidance may include:
 - Compliance strategy or position for dealing with taxpayers who may not follow the Resolution.
 - Examination techniques or audit steps for future audits.

7.40.1.5.2
(03-17-2017)

**IIR Administrative
Guidance**

- (1) The team should review the proposed administrative guidance and its impact to determine:
 - What coordination/clearance will be necessary with other impacted IRS business operating divisions/offices.
 - What other internal guidance will need to be revised and assign responsibility for it.
 - Whether the administrative guidance resolves the issue or whether published guidance project should be proposed.
- (2) A briefing should be conducted (either individually or as a team) with LB&I, TE/GE and/or SB/SE issue owner on the proposed guidance and other recommendations. If no concerns are raised, the IIR team will draft the guidance package consisting of a briefing paper and the proposed administrative guidance. The briefing paper will include recommendations as to whether additional published guidance will be necessary.

7.40.1.6
(03-17-2017)

**IIR Approval,
Communications, and
Evaluation**

- (1) This is the final stage in the IIR process. At this point, approval and communication activities should be occurring simultaneously. Guidance packages will be placed in formal clearance, briefings will occur, and communication strategies developed.

7.40.1.6.1
(03-17-2017)
**Approval of IIR Team
Recommendations**

- (1) Once the IIR team's guidance package has been prepared, each team member will review and indicate approval. The guidance package should include a cover sheet, briefing paper and proposed guidance. A copy of the guidance package is placed in the team binder. The approval process will start with the IIR issue owner. At any point in the approval process, the draft document may be returned to the team for additional work.

7.40.1.6.1.1
(03-17-2017)
Issue Owner Approval

- (1) The IIR team executive will present the guidance package to the business operating division (BOD) Commissioner for approval. The presentation will include a briefing by the IIR team of the team's findings and recommendation. Joint or separate briefings will be held if requested for other IRS executives (TE/GE, SB/SE, LB&I, Division Counsel or Appeals) impacted. The functional team member will coordinate their attendance/briefing. The date of the submission and approval of the BOD Commissioner will be noted on the sign-off sheet and retained.

7.40.1.6.1.2
(03-17-2017)
**Briefing Outside
Stakeholders**

- (1) Once the LB&I, TE/GE or SB/SE Commissioner has approved the team's guidance recommendation, the IIR team may meet with the outside stakeholders who participated in the process. No documents will be shared with the outside stakeholders at the meeting, but the IIR team should outline the proposed recommended resolution, explaining the rationale for the proposed recommended resolution. The IIR team must clearly state that the proposed recommended resolution is not Service position, and that, if the proposed recommended resolution leads to published guidance, the published guidance will be prepared and approved (and may be changed) in the same manner as other published guidance.

7.40.1.6.1.3
(03-17-2017)
**Published Guidance
Clearance**

- (1) The Associate Chief Counsel team member, upon notification of the business operating division's approval, will begin the formal clearance process for the guidance. Normal clearance procedures for published guidance will be followed during the review by Chief Counsel, IRS Commissioner, and Treasury.
- (2) The IIR team executive may follow-up with Counsel and Treasury to find out what stage of clearance the proposed guidance is in. If problems or questions arise, the IIR team should participate in any necessary briefings (either in-person or by conference call) to resolve the issue.
- (3) Upon receiving Treasury approval, the Associate Chief Counsel attorney will coordinate the release of the guidance with IIR team manager and LB&I Counsel.

7.40.1.6.1.4
(03-17-2017)
**Administrative Guidance
Clearance**

- (1) A team member(s) should be assigned responsibility for clearing administrative guidance (audit guidelines/directives/interim guidance memoranda). Normal clearance procedures should be followed based on the type of guidance being issued. See IRM 4.51.2.6.2 for clearing LB&I directives. If issued on interim guidance basis via memorandum, the Issue Owner is responsible for ensuring that the guidance is later incorporated into the IRM or other published document.

7.40.1.6.2
(11-01-2004)

**Communication of IIR
Guidance**

- (1) Once the guidance package has been prepared, the team should begin developing communication strategies to ensure that all external participants are timely informed and internal and external outreach plans are developed to communicate the guidance to those impacted.

7.40.1.6.2.1
(03-17-2017)

**Notification of Issue
Requesters and Other
External Participants**

- (1) Published Guidance - IIR participants are notified of the publication of guidance at same time the guidance is released to the press. The Associate Chief Counsel representative will coordinate the timing of this event with Division Counsel and the IIR team.
- (2) Administrative Guidance – IIR team will notify the IIR participants when the Administrative Guidance has been posted to IRS.gov.
- (3) After the guidance has been released, the IIR team should meet with the issue requesters and other interested parties to brief them on the contents of the guidance and gather feedback on the IIR process. This could be done in person or through conference calls.

7.40.1.6.2.2
(03-17-2017)

Communications Plan

- (1) Each IIR team executive is responsible for the development of a communications plan to announce the IIR resolution guidance. The IIR team will draft the communications products with the assistance of the LB&I, TE/GE or SB/SE communication specialist. Communications product drafting should start no later than when the proposed guidance has been submitted for clearance.
- (2) The IIR Team should keep the functional communication specialists abreast of the development of the proposed resolution to ensure timely communication planning, product development and coordination of communication activity for their respective internal and external audiences. The functional communications specialist will coordinate the clearance of the communications documents with the LB&I, TE/GE or SB/SE IIR analyst..
- (3) The announcement of administrative guidance should be coordinated with the release of the published guidance associated with it.

7.40.1.6.3
(11-01-2004)

**Questions from Internal
and External
Stakeholders**

- (1) Internal and external stakeholders with questions concerning IIR published guidance should direct their questions to the Associate Chief Counsel office responsible for the subject matter addressed in the published guidance. A business operating division contact should be assigned to answer questions on IIR administrative guidance issued (e.g. audit guidelines).

Exhibit 7.40.1-1 (11-01-2004)
NTEU Letter of Understanding



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAY - 3 2002

Ms. Patricia M. Eanet
Assistant Counsel for Negotiations
National Treasury Employees Union
901 E Street, N.W. Suite 600
Washington, D.C. 20004-2037

RE: Industry Issue Resolution Program

Dear Ms. Eanet

This is to confirm conversations that have occurred between representatives of the Commissioner, Large and Mid-Size Business Division (LMSB), Small Business & Self Employed Division (SB/SE), National Chief Appeals, the Office of Workforce Relations, and you concerning the Internal Revenue Service's decision to implement the Industry Issue Resolution Program (IIR) on a permanent basis. A one-year pilot was conducted in accordance with the provisions of the parties' Letter of Understanding (LOU) dated March 8, 2001. On April 4, 2002, you were provided a briefing to discuss the results of the pilot and the implementation of the program. This program is intended to resolve contentious or burdensome tax issues that affect significant numbers of taxpayers and constitutes part of an IRS strategy to resolve issues in a manner other than the traditional post-filing examination process. The IIR Program is being expanded to include submissions from SB/SE's small business taxpayers. LMSB and SB/SE will undertake much of the operational responsibility for the IIR program, and the Office of Chief Counsel, in conjunction with Treasury, and the Appeals organization also will play significant roles in the program. Accordingly, the impacted employees covered by the provisions of this Letter of Understanding (LOU) are those LMSB, SB/SE and Appeals employees who will participate in the IIR program. Executive oversight of this initiative will be through the LMSB Compliance Strategy Council, which includes representatives from LMSB, Appeals, National NTEU, and, as appropriate, SB/SE.

As a result of the discussions between the parties named above, the Employer has determined that it will take the actions listed in the following paragraphs relative to the implementation of the IIR initiative.

1. The Employer will notify all impacted chapters and employees of the implementation of this initiative at formal meetings governed by applicable NORD V provisions. Impacted employees are those LMSB, SB/SE and Appeals employees who are selected to participate in the IIR program. The meetings will be held during work hours and shall be conducted at all sites

Exhibit 7.40.1-1 (Cont. 1) (11-01-2004)**NTEU Letter of Understanding**

2

where impacted bargaining unit employees are located. A question and answer period will be included in the meetings. Questions left unanswered during the meeting will be responded to as soon as possible. Answers to questions raised by or of interest to the group will be communicated to the group in writing.

2. Impacted employees will be provided with appropriate training and materials necessary for their successful performance of the duties related to the IIR program.
3. If, as a result of participation in the IIR program, an employee believes that an adjustment in his/her case inventory or workload may be required, the employee will discuss this issue with their manager. Adjustments may be made on a case by case basis.
4. The Employer does not anticipate that there will be any adverse impact on employees as a result of this initiative. However, should there be any adverse impact, the Employer will notify NTEU and bargain in accordance with laws, government-wide rules and regulations.
5. The Employer will take positive action to alleviate and resolve problems or disagreements that may arise between members of teams assembled as a result of the IIR program.
6. If either of the parties becomes aware of significant unanticipated problems which arise during the implementation of this initiative, the Employer or NTEU will inform the other of their existence and meet to discuss them as soon as possible.
7. In tax matters, the parties recognize and value the role of the Appeals organization in the resolution of disputes with the taxpayer. In the permanent implementation of this program, the Employer's sole objective is to improve service to the taxpayer, and is not intended to diminish the role of the Appeals Officer.
8. The following procedure will be used to identify those LMSB bargaining unit employees who will participate in the program.

A) Based upon the identified issue, the appropriate Director of Field Operations, in consultation with the Technical Advisor Manager, will identify current LMSB cases involving the issue in question, and will then contact the involved audit team(s) through normal management channels to identify those team members working on the issue. If there is only one team member in the industry with the requisite knowledge (both of the industry and the specific issue), that member may be required to work on the team.

Exhibit 7.40.1-1 (Cont. 2) (11-01-2004)
NTEU Letter of Understanding

3

B) If more than one team member possesses the requisite knowledge, volunteers will be solicited from all qualified team members. Employees will then be selected based upon an assessment of the following criteria: overall expertise/experience, workload, geographic issue impact with taxpayers involved, and travel costs.

9. The following procedure will be used to identify those SB/SE bargaining unit employees who will participate in the program.

A) Based upon the identified issue, the Office of Pre-filing Compliance TEC, in consultation with the Office of Exam Specialization Compliance and the applicable SB/SE TEC or Compliance Area Director, will identify current SB/SE TEC and Compliance employees, with sufficient knowledge related to the issue in question. These identified employees will then be contacted through normal management channels for placement on the IIR work team. If there is only one TEC or Compliance employee with the requisite knowledge (both of the industry and the specific issue), that employee may be required to work on the team.

B) If more than one employee possesses the requisite knowledge, volunteers will be solicited from all qualified employees. Employees will then be selected based upon an assessment of the following criteria: overall expertise/experience, workload, geographic issue impact with taxpayers involved, and travel costs.

10. To the extent practicable, Appeals employees who participate in the program will be Industry Specialization Program (ISP) Coordinators with the appropriate expertise. However, staffing, workload, or travel costs may dictate selection of Appeals Officers who are not ISP Coordinators. This will be done on a voluntary basis, with input from the ISP Coordinator to management, in order to identify qualified employees with the appropriate level of expertise and experience.
11. Twelve months after selection of the first issue for inclusion in the program, the Employer will provide National NTEU with a status briefing.
12. The Employer will provide a copy of this LOU to all impacted employees.

Exhibit 7.40.1-1 (Cont. 3) (11-01-2004)
NTEU Letter of Understanding

4

If the above reflects your understanding of the actions the Employer will be taking relative to the implementation of the IIR program initiative, please indicate that understanding below and return the original of this letter to Marian Manlove. Please contact Marian on (202) 927-6157 if you have any questions.

Sincerely,

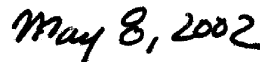


Lucy G. Vargas
Director, Office of Workforce Relations

Concurrence:



Patricia M. Eanet
Assistant Counsel for Negotiations
NTEU



Date

Exhibit 7.40.1-2 (11-01-2004)
Federal Advisory Committee Act

The Federal Advisory Committee Act (FACA), 5 USC Appendix 2, was enacted in 1972 to control the growth and standardize the operations of committees, boards, and similar groups established to advise executive branch agencies. It requires advisory committees to comply with certain procedural requirements, e.g. balanced membership and timely notice of meetings in the Federal Register. The Committee Management Secretariat is responsible for all matters relating to advisory committees and carries out the responsibilities of the Administrator, General Services Administration.

The procedural requirements of FACA only apply to advisory committees. An advisory committee is any committee, board, commissioner, counsel, conference, panel, task force, or other similar group, or any subcommittees thereof which is established by statute or reorganization plan, or established or utilized by the President or one or more executive agencies in the interest of obtaining advice or recommendations regarding a policy issue. FACA § 3(2). An advisory committee is characterized by an organized structure and a fixed membership.

While the definition of established is self-evident, an agency will be deemed to utilize an independently-created group, such as an Industry trade association, if the agency exercises strict management and control over the group. An agency will manage and control a group if it controls the group's membership, agenda, and deliberations. Logistical control over meetings with a group is not sufficient to bring the group within FACA. Furthermore, the participation of agency employees in the activities of an outside group, even if that participation is influential, does not subject the group to the requirements of FACA.

However, certain agency action when dealing with one or more independently organized groups may trigger the requirements of FACA. An agency may trigger FACA's requirements if the agency appoints the group's membership, provides an organizational structure for the group, provides funding for the group, sets the group's agenda, and reviews the group's work product. For example, FACA could be triggered if the agency appoints its own employees and several representatives of one or more trade or industry associations to work together to develop published guidance such as regulations or a revenue procedure, to address a particular industry concern.

If the Service were to establish an advisory committee subject to the requirements of FACA, it would have to consult with the GSA Committee Management Secretariat, justifying why the committee is essential to agency business and in the public interest and why the committee's functions cannot be performed by the agency.¹ It should be noted that the establishment of advisory committees are subject to ceilings established by GSA limiting the number of discretionary advisory committees per department. GSA has indicated a willingness to increase Treasury's ceiling if necessary. The Service would also have to file a charter, which explains the missions of the committee and how the committee's membership will be balanced with GSA, the House of Representatives, and the Senate. The Service would also have to publish in the Federal Register notice that it is establishing an advisory committee.

After the committee is formed, notice of any meetings must be published in the Federal Register. Furthermore, the meetings shall be open to the public, unless the agency determines that

FACA itself does not provide a remedy for its violation. FACA challengers have sought access to documents and meetings, termination of the committee, and injunctions prohibiting the agency's use of the committee's work. However, Courts will rarely grant the injunctive relief because it would be wasteful to require the agency to duplicate the efforts of the committee. FACA violations can generally be remedied by public notice and comment procedures.

Agencies may continue to receive input from outside groups if certain precautions are taken. First, FACA will not apply to a one time meeting because there is not opportunity to establish a fixed, continuous membership. FACA will also not apply to meetings initiated by an outside group for the purpose of expressing the group's views, or for the purpose of exchanging facts and information. Consequently, Service officials could meet with industry representatives to obtain information that will enhance the Service's understanding of relevant industry

Exhibit 7.40.1-2 (Cont. 1) (11-01-2004)**Federal Advisory Committee Act**

practices. Furthermore, they may meet with industry representatives to discuss issues of concern to the industry, and the industry may present proposals to address those concerns. Finally, Service officials may meet with industry representatives to obtain the industry's views on proposed published guidance, or on a particular Service initiative or proposal. While industry representatives may comment on Service proposals and may present their own proposals, the Service must be careful not to ask or direct industry representatives to work with the Service to jointly develop regulations, published guidance, proposals, or initiatives. If it did so, the Service would be, or appear to be exerting sufficient management and control over the industry representatives, or outside group, to trigger the requirements of FACA.

¹ Committees established for negotiated rulemaking are subject to the requirements of FACA. However, negotiated rulemaking committees are not subject to the ceilings or the number of advisory committees. Furthermore, personal notes and materials of the committee are not subject to disclosure under the Freedom of Information Act.

Exhibit 7.40.1-3 (11-01-2004)**Interacting with Outside Stakeholders - Frequently Asked Questions**

1. **If more than one source submits the same selected issue, will all sources be invited to participate in the IIR project?**

Yes, all requesters will be given the same opportunity to participate in the IIR project. Government ethics requires that the government not to appear to give preference to one group over another. Whether a separate meeting will be held with each requester or one large meeting for all requesters, as well the time and the location, will be determined by the assigned IIR team executive.

2. **If interested parties other than those that submitted a selected issue request to participate in the IIR project, will they be allowed to do so?**

Yes, all interested parties will be given an opportunity to participate in the IIR process. How we ask them to participate may vary, i.e., provide written comment. However, all requests for an in-person meeting with the IIR team to present their views will be granted, unless there is a business reason not to do so.

3. **When should meetings be scheduled with requesters?**

An initial meeting should be scheduled for the purpose of obtaining industry views on the issue. Follow-up meetings can be scheduled, as needed, to gather additional information. However, to avoid the appearance of establishing an advisory committee in violation of FACA, a series of meetings with industry should not be scheduled in advance.

4. **How should the IIR team executive handle requests from external stakeholders to attend meetings with the requester(s) of an issue?**

The IIR team executive should inform the requester of such requests. If the requester prefers a separate meeting, or there are tax disclosure concerns, or for any other valid business reason, the team executive will notify the other external stakeholders that they may not attend the meeting due to these reasons. The external stakeholders should be offered an opportunity to participate in a separate meeting with the IIR team.

5. **Should members of the press be admitted to meetings being held with industry representatives?**

Unless prior notice has been received, and the necessary communication coordination has made by the IIR team executive with LB&I and SB/SE Communications, they should not be allowed to attend. All requests by the media should be referred to IRS Media Relations. If the meeting would include the sharing of taxpayer specific data, then the media would not be permitted to attend.

6. **What additional involvement is expected of requesters of issue that are selected?**

Parties that submitted issues that are selected for the IIR program will be asked to assist the IIR team on an as needed basis. This could include:

- Presenting their position on the issue to the team
- Acting as a liaison between the team and industry taxpayers
- Assisting the team to identify sources of needed information and coordinating the gathering of that information from those sources
- Providing feedback to the team on the team's proposed issue solution guidance
- Notifying industry taxpayers regarding the issued guidance
- Providing feedback on the effectiveness of the IIR program

7. **Can the Service request the requester(s) to provide factual data on an IIR issue?**

Yes, but the Service should make it clear that the submission of the factual data is voluntary and let the requester(s) determine how to obtain the facts. Specific taxpayers should not be singled out by the Service to provide facts/books and records regarding the issue. However, individual taxpayers may volunteer to assist the team by providing facts/books and records.

Exhibit 7.40.1-3 (Cont. 1) (11-01-2004)**Interacting with Outside Stakeholders - Frequently Asked Questions****8. What input do issue requesters have in determining the proposed resolution guidance?**

External stakeholders are encouraged to fully explain their legal positions, opinions and recommended solutions regarding the issue. However, after consideration of the external input, the IIR team will have the sole responsibility for developing and proposing resolutions. External stakeholders will not be invited to enter into negotiations or to participate in the decision-making process with respect to the proposed resolution of the issue. Doing so would be in violation of FACA.

Exhibit 7.40.1-4 (11-01-2004)**Lessons Learned from Prior Industry Issue Resolution Teams**

A number of IIR teams have used the Industry Issue Resolution process approach successfully. Following are some of their lessons learned.

Resolution Tips

- Start with a “fresh view” approach to the issue to ensure all aspects of the legal analysis, IRS audit position, and industry position are on the table for discussion.
- Start building the issue resolution as a Revenue Procedure or Revenue ruling from the beginning of the process.
- Develop the historical background on the issue early.
- In resolving the issue, the team should be flexible and innovative. Consider audit protection, retroactivity, and prospective elements.
- In keeping with FACA guidelines, consider all industry groups in the resolution.

Industry Tips

- Other industries or groups can provide information. The primary industry meetings should be scheduled separately from other groups.
- Encourage the industry to identify all other industry organizations that are impacted by the issue.
- Encourage the industry to support site visits and interviews with appropriate parties as needed to ensure all facts and activities are identified and validated.
- Discuss with the industry the facts and legal analysis that the team is considering to determine if there are any other facts or views the team should consider.

IIR Team Tips

- Explore possible resolution options.
- Agree on the next meeting date with the team before concluding the meeting.
- Before all meetings with the industry, the team should have a pre-meeting conference to develop/ finalize the agenda.
- Some team members can be part time or on an as- needed basis.
- A team member core should attend all work team and industry meetings: team manager, Division Counsel, Associate Chief Counsel, revenue agent, subject matter expert.
- Keep the Treasury team member informed and engaged by briefing him/her of the missed activities and decision when he/she is unable to attend meetings.
- Provide written feedback to team members, including next steps.

