



Report to the Chairman, Subcommittee
on Tax, Committee on Ways and Means,
House of Representatives

May 2023

TAX ENFORCEMENT

IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits

Accessible Version

Revised June 7, 2023 to correct page 10. The corrected section should read: 'From fiscal years 2013 through 2022, data from the Appeals Centralized Database System (ACDS) show that use of ADR programs fell by 65 percent.'

GAO Highlights

Highlights of [GAO-23-105552](#), a report to the Chairman, Subcommittee on Tax, Committee on Ways and Means, House of Representatives

Why GAO Did This Study

IRS's ADR programs are intended to resolve disputes over taxes owed and to be paid between IRS enforcement staff and taxpayers more quickly and at lower cost than using the IRS appeals process or litigation. The National Taxpayer Advocate has reported that the use of ADR programs has steadily declined, while resolving disputes through the IRS appeals process is taking longer.

GAO was asked to review how IRS manages its ADR programs. This report describes IRS's ADR programs and evaluates ADR data as well as IRS's management of its ADR programs. GAO reviewed IRS ADR procedures, guidance and data; interviewed IRS and other government agency officials; and held focus groups with taxpayer representatives.

What GAO Recommends

GAO is making eight recommendations to improve how IRS manages its ADR programs, including that IRS should improve its ADR data collection, establish clear program objectives, analyze data to better achieve ADR's benefits, monitor taxpayers' experience to assess ways to improve it, and establish responsibilities and tasks for managing ADR programs. IRS generally agreed with the recommendations.

View [GAO-23-105552](#). For more information, contact Jessica Lucas-Judy at (202) 512-6806 or lucasjudj@gao.gov.

May 2023

TAX ENFORCEMENT

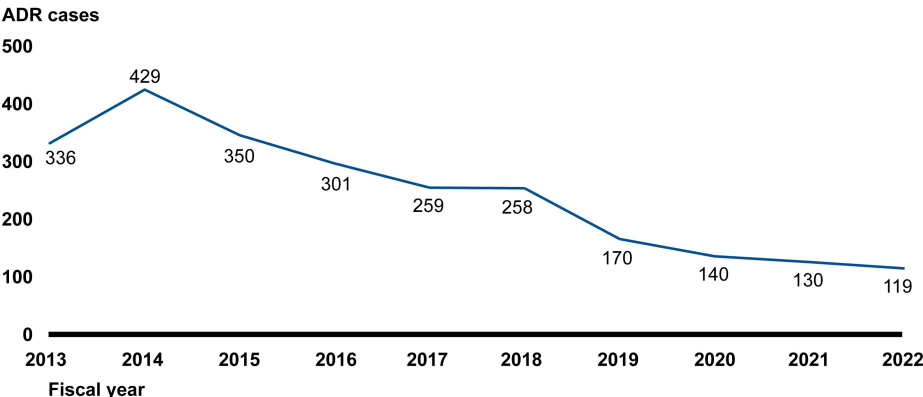
IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits

What GAO Found

The Internal Revenue Service (IRS) offers six alternative dispute resolution (ADR) programs providing mediation to expedite resolution and avoid lengthy traditional appeals and litigation processes. ADR can potentially benefit both IRS and taxpayers by reducing the time and costs to resolve disputes while increasing certainty for taxpayers in meeting their tax obligations.

From fiscal year 2013 to 2022, IRS used ADR programs to resolve disputes in less than half of one percent of all cases reviewed by its Independent Office of Appeals, which is responsible for tracking and implementing all IRS ADR programs. During that period, use of ADR fell by 65 percent. Beyond these data on ADR usage, IRS does not have the data necessary to manage the ADR programs, such as data on taxpayer requests to use ADR; IRS' acceptance or rejection of those requests; and the results from using ADR, including rate of resolution, time, and costs. Although IRS does not know definitively why ADR usage has declined, potential reasons include that taxpayers do not perceive the benefits of using ADR, according to IRS officials.

Alternative Dispute Resolution (ADR) Cases Closed Annually, Fiscal Years 2013 to 2022



Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Data for Alternative Dispute Resolution (ADR) Cases Closed Annually, Fiscal Years 2013 to 2022

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
ADR	336	429	350	301	259	258	170	140	130	119

Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

IRS is missing opportunities to use several management practices for its ADR programs to help increase taxpayers' willingness to use ADR as well as maximize the programs' benefits. IRS does not have clear and measurable objectives for its ADR programs that contribute to achieving IRS's strategic goals and objectives, such as its ability to resolve disputes over specific tax issues and reduce the investment of time and money to do so. IRS does not analyze data to assess whether ADR is achieving benefits such as resolving disputes over specific tax issues and reducing the investment of time and money to do so. IRS has not regularly monitored the taxpayer experience with ADR to address problems in real-time. Absent this information, IRS cannot assess how to

improve taxpayers' willingness to use ADR as well as their experience in resolving tax disputes. In addition, IRS cannot take action on these missed opportunities to maximize ADR benefits because IRS has not established specific responsibilities and related tasks for consistently managing all elements of the ADR programs.

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Abbreviations

ABA	American Bar Association
ACDS	Appeals Centralized Database System
ACUS	Administrative Conference of the United States
ADR	Alternative Dispute Resolution
AICPA	American Institute of Certified Public Accountants
The Act	Administrative Dispute Resolution Act
DSD	Dispute Systems Design
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRS Appeals	Independent Office of Appeals
Kenya	Kenya Revenue Authority
LB&I	Large Business and International
Michigan	Michigan Department of Treasury
NAEA	National Association of Enrolled Agents
New York	New York Bureau of Conciliation and Mediation Services
NTA	National Taxpayer Advocate
PAM	Post Appeals Mediation
RAP	Rapid Appeals Program
SB/SE	Small Business/Self-Employed
TE/GE	Tax Exempt/Government Entities
TEI	Tax Executives Institute
United Kingdom	United Kingdom's His Majesty's Revenue and Customs

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May 31, 2023

The Honorable Mike Kelly
Chairman
Subcommittee on Tax
Committee on Ways and Means
House of Representatives

Dear Chairman Kelly,

Each year, thousands of disputes arise between taxpayers and the Internal Revenue Service (IRS) over billions of dollars in additional recommended taxes from audits of tax returns and tax debts pursued for collection by IRS.¹ IRS eventually resolves most of these disputes over taxes without litigation through negotiations with taxpayers in its Independent Office of Appeals (IRS Appeals). This resolution process can take years and hundreds of staff hours for disputes over large tax amounts because of the complex issues involved.

With the aim of helping to reduce the time, costs, and taxpayer burden in resolving disputes, IRS has offered alternative dispute resolution (ADR) programs to certain groups of taxpayers. These programs could resolve tax disputes without having to go through the full appeals processes or litigation. However, our 1997 report on related ADR initiatives raised concerns and made recommendations to help ensure they were effective.² Also, according to a 2016 report by the National Taxpayer

¹IRS uses the terms "audit" and "examination" interchangeably when referring to its compliance reviews of tax returns.

²See GAO, *IRS Initiatives to Resolve Disputes Over Tax Liabilities*, GGD-97-71 (Washington, D.C.: May 9, 1997). We found that IRS did not have measures in place to assess the extent to which the initiatives achieved stated goals of reducing the time, costs, and taxpayer burden in resolving disputes. IRS took actions to implement the related recommendations. Although that report reviewed a variety of existing initiatives, some were focused on preventing disputes such as through prefiling procedures.

Advocate (NTA), IRS was resolving a very small and steadily declining proportion of cases through these alternatives.³

Furthermore, a January 2023 NTA report pointed to the declining quality of service to taxpayers during the appeals process as one of the most serious problems in IRS.⁴ The report noted various service barriers and that taxpayers have been experiencing increasing delays in reaching resolution through IRS Appeals since 2017.⁵ NTA reported that on average taxpayers now can expect IRS Appeals to take about a year to resolve disputes.

You asked us to review issues related to IRS's management of ADR programs. This report (1) describes IRS's ADR programs, (2) analyzes available data on the use and performance of IRS's ADR programs, and (3) assesses how IRS could enhance its ADR programs to better achieve desired results. In addition, this report describes how some other federal agencies, state tax agencies, and tax agencies in other countries manage their ADR programs.

To describe IRS's ADR programs, we reviewed the programs' processes and potential benefits. We also compared ADR processes to IRS's traditional stages for resolving tax enforcement disputes.⁶

To describe and assess the available data on ADR use and performance, we collected and analyzed IRS data on the number, characteristics, and

³See NTA, *Most Serious Problems #15 - Alternative Dispute Resolution (ADR): The IRS is Failing to Effectively Use ADR As a Means of Achieving Mutually Beneficial Outcomes for Taxpayers and the Government*, Taxpayer Advocate Service 2016 Annual Report to Congress – Volume One. NTA called for IRS to take several steps, including to expand ADR program availability, publicize data on its benefits, and encourage use through effective communications to taxpayers.

⁴NTA, *Annual Report to Congress*, 2022.

⁵The report said such barriers include IRS Appeals' staffing shortfalls and IRS Appeals' policies and practices that frustrate taxpayers in attempting to resolve the dispute with IRS enforcement units and raise concerns about IRS Appeals' independence from IRS enforcement.

⁶We identified the processes by reviewing ADR program documents and interviewing IRS officials. In this report, we do not include Tax Exempt/Government Entities division (TE/GE) ADR programs in our description of ADR programs (for our first objective) and our assessment of IRS's ADR management (for our third objective) because few ADR cases originate in TE/GE. Even so, our second objective includes TE/GE ADR program data to cover all uses of IRS ADR.

results of ADR cases. We then compared the results to similar data for all cases closed by IRS Appeals for fiscal years 2013 to 2022. We collected data from the IRS Appeals Centralized Database System (ACDS) and reviewed the data to determine whether information was attributable to ADR programs. To assess the reliability of electronic data, we performed reviews. These reviews included checks to determine that no data were missing and that the data values provided to us did not include obvious errors. We found the data to be reliable for describing the use of certain ADR programs. We compared the data to ADR program estimated timelines stated in the Internal Revenue Manual (IRM).

To assess how IRS could enhance its ADR programs to better achieve desired results, we identified federal program management criteria, such as discussed in our body of reports on federal evidence-based policymaking and in federal internal control standards.⁷ We also conducted a literature search to identify criteria for dispute resolution systems, including ADR. We identified dispute systems designs (DSD) principles as criteria for designing and evaluating dispute systems and adapted selected DSD principles identified in a study of Australia's tax dispute resolution system.⁸ We shared the criteria with IRS officials and other knowledgeable parties. No one suggested changes to our plan to apply the criteria. We applied the criteria to IRS's administration of its ADR programs to assess how well IRS managed them to achieve desired results and maximize potential value.

To identify potential enhancements to increase taxpayer usage and satisfaction with IRS's ADR programs, we conducted five focus groups with tax professionals who represent taxpayers in disputes with IRS. We recruited focus group participants from four associations that represent tax professionals. Focus group participants included tax lawyers and tax

⁷See, for example, GAO, *Evidence-Based Policymaking: Survey Results Suggest Increased Use of Performance Information across the Federal Government*, [GAO-22-103910](#) (Washington, D.C.: Nov. 2, 2021); *Evidence-Based Policymaking: Selected Agencies Coordinate Activities, but Could Enhance Collaboration*, [GAO-20-119](#) (Washington, D.C.: Dec. 4, 2019); and *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

⁸See Melinda Jone, *Evaluating Australia's Tax Dispute Resolution System: A Dispute Systems Design Perspective*, *eJournal of Tax Research* (2015), vol. 13, no. 2. The principles we selected were most relevant to evaluation of an existing dispute system as opposed to the design of a system. See appendix II for information on how we identified and reviewed research on tax dispute systems.

professionals who represent companies before IRS.⁹ The groups ranged in size from three to six participants, with a total 25 participants. We designed our focus groups to gather in-depth information on the experiences and perspectives of representatives of taxpayers using ADR programs to resolve disputes with the IRS. The data we collected reflect those of the taxpayer representatives who participated in our focus groups. The findings from our focus groups are nongeneralizable.

To describe ADR practices that other federal agencies, state tax agencies, or agencies in other countries use to manage ADR programs, we conducted a literature search and contacted knowledgeable organizations to identify these various entities and their practices. We identified agencies that use ADR programs to resolve either tax disputes or other disputes with members of the public. We also identified agencies that were described in academic literature. Using this and other information, such as diversity in agency size, function and geography and input from knowledgeable groups, we selected nine non-IRS agencies for review. We interviewed knowledgeable officials at these agencies and analyzed the literature search results to summarize the practices we identified. Appendix I provides the results of our work at these non-IRS agencies that use ADR programs.

For a more detailed discussion of our methodology, see appendix II. We conducted this performance audit from November 2021 to April 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Various types of disputes can arise between a taxpayer and IRS during an audit or collection action. For example, a taxpayer may assert that IRS

⁹The associations are the Tax Section of the American Bar Association, Tax Executives Institute, American Institute of Certified Public Accountants, and National Association of Enrolled Agents.

made an incorrect decision based on a misinterpretation of the law or facts during an audit or inappropriately acted to collect the taxes owed.

The first stage for resolving such disputes involves the audit or collection officials (i.e., the enforcement staff) working directly with the taxpayer to try to resolve the issue once they determine a taxpayer disagrees with their position.¹⁰ This resolution attempt may involve multiple interactions by telephone or correspondence. Enforcement staff review any new information submitted by the taxpayer as they attempt to resolve audit or collection matters.

If enforcement staff and the taxpayer cannot reach agreement, the taxpayer may take the dispute to the second dispute resolution stage, IRS Appeals.¹¹ The enforcement unit forwards the appeal request and documentation from the taxpayer along with the documentation for the proposed enforcement action.

The appeal process involves multiple steps. IRS Appeals reviews the differing taxpayer and IRS positions, for example, on taxes to be owed or collected. It then offers a conference in which taxpayers have the opportunity to present their position. Once IRS Appeals concludes its review of the facts of the case presented by each side and considers potential hazards of litigation, it communicates a proposal to settle the dispute to the taxpayer.¹²

¹⁰References to “taxpayer” include taxpayer representatives such as a lawyer or accountant unless otherwise noted.

¹¹Appeals is IRS’ long-standing, traditional dispute resolution forum. Its mission is to resolve tax disputes, without litigation, in a manner that is fair and impartial to both the government and the taxpayer, and that will enhance voluntary compliance and public confidence in the integrity and efficiency of IRS. Internal Revenue Manual (IRM) § 8.1.1.1. Not all disputed issues go through the appeals’ process before entering litigation in a court.

¹²IRS has defined the hazards of litigation as the uncertainties of the outcome of a court’s decision in the event of a trial. IRM § 8.11.1.2.7.5.

If the taxpayer and IRS cannot agree on a resolution through the traditional appeals process, the third dispute resolution stage is litigation. In this stage, the taxpayer seeks resolution in federal court, if eligible.¹³

The Administrative Dispute Resolution Act (the Act) set the stage for increased use of ADR in federal agencies.¹⁴ The Act requires each federal agency to adopt a policy that addresses the use of alternative means of dispute resolution. It also directs the head of each agency to designate a senior official to be the dispute resolution specialist to implement the policy. The act provided that training for the dispute resolution specialist and other employees involved in implementing the agency's ADR policy should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The act also authorized using a neutral third party in dispute resolution proceedings.

Mediation is a common ADR technique used in the federal government, as well as state and international tax administration agencies. Mediation involves a neutral third party assisting disputants in negotiating an agreement. The mediator generally has no independent authority and does not render a decision. Instead, the mediator acts as a facilitator to guide discussion between the disputing parties. Mediators may focus on enabling conversation among the parties, direct the process, provide advice, and give recommendations to resolve the dispute. Mediators use a variety of techniques to manage negotiations, such as listening actively, managing impasse and heightened emotions, and working with parties to create and evaluate settlement proposals, among others.

In a 2016 report, the National Taxpayer Advocate noted that mediation can provide several potential benefits. These benefits include increasing the efficiency and timeliness of case resolutions, protecting taxpayer rights, reducing taxpayer burden and cost, encouraging voluntary compliance, and economizing scarce tax agency resources.¹⁵ The report further noted that mediation can also improve satisfaction among

¹³Depending on the facts and circumstances, taxpayers may file their case in the U.S. Tax Court, a U.S. District Court, or the Court of Federal Claims. A lower court ruling may be appealed to a federal appellate court.

¹⁴Pub. L. No. 101-552, 104 Stat. 2736 (1990) (codified as amended at 5 U.S.C. § 571 note).

¹⁵NTA, *Annual Report to Congress*, 2016.

disputants with the outcome or manner in which the dispute is resolved and improve the taxpayer experience with IRS.

IRS's ADR Programs Intend to Avoid the Traditional Appeals and Litigation Approach to Resolving Disputes

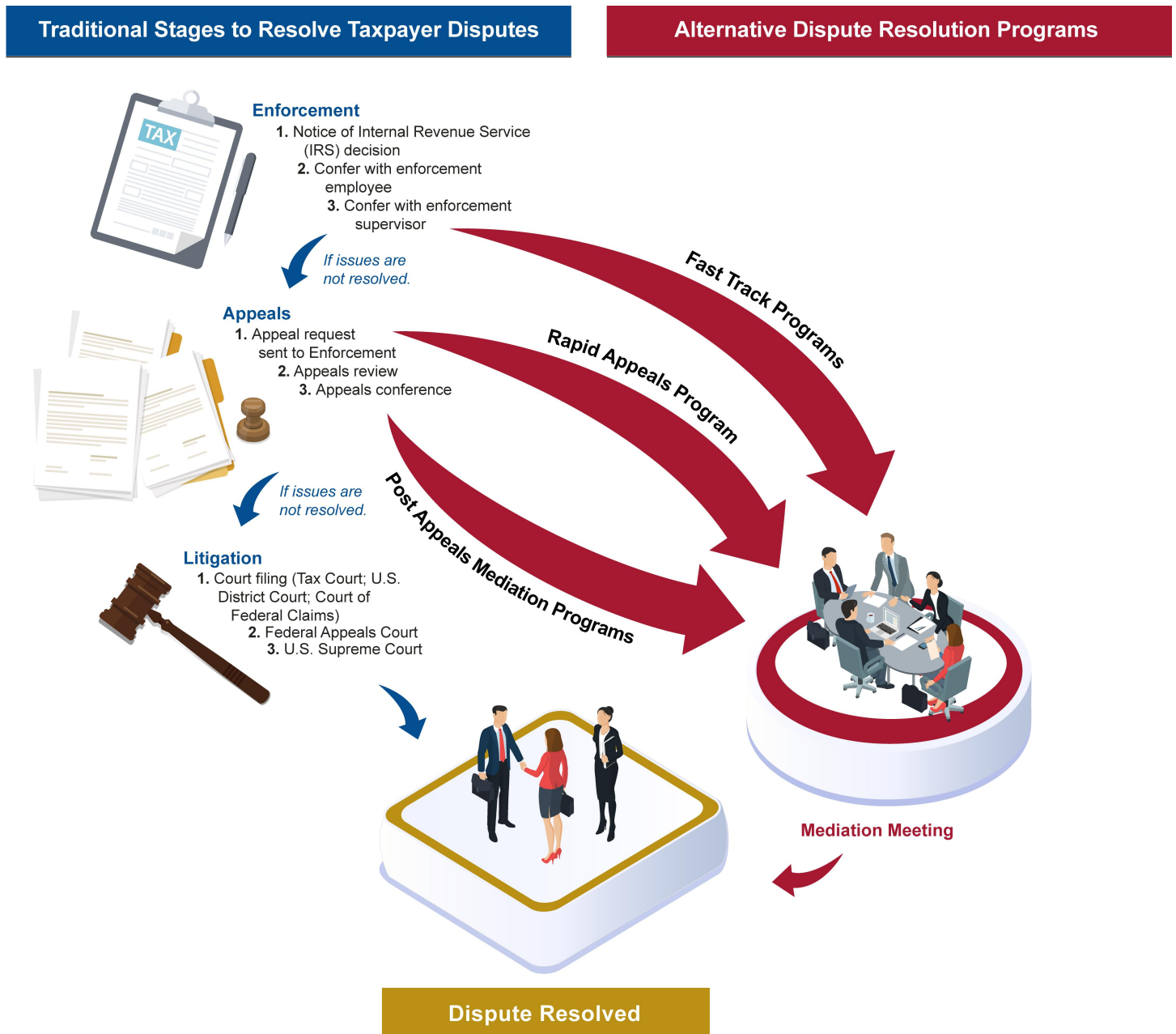
IRS's ADR programs are intended to offer taxpayers and IRS the opportunity to resolve disputes more quickly and at a lower cost by having an IRS Appeals technical employee act as a mediator to facilitate discussions over the disputes.¹⁶ If these discussions resolve the disputes, both taxpayers and IRS can avoid more time-consuming and costly traditional appeals and litigation dispute stages.

IRS has established three broad types of ADR programs including Fast Track programs, the Rapid Appeals Program, and Post Appeals Mediation programs.¹⁷ Each type has a unique access point within the traditional stages to resolve disputes with mediation before, during, and at the end of its traditional appeals process (see simplified depiction in fig. 1).

¹⁶These intended results we identified are based on our analysis of ADR programs' operations and, as discussed later in this report, stated program objectives and other desired results documented by IRS. Taxpayers must apply to IRS to participate in one of the ADR programs. The IRM provides guidance for IRS officials to accept or reject a taxpayer's request for ADR by considering certain exclusionary criteria (see appendix III for a description of some of the exclusionary criteria).

¹⁷These broad types we identified are based on our analysis of ADR programs in the context of IRS's traditional approach. We exclude from this report's scope IRS's process of early referral of disputes to IRS Appeals because, unlike other ADR programs, early referral does not use mediation to resolve disputes. It involves the transfer of a fully developed, unagreed issue to the traditional appeals process while an IRS enforcement official continues working on other issues. The Rapid Appeals Program is named Rapid Appeals Process in the IRM and IRS guidance. We use the name Rapid Appeals Program in this report for clarity and consistency in referring to its use of mediation along with other similar ADR programs.

Figure 1: How Internal Revenue Service Alternative Dispute Resolution (ADR) Programs Fit in the Traditional Stages for Resolving Disputes



Source: GAO analysis of IRS information, and Vector/stock.adobe.com. | GAO-23-105552

Text for Figure 1: How Internal Revenue Service Alternative Dispute Resolution (ADR) Programs Fit in the Traditional Stages for Resolving Disputes

Traditional Stages to Resolve Taxpayer Disputes	Alternative Dispute Resolution Programs
Enforcement	Fast Track Programs/Mediation Meeting
1. Notice of Internal Revenue Service (IRS) decision	
2. Confer with enforcement employee	
3. Confer with enforcement supervisor	
If issues are not resolved.	
Appeals	Rapid Appeals Program/Mediation Meeting
1. Appeal request sent to Enforcement	
2. Appeals review	
3. Appeals conference	
If issues are not resolved.	Post Appeals Mediation Programs/Mediation Meeting
Litigation	
1. Court filing (Tax Court; U.S. District Court; Court of Federal Claims)	
2. Federal Appeals Court	
3. U.S. Supreme Court	
Dispute Resolved	Dispute Resolved

Source: GAO analysis of IRS information, and Vector/stock.adobe.com. | GAO-23-105552

Note: This is a simplified, linear depiction of the flow of disputes to be resolved through the Internal Revenue Service's processes. Disputes may be resolved at the traditional stages or through Alternative Dispute Resolution (ADR). Not all disputes go through each of the stages. If an ADR program does not resolve a dispute, it may return to the traditional stages.

IRS has three Fast Track programs: Large Business and International (LB&I) Fast Track Settlement, Small Business/Self-Employed (SB/SE) Fast Track Settlement, and Collection Fast Track Mediation.¹⁸ The LB&I and SB/SE Fast Track Settlement programs generally provide the taxpayer an opportunity to mediate with IRS audit staff when certain types of disputes arise over tax issues within the jurisdiction of those divisions.¹⁹ The Collection Fast Track Mediation program offers the taxpayer an opportunity to mediate with IRS collection staff when disputed issues

¹⁸For reasons discussed in appendix II, we did not include a Fast Track program offered by the Tax Exempt/ Governmental Entities division. The Large Business and International division serves C corporations, S corporations, and partnerships with assets greater than \$10 million. It also serves U.S. citizens and residents with offshore activities and nonresident aliens with U.S. activities. The Small Business/Self-Employed Division serves sole proprietor businesses, rental/flow-through income, farm income, and/or employee business expenses as well as other businesses with assets less than \$10 million. It also has responsibility for estate, gift, fiduciary, excise, and most employment tax returns.

¹⁹See appendix III for information on some factors that would deem a disputed issue ineligible.

arise in collections. If any Fast Track program does not resolve a disputed issue, the taxpayer may choose the traditional IRS Appeals process to settle disputes.

The Rapid Appeals Program allows the taxpayer, enforcement staff, and IRS Appeals officer to have a working conference at the beginning of the appeals process using mediation in an attempt to resolve certain types of disputed issues.²⁰ If the Rapid Appeals Program does not resolve all of the disputed issues, the taxpayer may choose the traditional IRS Appeals process to attempt to settle disputes for the remaining issues.

The Post Appeals Mediation programs include two types—one for collection disputes and one for examination disputes.²¹ These two programs allow the taxpayer and IRS Appeals to work with a mediator to attempt to resolve disputes while the case is under Appeals' consideration. If Post Appeals Mediation programs do not resolve all disputed issues, the taxpayer may proceed to litigation.²² Appendix III has more information on the ADR programs.

IRS Data Collection Is Insufficient to Analyze and Address Low ADR Program Use

IRS Data Show Low and Declining Use of ADR Programs

From fiscal years 2013 through 2022, data from the Appeals Centralized Database System (ACDS) show that use of ADR programs fell by 65 percent. ADR use peaked in fiscal year 2014 and declined in

²⁰The program is available for taxpayers who appealed LB&I-sourced cases (except International Individual Compliance cases) and SB/SE Estate and Gift cases.

²¹As noted in appendix III, we use the name Examination Post Appeals Mediation in this report for clarity in the type of enforcement disputes the program for examination involves, but the IRM calls the program Post Appeals Mediation (Non-Collection Cases). The Collection Post Appeals Mediation program is only for disputes of offers in compromise—which allows taxpayers to pay less than the full tax amount owed—and the trust fund recovery penalty. Appendix III provides details on these two types of collection disputes.

²²Litigation refers to the process of resolving disputes through the court system. Congress created the Tax Court as an independent judicial authority for taxpayers disputing certain IRS determinations. Generally, a taxpayer may file a petition in the Tax Court in response to certain IRS determinations.

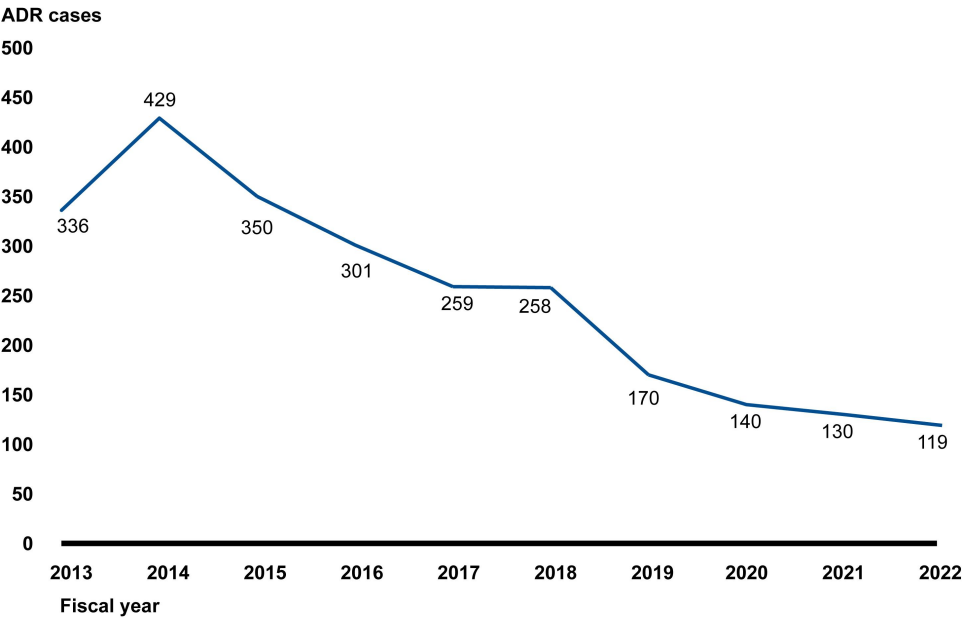
every subsequent fiscal year (see fig. 2).²³ An increase in Fast Track cases from SB/SE accounted for the rise in ADR cases in fiscal year 2014.²⁴ While IRS Appeals officials said they were uncertain of the cause of the increase, SB/SE officials said the peak may have resulted from the roll-out of Fast Track Settlements programs in 2013.²⁵

²³Data on ADR usage includes Fast Track Settlement for LB&I, SB/SE, and TE/GE; Fast Track Mediation for Collections; and the Rapid Appeals Program and Post Appeals Mediation.

²⁴We determined usage of ADR by counting each instance of digital codes that indicates ADR occurred in a set of all closed Appeals cases from fiscal years 2013 through 2022. We focused on closed cases to describe data because they are finalized in ACDS and will not change.

²⁵Fast Track Settlements for cases from LB&I originated in 2003.

Figure 2: Internal Revenue Service (IRS) Alternative Dispute Resolution (ADR) Cases that Were Closed Each Fiscal Year, 2013 to 2022



Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Data for Figure 2: Internal Revenue Service (IRS) Alternative Dispute Resolution (ADR) Cases that Were Closed Each Fiscal Year, 2013 to 2022

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
ADR	336	429	350	301	259	258	170	140	130	119

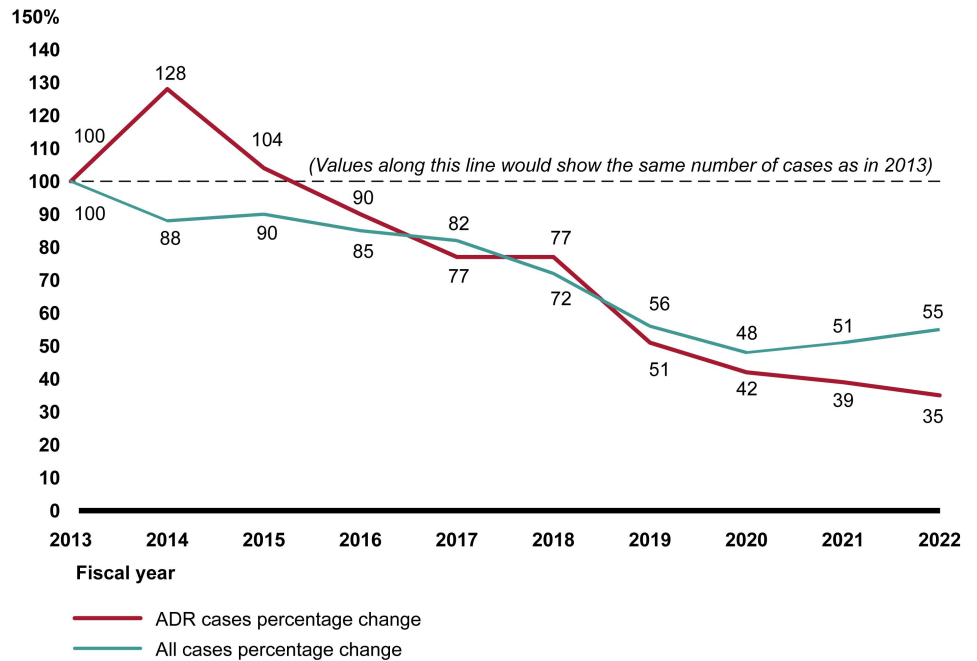
Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Note: Data on ADR usage includes Fast Track Settlement for Large Business and International, Small Business/Self-Employed, and Tax Exempt/Government Entities; Fast Track Mediation for Collections; and the Rapid Appeals Program and Post Appeals Mediation. Data describe cases that closed in that fiscal year.

For context, IRS Appeals closed more than 948,000 cases of all types from fiscal year 2013 through 2022 while closing almost 2,500 cases that used at least one ADR program—less than half a percent of all closed IRS Appeals’ cases. Furthermore, ADR usage has decreased more than the overall decline in IRS Appeals’ cases (see fig. 3).

Figure 3: Closed Cases Using Alternative Dispute Resolution (ADR) Declined by a Greater Rate than All IRS Appeals Closed Cases from Fiscal Years 2013 through 2022

Percentage of cases closed compared to Fiscal Year 2013



Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Data for Figure 3: Closed Cases Using Alternative Dispute Resolution (ADR) Declined by a Greater Rate than All IRS Appeals Closed Cases from Fiscal Years 2013 through 2022

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Number of ADR Cases	130117	114442	116683	110482	106365	94148	72713	62586	66161	71872
Number of All Cases Percentage change	100%	88%	90%	85%	82%	72%	56%	48%	51%	55%
ADR Cases Percentage change	100%	128%	104%	90%	77%	77%	51%	42%	39%	35%

Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Note: Data describe cases that closed in that fiscal year

IRS officials said decreased taxpayer demand explains the decline in use of some ADR programs. SB/SE officials said that a 2016 study they conducted found taxpayers saw no advantage to some ADR programs over the traditional appeals process. However, IRS officials said that neither SB/SE nor other IRS divisions have more recent data to confirm

this or any other reason for the decline. For example, officials from IRS Appeals and SB/SE said they do not have data to show how often IRS declined a taxpayer's request for an ADR program. LB&I officials said they have such data but have not used them or other data to identify trends in these taxpayer requests and better understand the cause of the decline in ADR usage. LB&I officials said they planned to undertake such analysis but SB/SE officials told us they did not intend to further research the decline in usage because of a lack of relevant data.

In our five focus groups with taxpayer representatives, we asked participants about their satisfaction with ADR and what factors most influenced decisions on whether to pursue ADR. IRS's willingness to participate in ADR was among the most commonly occurring themes across the groups. While these findings from our focus groups cannot be generalized to explain why ADR usage declined since fiscal year 2013, they do provide rich context and detailed insights into the ADR experiences of the taxpayer representatives that participated in our groups.²⁶ Based on our analysis, some of the additional themes described by participants in a majority of the focus groups follow.

- In five of five focus groups, participants stated that they believed that IRS staff, particularly for audit disputes, did not always participate in ADR programs in good faith. In four focus groups participants stated that they believed IRS staff did not show willingness to move from their position on the tax owed. This factor is a disincentive to pursue use of ADR. For example, one participant said, "We had...a person here...that would offer ADR, Post-Appeals Mediation, but really wasn't interested in pursuing it. There was a benefit to them in the system of saying that they had offered it..." The participant concluded "there was clearly room for a settlement. And somebody...wanted to tick the box that they had offered ADR, but they didn't really want to play." Similarly, several participants in five of the six groups said that their interest in ADR was related to how willing IRS audit staff were to sincerely participate.
- In three of our five focus groups, participants referred to difficulties or confusion about using ADR and how the programs worked. Group participants discussed difficulties accessing ADR programs and said IRS provided little assistance or information. In three of five groups, participants said they were confused about how to access ADR

²⁶The scope of our work did not include case file reviews to verify reasons cited by the taxpayer representatives. We did not have the authority for this review to access taxpayer data in such case files.

programs. A participant in one focus group cited experiences in which IRS audit and collections staff were unfamiliar with the ADR programs being requested. The participant described applying for an ADR program. "You initiate the mediation by sending a written request as appropriate to a manager...I had to send that to the team manager with a copy to the appropriate area director...I just remember talking to the area director about it, who called and said like 'why are you sending this to me? What is this?'" In a subsequent interview, a taxpayer representative from another association described a similar experience.

- In all five groups, participants described being unable to resolve the dispute. In two groups, a participant said the IRS Appeals officer serving as an ADR mediator blocked a settlement to which the auditor and taxpayer had agreed. One participant said, "We had a recent experience where we went into Fast Track, agreed on a resolution with exam. And after the conference, the Appeals officer said 'no.' They weren't going to recommend or approve it because they didn't feel it was the right resolution. Which was shocking given their role is supposed to be to mediate a resolution between the two parties."

In response to these quotes, IRS officials said that without knowing the details of the related disputes, the participants' examples could be misleading. They also said that Appeals' procedures dictate the ultimate authority to approve resolution of disputes. Regardless, the participants' quotes provide insights into the ADR experiences of the taxpayer representatives who participated in our focus groups.

Conversely, a theme in all focus groups was that participants were more likely to pursue ADR when they perceived that the IRS was willing to participate and sought to find a resolution. See appendix IV for additional details on the results from the focus groups.

IRS's Data Collection Does Not Allow Differentiation of Certain ADR Cases from Other Appeal Cases

IRS Appeals is responsible for tracking ADR programs. Appeals stores and tracks its data, including data on ADR cases, in the ACDS. ACDS describes the number of days needed to close the case and the cases' closing disposition, such as whether the case was fully resolved, partially resolved, or not resolved, among other data.

However, IRS Appeals officials told us that data for three ADR programs—the Rapid Appeals Program and Post Appeals Mediation programs for examination and collection cases—are comingled with data in the traditional appeals process.²⁷ Therefore, ACDS cannot segregate the data for the more than 620 cases in the Rapid Appeals and Post Appeals Mediation programs from fiscal years 2013 through 2022. For example, IRS officials said ACDS cannot distinguish these cases from other appeal cases on the amount of tax dollars in dispute, IRS staff time charged, or whether the disputed issues achieved resolution. As a result, we consider Rapid Appeals and Post Appeals Mediation data to be unreliable for analysis of time, case closing disposition, or tax dollars in dispute. Our focus group discussions indicated that these are important factors influencing taxpayers' decisions whether to pursue using ADR.

IRS Appeals officials said that to access such data would only be possible through a manual review of relevant case files because ACDS does not disaggregate data by particular activities or programs indicated by feature codes. Officials said that resource constraints have led IRS to keep ACDS operating in its present capacity, or make only those changes necessary to meet new legislation. They said that in recent years IRS has not had the resources to adapt the system to the needs of particular programs, such as ADR. Officials stated that IRS Appeals will potentially be able to capture additional data when it implements the proposed Enterprise Case Management system. However, this system will not be available to IRS Appeals until, at the earliest, the second half of 2024. When we asked IRS Appeals officials if they could implement a temporary means of collecting disaggregated ADR data, they said that IRS Appeals does not have the ability to use temporary, ad-hoc methods to identify and collect data attributable to ADR Programs.

IRS's Strategic Plan for fiscal years 2022 through 2026 directs the agency to improve its analytical capabilities to drive evidence-based decision-making.²⁸ Additionally, IRS policy stipulates that officials have useful information necessary to ensure that their programs are effectively

²⁷Post Appeals Mediation (PAM) includes both PAM for examination cases and PAM for collection cases. While these are technically different programs, Appeals uses the same code to identify them in the ACDS. We cannot distinguish these two types of cases from each other.

²⁸Internal Revenue Service. "IRS Fiscal Year 2022-2026 Strategic Plan." Publication 3744. Department of Treasury.

managed.²⁹ For example, the stated objectives and potential benefits of ADR programs include reducing taxpayer burden, case cycle time, IRS staff burden, and IRS resource needs, as well as resolving tax disputes.³⁰ The need to have and evaluate quality information that reflects program objectives is reiterated in federal internal control standards.³¹ Without this information, IRS Appeals has limited ability to make evidence-based decisions that could help improve ADR.

IRS Does Not Track ADR Requests and Denials

IRS Appeals officials said ACDS also does not track how many taxpayers requested ADR and how many taxpayer requests were denied access to ADR by the IRS enforcement staff. Specifically, if LB&I or SB/SE staffs reject a taxpayer request for ADR, IRS Appeals officials said ACDS does not record the taxpayer request or IRS rejection.³² Participants in all five focus groups said that these IRS rejections were frustrating. In two cases, participants were particularly frustrated by rejections when IRS staff had suggested that the taxpayer request ADR.

IRS accepts or rejects a taxpayer's request for ADR. When reviewing a taxpayer's request, the IRM directs officials to consider certain exclusionary criteria (see appendix III for a description of some criteria). These criteria may apply to specific case conditions, such as whether a case has already been docketed for litigation. However, some exclusionary criteria are broad and involve IRS discretion in determining whether a taxpayer's request for ADR should be approved.³³

IRS officials said that while requests for ADR are only rejected according to these criteria, they do not have data to confirm this for SB/SE disputes. While LB&I does have the means to digitally track when a taxpayer has requested Fast Track, LB&I officials said they do not track the number of occurrences when such requests were denied and as a result LB&I

²⁹IRM 1.2.1.2.26.

³⁰The objectives of IRS's ADR programs are discussed later in this report.

³¹[GAO-14-704G](#), Principle 13.

³²A copy of the application is included in the taxpayer case file, but these files are only available for manual search and are not currently used to collect data on taxpayer requests for ADR and any trends for these requests.

³³One such criterion excludes requests for ADR for "issues for which mediation is not consistent with sound tax administration."

officials have not shared such data with IRS Appeals. IRS officials provided the following reasons.

- **LB&I.** Officials said that while they tracked taxpayer requests for Fast Track, they do not specifically track or identify when requests were rejected. LB&I officials said they have not yet analyzed or used any program data because of changes in management of the program since 2019. Officials said that staff have been assigned to determine how best to use the Fast Track data during fiscal year 2023.
- **SB/SE.** Officials said all rejections of requests for Fast Track are to be made in compliance with IRS's exclusionary criteria. SB/SE officials said territory managers are to concur with rejections of requests outside of these criteria. However, SB/SE did not have data to support these statements.

Without documenting and tracking ADR request and rejection data, IRS cannot accurately assess taxpayer demand for ADR or determine trends, such as whether rejected ADR requests have commonalities. Nor can IRS determine and remediate any gaps in taxpayers' knowledge of the ADR process, among other analyses, and better achieve ADR objectives.

IRS Appeals Can Report Some Data for Fast Track Programs

ACDS data can be used to describe certain case data for the Fast Track programs, including the final disposition of closed cases and the number of days needed to close cases.³⁴ On average, Fast Track cases appear to be fully resolved at a higher rate than all IRS Appeals cases.³⁵ While more than 77 percent of Fast Track cases were fully resolved, 59 percent

³⁴ACDS does include some data on the dollar value of the disputed tax dollar amounts but we did not analyze them due to data reliability concerns. Appeals officials said they do not use these data because they do not see dollar value as a useful metric in evaluating cases. Because it does not use the dollar value data, Appeals does not ensure the accuracy of the data in ACDS.

³⁵Appeals uses closing codes to describe the final status of a closed case. Closing codes are not used uniformly across all ADR programs. For example, while Fast Track cases may be closed as "Fully Resolved," "Partially Resolved," or "Not Resolved," other ADR programs, such as Post Appeals Mediation, may be closed as "Agreed" or "Unagreed." In general, a case closed as "Fully Resolved" or "Agreed" indicates that the ADR program resulted in a settlement between IRS and the taxpayer, whereas "Not Resolved" or "Unagreed" means IRS and the taxpayer did not reach a settlement.

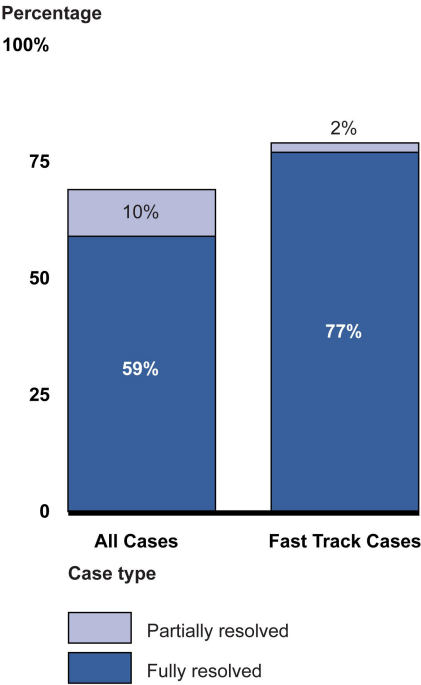
of all cases closed by IRS Appeals were closed as fully resolved or agreed (see fig. 4).³⁶

Because cases subject to Fast Track may be different from those that were not—such as in terms of tax issue or case complexity—we are limited in how we can compare these two groups of cases.³⁷ As a result, it is not currently possible without a manual case file review to know whether Fast Track cases would have been just as likely to be resolved without the use of the ADR program.

³⁶In addition, of the closed cases, 11 percent were not resolved or unagreed, 10 percent were partially resolved, and 20 percent were resolved as “default.” IRS officials said default cases are those in which the taxpayer, upon completion of the Appeals process, has the right to pursue litigation but chose not to, within a specific time frame.

³⁷We were unable to determine from the Appeals data if cases using ADR are different from or similar to those cases not using ADR. Differences in case characteristics may make a comparison between ADR cases and cases not using ADR misleading. Such a comparison would require identifying cases with matching characteristics, such as tax issue and the nature of the dispute, as well as randomized selection of similar cases. ACDS data neither provide characteristics such as the tax issue for all cases nor allow for randomized selection.

Figure 4: Proportion of All IRS Appeals Cases and Fast Track Cases Closed as “Fully Resolved” or “Partially Resolved” from Fiscal Years 2013 through 2022



Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Data for Figure 4: Proportion of All IRS Appeals Cases and Fast Track Cases Closed as “Fully Resolved” or “Partially Resolved” from Fiscal Years 2013 through 2022

Case Type	Outcome Summarized	Total	Percent Resolved
All Cases	Fully Resolved	559149	0.58978167
All Cases	Partially Resolved	90646	0.09561199
Fast Track Cases	Fully Resolved	1444	0.77219251
Fast Track Cases	Partially Resolved	33	0.01764706

Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Note: “Fully resolved” cases include those labelled as “fully resolved” and “agreed” in Appeals Centralized Database System data. Data describe cases that closed in that fiscal year.

IRS Appeals data indicate that some Fast Track programs took more days to close on average, than the timelines estimated by the Internal Revenue Manual. IRS officials said they could not explain the discrepancy without reviewing the details of individual case files. Table 1 compares the days spent to close Fast Track programs to these estimated timelines.

Table 1: Fast Track Settlements and Fast Track Mediation Programs' Closing Time Compared to Internal Revenue Manual (IRM) Estimated Timelines from Fiscal Years 2013 to 2022

Program	IRM Timeline	Average Days to Close	Difference
Fast Track Settlements (FTS) for Large Business and International	120 days	102	Under by 18 days or 15 percent
FTS for Small Business/Self-Employed (SB/SE)	60 days	72	Over by 12 days or 20 percent
FTS for Tax-Exempt/Government Entities	60 days	90	Over by 30 days or 50 percent
Fast Track Mediation for SB/SE	40 days	73	Over by 33 days or 83 percent

Source: GAO analysis of Internal Revenue Service data and the Internal Revenue Manual. | GAO-23-105552

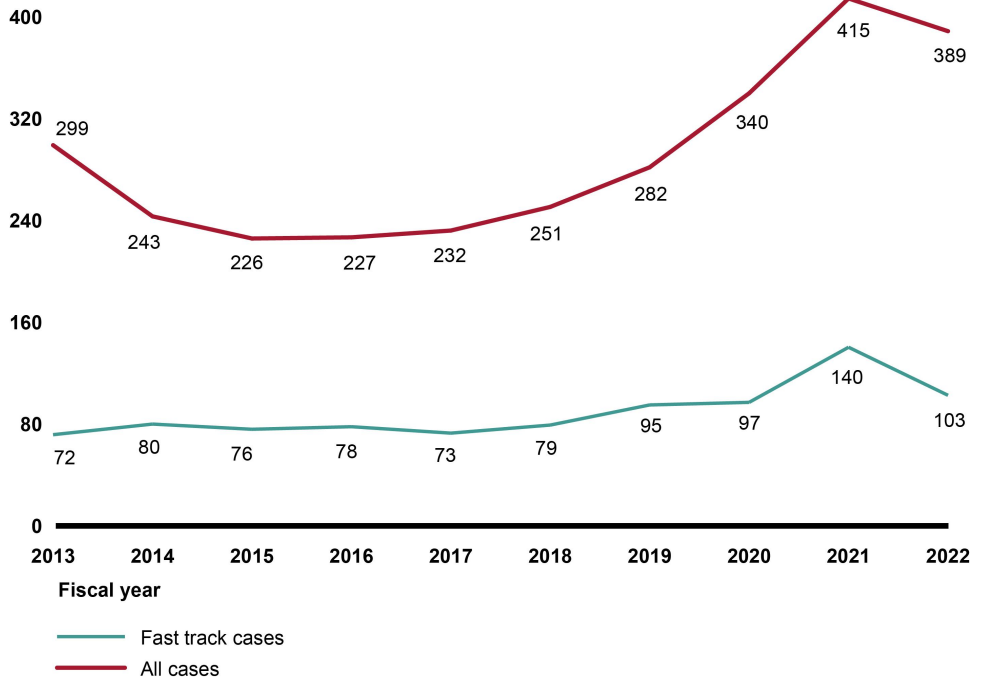
Note: Data describe cases that closed from fiscal years 2013 to 2022.

In addition, the days to close Fast Track took less time on average than closing all appeals cases (see fig. 5). As discussed above, a number of factors may impede direct comparison between cases subjected to Fast Track to cases that only use the traditional appeals' process, such as differing tax issues.³⁸ On average from fiscal years 2013 through 2022, all IRS Appeals cases took almost 279 days, or more than 9 months. During the same period, Fast Track cases took almost 83 days, or less than 3 months.

³⁸See previous footnote.

Figure 5: Number of Days Needed to Close All IRS Appeals Cases and Fast Track Cases from Fiscal Years 2013 to 2022

Average total days to complete appeals cases



Source: GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Data for Figure 5: Number of Days Needed to Close All IRS Appeals Cases and Fast Track Cases from Fiscal Years 2013 to 2022

Fiscal Years	Average Days	ADR_type
2013	299.176132	All Cases
2014	243.234411	All Cases
2015	225.845334	All Cases
2016	226.755847	All Cases
2017	232.081351	All Cases
2018	250.663655	All Cases
2019	281.814346	All Cases
2020	339.962249	All Cases
2021	414.475736	All Cases
2022	388.764776	All Cases
2013	71.6533865	Any FTS
2014	79.9944444	Any FTS
2015	75.9124088	Any FTS
2016	77.9324895	Any FTS

Fiscal Years	Average Days	ADR_type
2017	72.8826816	Any FTS
2018	79.2245989	Any FTS
2019	95.0353982	Any FTS
2020	97.0707071	Any FTS
2021	140.364706	Any FTS
2022	102.616667	Any FTS

Source GAO analysis of the Internal Revenue Service data. | GAO-23-105552

Note: Data describe cases that closed in the fiscal year.

IRS Does Not Use Some Management Practices that Could Help Maximize ADR's Value

Some ADR Programs Do Not Have Clear, Measurable Objectives

According to federal standards for internal control, management should define objectives clearly in specific and measurable terms to enable the identification of risks and define risk tolerances.³⁹ Clearly defined objectives enable management to identify, analyze, and respond to risks to achieving those objectives. Measurement allows for the assessment of performance toward achieving objectives.

We identified objectives for four of the six ADR programs, although some of the objectives were not stated in measurable terms. We were not able to locate objectives for the other two ADR programs—Examination Post Appeals Mediation and Collection Post Appeals Mediation.⁴⁰

³⁹GAO-14-704G.

⁴⁰According to the IRM, an IRM section involving a program must describe its internal control framework, including a subsection with a specific title to describe the program objectives, among other things. IRM § 1.11.2.2.5(1). Our analysis of the IRM to identify ADR program objectives credited IRS for statements of apparent desired results that appeared under a “program objective[s]” subsection heading. Nonetheless, some of these subsections described results in terms that did not directly state a program’s objectives but instead, for example, stated that a program is “designed to” achieve certain results, or asserted the “benefits” or desired results achieved by a program.

Four of the six ADR programs—LB&I Fast Track Settlement, SB/SE Fast Track Settlement, Collection Fast Track Mediation, and Rapid Appeals Program—have similar Internal Revenue Manual (IRM) statements on a common objective to resolve tax disputes at the lowest level without sacrificing the quality and integrity of IRS determinations. Two of these four—LB&I and SB/SE Fast Track Settlement programs—also have objectives that generally align with each other and include some measurable terms.⁴¹ For example, they both refer to using settlement authority, reducing time for cases, and reducing taxpayer burden. In addition, the Rapid Appeals Program has an objective on more timely dispute resolution. The Collection Fast Track Mediation objective refers to providing an opportunity to use mediation to resolve disputes.

IRS makes statements in other parts of the IRM that could imply other objectives for some ADR programs. However, it is unclear whether the statements are intended to be objectives because they are not labeled as such. For example, under a heading titled, “Collaborative Process,” for the Rapid Appeals Program, the IRM says the program is designed to reduce taxpayer burden and cycle time, among other things. Although some of these intended results are similar to objectives stated in the IRM for the two Fast Track Settlement programs, their usefulness is limited because the IRM does not label them as program objectives for purposes of identifying risks, assessing performance, and taking steps to help achieve the objectives.

Similarly, the IRM states that Collection Fast Track Mediation is to help taxpayers resolve certain collection disputes without the need to formally appeal a rejection determination, and it may allow expedited resolution for an isolated disagreement. However, this statement is within a general description dealing with an aspect of the program. Such a statement could imply objectives to reduce time or cost for the taxpayer by not having to formally file an appeal, but does not clearly label these potential outcomes as objectives with related measures to assess performance.

In addition, IRS publications and IRS.gov website pages for various ADR programs include statements that could imply objectives for some ADR programs. For example, the website for Collection Fast Track Mediation says that benefits of the program may include speedier case resolution,

⁴¹The LB&I Fast Track Settlement program has differing objectives' statements in two separate parts of the IRM. One part includes the common objective of the four programs while the other aligns generally with the SB/SE Fast Track Settlement program's objectives.

lower costs, and more flexibility. These benefits could imply objectives that can be measured, such as reduced resolution time or cost savings from using ADR.

According to IRS officials, IRS does not separately state objectives for ADR programs apart from the traditional appeals dispute resolution process because ADR programs are part of IRS Appeals' statutory mission, which is to resolve tax disputes without litigation in a fair and impartial manner. Even so, IRS has chosen to state other objectives for four ADR programs. Also, the three Fast Track programs are designed to allow disputes to be resolved under the jurisdiction of IRS enforcement programs by using an Appeals' mediator rather than the traditional appeals process.

Without clearly stated ADR program objectives in measurable terms, IRS cannot readily identify, analyze, and respond to risks to achieving ADR objectives or establish measures to assess program performance in achieving objectives.

ADR Program Objectives Do Not Clearly Align with IRS's Strategic Goals and Objectives

Leading performance practices for federal agencies include aligning activities and core processes with strategic goals to reinforce these connections for staff and create a greater focus on results.⁴² In addition, dispute systems design principles call for systems to be aligned and reflected in the organization's mission, vision, and values.⁴³ A key way to make these connections and improve the likelihood of achieving an agency's mission is to clearly align program objectives with agency-wide strategic goals and objectives.

For the most part, we did not find documentation linking ADR program objectives with IRS's strategic goals. IRS's fiscal years 2022-2026 strategic plan identifies a strategy to reduce taxpayer burden by decreasing the time between filing and issue resolution. This is to support IRS's strategic goal on enforcing the tax law and its strategic objective on improving operations to effectively and efficiently identify and address noncompliance. However, IRS does not link its ADR objectives to this strategy, strategic goal, or objective. For example, one ADR program (LB&I Fast Track Settlement) program has an objective that directly shares some of the language of this strategy. However, IRS does not clearly document the program's link to the plan's strategy or goals to reduce taxpayer burden and improve tax enforcement operations.⁴⁴

IRS has not clearly linked ADR program objectives to strategic goals and objectives because of IRS's rationale for not creating separate ADR objectives, as stated above. Without ADR program objectives that clearly link to IRS strategic goals and objectives, IRS is missing an opportunity to integrate ADR results into achieving IRS's mission, including agency-wide

⁴²GAO, *Managing For Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington, D.C.: Sept. 9, 2005); and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, DC: June 1, 1996).

⁴³See principle 9 in appendix V. The appendix describes and outlines this and other principles of dispute systems design that we identified as criteria for assessing IRS's management practices for its ADR programs.

⁴⁴In addition, the IRM statement on objectives for SB/SE Fast Track Settlement says the program "reduces overall case cycle time," but does not link this objective to the strategic plan's strategy to decrease the time between filing and compliance issue resolution, or to reduce taxpayer burden.

goals on improving operations to address noncompliance and reduce taxpayer burden.

IRS Does Not Analyze Data on the Use and Results of ADR to Assess Program Performance and Make Decisions

As we have reported in a body of work on performance management, decision makers need evidence about whether federal programs and activities are achieving intended results.⁴⁵ Such evidence can help identify and correct problems and improve programs. In addition, IRS's strategic plan includes a goal and an objective on using data to drive evidence-based decisions and improve operational outcomes.

IRS does not analyze data on the use and results of ADR to assess the performance of ADR programs and identify potential improvements. For example, we found no analysis of what types of disputes achieved a higher rate of resolution, such as by the dollar amounts and the types of tax issues being disputed.⁴⁶ Participants across our focus groups talked about taxpayer usage being driven by such factors. Furthermore, IRS has not analyzed aspects of ADR program performance, such as the number or rate of:

- taxpayer requests to use ADR (to indicate interest in using ADR);
- IRS staff offering ADR (to indicate IRS staff openness to using ADR);
- IRS rejections of taxpayer requests to use ADR (to indicate possible challenges to using ADR); or
- disputes resolved through ADR (to indicate effective use of ADR).

IRS regularly produces reports on ADR programs that show the number of cases received, in process, withdrawn, and closed overall and with an agreement.⁴⁷ The reports also have statistical data on the average days

⁴⁵See, for example, GAO, *Evidence Based Policy-Making: Survey Results Suggest Increased Use of Performance Information across the Federal Government*, [GAO-22-103910](#) (Washington, D.C.: Nov. 3, 2021); and *Evidence-Based Policymaking: Selected Agencies Coordinate Activities but Could Enhance Collaboration*, [GAO-20-119](#) (Washington, D.C.: Dec. 4, 2019).

⁴⁶Tax issues involve positions that taxpayers take on parts of their tax returns.

⁴⁷Report periods cover the fiscal year to date and previous 2 fiscal years.

to settle disputes and close cases, as well as the average hours spent for closed cases in those time periods. Because the data cover only 3 fiscal years, the data are limited for identifying longer-term trends such as the 8-year decline in ADR usage through fiscal year 2022. Furthermore, IRS officials did not provide evidence on how they used these data to assess the performance of ADR programs in achieving objectives and make changes to improve performance, if appropriate.

IRS does not analyze the data in its ADR reports to assess or make decisions to improve ADR performance because IRS does not have sufficient data on ADR usage and results to do such analyses, according to IRS officials. Nor had IRS established procedures or measures for analyzing ADR performance, such as a rate at which disputes are resolved through ADR. LB&I officials provided examples of the limited trend analyses of the above report data for its Fast Track Settlement program. However, they had no examples of analyzing the data to make decisions about performance or possible improvements. They said they plan to start analyzing data in the reports during fiscal year 2023. SB/SE officials said they were unaware of the reports and asked IRS Appeals to send them.

IRS Does Not Monitor the Quality of the Taxpayer Experience with ADR

Improving the customer experience in receiving federal government services is one of three priorities in the President's Management Agenda.⁴⁸ In addition, the *IRS Fiscal Year 2022-2026 Strategic Plan* includes goals on improving the taxpayer experience. Two of the four strategic goals in the IRS strategic plan cite commitments to provide quality services and transform IRS operations to improve the taxpayer experience. Furthermore, IRS officials said IRS policy encourages Appeals to survey its customers and expand ADR test programs to enhance taxpayer service.⁴⁹ According to a 2021 report on federal agency

⁴⁸The Agenda defines government-wide management priorities for all federal agencies to improve how government operates and performs.

⁴⁹They cited IRS Policy Statement 8-1 paragraph (3), sentence 4. IRM § 1.2.1.9.1(3)(d).

use of ADR, seeking and incorporating valuable feedback from stakeholders is one of the central principles of dispute systems design.⁵⁰

However, IRS does not systematically assess taxpayer satisfaction or experience with ADR. IRS Appeals last asked about ADR in its customer satisfaction surveys in fiscal year 2018. According to officials, IRS Appeals has a limited number of questions available when designing customer satisfaction surveys. They said that IRS Appeals added a question to the survey in 2019 but it involved a non-ADR program.

Participants in our focus groups identified factors that affect their decisions on whether to pursue ADR and their ADR satisfaction, both positively and negatively. The following factors are among those that participants discussed most frequently across multiple groups:⁵¹

- **Quality of the IRS mediator:** Participants in four of five groups reported mixed experiences with mediators. They commented favorably on the the mediators, to include mediators' skills in helping disputants understand the strengths and weaknesses of each position and seek a common ground. However, participants in two of the four groups also noted experiences in which they believed mediators did not help disputants to seek common ground. Participants in one of the groups asserted that mediator training could be improved or that some mediators act as neutrals ineffectively.
- **Speed of resolving issues through ADR:** Participants across all five groups said that when ADR works, it is much faster than traditional appeals.⁵² As an example, one participant said instead of 6 months or more, a dispute can be resolved through ADR in about 3 months, and that the mediation sessions are often 1 to 2 days.
- **Changes in taxes owed or paid:** Participants in three of five groups cited this as a positive factor. For example, they explained that ADR

⁵⁰See Kristen Blankley, Kathleen Claussen & Judith Starr, *Alternative Dispute Resolution in Agency Administrative Programs* (Dec. 17, 2021) (report to the Admin. Conf. of the U.S.).

⁵¹We did not have the authority to analyze the individual taxpayer experiences described in our focus groups. Even so, without having taxpayer feedback on such experiences, IRS cannot monitor any taxpayer concerns with ADR in real time. The factors identified here are those discussed by participants in three or more groups.

⁵²Resolutions from using Post Appeals Mediation would not be faster because it occurs after the traditional appeals process.

provided a better result than was expected or that was at least as good as what would have been achieved with an appeal.

- **Limited types of cases that meet IRS's approval to use ADR:** Participants in all five groups said many opportunities to use ADR to resolve disputes are lost, including those due to IRS's denial of taxpayer requests.

The dispute systems design principles say a dispute system should be fair and perceived as fair, as well as foster a culture that welcomes good faith dissent.⁵³ However, participants across four of the five focus groups said that IRS enforcement staff would not move from their position during ADR mediation on the tax owed.⁵⁴ This factor is a disincentive to pursue use of ADR. For example, participants said that enforcement staff may offer or agree to use ADR but do not negotiate. They offered several potential reasons for IRS staff not being willing to negotiate. These reasons include staff being convinced of the correctness of their position or following input from others, such as IRS subject experts or legal advisers. In two of these four focus groups, participants said that when IRS enforcement staff do not show a willingness to negotiate, taxpayers or their representatives feel frustrated or unfairly treated. Participants in these four groups also said that using ADR wastes time and money and increases the overall costs and time to resolve disputes when the taxpayer moves on to appeal or litigate a dispute that was not resolved in an ADR mediation.

In our contacts with IRS officials about such taxpayer experiences in using ADR, some officials noted that IRS trains enforcement staff on ADR's benefits. Some officials also noted the participants may not understand the role of the enforcement staff during ADR. They noted that IRS is considering a strategy to improve communication with taxpayers, including soliciting their feedback. Finally, some officials said that it is not the role of IRS enforcement staff to negotiate during mediation. Rather, the staff are to present their position to the mediator and decide whether to accept a settlement proposal that a mediator may offer. IRS officials also said that both disputants may propose a settlement and are expected to be active during ADR mediation.

⁵³See principle 7 in appendix V.

⁵⁴As described in our methodology, focus group results are illustrative and are not generalizable.

Without feedback from taxpayers, IRS is challenged to assess ADR programs' contributions to its strategic goals to improve the taxpayer experience. Also, IRS is missing opportunities to use the feedback to monitor and address any problems affecting the taxpayers' experiences with ADR in real time. Further, absent such feedback, IRS has less certainty on how to enhance taxpayers' willingness and the effective use of its ADR programs.

IRS Does Not Have a Neutral Communication Resource for Fast Track Programs

IRS has not set up a neutral communication channel for answering taxpayer questions about how the ADR process works for Fast Track programs and helping taxpayers to make informed decisions about using these programs. In addition to IRS's goals to improve the taxpayer experience, dispute systems design criteria call for disputants to have access to an independent, confidential neutral to whom they can go to for information and assistance. This includes the use of guidelines and/or coordinators and advisers.

IRS Appeals officials said they do not view it as their role to advise taxpayers on their ADR decisions. Instead of providing neutral staff to answer taxpayers' questions, IRS officials said they rely on IRS.gov website-based guidance and publications about ADR to inform taxpayers about ADR options to support decision-making on whether to pursue ADR. They noted that the operating division, such as LB&I and SB/SE, is to provide these ADR documents. Without such staff to assist them, taxpayers seeking to use Fast Track ADR programs are limited to discussing their questions about ADR with the other disputant—the IRS staff who are proposing the enforcement action that is being disputed.

In three of our five focus groups, participants referred to difficulties or confusion about using ADR and how the programs worked. For example, participants in the three groups said that the IRS website or publications raised questions about how ADR works. Furthermore, participants in two of these groups said that their questions about ADR, requests to use ADR, or the reasons IRS rejected their requests have gone unanswered by IRS staff. Overall, participants in four of the five groups said that their interactions with enforcement staff or prior experience with ADR have discouraged them from using ADR.

In discussing our preliminary results with IRS officials, the officials said that taxpayers can contact IRS Appeals staff, who are trained to be independent.⁵⁵ They also said that IRS is considering a strategy to better communicate with taxpayers about their ADR options as well as clarification of IRS staff roles involving ADR. This could include identifying neutral IRS staff whose duties include responding to taxpayers' ADR questions.

Without access to an independent IRS party that is not a disputant, taxpayers may be less likely to receive clear answers to their questions about using ADR, and Fast Track in particular. In turn, taxpayers may be less likely to use ADR, particularly if they do not feel comfortable seeking answers from enforcement staff. To the extent that taxpayers feel confused or uncomfortable, IRS cannot be assured that it is improving the taxpayer experience.

IRS Does Not Regularly Evaluate Its ADR Programs to Improve Them

As we have reported, program evaluations can play a key role in program planning, management, and oversight by providing information on both program design and execution to program managers, legislative and executive branch officials, and the public.⁵⁶ According to internal control standards, periodic evaluations combined with ongoing monitoring are key ways for managers to obtain feedback on effectiveness and identify needed changes.⁵⁷ The program evaluation literature has identified different ways that program managers and policy makers can use evaluation results to (1) clarify understanding of how the program does or does not address a problem, and (2) make changes to improve the design or management of a program. In addition, dispute systems design

⁵⁵We could not find IRS publications or IRS.gov website guidance informing taxpayers to contact IRS Appeals staff for information or assistance about Fast Track programs. The publication for the LB&I program says taxpayers may contact a specified IRS Appeals manager for the sole purpose of determining if Fast Track Settlement is appropriate for their disputes. However, such contact requires LB&I agreement. Also, the publication does not tell the taxpayer how to contact the specified IRS Appeals staff.

⁵⁶GAO, *Program Evaluation: Strategies to Facilitate Agencies' Use of Evaluation in Program Management and Policy Making*, [GAO-13-570](#) (Washington, D.C.: June 26, 2013). Program evaluations are systematic studies that use research methods to address specific questions about program performance.

⁵⁷[GAO-14-704G](#).

principles call for evaluation of the dispute system. Evaluation acts to identify strengths and weaknesses of design and fosters continuous improvement (see principle 10 in appendix V).

IRS has done limited evaluations of its ADR programs. IRS has not conducted ADR program evaluations in recent years because IRS Appeals has been understaffed, according to IRS officials.

IRS did one recent evaluation of ADR.⁵⁸ SB/SE did this study in 2016 because the taxpayer response to its Fast Track Settlement program had been low following its 2013 rollout to all SB/SE taxpayers. The study sought to profile eligible taxpayers to better understand their needs and to identify changes to increase taxpayer use of the program. The study found no barriers for eligible taxpayers.⁵⁹ Further, the study found that taxpayers and their representatives were highly unresponsive to resolving unagreed issues during the audit through mediation. In instances where Fast Track Settlement was offered, taxpayers failed to respond or saw no advantage to the program over traditional Appeal procedures.

The study report recommended that SB/SE revisit its marketing strategy to increase usage of the established issue resolution strategies and Fast Track Settlement program, possibly with the aid of SB/SE communications and stakeholder outreach offices. Additionally, the report recommended options such as (1) conducting tax preparer and taxpayer focus groups to gain perspective on the program, and (2) soliciting ideas from IRS audit officials that have been involved with the program. According to IRS officials, IRS did not revise its marketing strategy or conduct tax preparer or taxpayer focus groups. The officials said that IRS obtained some feedback from IRS staff on the use of Fast Track Settlement but did not implement a proposal to do more. In both cases, IRS officials attributed the inaction to other priorities.

Without such periodic evaluations, IRS is not taking advantage of a way to understand how well ADR programs address the lengthy and costly

⁵⁸IRS also commissioned a 2012 study by the Harvard Negotiation & Mediation Clinical Program. The study of IRS ADR programs was designed to ensure they (1) adequately address the needs of the relevant taxpayer segment, and (2) efficiently accelerate case resolution. Although we reviewed the study report, we do not address its details because it was written more than 10 years ago and had a different scope. The study covered nine ADR programs, including those that are not in the scope of our work.

⁵⁹The study compared tax return data for taxpayers who chose Fast Track Settlement versus taxpayers who did not choose Fast Track Settlement.

resolution processes through the traditional appeals and litigation processes. IRS is also missing opportunities to identify any changes to the design or management of ADR programs so that they are more effective in achieving faster, less costly dispute resolutions as well as other objectives.

IRS Has Not Established Clear Management Responsibility for ADR Programs

According to federal internal control standards, management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.⁶⁰ The standards say management should implement control activities through policies, procedures, techniques, and mechanisms that enforce directives to achieve objectives and address related risks. Practices that contribute to this principle include documenting policies that identify responsibilities, such as for these control activities.

The Fast Track programs are managed by officials in IRS Appeals as well as LB&I and SB/SE audit or collection units. The Rapid Appeals Program and two Post Appeals Mediation programs are managed by IRS Appeals officials. The Internal Revenue Manual (IRM) generally describes these arrangements and states the titles of some officials for program oversight when responsibilities are shared. For example, for SB/SE Fast Track Settlement, the IRM identifies responsible officials as the Director, Case and Operations Support in IRS Appeals, and Director, Examination Headquarters in SB/SE.

Beyond generally identifying these officials, neither the IRM nor other ADR program documents state the titles for all of the specific officials and assign responsibilities for specific management tasks that could help ensure ADR programs achieve their objectives. For example, the IRM for the SB/SE Fast Track Settlement program refers to regular program reports discussed above, including full year performance and year-to-date comparisons of closures, receipts, and average days to settle and close, and other data. However, it does not assign responsibility for analyzing data on the use and results of ADR or for making decisions about the assessment of program performance in achieving objectives and any actions to improve performance. For LB&I, the IRM generally refers to officials responsible for managing and overseeing its Fast Track

⁶⁰[GAO-14-704G](#).

Settlement program and does not identify the related tasks to be completed. Similarly, the IRM does not state management responsibilities and tasks for monitoring the quality of the taxpayer experience with ADR and regularly evaluating ADR programs to improve them.

IRS has not documented and assigned responsibilities for these tasks because, as discussed earlier in this report, IRS has not established procedures or implemented management practices to analyze program data, monitor the taxpayer experience, and evaluate ADR programs. Without clearly documented responsibility and tasks to manage the ADR programs, IRS cannot be assured that any management decisions will be implemented effectively to achieve the ADR program objectives and address related risks.

Conclusions

IRS has taken action to create ADR programs that leverage mediation to resolve tax disputes at various times. If managed effectively, ADR programs can help taxpayers and IRS avoid or shorten the appeals process to resolve disputes without time-consuming, costly litigation. ADR programs can resolve tax disputes in months compared to taking a year or more in the appeals process. ADR affords IRS and taxpayers the opportunity to save time and money as well as achieve certainty in resolving tax disputes.

Given the overall decline in ADR usage over the last decade, IRS is missing opportunities to achieve these benefits. One step would be to ensure that data collected on ADR usage are reliable and capture trends in the results achieved. IRS can better coordinate its efforts in seeking these benefits by explicitly stating the objectives for the ADR programs and how they link to IRS's strategic plan.

In turn, IRS could analyze data on ADR usage, costs, and results to help identify the types of disputed tax issues or other case characteristics that achieve more resolutions and save time and money. Regularly monitoring how well the ADR programs and IRS mediators are working as well as communicating with taxpayers on their ADR experiences could increase their satisfaction and willingness to use ADR. Such analyses and monitoring would allow IRS to correct any ADR problems as they arise so that they do not fester and waste IRS resources. Setting up a neutral communication resource to answer questions and provide information would also help taxpayers make informed decisions about using IRS's

Fast Track Programs independent of the staff who propose the enforcement action being disputed.

Over the longer term, periodic evaluations can study the efficiency and effectiveness of ADR operations, suggesting comprehensive solutions to problems that undercut taxpayers' ADR usage as well as resolutions. A crosscutting step would be for IRS to clarify who is in charge of the ADR programs by documenting responsibilities and related tasks to ensure that actions to address these missed opportunities actually occur.

Recommendations for Executive Action

We are making the following eight recommendations to IRS:

The Commissioner of Internal Revenue should collect consistent, reliable data on what happens to taxpayer requests to use ADR as well as the results of each ADR program, such as resolutions achieved for the time and costs invested. (Recommendation 1)

The Commissioner of Internal Revenue should establish objectives for ADR programs in clear, measurable terms. (Recommendation 2)

The Commissioner of Internal Revenue should link the ADR program objectives to the IRS strategic goals and objectives that the programs support. (Recommendation 3)

The Commissioner of Internal Revenue should regularly analyze data on the use and results of ADR to make real-time decisions to improve performance, as appropriate. (Recommendation 4)

The Commissioner of Internal Revenue should regularly monitor ADR program operations with a focus on soliciting and using taxpayer feedback on the quality of their experiences with ADR. (Recommendation 5)

The Commissioner of Internal Revenue should establish a neutral IRS resource to communicate with taxpayers to answer questions about IRS's Fast Track programs. (Recommendation 6)

The Commissioner of Internal Revenue should conduct periodic evaluations of the ADR programs to identify actions needed to improve their performance in achieving objectives. (Recommendation 7)

The Commissioner of Internal Revenue should establish clear responsibility and related tasks for managing ADR programs, including the practices in the above recommendations, to help ensure that the programs maximize the benefits of using ADR. (Recommendation 8)

Agency Comments, Third-Party Views, and Our Evaluation

We provided a draft of this report to IRS for review and comment. IRS provided written comments in an April 14, 2023 letter, which is reproduced in appendix VI and summarized below. In its letter, IRS said our review focused on mediation programs that collectively serve about 100 taxpayers each year. Our report notes that use of these programs has declined over the past decade. If managed effectively, ADR programs can help taxpayers and IRS avoid or shorten the appeals process to resolve disputes without time-consuming, costly litigation. Our recommendations include management practices that could increase taxpayers' willingness to use ADR. IRS agreed to take action on our eight recommendations. IRS agreed with three recommendations, tied its agreement with three other recommendations to specific contingencies that are in progress, and agreed to consider implementing two recommendations. IRS also provided technical comments, which we incorporated as appropriate.

Specifically, IRS agreed with three recommendations on monitoring ADR operations with a focus on soliciting and using taxpayer feedback (recommendation 5), periodically evaluating the ADR programs (recommendation 7), and establishing clear responsibilities for managing ADR programs (recommendation 8). IRS said it would take steps to implement the recommendations.

For three other recommendations, IRS tied its agreement to contingencies such as developing a data collection system known as Enterprise Case Management and implementing the Strategic Operating Plan for the statute commonly known as the Inflation Reduction Act of 2022 (Public Law 117-169). These three recommendations include collecting consistent, reliable data on the ADR programs (recommendation 1), linking the ADR objectives with IRS's strategic goals and objectives (recommendation 3), and regularly analyzing ADR data to make real-time decisions on performance (recommendation 4). As IRS refines and implements its plan for using the about \$80 billion in

additional funding provided under the Inflation Reduction Act, we encourage IRS to work toward implementing these and other open recommendations.

For the remaining two recommendations, IRS agreed to consider necessary changes. We appreciate that IRS agrees with the importance of both recommendations but our findings indicate that changes are necessary. Specifically, IRS agreed to review existing ADR objectives for the six programs we analyzed to consider whether changes are appropriate (recommendation 2). We found that IRS had not clearly stated ADR objectives for the six programs in measurable terms. Such objectives and measures would help IRS identify, analyze, and respond to risks and assess program performance.

Furthermore, IRS agreed to consider establishing a separate neutral mechanism to address taxpayer questions about the ADR programs (recommendation 6), noting that IRS's website and publications describe the programs and that independent Appeals staff are available to answer taxpayers' questions. Our report acknowledged that taxpayers used the IRS resources as well as asked IRS enforcement staff about how ADR worked but pointed out that some taxpayers still had questions, particularly about the Fast Track programs. As a result, a neutral source to answer questions that were not sufficiently answered by these resources and staff would help taxpayers make informed decisions about whether to use an ADR program.

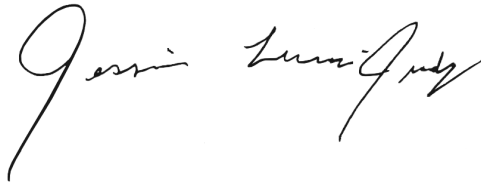
We also provided relevant segments of this report to the government officials we contacted in other federal agencies and national and state tax administration agencies on their management of ADR programs. We asked for their review and incorporated their comments as appropriate to help assure the accuracy of our report descriptions of management practices for those programs.

We are sending copies of this report to the appropriate congressional committees, the Commissioner of Internal Revenue, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6806 or lucasjudyj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in Appendix VII.

Letter

Sincerely yours,

A handwritten signature in black ink, reading "Jessica Lucas-Judy". The signature is written in a cursive, flowing style.

Jessica Lucas-Judy
Director, Tax Issues
Strategic Issues

Appendix I: Other Government Agencies' Management of Alternative Dispute Resolution Programs

Many other government agencies use alternative dispute resolution (ADR) programs to resolve disputes with members of the public.¹ Using dispute systems design principles as a guide (see appendix V), we interviewed officials from nine agencies to discuss their management practices for administering their respective ADR programs. We met with officials from four federal agencies, three state tax administration agencies, and two national tax administration agencies of foreign countries. For additional information on how we selected the nine agencies, see appendix II.

These agency officials described certain management practices that they said contributed to positive results of their ADR programs. We identified five consistent themes for these agencies' ADR programs, as follows.

Mediator Training Activities

Officials at all of these agencies described their ADR programs as including some form of mediator and dispute resolution training. These training efforts ranged from mandating formal professional certifications to staff taking initial training upon joining the ADR program. For example, officials from the Federal Election Commission said that relevant staff received 40 hours of mediation training and that some of these staff received training to qualify as "conflict coaches." Officials from the New York Bureau of Conciliation and Mediation Services (New York) told us it does not require specific mediation training before staff join the agency. Staff are trained through a shadowing process and other on-the-job

¹We refer to these government entities as agencies, though some of them may represent subagencies. We also refer to the foreign government entities as "agencies" though they may employ different terminology and legal definitions of what constitutes an agency may vary in their jurisdictions.

training.² Conversely, officials from the Australian Taxation Office told us the agency required all mediation staff to become formally accredited as professional mediators by a recognized mediation organization. Australian Taxation Office officials told us staff are required to participate in an initial 5-day course and complete annual continuous learning credits to maintain their accreditation.

Guidance on ADR to External Participants

Officials from all the agencies described their agencies as preparing and distributing documents to educate and guide external participants on the ADR process. Officials described formal guidance documents provided to taxpayers and members of the public and public information such as through websites where disputants could learn more about ADR. For example, officials from the Federal Election Commission said that they provide disputants with information about ADR, including the timeline and statute of limitations for the process and how the ADR program ensures the disputants' confidentiality.³ Officials from the Michigan Department of Treasury (Michigan) said that they are developing a "Frequently Asked Questions" page to help disputants understand how their ADR program functions. Australian Taxation Office officials said that their two public assistance programs both help taxpayers understand and elect to participate in ADR. Australian officials said these programs function to guide vulnerable and at-risk demographic populations through the tax process. Officials said both programs helped such populations learn about and use ADR.

Dedicated Management and Program Staff to Administer ADR Programs

Agency officials described some themes frequently, though not unanimously, as occurring at their respective agencies. Officials from eight of the nine agencies described having managers and staff whose primary function is to implement their respective ADR programs. For

²The Bureau of Conciliation and Mediation Services is an independent Bureau of the New York Department of Taxation and Finance created by law to assist taxpayers who receive statutory notices and are in disagreement with the notices.

³Disputants should respond to an offer to participate in ADR within 15 days. Otherwise, the matter may be dropped from further consideration for ADR. By participating in ADR, the disputant agrees to set aside the statute of limitations while the complaint is pending in the ADR office.

example, officials from the Department of Transportation told us the agency employs one manager and one mediator or trainer whose sole functions are to implement their Center for Alternative Dispute Resolution. Officials from The United Kingdom's His Majesty's Revenue and Customs (United Kingdom) said the agency employs approximately 40 staff, including 30 full-time mediators to manage ADR activities and facilitate tax dispute resolution. Officials from the Utah State Tax Commission told us that while the agency employs administrative law judges and appeals clerks to, among other duties, implement its Formal Mediation and informal ADR program, managing such programs is not their primary role.

Voluntary Nature of ADR Program

Officials from eight of the nine agencies stated that their ADR programs were voluntary for disputant members of the public. Officials from the Environmental Protection Agency said all disputants, including both the government agency and members of the public, are to mutually agree to participate in an ADR process. Similarly, officials from Michigan and the United Kingdom also said that, provided the request for ADR meets certain timeline and legal criteria, the process is voluntary for taxpayers. However, officials from Michigan and New York also said that while ADR was voluntary for the taxpayer, the agency could not refuse a request for ADR that met legal and timeline criteria. Agency officials told us that while the Federal Election Commission may offer ADR to disputants voluntarily, disputants cannot request ADR and can only accept or reject the offer from the agency.

Data Collection and Analysis

Officials from eight of the nine agencies described some form of data collection and analysis of their ADR programs. For example, officials from the Nuclear Regulatory Commission said the agency collects and tracks data on the number of cases resolved through its ADR program annually.

New York prepares an annual report that describes ADR tax cases for the fiscal year.⁴ This report includes the number of taxpayer requests, tax

⁴New York's fiscal year runs from April 1 of one year to March 31 of the subsequent year.

cases closed, and the disposition of closed cases. The dispositions are categorized as either adjusted, cancelled, or sustained.⁵

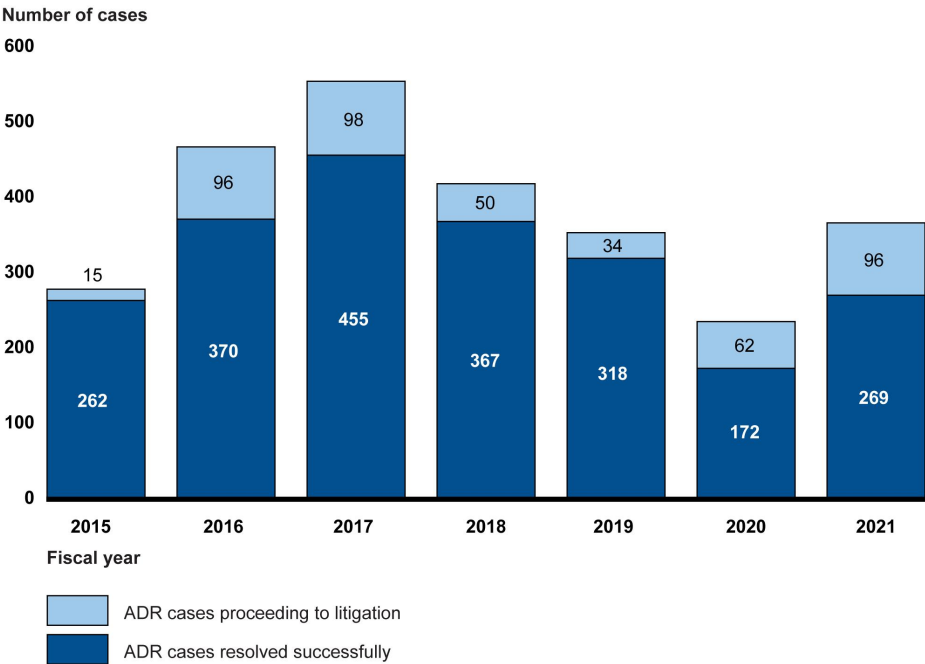
The United Kingdom annually reports tax ADR data, including taxpayer requests for ADR, the ADR case resolution number and rate, and the number of tax cases that proceeded to litigation. The United Kingdom has included this information in its public annual reports since the fiscal year starting in 2015.⁶ From that year until the fiscal year starting in 2021, it received more than 7,300 requests for tax ADR, accepted and proceeded with ADR for more than 4,700 of those requests, and resolved almost 2,700 tax cases.⁷ The United Kingdom resolved between 230 to more than 550 ADR tax cases during the years we reviewed. Officials from the United Kingdom attributed the 2020 decline in ADR tax cases and closures to slowing compliance activity due to the COVID-19 pandemic. See figure 6 for the number of tax cases closed using ADR from the fiscal years beginning in 2015 through the fiscal year beginning in 2021.

⁵These reports are required by law to be provided to the governor, the temporary president of the senate, and the speaker of the assembly.

⁶The United Kingdom's *Annual Report and Accounts* reports data for a period from April 1 of one year to March 31 of the subsequent year.

⁷His Majesty's Revenue and Customs' annual reports have cited "rejected as being "Out of Scope" and "rejected by governance panels" as reasons for rejecting ADR requests. The reports do not define "out of scope" or the criteria used by the government panels.

Figure 6: His Majesty's Revenue and Customs of the United Kingdom Cases Closed with ADR from Fiscal Years 2015 to 2021



Source: GAO analysis of His Majesty's Revenue and Customs of the UK data. | GAO-23-105552

Data for Figure 6: His Majesty's Revenue and Customs of the United Kingdom Cases Closed with ADR from Fiscal Years 2015 to 2021

Fiscal Year	2015	2016	2017	2018	2019	2020	2021
ADR cases resolved successfully	262	370	455	367	318	172	269
ADR cases proceeding to litigation	15	96	98	50	34	62	96

Source: GAO analysis of the Majesty's Revenue and Customs of the UK data. | GAO-23-105552

Note: His Majesty's Revenue and Customs reports data from April 1 of one year to March 31 of the subsequent year.

As discussed below, we summarized additional details on aspects of how agency officials said their ADR programs function. We organized our summary by the three types of agencies that we reviewed.

Federal Agencies

We interviewed officials and reviewed documents on selected ADR programs of the Department of Transportation, Environmental Protection

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Agency, Federal Election Commission, and Nuclear Regulatory Commission. Based primarily on our interviews as well as document research, we identified the following categories of their ADR program management practices.

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Table 2: Description of Federal Agency Alternative Dispute Resolution (ADR) Program Management Practices

Practices	Department of Transportation	Environmental Protection Agency	Federal Election Commission	Nuclear Regulatory Commission
ADR leadership engagement	Management funds and implements a dedicated office for ADR.	Management communications show support of ADR and hiring additional staff.	Management increased ADR staffing and broadened types of cases accepted in ADR.	Commission approved ADR program policy within agency's Enforcement Policy.
ADR program staff and management	Dedicated office and staff for ADR.	Dedicated office and staff for ADR.	Dedicated office and staff for ADR.	Dedicated staff for ADR within designated office.
Documented ADR objectives	Annual ADR goals are tied to dedicated staff's performance.	Annual reporting on goals and 4-year strategic plan.	Documented three goals for the ADR program.	Five ADR program objectives support agency Enforcement Policy Goals.
Voluntary ADR process	ADR is voluntary.	ADR is voluntary.	ADR is voluntary but only agency can initiate it.	ADR is voluntary.
Mediator training	Agency training on basic mediation skills qualifies staff to participate as a mediator in the federal sharing "neutrals" program.	Skills development for conflict mediation staff is a strategic goal.	Staff receive 40 hours of mediation training and some participated in Harvard negotiation training.	Agency contractor trains mediators on conflict resolution and negotiation, and an overview of the NRC Office of Enforcement program.
Other internal staff ADR training	Same as mediator training.	Annual Conflict Resolution Day and corresponding month of training and events.	Informal collaboration on the case referral process.	External mediation and negotiation training for ADR program staff and agency ADR participants.
External disputant awareness and guidance	Provides disputants with guidance on how mediation works and what ADR can achieve.	Assists disputants to decide which ADR method should be used for a dispute.	Informs disputants about the ADR process, timeline, and effect on confidentiality.	Provides information and guidance via brochures and ADR program website.
Data collection and analysis	Collects data on number of disputes and settlement rate.	Collects case data, including resolution status. Tracks status of ADR agreements and reviews the sustainability of agreements as staff capacity allows.	Collects some data on timeliness of process but does not track costs. Surveys participants.	Conducts continuous program data review, including annual case data such as number of cases settled. Analyzes data for factors affecting the results.
ADR program evaluation	Reviews participant surveys to evaluate ADR activities.	Reviews participant surveys to evaluate ADR activities. Evaluates the mediation contractor.	Surveys participants and reviews feedback on ADR process. Tracks compliance every quarter.	Surveys participants and uses data to make adjustments. Conducted a review of resource impacts of the ADR program.

Source: GAO analysis of statements and documents from listed agency officials. | GAO-23-105552

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State Tax Agencies

We interviewed officials and reviewed documents on selected ADR programs of the Michigan Department of Treasury, New York Department of Taxation and Revenue—Bureau of Conciliation and Mediation Service, and the Utah State Tax Commission. Based primarily on our interviews as well as document research, we identified the following categories of their respective ADR program management practices.

Table 3: Description of State Tax Administration Agency Alternative Dispute Resolution (ADR) Program Management Practices

Practices	Michigan Department of Treasury	New York Bureau of Conciliation and Mediation Services	Utah State Tax Commission
ADR leadership engagement	Managers and officials present on ADR at informal conferences to external groups.	Management advocates by presenting ADR to external stakeholders and organizations.	Tax commissioners present ADR to the public and to County Boards of Equalization.
ADR program staff and management	Attorneys serve as referees (informal conference program) or reviewers (ADR program). Referees and reviewers are independent from audit teams and other units.	Employs about 30 conferees, who are full-time tax dispute mediators.	Four administrative law judges serve as tax dispute mediators.
Documented ADR objectives	Objectives were not written but were described as reducing the time and cost of resolving disputes.	Mission statement cites resolving disputes informally, fairly, and impartially, and enhancing public confidence in the Tax Department.	Objectives were not written but were described as reducing time and workload.
Voluntary ADR process	Participation is voluntary for the taxpayer. Within certain criterial limits, the agency cannot reject a taxpayer's ADR request.	Participation is voluntary for the taxpayer and, within certain criteria limits, the audit teams or the bureau cannot decline to participate.	Participation is voluntary for all disputants.
Mediator training	New informal conference referees undergo a shadowing period to observe experienced staff conducting hearings.	Offers training on ADR to new staff, other Tax Department employees, and the public.	Provides administrative law judges with limited initial training and occasional training in administering hearings.
Other internal staff ADR training	Not discussed by agency officials or in other resources.	Provides internal ADR training to its audit teams and call centers so they can explain the ADR program to taxpayers who seek help after receiving a statutory notice.	Not discussed by agency officials or in other resources.
External disputant awareness and guidance	Issues documents to describe taxpayer appeal rights. Developing more online public information on ADR process. Urge taxpayers to use ADR.	Offers guidance to taxpayers at the start of each mediation conference. Trains call-center staff on ADR to better explain the program to taxpayers.	Provides explanatory forms to disputants. Guidance is available on the agency website.

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Practices	Michigan Department of Treasury	New York Bureau of Conciliation and Mediation Services	Utah State Tax Commission
Data collection and analysis	Collects and publishes data on results of ADR.	Collects and analyzes data to make improvements and shares analysis results with other departments so they can make improvements.	Does not collect or analyze data.
ADR program evaluation	Not discussed by agency officials in the interview or other resources.	Evaluates program through collection and analysis of data. Previously used participant surveys. Annually tests and improves its internal controls.	Has neither done an evaluation nor analyzed the effectiveness of the ADR process.

Source: GAO analysis of statements and documents from listed agency officials. | GAO-23-105552

National Tax Administration Agencies

We interviewed officials and reviewed documents on selected ADR programs of the Australian Taxation Office and His Majesty’s Revenue and Customs of the United Kingdom. Based primarily on our interviews as well as document research, we identified the following categories of their ADR program management practices.

Table 4: Description of National Tax Administration Agency Alternative Dispute Resolution (ADR) Program Management Practices		
Practices	Australian Taxation Office	His Majesty’s Revenue and Customs of the United Kingdom
ADR leadership engagement	Individual agency commissioners have expressed support for ADR.	Officials said management and the UK’s judiciary were supportive of ADR.
ADR program staff and management	Has a specific unit of ADR officials and a network of neutral mediators.	Has 30 full-time mediators whose role is to reach tax dispute resolution.
Documented ADR objectives	Written goals to use ADR to resolve disputes early, quickly, and in a cost effective way.	Litigation and Settlements Strategy defines how ADR fits into overall agency strategy.
Voluntary ADR process	All parties must agree to participate in the voluntary process.	While the mediator may reject a taxpayer application, ADR is voluntary to the taxpayer. The process is not voluntary for the audit team if the mediator accepts the application.
Mediator training	Mediators are formally accredited in mediation skills by a nationally recognized mediation organization.	Mediators are trained through an externally credentialed mediation training.
Other internal staff ADR training	The agency is working to better educate compliance staff about the ADR process.	The ADR Policy Team provides advice on the Litigation and Settlement’s Strategy—the framework for resolving all disputes including ADR—to operational compliance staff. The ADR Policy Team is implementing training on the strategy for staff.

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Practices	Australian Taxation Office	His Majesty's Revenue and Customs of the United Kingdom
External disputant awareness and guidance	Two programs provide education for vulnerable taxpayers, including how to access ADR. The programs provide assistance in choosing if ADR is necessary and what ADR tool is most appropriate for the taxpayer.	Taxpayers may apply for ADR or ADR may be recommended by agency staff. Agency implemented an online ADR application portal to ease the process. Agency offers support to vulnerable populations, including guiding them in the ADR process if necessary.
Data collection and analysis	ADR team collects and publishes data on ADR results but does not conduct detailed analysis of the data.	Collects and reports data annually in publically available documents. Collects and tracks the numbers of cases for which ADR was requested, resolved, or moved on to litigation.
ADR program evaluation	Evaluating the audit team's ADR understanding and training needs and using the evaluation to develop training materials. ADR is being reviewed by the Inspector General for Taxation. Feedback collected from participant is used to evaluate effectiveness of ADR processes. Australia has solicited reviews by academic researchers to allow the agency to identify areas for improvements.	Has not conducted specific analysis of ADR's effectiveness. Uses participant surveys to assess the results of an ADR session. Issues an annual report that describes the results of the ADR system.

Source: GAO analysis of statements and documents from listed agency officials. | GAO-23-105552

Appendix II: Objectives, Scope, and Methodology

This report (1) describes the Internal Revenue Service's (IRS) alternative dispute resolution (ADR) programs, (2) analyzes available data on the use and performance of IRS's ADR programs, and (3) assesses how IRS could enhance its ADR programs to better achieve desired results. This report also describes how some other federal agencies, state tax agencies, and agencies in other countries manage their ADR programs.

To describe IRS's ADR programs, we reviewed IRS's Internal Revenue Manual (IRM) on the programs' eligibility requirements, processes, and potential benefits. We also interviewed officials from the Large Business and International and Small Business and Self-Employed divisions on how these programs operated.¹ We compared IRS ADR program processes to IRS's traditional stages for resolving tax enforcement disputes.

To describe the frequency of use and characteristics of IRS's ADR programs, we interviewed officials from the Independent Office of Appeals, Large Business and International, Small Business/Self-Employed, and Tax Exempt and Government Entities divisions to determine what data on ADR are available. Based on those interviews and review of the IRM we determined that the Appeals Centralized Database System (ACDS) is the most complete record of ADR programs. We also determined that IRS Appeals could provide a record of all closed cases, including ADR cases, from fiscal year 2013 to 2022. To describe and assess the available data on ADR use and performance, we collected and analyzed IRS data on the number, characteristics and results of ADR cases; and compared the results to similar data for all cases closed by IRS Appeals for fiscal years 2013 to 2022.

We analyzed the data to count the number of cases and identify trends in data fields such as final closing disposition and total days to complete the case, among others. We reviewed the data to determine whether

¹In this report, we do not include Tax Exempt/Government Entities division (TE/GE) ADR programs in our description of ADR programs (for our first objective) and our assessment of IRS's ADR management (for our third objective) because few ADR cases originate in TE/GE. Even so, our second objective includes TE/GE ADR program data to cover all uses of IRS ADR.

information was attributable to ADR programs. We compared the data to ADR program estimated timelines stated in the Internal Revenue Manual. We interviewed agency officials about how the data were collected and internally checked. We also reviewed agency documentation and guidance regarding ADR data. To assess the reliability of electronic data we performed reviews, including checks to determine that no data were missing. The data values provided to us did not include obvious errors. We compared the ACDS sourced data to data derived from IRS Appeals ADR program reports.

We found small differences between the data listed in the program reports and that in the ACDS data. However, we determined that ACDS data were generally reliable for the purposes of describing the total number of closed cases that included an ADR program. We also determined that ACDS data were generally reliable to analyze Fast Track case closing disposition and the number of days needed to close a case that included Fast Track.²

To assess how IRS could enhance its ADR programs to better achieve desired results, we identified federal program management criteria as discussed in our body of reports on federal evidence-based policymaking and in internal control standards.³ We also conducted a literature search and identified dispute systems design (DSD) principles as a source for criteria we could adapt and use to collect information and assess IRS's administration of ADR.

According to studies on the use of ADR in government agencies, DSD is used to plan for and implement dispute resolution systems, including ADR processes.⁴ DSD involves designing systems to manage, learn from, and

²Counts of Rapid Appeals Program (RAP) and Post Appeals Mediation (PAM) cases differed more significantly between the Appeals ADR reports and the ACDS data set. We believe our count of RAP and PAM cases in the ACDS data to be reliable based on the other steps taken to ensure data accuracy described above.

³See, for example, GAO, *Evidence-Based Policymaking: Survey Results Suggest Increased Use of Performance Information across the Federal Government*, [GAO-22-103910](#) (Washington, D.C.: Nov. 2, 2021); *Evidence-Based Policymaking: Selected Agencies Coordinate Activities, but Could Enhance Collaboration*, [GAO-20-119](#) (Washington, D.C.: Dec. 4, 2019); and *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), (Washington, D.C.: Sept. 10, 2014).

⁴See, for example, Kristen Blankley, Kathleen Claussen & Judith Starr, *Alternative Dispute Resolution in Agency Administrative Programs* (Dec. 17, 2021) (report to the Admin. Conf. of the U.S.), and the results of our literature review as follows.

resolve conflict. According to the studies, central principles of DSD include seeking and incorporating valuable feedback from stakeholders and engaging in periodic evaluation of the dispute resolution process to determine successes and shortcomings, among other principles. The studies note that DSD principles are now widely considered best practices for many types of institutions.

Researchers have adapted DSD principles to evaluate systems used by national tax agencies to resolve disputes with taxpayers, including their use of ADR. Our review of the literature identified these principles, as discussed in appendix V, in an evaluation of the Australian Taxation Office's dispute resolution system.⁵ We used the principles as a basis for operationalizing DSD criteria in part because the related analysis commonly appeared in the articles we reviewed. Among the 108 sources we reviewed, 35 were related to tax systems. In addition, the study's author appears as an author or co-author six times in those studies. We found that the author's study provides a structured framework to review and assess the use of ADR using specific criteria applied in the context of a tax system.

This DSD method of analysis was a consistent, repeated form of analysis we found in our research. The original list includes 14 principles, of which we used 10 (see appendix V for the 10 DSD principles we used) as being most relevant to evaluating ADR to resolve disputes in an existing system. We shared the list of DSD principles for comment and feedback with IRS officials responsible for ADR and with the authors of a recent report on federal agency use of ADR.⁶ No one suggested changes to our plan to apply the criteria.

We compared IRS's administration of its ADR programs to the various criteria to assess how well IRS managed ADR programs to achieved desired results and maximize their potential value. We also talked to IRS officials in IRS' operating divisions and the Independent Office of Appeals about our assessment.⁷

⁵See Melinda Jone, *Evaluating Australia's Tax Dispute Resolution System: A Dispute Systems Design Perspective*, eJournal of Tax Research (2015), vol. 13, no. 2.

⁶Kristen Blankley, Kathleen Claussen & Judith Starr, *Alternative Dispute Resolution in Agency Administrative Programs* (Dec. 17, 2021) (report to the Admin. Conf. of the U.S.).

⁷Our scope on the assessment of IRS's ADR programs did not include the Tax Exempt/Governmental Entities division because of the low usage of ADR in this division.

To identify potential enhancements to increase taxpayer usage and satisfaction with IRS's ADR programs, we conducted focus groups to obtain views of tax professionals who represent taxpayers in disputes with IRS. We asked participants to discuss their answers to our questions on factors that affected their decisions on whether to pursue using ADR and on their level of satisfaction with ADR. We also asked them to discuss any suggested changes to improve IRS ADR programs.

Because we did not have access to federal tax information, we were not able to identify and recruit taxpayers with ADR experience. So, we decided to speak to tax professionals who represented taxpayers in disputes with IRS. We recruited participants through the support of four associations of tax professionals: Tax Executives Institute (TEI), the Section of Taxation of the American Bar Association (ABA), National Association of Enrolled Agents (NAEA), and American Institute of Certified Public Accountants (AICPA).⁸ Based on our previous experience in using these organizations as informed sources on reviews of IRS programs, we selected these groups to obtain views of a wide range of taxpayer issues to include those that represent large businesses and small businesses in disputes with IRS. We also consulted with IRS officials and considered their input on groups that have views on the operations of ADR programs from the taxpayers' perspective.

Through our requests to tax professional organizations to help recruit focus group participants, and through questionnaires prior to the discussion groups, we sought representatives who had had the opportunity to consider pursuing ADR to resolve a dispute—and especially those who had pursued and used ADR in an attempt to resolve a dispute—in the last 5 years. Given the low and declining level of use of ADR (as discussed in this report) and our goal to have groups that represent a wide range of taxpayer issues, we opened two group discussions to two participants who reported they had no experience with deciding whether to pursue ADR. We included such participants to understand their perspectives and experience to potentially identify factors that may contribute to low overall use.

⁸TEI is an organization of tax professionals, including those employed by large businesses. ABA is an association of legal professionals, with its Tax Section representing those involved in tax laws. NAEA an association of professionals who are authorized to represent taxpayers before IRS. AICPA includes tax professionals who prepare tax returns and represent taxpayers in related tax disputes.

We conducted a total of five focus group sessions: two with TEI members, one with ABA members, one with NAEA members, and one with AICPA members. The groups ranged in size from three to seven participants, with a total 24 participants. The discussions were facilitated by experienced moderators and conducted virtually with video-conferencing software. We used a discussion guide that was pretested with members or staff of three of the professional organizations. .

To analyze the content of the group discussions, we recorded the sessions with the video-conferencing software and had the discussions professionally transcribed. After reviewing the transcripts, our analysts worked together to develop an initial list of themes discussed in the groups. The analysts then iteratively refined the themes to describe and summarize the group participants' comments. We identified discussion key themes based on the frequency of comments within and across groups in consideration of the extensiveness of comments or number of participants mentioning a theme. We also looked for patterns across groups and differences between groups to identify commonly occurring themes.

To identify themes, two analysts individually reviewed transcripts and developed an initial list of categories. Two analysts then worked together to combine their lists into one classification scheme, which was iteratively refined. To test the reliability of the classification scheme, two analysts independently analyzed a subset of the transcripts by grouping similar participant statements together into the same category (a process called coding). The two analysts then compared their coding results. To conduct the full analysis, an analyst used the final classification scheme to code the transcripts and then a second analyst verified the first analysts' coding decisions. When the second analyst disagreed with the first analysts' decisions, the analysts worked together to reconcile any disagreements and arrive at a final coding decision.

Although we designed our focus groups to gather in-depth information on the experiences and perspectives of those taxpayers using ADR programs to resolve taxpayer disputes with IRS, the data we collected reflect those of the taxpayer representatives who participated in our focus groups. The findings from our focus groups are nongeneralizable.

To identify and describe ADR practices used by other government agencies, we first identified a nongeneralizable sample of federal, state, and foreign government agencies that use ADR programs to settle

disputes with members of the public.⁹ We initially conducted an academic literature search in March of 2022. To identify relevant literature we searched nine digital sources: Worldcat, Scopus, Ebsco, ProQuest, ProQuest Dialog, Westlaw, Westlaw Edge, HeinOnline, and Google Advanced. We searched for a variety of keywords including “Internal Revenue Service,” “tax,” “Alternative Dispute Resolution,” and “mediation,” among others. We identified more than 100 relevant documents and analyzed the contents of these documents to identify which agencies, states, and countries were described in the literature. We reviewed the literature for examples of ADR programs conducted to resolve disputes between a government agency tax or civil enforcement activity and a member of the public.

To identify an initial group of federal agencies we interviewed government officials from the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service. We reviewed information provided by ACUS and found on the ACUS website. This information included a list of more than 50 ADR programs implemented by federal government agencies. We reviewed publically available ADR program information found on each federal agency website.

Based on descriptions provided on agency websites, we limited our sample to those federal agency ADR programs that attempt to resolve disputes between the agency and the public as well as those that attempt to resolve disputes related to an enforcement activity rather than for contracting disputes. We excluded those that dealt with criminal law and with ADR usage within the judicial system. We used the limiting criteria to identify federal ADR programs that were generally similar to the programs IRS uses. We also prioritized agencies that were discussed in the academic literature. Finally, we sought a diversity of agencies, based on agency size and area of enforcement activities. Based on this information, we identified an initial list of four potential agencies: the Department of Transportation, Environmental Protection Agency, Federal Election Commission, and Nuclear Regulatory Commission. We confirmed our proposed sample of ADR programs with officials from ACUS, and contacted the agencies. All four agencies agreed to be interviewed about their ADR programs.

⁹We refer to these government entities as agencies, though some of them may represent subagencies. We also refer to the foreign government entities as “agencies” though they may employ different terminology and legal definitions of what constitutes an agency may vary in their jurisdictions.

To identify an initial group of state agencies to interview, we reviewed the public websites of every U.S. state tax collection agency. We interviewed officials from the Federation of Tax Administrators to understand their perspective on state programs. We combined our initial academic research with our state agency findings and selected a list of eight potential state agencies. We limited our final list to the tax agencies of four states—Hawaii, Michigan, New York and Utah—based on the states’ publicly available information and appearance in academic literature and a desire for geographic diversity. Upon contact with the state of Hawaii, we found that their program did not meet some of our research criteria. Subsequently we focused our research on and interviewed officials from the other three states.

To identify foreign country tax agencies, we conducted academic literature searches as described above and analyzed the results to identify which countries were described in the literature. We reviewed the websites of national tax agencies to identify what information they provided. We also interviewed officials from the Organization for Economic Cooperation and Development to gain their perspective on ADR practices in other countries. Based on this analysis we limited our list of national tax agencies to the Australian Taxation Office (Australia), His Majesty’s Revenue and Customs of the United Kingdom (United Kingdom), and the Kenya Revenue Authority (Kenya). Since officials from Kenya did not respond to our attempts to contact them, we focused our research on Australia and the United Kingdom. We interviewed officials and reviewed documents from both countries.

Upon selection of the nine government agencies, we conducted semistructured interviews with officials who implement and oversee the relevant ADR programs. We interviewed the officials on how they managed their ADR programs, what methods they used to resolve disputes, and how they collected and assessed data, among other topics. We also reviewed agency websites and documents from some of the agencies to identify additional details about the ADR programs. We developed and shared draft summaries of our results with officials at each of the nine agencies and made changes as appropriate. Appendix I reports these summarized results.

We conducted this performance audit from November 2021 to April 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix III: Descriptions of Internal Revenue Service Alternative Dispute Resolution Programs

The Administrative Dispute Resolution Act set the stage for increased use of alternative dispute resolution (ADR) in federal agencies.¹ The act proposed ADR processes—such as mediation and arbitration—as alternatives to existing agency administrative procedures and litigation to resolve disputes.

The Act noted that federal agency administrative procedures are intended to offer prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the federal courts. However, the Act further noted that administrative proceedings had become increasingly formal, costly, and lengthy. This, in turn, resulted in unnecessary expenditures of time and a decreased likelihood of achieving consensual resolution of disputes. The Act noted that for many years the private sector had used ADR and that, in appropriate circumstances, such techniques had yielded faster, less expensive, and less contentious resolutions. Further, the Act cited the use of these alternative means in a wide variety of programs to produce more creative, efficient, and sensible outcomes.

According to the Internal Revenue Service (IRS), with the Act in place, IRS began exploring the use of ADR, including mediation techniques to resolve tax disputes more effectively and efficiently in certain cases rather than using the traditional appeals process. The IRS Reform and Restructuring Act of 1998 effectively codified early ADR programs.² Over time, the Independent Office of Appeals (IRS Appeals) developed the procedures for ADR programs through negotiated rulemaking and with internal and external stakeholders involved in the design process, according to IRS officials.

¹Pub. L. No. 101-552, 104 Stat. 2736 (1990).

²Pub. L. No. 105-206, 112 Stat. 685 (1998).

IRS's six ADR programs discussed in this report use mediators to help an IRS enforcement unit and taxpayer negotiate a resolution to their tax dispute.³ The mediator acts as a neutral third party to facilitate the discussion, define issues, and promote settlement negotiations. Both the taxpayer and IRS unit must consent to using ADR. In deciding whether to consent to ADR, IRS considers a host of exclusionary factors that could deem an issue ineligible for ADR. For example, these can include:

- issues in a taxpayer's case that are docketed, designated, or under consideration for designation for litigation;⁴
- issues that are part of a whipsaw transaction;⁵
- issues identified in a Chief Counsel Notice, or equivalent publication, as excluded from the ADR process;⁶ and
- issues for which mediation is not consistent with sound tax administration.

Some of the exclusion factors are broader than others and involve IRS discretion in deciding if the issue is eligible for ADR. For example, "issues for which mediation is not consistent with sound tax administration" is cited in IRS's Internal Revenue Manuals (IRM) as an exclusion factor and allows for broader IRS flexibility in determining ADR eligibility due to the subjective nature of the criterion. For some cases, IRS also has the authority to disagree with or disallow the use of ADR requested by the taxpayer for reasons not specified in the exclusion factors if an IRS territory manager concurs.⁷ If the enforcement staff approve the taxpayer

³As discussed in our scope and methodology, we did not include an ADR program in the Tax Exempt/Governmental Entities (TE/GE) division because few ADR cases originate in TE/GE.

⁴In this instance, a docketed case refers to a case assigned a docket number in a court.

⁵For example, a whipsaw transaction develops when a settlement in one case can have a contrary tax effect in another case and one of the taxpayers may later, when the period of limitations applicable to the other case has expired or is about to expire, file a claim on a basis inconsistent with the prior closing. See IRM § 8.2.3.13.

⁶Chief Counsel Notices are directives that provide interim guidance, temporary procedures, a description of changes in litigating positions, or administrative information. See <https://www.irs.gov/chief-counsel-notices>.

⁷Territory managers have oversight and responsibility for program delivery as well as administration and compliance.

request, an ADR application is submitted to IRS Appeals for approval to proceed.

Fast Track Programs

Fast Track programs may be used to address certain fully developed issues that remain unresolved with IRS's audit or collections staff.⁸ When the taxpayer and IRS have exhausted issue resolution efforts within these two enforcement units, they can request to use mediation in an attempt to reach resolution. If resolution is reached through mediation, Fast Track programs can bypass lengthy and costly dispute procedures of the traditional appeals and litigation stages. Absent resolution through Fast Track programs, a taxpayer may request traditional IRS Appeals consideration. IRS has three types of Fast Track programs, as follows.

- Large Business and International (LB&I) Fast Track Settlement program for large business and international taxpayers' audit disputes;
- Small Business/Self-Employed (SB/SE) Fast Track Settlement program for small business and self-employed taxpayers' audit disputes; and
- Collection Fast Track Mediation program for legal and factual issues regarding certain offer in compromise and trust fund recovery penalty cases and issues.⁹

⁸For cases from LB&I, an issue is generally considered fully developed when Form 5701, Notice of Proposed Adjustment, was issued to the taxpayer clearly setting out the government's position, and the taxpayer has prepared a written response defining their position and the basis for disagreement.

⁹Offer in compromise refers to an agreement between a taxpayer and IRS that settles a taxpayer's tax liabilities for less than the full amount owed. Taxpayers who can fully pay the liabilities through an installment agreement or other means generally will not qualify for this agreement in most cases. The trust fund recovery penalty is provided for by Internal Revenue Code § 6672 against any person required to collect, account for, and pay over taxes held in trust who willfully fails to perform any of these activities, or willfully attempts to evade or defeat any such tax or its payment.

Rapid Appeals Program

The Rapid Appeals Program offers the potential to improve the efficiency and timeliness of appeals resolutions.¹⁰ It consists of a preconference meeting that becomes a working conference where IRS Appeals utilizes mediation in an attempt to resolve certain unagreed issues with the taxpayer while the case is in IRS Appeals' jurisdiction.¹¹ The Rapid Appeals Program is designed to be completed in one conference. If the program is successful in resolving the dispute, it can bypass lengthy and costly procedures in the traditional appeals and litigation stages. Absent resolution by the Rapid Appeals Program, the traditional appeal process may continue using an IRS Appeals settlement officer rather than a mediator.

Post Appeals Mediation Programs

Post Appeals Mediation programs may be used only after IRS Appeals settlement discussions are unsuccessful and the remaining disputed issues are fully developed. The programs use mediation only for those taxpayer cases under its active consideration. The taxpayer's written mediation request must be submitted while the case is still with IRS Appeals. Cases for which tax disputes have been previously mediated through a different ADR program, such as through Fast Track programs, are ineligible for Post Appeals Mediation. If the taxpayer and IRS Appeals can arrive at a resolution, these programs can help avoid the lengthy and costly dispute procedures of litigation. In this sense, the programs are considered to be an extension of the traditional appeals process that was unable to resolve the tax dispute. Post Appeals Mediation programs cover two types of tax disputes, as follows.

¹⁰The program is named Rapid Appeals Process in the IRM and other IRS guidance. We use the name Rapid Appeals Program throughout this report for clarity and consistency in referring to this distinct dispute resolution process using mediation as a program in the context of the other similar ADR programs.

¹¹The program is available for taxpayers who appealed LB&I-sourced cases (except International Individual Compliance cases) and SB/SE estate and gift cases.

**Appendix III: Descriptions of Internal Revenue
Service Alternative Dispute Resolution
Programs**

- The Examination Post Appeals Mediation program attempts to resolve disputed tax issues that originate from an IRS audit.¹²
- The Collection Post Appeals Mediation program attempts to resolve disputed tax issues that originate through IRS tax collection actions.¹³

¹²We use the name Examination Post Appeals Mediation throughout this report for clarity in referring to the type of enforcement disputes it involves. However, the program is named Post Appeals Mediation (Non-Collection) in the IRM and other IRS guidance.

¹³Similar to the Collection Fast Track program discussed above, this program limits eligibility to disputes over offers in compromise and the trust fund recovery penalty.

Appendix IV: Focus Group Discussions with Taxpayer Representatives

We held five focus group discussions with tax professionals to gather information about their views on the Internal Revenue Service's (IRS) alternative dispute resolution (ADR) programs based on their experiences in representing taxpayers in disputes with IRS on tax liabilities (see appendix II for information on how we selected the representatives and analyzed the content of the discussions).

In the groups, we asked participants to discuss their answers to our questions on factors that affected their decisions whether to pursue using ADR and on their level of satisfaction with ADR.¹ The following summarizes the most common themes discussed, along with the number of groups with participants who cited the factor.²

- IRS's willingness to participate, to include both IRS's willingness to agree to ADR and to negotiate in ADR to find a resolution (five groups);
- the overall effectiveness of ADR, including ADR being faster and less costly than traditional appeals, or where participants made statements such as, "when it [ADR] works, it works" (five groups);
- the characteristics of the case, such as the type of issue at dispute or the size of the gap between the representative's and IRS's positions on the tax amounts in dispute (five groups);
- experiences where ADR did not resolve the dispute, including when the overall costs and time to resolve a dispute increase when the taxpayer moves on to appeal or litigate a dispute (five groups);
- the quality of IRS mediators, to include positive comments on the skills of a mediator to help disputants seek a common ground, and

¹We also asked them to discuss any suggested changes to improve IRS ADR programs. However, no improvement themes were common enough among the groups to report.

²The factors are not exhaustive or mutually exclusive, but instead represent some of the most common ideas representatives expressed.

negative comments where a mediator imposed the mediator's own resolution (four groups);

- participants' interactions with IRS staff, or prior experience with ADR, that discouraged the use of ADR (four groups);
- difficulties or confusion about accessing and using ADR programs and limited assistance or information from IRS, such as where IRS guidance did not answer questions about ADR, or questions about ADR went unanswered by IRS staff (three groups); and
- experiences where ADR resulted in a more satisfactory change in the amount of tax that was due (three groups).

Appendix V: Dispute Systems Design Principles

We identified and adapted the following principles based on our analysis of research on tax dispute systems. We then used these principles to guide our collection of information on the administration of Alternative Dispute Resolution (ADR) programs at the Internal Revenue Service (IRS) and other government agencies, and to assess IRS's administration of ADR (see appendix II for discussion of how we identified and reviewed research on tax dispute systems).¹

1. The system has a person or persons who function as internal independent confidential neutral(s). Disputants should have access to an independent confidential neutral to whom they can go to for coaching, referring, and problem solving.
2. Procedures are ordered from low to high cost. In order to reduce the costs of handling disputes, the procedures in the system should be arranged in graduated steps in a low-to-high-cost sequence.
3. The system has multiple access points. The system should allow disputants to enter the system through many access points and offer a choice of persons whom system users may approach in the first instance.
4. The system includes training and education. Training of stakeholders in conflict management as well as education about the dispute system and how to access it are necessary.
5. Assistance is offered for choosing the best process. This includes the use of guidelines and/or coordinators and process advisers to ensure the appropriate use of processes.
6. Disputants have the right to choose a preferred process. The best systems are multioption with disputants selecting the process.
7. The system is fair and perceived as fair. The system should be fair to parties and foster a culture that welcomes good faith dissent.

¹See Melinda Jone, *Evaluating Australia's Tax Dispute Resolution System: A Dispute Systems Design Perspective*, eJournal of Tax Research (2015), vol. 13, no. 2. Dispute systems design principles reprinted with permission.

8. The system is supported by top managers. There should be sincere and visible championship by senior management.
9. The system is aligned with the mission, vision, and values of the organization. The system should be integrated into the organization and reflect the organizational mission, vision, and values.
10. There is evaluation of the system. This acts to identify strengths and weaknesses of design and foster continuous improvement.

Appendix VI: Comments from the Internal Revenue Service



CHIEF, INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

April 14, 2023

Jessica Lucas-Judy
Director, Tax Issues
Strategic Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Lucas-Judy:

Thank you for the Government Accountability Office's (GAO) draft report, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits*. We appreciate GAO's analysis of the alternative dispute resolution (ADR) programs offered by the IRS.

The IRS is committed to resolving disputes with taxpayers without costly litigation, whenever possible. The mission of the IRS Independent Office of Appeals (Appeals) is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer. More than 70,000 taxpayers bring their case to Appeals each year, with the vast majority opting for the traditional appeals process in which Appeals personnel take a fresh, objective look at the facts and issues and negotiate an administrative settlement of the matter directly with the taxpayer and their representative. We know from our interactions with taxpayers and our customer satisfaction surveys that taxpayers appreciate the availability of this administrative dispute resolution function.

The GAO's focus in this audit is the mediation programs offered by the IRS that collectively serve about 100 taxpayers each year. In these programs, Appeals serves as a mediator trying to bring the taxpayer and IRS personnel to a negotiated resolution of a tax controversy. We agree that ADR programs – alongside the traditional appeals process – can be important tools for resolving tax disputes without litigation. As you recognize, however, mediation requires both the taxpayer and IRS personnel to agree to mediate, and often one side or the other has valid reasons why mediation is not a better option than the traditional appeals process in that case.

**Appendix VI: Comments from the Internal
Revenue Service**

2

We are dedicated to improving our processes and will take GAO's insights into consideration as we review our ADR programs. Enclosed is a corrective action plan addressing each recommendation.

If you have any questions, please contact me, or a member of your staff may contact Steven M. Martin, Director, Case and Operations Support, at 202-317-4150.

Sincerely,

**Andrew J.
Keyso Jr.**

Digitally signed by
Andrew J. Keyso Jr.
Date: 2023.04.14
08:09:38 -04'00'

Andrew J. Keyso, Jr.

Enclosure

Enclosure

**GAO Recommendations and the IRS Responses to
GAO's Draft Report, "Tax Enforcement: IRS Could Better Manage Alternative Dispute
Resolution Programs to Maximize Benefits"**

Recommendation 1

The Commissioner of Internal Revenue should collect consistent, reliable data on what happens to taxpayer requests to use ADR as well as the results of each ADR program, such as resolutions achieved for the time and costs invested. (Recommendation 1)

Corrective Action: The IRS agrees in principle with this recommendation but is currently limited in what data its systems can collect and share agencywide. More specifically, as noted in the GAO report, the Appeals Centralized Database System (ACDS) is outdated technology that limits Appeals' ability to collect the data GAO suggests. With recent funding, ACDS and approximately 60 similarly situated case management systems used throughout the Agency are scheduled to be replaced by a proposed Enterprise Case Management System (ECM) agencywide. As the agency progresses in implementing ECM, the Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will consider what data should be collected to track taxpayer requests for alternative dispute resolution (ADR) and the resolution of such requests.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 2

The Commissioner of Internal Revenue should establish objectives for ADR programs in clear, measurable terms. (Recommendation 2)

Corrective Action: The IRS agrees that objectives for the ADR programs are important, and currently has objectives for its ADR programs. As GAO notes, four of the six ADR programs have established objectives that seek to resolve tax disputes at the lowest level in the agency. The remaining two ADR programs (post-Appeals mediation programs that take place only between the taxpayer and Appeals personnel) are governed by the overall mission and objective of the Independent Office of Appeals: to resolve cases, without litigation, on a basis that is fair and impartial to both the government and the taxpayer. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will review these objectives to determine whether modifications are appropriate.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 3

The Commissioner of Internal Revenue should link the ADR program objectives to the IRS strategic goals and objectives that the programs support. (Recommendation 3)

Corrective Action: The IRS agrees that the objectives of the ADR program should align with the IRS's strategic goals and objectives and believes that they do align currently. However, as the IRS begins to implement the Inflation Reduction Act Strategic Operating Plan (IRS SOP), which will replace the existing IRS 2022-2026 strategic plan, the Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions and the IRS Transformation and Strategy Office, will consider how the objectives of the ADR program align with the IRS's stated objective in the IRA SOP of quickly resolving taxpayer issues when they arise.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 4

The Commissioner of Internal Revenue should regularly analyze data on the use and results of ADR to make real-time decisions to improve performance, as appropriate. (Recommendation 4).

Corrective Action: The IRS agrees in principle with this recommendation. As noted in response to recommendation 1, existing technology limits the collection and sharing of relevant data across the agency that can be used to diagnose reasons why taxpayers or IRS personnel opted to use or not use ADR. As the agency begins to implement the IRA SOP, the Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will consider how data can be collected in ECM and how data analytics can be used to draw conclusions about the use and results of ADR.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 5

The Commissioner of Internal Revenue should regularly monitor ADR program operations with a focus on soliciting and using taxpayer feedback on the quality of their experiences with ADR. (Recommendation 5)

Corrective Action: The IRS agrees with this recommendation. The Independent Office of Appeals surveys every taxpayer that brings a case to Appeals, whether through the traditional appeals process or through ADR. Taxpayer feedback provided through this survey informs the process improvements we make in Appeals. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will consider what further efforts can be implemented to solicit taxpayer feedback on ADR programs.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 6

The Commissioner of Internal Revenue should establish a neutral IRS resource to communicate with taxpayers to answer questions about IRS's Fast Track programs. (Recommendation 6)

Corrective Action: The IRS agrees that providing taxpayers with information about its Fast Track program is important, and currently does so on the IRS website and in publications, the IRM and applicable published guidance. Appeals employees, who are by statute independent of the examination and collection functions, can also answer questions about the program. The IRS will consider whether establishing a separate neutral mechanism for taxpayers to submit questions about Fast Track programs is appropriate and helpful.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 7

The Commissioner of Internal Revenue should conduct periodic evaluations of the ADR programs to identify actions needed to improve their performance in achieving objectives. (Recommendation 7)

Corrective Action: The IRS agrees with this recommendation. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will establish and implement a process for conducting periodic reviews of ADR programs at the IRS.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 8

The Commissioner of Internal Revenue should establish clear responsibility and related tasks for managing ADR programs, including the practices in the above recommendations, to help ensure that the programs maximize the benefits of using ADR. (Recommendation 8)

Corrective Action: The IRS agrees to clarify roles and responsibilities within the agency for managing ADR programs. Jurisdiction over the ADR programs is shared among Appeals and the IRS business operating divisions. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will ensure that within the context of this shared jurisdiction, responsibilities are clearly established.

Responsible Official: Chief, IRS Independent Office of Appeals

Text for Appendix VI: Comments from the Internal Revenue Service

Jessica Lucas-Judy
Director, Tax Issues
Strategic Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

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The GAO's focus in this audit is the mediation programs offered by the IRS that collectively serve about 100 taxpayers each year. In these programs, Appeals serves as a mediator trying to bring the taxpayer and IRS personnel to a negotiated resolution of a tax controversy. We agree that ADR programs – alongside the traditional appeals process – can be important tools for resolving tax disputes without litigation. As you recognize, however, mediation requires both the taxpayer and IRS personnel to agree to mediate, and often one side or the other has valid reasons why mediation is not a better option than the traditional appeals process in that case.

We are dedicated to improving our processes and will take GAO's insights into consideration as we review our ADR programs. Enclosed is a corrective action plan addressing each recommendation.

If you have any questions, please contact me, or a member of your staff may contact Steven M. Martin, Director, Case and Operations Support, at 202-317-4150.

Sincerely,

Andrew J. Keyso, Jr.

Enclosure

GAO Recommendations and the IRS Responses to GAO's Draft Report, "Tax Enforcement: IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits"

Recommendation 1

The Commissioner of Internal Revenue should collect consistent, reliable data on what happens to taxpayer requests to use ADR as well as the results of each ADR program, such as resolutions achieved for the time and costs invested. (Recommendation 1)

Corrective Action: The IRS agrees in principle with this recommendation but is currently limited in what data its systems can collect and share agencywide. More specifically, as noted in the GAO report, the Appeals Centralized Database System (ACDS) is outdated technology that limits Appeals' ability to collect the data GAO suggests. With recent funding, ACDS and approximately 60 similarly situated case management systems used throughout the Agency are scheduled to be replaced by a proposed Enterprise Case Management System (ECM) agencywide. As the agency progresses in implementing ECM, the Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will consider what data should be collected to track taxpayer requests for alternative dispute resolution (ADR) and the resolution of such requests.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 2

The Commissioner of Internal Revenue should establish objectives for ADR programs in clear, measurable terms. (Recommendation 2)

Corrective Action: The IRS agrees that objectives for the ADR programs are important, and currently has objectives for its ADR programs. As GAO notes, four of the six ADR programs have established objectives that seek to resolve tax disputes

at the lowest level in the agency. The remaining two ADR programs (post-Appeals mediation programs that take place only between the taxpayer and Appeals personnel) are governed by the overall mission and objective of the Independent Office of Appeals: to resolve cases, without litigation, on a basis that is fair and impartial to both the government and the taxpayer. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will review these objectives to determine whether modifications are appropriate.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 3

The Commissioner of Internal Revenue should link the ADR program objectives to the IRS strategic goals and objectives that the programs support. (Recommendation 3)

Corrective Action: The IRS agrees that the objectives of the ADR program should align with the IRS's strategic goals and objectives and believes that they do align currently. However, as the IRS begins to implement the Inflation Reduction Act Strategic Operating Plan (IRS SOP), which will replace the existing IRS 2022-2026 strategic plan, the Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions and the IRS Transformation and Strategy Office, will consider how the objectives of the ADR program align with the IRS's stated objective in the IRA SOP of quickly resolving taxpayer issues when they arise.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 4

The Commissioner of Internal Revenue should regularly analyze data on the use and results of ADR to make real-time decisions to improve performance, as appropriate. (Recommendation 4).

Corrective Action: The IRS agrees in principle with this recommendation. As noted in response to recommendation 1, existing technology limits the collection and sharing of relevant data across the agency that can be used to diagnose reasons why taxpayers or IRS personnel opted to use or not use ADR. As the agency begins to implement the IRA SOP, the Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will consider how data can be collected in ECM and how data analytics can be used to draw conclusions about the use and results of ADR.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 5

The Commissioner of Internal Revenue should regularly monitor ADR program operations with a focus on soliciting and using taxpayer feedback on the quality of their experiences with ADR. (Recommendation 5)

Corrective Action: The IRS agrees with this recommendation. The Independent Office of Appeals surveys every taxpayer that brings a case to Appeals, whether through the traditional appeals process or through ADR. Taxpayer feedback provided through this survey informs the process improvements we make in Appeals. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will consider what further efforts can be implemented to solicit taxpayer feedback on ADR programs.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 6

The Commissioner of Internal Revenue should establish a neutral IRS resource to communicate with taxpayers to answer questions about IRS's Fast Track programs. (Recommendation 6)

Corrective Action: The IRS agrees that providing taxpayers with information about its Fast Track program is important, and currently does so on the IRS website and in publications, the IRM and applicable published guidance. Appeals employees, who are by statute independent of the examination and collection functions, can also answer questions about the program. The IRS will consider whether establishing a separate neutral mechanism for taxpayers to submit questions about Fast Track programs is appropriate and helpful.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 7

The Commissioner of Internal Revenue should conduct periodic evaluations of the ADR programs to identify actions needed to improve their performance in achieving objectives. (Recommendation 7)

Corrective Action: The IRS agrees with this recommendation. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will establish and implement a process for conducting periodic reviews of ADR programs at the IRS.

Responsible Official: Chief, IRS Independent Office of Appeals

Recommendation 8

The Commissioner of Internal Revenue should establish clear responsibility and related tasks for managing ADR programs, including the practices in the above recommendations, to help ensure that the programs maximize the benefits of using ADR. (Recommendation 8)

Corrective Action: The IRS agrees to clarify roles and responsibilities within the agency for managing ADR programs. Jurisdiction over the ADR programs is shared among Appeals and the IRS business operating divisions. The Chief, IRS Independent Office of Appeals, in coordination with the IRS business operating divisions, will ensure that within the context of this shared jurisdiction, responsibilities are clearly established.

Responsible Official: Chief, IRS Independent Office of Appeals

Appendix VII: GAO Contact and Staff Acknowledgments

GAO Contact

Jessica Lucas-Judy, (202) 512-6806, lucasjudyj@gao.gov

Staff Acknowledgments

In addition to the contact named above, Tom Short (Assistant Director), Ronald W. Jones (Analyst-in-Charge), Caitlin Cusati, Ben Legow, Krista Loose, Brian Noyes, Robert Robinson, Rebecca Sero, and Peter Verchinski made key contributions to this report.

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