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IRS Limits Lenders' Ability to Access Borrowers' Tax Returns

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The Internal Revenue Service ("IRS") has issued a policy update stating that, effective June 30, 2024, a lender's ability to obtain borrowers' tax returns for verification purposes will only be available for residential and commercial real estate loans. The announcement comes as yet another IRS restriction on lenders, after a related one in 2019 when the IRS prohibited lenders and other parties from sharing taxpayers' tax returns with third parties, impacting the sales of loans to third parties. For a discussion of the 2019 change, click here.

The January 2, 2024 policy update is to the Income Verification Express Service ("IVES"), an IRS program created in 2006 to provide tax transcripts to a third party with consent of the taxpayer, currently allowing lenders to obtain taxpayer verification data quickly when underwriting a variety of loans. The IRS's new position will limit the reach of the program to mortgage loan determinations. The IRS stated: "Effective June 30, 2024, the IRS will only provide IVES transcripts to mortgage lending firms for the sole purpose of obtaining a mortgage on residential or commercial real property (land and buildings)."

Lenders rely heavily on the ability to obtain tax returns from the IRS to verify the borrower's financial status. In its January 2nd statement, the IRS recommends that, if tax transcript information is required by a lender for other than a mortgage loan, such is requested directly from the taxpayer. Although the IRS claims that the new policy is designed to ensure greater safeguarding of taxpayer data, it is likely to have far reaching implications for lenders, particularly those working mostly with small businesses. Requesting tax returns from borrowers will likely not only result in additional delays of loan processing, particularly where borrowers do not maintain good records, but will likely also result in added complexity and expense to the process. That is particularly true for participants in Small Business Administration ("SBA") lending, since the SBA requires that tax returns of the borrower be provided as part of the loan application package. In addition, lenders forced to rely on tax returns provided by the borrowers will likely be required to do more due diligence to ensure the authenticity and accuracy of such returns. One option may be to require the borrower to certify as to the accuracy of the returns provided, or to obtain copies from the borrower's accountants.

The IRS's announcement also clarifies that all IVES participants using fax requests (legacy system), Web User Interface (WebUI), or Application to Application (A2A) channels must **re-apply** to the IVES program by **May 1, 2024,** to remain in active status. Participants must complete *Form 13803, Application to Participate in the Income Verification Express Service (IVES) Program*, fax the new application to 844-251-8254, and declare their sole purpose for using IVES is to secure third party tax data needed for a mortgage on residential or commercial real

property (real estate).

This advisory is a general overview of the IRS policy update and is not intended as legal advice. If you have any questions about the policy update, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at **jsimon@cullenllp.com**, Elizabeth A. Murphy at (516) 296-9154, or via email at **emurphy@cullenllp.com**, or Gabriela Morales at (516) 357-3850 or via email at **gmorales@cullenllp.com**.

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