

**MSP
#5****VITA/TCE FUNDING: Volunteer Tax Assistance Programs Are Too Restrictive and the Design Grant Structure Is Not Adequately Based on Specific Needs of Served Taxpayer Populations****RESPONSIBLE OFFICIAL**

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DEFINITION OF PROBLEM

On January 2, 2014, the IRS ceased providing free return preparation services at its local Taxpayer Assistance Centers (TACs).¹ Instead, taxpayers were directed to use Free File, tax preparation software that is free for taxpayers whose 2013 incomes were less than \$58,000, or obtain the services at Volunteer Income Tax Assistance and Tax Counseling for the Elderly (VITA or TCE) sites.²

In fiscal year (FY) 2014, VITA and TCE programs prepared 3,472,696 returns, an increase of about 27 percent over the FY 2009 level.³ VITA and TCE sites that received funding from the IRS, also referred to as award grantees, alone prepared more than 1.4 million and 1.3 million returns, respectively, during FY 2014.⁴ Inexplicably, the IRS awarded VITA grantees \$100,000 less than in FY 2013 and committed more resources to the TCE grant program, despite the fact that the number of returns prepared by VITA programs increased at a substantially higher rate than the number of returns prepared by TCE programs in FYs 2009-2013.⁵ Because every VITA grant dollar must be matched by the VITA grantee, a requirement not imposed on TCE grantees, the IRS funding decision had the effect of reducing resources available to the VITA grant program by two hundred thousand dollars in FY 2014.

These data do not capture the number of taxpayers who are turned away from VITA or TCE sites because the issues they need help with are “out of scope.”⁶ VITA and TCE sites have reported an increase in these

1 TACs are local IRS sites where taxpayers can go for face-to-face assistance. IRS, *Contact Your Local IRS Office*, available at <http://www.irs.gov/uac/Contact-Your-Local-IRS-Office-1> (last visited Oct. 27, 2014).

2 VITA and TCE sites provide free tax preparation services for qualified individuals in conjunction with IRS assistance and direction. See IRS, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources*, available at <http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources> (last visited Oct. 17, 2014); IRS, *Free File: Do Your Federal Taxes for Free*, available at <http://www.irs.gov/uac/Free-File-Do-Your-Federal-Taxes-for-Free> (last visited Oct. 27, 2014). The income amount changes each taxable year.

3 IRS response to TAS information request (Aug. 15, 2014). In FY 2009, VITA prepared 417,741 returns; TCE sites prepared 1,538,181 returns; and VITA Grantees—a total of 779,734 returns (included in the total VITA number).

4 IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014). The number of returns prepared by VITA grantees increased by 66,182 in FY 2014 compared to FY 2013. The number of returns prepared by TCE grantees decreased in FY 2014 for the first time, by 251,929 returns compared to FY 2013.

5 TAS teleconference with Wage and Investment (W&I) (Nov. 24, 2014). W&I was unable to explain why or how funding over the congressionally appropriated amounts (discretionary funding) were determined. IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014) and IRS response to fact check (Dec. 27, 2014). TCE grantees prepared 1,538,181 returns in FY 2009 and 1,595,860 returns in FY 2013, resulting in an increase of 57,679 returns. VITA grantees prepared 779,734 returns in FY 2009 and 1,353,433 in FY 2013, an increase of 573,699 returns. See Figure 1.5.2, *Tax Returns Prepared at VITA/TCE Sites in FYs 2009-2014* *infra*.

6 “Out of scope” returns include forms, schedules, and tax law topics the IRS identifies each year, which may change every year. Examples of out of scope items are cancellation of debt other than nonbusiness credit card debt, some expenses on Form 3903, *Moving Expenses*, some Forms 1040X, *Amended Returns*, and transactions in virtual currencies. See IRS Pub. 4012, *VITA/TCE Volunteer Resource Guide, Scope of Service* 8-10 (Oct. 2014).

types of returns.⁷ IRS Free File software cannot address these issues either.⁸ Consequently, these taxpayers have nowhere to turn for free assistance in preparing their returns.⁹

The National Taxpayer Advocate is concerned that the IRS's approach to free tax preparation assistance falls short of Congress' expectations that the IRS would "extend services to underserved populations and hardest-to-reach areas, ... heighten quality control, enhance training of volunteers, and significantly improve the accuracy rate of returns prepared by VITA sites."¹⁰

By eliminating tax preparation services at TACs and inadequately supporting VITA or TCE sites, the IRS makes it more difficult for taxpayers to obtain tax preparation assistance that helps them meet their reporting obligations and comply with the tax laws. These shortcomings burden taxpayers because those who cannot obtain free filing assistance may pay more in taxes than they are legally required to pay, or seek preparation services from unqualified or unscrupulous preparers, undermining voluntary compliance and eroding the *taxpayer's rights to be informed, to quality service, and to pay no more than the correct amount of tax.*¹¹

ANALYSIS OF PROBLEM

Background

Volunteer taxpayer assistance programs administered by the IRS originated with the Tax Reform Act of 1969 and were later consolidated as VITA.¹² VITA partners offer free tax assistance and help in preparing income tax returns for low to moderate income individuals, the disabled, the elderly, and those with limited English proficiency (LEP).¹³ The IRS provides VITA partners with tax preparation software, limited amounts of hardware, online training for volunteer certification, and advertising on IRS.gov. VITA partners are responsible for all other aspects of their program, including:

- Publicity;
- Volunteer recruitment;
- Training;
- Providing the site; and

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- 7 2014 Common Cents Conference, IRS VITA Communications Panel, *Impact of Taxpayer Assisted Center Closures: VITA Field Survey Results*, available at <http://commoncentsconference.mdccash.org/wp-content/uploads/2013/01/VITA-Field-Survey-Summary-FINAL.pdf> (last visited Dec. 16, 2014).
 - 8 IRS, *Available Forms and Limitations*, available at <http://www.irs.gov/uac/List-of-Available-Free-File-Fillable-Forms> (last visited Dec. 16, 2014).
 - 9 TACs were able to prepare tax returns that are more technical and did not have as many out of scope limitations compared to the VITA or TCE sites and the Free File software.
 - 10 S. Comm. on Appropriations, *Financial Services and General Government Appropriations Bill, 2014*, report to accompany S. 1371, 113th Cong., S. REP. NO. 113-80, at 27 (2014).
 - 11 On June 10, 2014, the IRS formally adopted the Taxpayer Bill of Rights (TBOR). See IRS, *Taxpayer Bill of Rights*, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights> (last visited Oct. 20, 2014). The *right to be informed* includes the right to know what the taxpayer need to do to comply with the tax laws and clear explanations of the laws and IRS procedures. The *right to quality service* includes the right to receive prompt, courteous, and professional assistance in their dealings with the IRS. Taxpayers also have the *right to pay only the amount of tax legally due*, including interest and penalties.
 - 12 See *Income Tax Overpayments by the Elderly*, IRS Commissioner Hearing Before the S. Comm. On Aging, 95th Cong. 44 (1970) (statement of Randolph W. Thrower, IRS Commissioner). Commissioner Thrower submitted a written answer to Congress describing the Taxpayer Assistance Training Program, which was the pilot of the IRS volunteer tax programs. See also IRS Pub. 4671, *VITA Grant Program Overview and Application Instructions* 6 (Apr. 2014).
 - 13 IRS, *Free Tax Return Preparation for Qualifying Taxpayers*, available at <http://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers> (last visited on Nov. 14, 2014).

- All aspects of management.¹⁴

The IRS administers the VITA program through the Stakeholder Partnership, Education and Communications program (SPEC) in the W&I division.¹⁵

Prior to 2007, the VITA partners funded their programs without any financial assistance from the IRS. However, in December 2007 Congress created and appropriated funding for the VITA grant program to provide matching funds (*i.e.*, the IRS may match the funds the organization has secured).¹⁶ In 2008, the House Appropriations Committee directed the IRS, through VITA and TCE, to “strengthen, improve, and expand taxpayer service overall.”¹⁷ The Committee explained the purpose of the VITA grant funds was “[t]o enable VITA programs to extend services to underserved populations and hardest-to-reach areas, both urban and non-urban, as well as to increase the capacity to file returns electronically, heighten quality control, enhance training of volunteers, and significantly improve the accuracy rate of returns prepared by VITA sites.”¹⁸

Once awarded, grant funds are restricted and can only be used for reasonable costs that would not have existed but for the program, such as:

- Hardware used to prepare returns;
- Salaries, wages, and benefits of clerical personnel, interpreters, program and site coordinators, and tax law instructors;
- Office supplies;
- Rent;
- Utilities; and
- Equipment and technical personnel that relate to electronic filing services.

The IRS does not allow VITA or TCE to use grant funds as compensation for tax assistants or preparers, screeners, or quality reviewers.¹⁹ Not all VITA participants seek or receive grants; some operate without monetary support from the IRS.

In 1978, Congress created the TCE program, which allows the IRS to provide funding (without the matching requirement) to various private and public nonprofit agencies and organizations that offer free

14 Internal Revenue Manual (IRM) 22.30.1.5.1.2(6), *Volunteer Income Tax Assistance (VITA) Grant* (Oct. 01, 2011).

15 SPEC handles the outreach and education functions of the IRS, and manages the VITA and TCE programs. SPEC’s mission is to “assist taxpayers in satisfying their tax responsibilities” and is accomplished by partnering with various organizations providing access to low income and underserved populations in the local communities. IRM 22.30.1.1(2), *What is Stakeholder Partnerships, Education and Communications* (Oct. 1, 2013).

16 Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1975-76 (2007). See also IRM 22.30.1.5.1.2(2), *Volunteer Income Tax Assistance (VITA) Grant* (Oct. 01, 2011). The IRS may match funds that an organization provides in the form of cash, software, hardware, supplies, salaries, and volunteer services. IRS, *VITA Grant FAQs Category: Matching Funds* (Mar. 28, 2014), available at <http://www.irs.gov/Individuals/VITA-Grant-FAQs-Category-Matching-Funds>. The goal of the grant program is to provide free tax return preparation and electronic filing to taxpayers that are low to moderate-income, elderly, disabled, and individuals with limited English proficiency. IRM 22.30.1.5.1.2(3), *Volunteer Income Tax Assistance (VITA) Grant* (Oct. 01, 2011).

17 H. Comm. on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., H.R. REP. No. 110-207, at 26 (2008).

18 153 CONG. REC. H16049 (daily ed. Dec. 17, 2007).

19 IRM 22.30.1.3.3.1.2(1), *Compensation for the Grant Program* (Oct. 01, 2011).

tax counseling and assistance to individuals over the age of 60.²⁰ TCE volunteers are IRS-certified and serve all taxpayers but specialize in issues unique to older taxpayers, such as pensions and retirement.²¹

Congress Intended the IRS to Sufficiently Fund, Expand, and Improve the Reach of the VITA and TCE Programs.

At the same time Congress authorized funding for the VITA grant program, legislators were concerned about the IRS reducing taxpayer services and the associated adverse impact on voluntary compliance:

The IRS discontinued tax preparation services at Taxpayer Assistance Centers without properly evaluating the limitations of the most vulnerable taxpayer populations—the elderly, low income, rural, and those not proficient in English.

If the IRS proposes further reductions in specific taxpayer services ... the IRS must demonstrate that such reductions will not result in a decline in voluntary compliance. Where such reductions involve a reduction in face-to-face service, the IRS must demonstrate that the proposed reductions do not adversely impact compliance by taxpayers ...²²

In 2014, Congress directed the IRS to “expand the quantity and funding level of VITA grants focused on serving persons with disabilities proportional to the growing disability population requiring tax assistance” and “allow national coalitions responsible for the coordination of local community partnerships focused specifically on the expanded provision of tax services for individuals with disabilities to compete in the VITA community matching grant processes.”²³ Congress directed the IRS to fund the TCE and VITA programs at no less than \$5,600,000 and \$12,000,000 respectively.²⁴

Eliminating Tax Return Preparation Services at TACs Harms the Most Vulnerable Taxpayers and Voluntary Compliance.

Prior to 2014, taxpayers turned to TACs for assistance in preparing and filing tax forms such as IRS Form 1040 Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, complicated and advanced forms such as Schedule D, *Capital Gains and Losses*, and Schedule F, *Profit or Loss From Farming*, because VITA and TCE sites generally cannot prepare these out-of-scope forms.²⁵ In addition to Schedules C, D, and F, low and moderate income taxpayers also may need tax preparation assistance with Form 3903, *Moving Expenses* and Form 1099-C, *Cancellation of Debt*.²⁶ At the start of 2014, the IRS stopped preparing returns at TACs and directed taxpayers to use other free options such as the IRS Free File program,

20 Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95-224, § 6, 92 Stat 3, 5 (1978). See also Statement of Procedural Rules, Treas. Reg. § 601.802. Unlike VITA grant funding, TCE grant funding does not require matching funds.

21 IRS, *Free Tax Return Preparation for Qualifying Taxpayers*, available at <http://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers> (last visited on Nov. 14, 2014).

22 153 CONG. REC. H16049 (daily ed. Dec. 17, 2007).

23 U.S. Congress, S. Comm. on Appropriations, *Financial Services and General Government Appropriations Bill, 2014*, report to accompany S. 1371, 113th Cong., S. REP. NO. 113-80, at 28 (2014).

24 Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 5, 188 (2014).

25 IRS Pub. 3676 (EN/SP), *IRS Certified Volunteers Providing Free Tax Preparation 1* (Jan. 2014). In June 2013, the National Taxpayer Advocate met with executives from the IRS Wage & Investment division to discuss the National Community Tax Coalition (NCTC), a SPEC national partner, request for the IRS to reconsider a decision to discontinue the Expanded Form 1040 Schedule C, *Profit or Loss From Business (Sole Proprietorship)* pilot tax return preparation program after the 2013 filing season. The discussions resulted in SPEC continuing the program.

26 Pub. 4012, *VITA/TCE Volunteer Resource Guide, Scope of Service 8-10* (Oct. 2014).

Facilitated Self-Service Assistance (FSA) sites, or VITA and TCE.²⁷ The IRS stated that commercial tax software and paid preparers are additional options.²⁸ However, these alternatives are not replacements for the service formerly offered by TACs. Unlike TACs, VITA and TCE sites and Free File software cannot prepare forms or handle issues that are “out of scope.” Low income taxpayers may not be able to afford software or a paid preparer, while taxpayers with disabilities, limited technology skills, or no access to a computer may be unable to use Free File or commercial software.

As discussed in the National Taxpayer Advocate’s 2013 Annual Report to Congress, TACs are preferred by some taxpayers “who do not have Internet access or prefer in-person assistance.”²⁹ A 2011 SPEC Rural Strategy Initiative acknowledged, “[e]ven though the percentage of low-income residents per capita is higher in rural areas than in larger cities, the coverage rates for free tax preparation services are lower. While many partners want to service rural areas, there are often barriers and challenges that are difficult to overcome.”³⁰ As the Senate Appropriations Committee FY 2015 Financial Services and General Government Subcommittee draft report noted, “Given the significant wait times and deteriorating rate of response for assistance provided through the national toll-free line, it is imperative the IRS Taxpayer Assistance Centers [TACs] in rural areas are fully staffed and capable of resolving taxpayer issues.”³¹

The IRS discontinued tax preparation services at TACs without properly evaluating the limitations of the most vulnerable taxpayer populations—the elderly, low income, rural, and those not proficient in English. In April 2012, members of the Taxpayer Advocacy Panel (TAP) performed a survey of taxpayers that indicates that even though taxpayers tried to resolve their issues through other means, they still needed face-to-face assistance from a TAC.³² The IRS’s own taxpayer service plan acknowledges that some taxpayers, including those with income restrictions, the elderly, or individuals with limited English abilities, are more likely to visit a location that offers face-to-face services to complete their tasks.³³ Individuals prefer face-to-face help for a few reasons:

- Some may want the opportunity to receive an immediate response, or to clarify that they fully understand any information, direction, or guidance;
- Some may lack computer or Internet access;³⁴ and

27 IRS, *Growth Through Alternative Filing Strategies in the Next ERA* FY 2014 Program Guide 7 (2014). See also IRS, *Contact Your Local IRS Office*, available at <http://www.irs.gov/uac/Contact-Your-Local-IRS-Office-1> (last visited on Oct. 17, 2014). FSA is interactive tax preparation software that is available at some VITA and TCE sites that the taxpayer uses with very little assistance and does not require face-to-face interaction. For further information on Face-to-Face taxpayer services, see National Taxpayer Advocate 2012 Annual Report to Congress 20-39 (Most Serious Problem: *The IRS Lacks a Servicewide Strategy that Identifies Effective and Efficient Means of Delivering Face-to-Face Taxpayer Services*).

28 IRS, *FY 2014 Service Approach Return Preparation Clarification* 3 (Jun. 9, 2014).

29 See National Taxpayer Advocate 2013 Annual Report to Congress 20-39, at 30 (Most Serious Problem: *IRS BUDGET: The IRS Desperately Needs More Funding to Serve Taxpayers and Increase Voluntary Compliance*).

30 IRS, *Fact Sheet for SPEC Partners, SPEC Rural Strategy Initiative* 1 (July 2011). Since FY 2012, W&I rural areas as part of the overall low income population and no longer captures or has knowledge of the actual coverage rates for rural areas. IRS response to fact check (Dec. 27, 2014).

31 *FY15 Financial Services and General Government Subcommittee Reported Bill and Draft Report* (July 24, 2014), available at <http://www.appropriations.senate.gov/news/fy15-fsgg-subcommittee-reported-bill-and-draft-report> (last visited Oct. 30, 2014).

32 The TAP is a federal advisory committee comprised of citizen volunteers who work to improve IRS services by providing the taxpayers’ perspective to various IRS operations. The National Taxpayer Advocate and her Research and Systemic Advocacy staffs provided support to this survey effort. TAP volunteers returned 664 completed surveys from 37 different TAC offices. While these results are not statistically representative of all TAC visitors, they represent the needs and activities of a sizable number of TAC customers during one week in the tax filing season. Percentages shown are out of all 664 respondents. Some respondents did not answer every question. Taxpayer Advocacy Panel, 2012 Annual Report 33 (Apr. 2012).

33 IRS, 2007 Taxpayer Assistance Blueprint Phase II, 111.

34 Kathryn Zickuhr, Pew Research Center, *Who’s not online and why* 2 (Sep. 25, 2013), available at <http://www.pewinternet.org/2013/09/25/main-report-2/>.

- Some may have education, income, disability, language, or age barriers.³⁵

According to a Pew study, “[a]s of May 2013, 15 percent of American adults age 18 and older do not use the internet or email.”³⁶ The study found, “[a]s in previous surveys, internet use remains strongly correlated with age, education, and household income.”³⁷ Pew also noted, “Many seniors have physical conditions or health issues that make it difficult to use new technologies.”³⁸ The following percentages of adults are not online:

- 44 percent of those over the age of 65;
- 41 percent of those who have not graduated from high school;
- 24 percent of Hispanics;
- 15 percent of black non-Hispanics;
- 24 percent of those residing in households with income of less than \$30,000 per year; and
- 20 percent of those living in rural areas.³⁹

All of these taxpayers are more likely to need face-to-face services.⁴⁰ However, in the absence of return preparation services at TACs, their tax assistance options are limited to paid preparers, commercial software, or VITA or TCE sites. Some taxpayers turn to Low Income Taxpayer Clinics (LITCs), but the clinics’ mission is to provide low income taxpayers representation in tax controversies, and they generally cannot prepare current-year tax returns.⁴¹ As a result, some taxpayers may become frustrated and stop filing returns altogether.

Increased Activity and Inadequate Resources at VITA/TCE Sites Burden Taxpayers Who Depend on Them.

In FY 2014, the IRS funded both VITA and TCE at the congressionally appropriated levels, but decreased discretionary funding for the VITA program and increased discretionary funding for the TCE program for FY 2014 as compared to FY 2013 levels.⁴² As depicted below, VITA discretionary funding decreased by one percent, from \$12.1 to \$12 million and TCE discretionary funding rose by nine percent, from \$5.6 million to \$6.1 million.

35 Kathryn Zickuhr, Pew Research Center, *Who’s not online and why* 2, 4 (Sep. 25, 2013), available at <http://www.pewinternet.org/2013/09/25/main-report-2/>. Pew found that groups of individuals with similar characteristics to older and less affluent persons over the age of 65 had “significant challenges with health or disability” that prevented their use of “digital tools and services, both physically and psychologically.” Aaron Smith, Pew Research Center, *Older Adults and Technology Use* 1 (Apr. 3, 2014), available at <http://www.pewinternet.org/2014/04/03/older-adults-and-technology-use/>.

36 *Id.* at 4.

37 *Id.*

38 Aaron Smith, Pew Research Center, *Older Adults and Technology Use* 2 (Apr. 3, 2014), available at <http://www.pewinternet.org/2014/04/03/older-adults-and-technology-use/>.

39 Kathryn Zickuhr, Pew Research Center, *Who’s not online and why* 2 (Sep. 25, 2013), available at <http://www.pewinternet.org/2013/09/25/main-report-2/>.

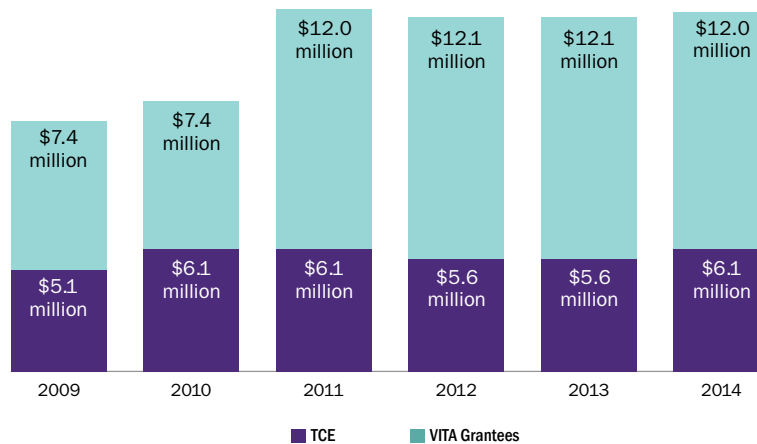
40 IRS, 2007 Taxpayer Assistance Blueprint Phase II, 111.

41 Internal Revenue Service Restructuring Act of 1998, Pub.L. No. 105-206, Title III, § 3601(a), 112 Stat. 685. 774 (1998). See also IRC § 7526. The LTC program was created and funded to provide taxpayers much needed tax assistance when there is a tax controversy with the IRS. Any other purpose is an inappropriate use of LTC grant funds.

42 IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014) and IRS response to fact check (Dec. 27, 2014). For FY 2014 the IRS award amount for the VITA and TCE sites was \$12 million and \$6.1 million respectively.

FIGURE 1.5.1⁴³

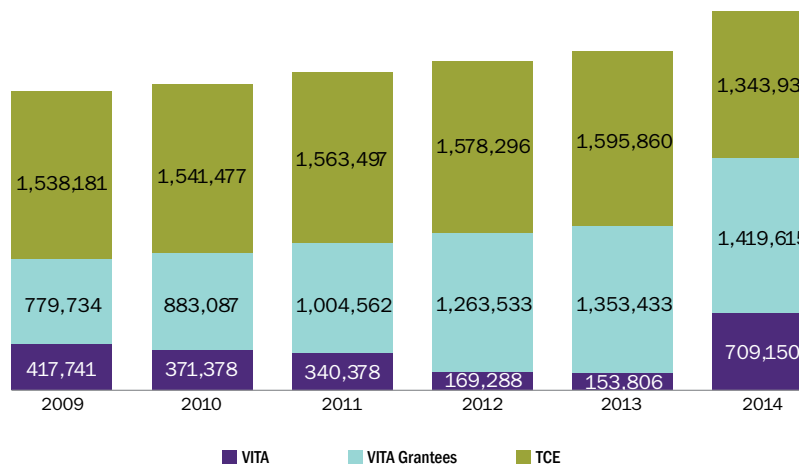
IRS funding of volunteer programs, FYs 2009-2014



During the same period, the number of tax returns prepared by VITA sites increased five percent while the number prepared by TCE decreased 16 percent as shown on Figure 1.5.2.⁴⁴

FIGURE 1.5.2⁴⁵

Tax returns prepared at VITA/TCE sites, FYs 2009-2014



⁴³ IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014) and IRS response to fact check (Dec. 27, 2014).

⁴⁴ *Id.* The IRS awarded seven fewer grants to VITA sites from FY 2013 to FY 2014 while the number remained the same for the TCE sites for the same period. The IRS increased funding for the TCE sites while the number of returns prepared by these sites decreased for the first time since the program was created.

⁴⁵ IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014).

The IRS awarded seven fewer grants to VITA sites from FY 2013 to FY 2014 while the number remained the same for the TCE sites for the same period.⁴⁶ The IRS increased discretionary funding for the TCE sites despite the fact that the number of returns prepared by TCE sites increased at a significantly slower pace than the number of returns prepared by VITA sites in FYs 2009-2013.⁴⁷ In fact, the number of returns prepared at TCE sites decreased in FY 2014 for the first time since the program was created.⁴⁸ The decision by the IRS to decrease discretionary funding for VITA also decreased the dollar amount of matching funds dedicated to volunteer tax preparation by two hundred thousand dollars.⁴⁹ Moreover, since VITA programs actually increased the number of returns prepared in FY 2014 despite funding cuts, the IRS could have served more taxpayers by increasing funding for VITA programs.⁵⁰ It is unclear on what basis the IRS decided to supplement the congressionally directed appropriations level for the TCE program by about \$500,000 while allowing funding for the VITA program to decline.

As the Treasury Inspector General for Tax Administration has noted, the combination of increased activity and decreased funding can strain the VITA and TCE program partners' ability to meet taxpayer needs and improve voluntary compliance.⁵¹ The increased burden on the programs may force some sites to turn people away, while others may be unable to provide quality services.⁵² This may leave taxpayers with no way to obtain prompt, courteous, and professional assistance from the IRS as well as organizations funded by the IRS, undermining the taxpayer right to quality service.⁵³

A small sample of VITA site responses to a survey conducted by the non-profit Maryland CASH Campaign includes specific concerns about the IRS's decision to eliminate tax preparation services at TACs.⁵⁴ Those include:

- Increased referrals from TACs for returns involving issues that are out of scope for VITA sites;
- Increased referrals outside of tax season (most VITA sites are open only during the tax season);
- Increased referrals for amended and prior year returns;
- A simultaneous decrease in IRS SPEC staff traveling to the VITA sites;
- A simultaneous decrease in IRS SPEC staff conducting training or presentations; and

46 IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014).

47 *Id.*

48 *Id.*

49 IRS response to TAS information request (Nov. 19, 2014).

50 IRS response to TAS information request (Aug. 15, 2014 and Nov. 19, 2014) and IRS response to fact check (Dec. 27, 2014). VITA grantees prepared 66,182 more returns in FY 2014 than in FY 2013 (1,419,615 vs. 1,353,433), while TCE grantees prepared 251,929 fewer returns over the same period (1,343,931 vs. 1,595,860).

51 Treasury Inspector General for Tax Administration (TIGTA), Audit No. 201240049, *Additional Steps Are Needed to Ensure the Volunteer Income Tax Assistance Grant Program Reaches More Underserved Taxpayers* (Apr. 30, 2012).

52 The guiding principle of the IRS VITA Grant Program is that the grantees should show "incremental increases" in their return preparation each year. The IRS also expects grantees to achieve 100 percent of their grant agreement goals as well as increasing the amount of returns compared to the prior year with similar amounts of funding. IRS, Pub. 4883, *Grant Programs Resource Guide for VITA Volunteer Income Tax Assistance & TCE Tax Counseling for the Elderly* 5 (Aug. 2014).

53 IRS, *Taxpayer Bill of Rights*, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights> (last visited Oct. 20, 2014).

54 Maryland CASH Campaign released the survey at the 2014 Common Cents Conference. 2014 Common Cents Conference, IRS VITA Communications Panel, *Impact of Taxpayer Assisted Center Closures: VITA Field Survey Summary Results*, available at https://www.surveymonkey.com/sr.aspx?sm=mDtFjCp_2f5M9b0bk33JOo8_2ffhVCxf2eyFcarkizSSx4_3d (last visited Nov. 15, 2014).

- A simultaneous decrease in the availability of IRS resources, such as training materials and site tools.⁵⁵

VITA and TCE sites must perform intake and interview each taxpayer who visits a site;⁵⁶ however, the sites do not report the time spent on intake and processing for a taxpayer whose issue is out of scope or needs an amended or prior year tax returns prepared. The initial interviews provide valuable information and guidance to taxpayers, even if they ultimately cannot be assisted by the VITA or TCE site. However, by the IRS not counting and funding the time spent on this valuable service, taxpayers experience longer wait times or risk being turned away. These limitations, in the absence of tax return preparation services at TACs, erode the taxpayer's *right to be informed* of compliance requirements and receive a clear explanation of the laws and procedures.⁵⁷

The IRS's restrictions on which volunteers can prepare prior year or amended returns, combined with the limitations of software, discourage sites from preparing these returns. And because the IRS no longer prepares them in the Taxpayer Assistance Centers, taxpayers no longer have access to free assistance in this area.

VITA/TCE Programs Are Subject to Limitations and Restrictions that Impede Their Effectiveness.

In addition to the out of scope restrictions, the IRS suggests that volunteer preparers have two years of previous experience and be trained and certified at the advanced level before preparing prior year or amended returns. This policy means some taxpayers will not receive service, because the sites lack preparers qualified to handle their returns.⁵⁸ Volunteer preparers who work in the tax and accounting field, such as attorneys and certified public accountants, are also burdened by the IRS training and certification policy requirement that volunteers who answer tax law questions, instruct tax law classes, prepare or correct tax returns, or conduct quality reviews of completed tax returns must be certified in tax law annually.⁵⁹ The IRS should require these volunteers to recertify only on new provisions and changes in tax law much like the IRS proposed in its pre-*Loving* regulation of return preparers, which could possibly increase volunteer participation.⁶⁰

Moreover, although the IRS encourages electronic filing, the TaxWise software it provides to VITA and TCE volunteers allows return preparation only for the current year and the three previous taxable years.⁶¹ Because VITA and TCE sites are only authorized to use this software, they cannot fully assist a taxpayer

55 2014 Common Cents Conference, IRS VITA Communications Panel, *Impact of Taxpayer Assisted Center Closures: VITA Field Survey Summary Results*, available at https://www.surveymonkey.com/sr.aspx?sm=mDtFjCp_2f5M9bobk33JOo8_2ffhVCxf2eyFcarkizSSx4_3d (last visited Nov. 15, 2014).

56 IRM 22.30.1.3.13.1.2, *Intake and Interview Process* (Oct. 1, 2014).

57 IRS, *Taxpayer Bill of Rights*, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights> (last visited Oct. 20, 2014).

58 IRS, *Fact Sheet for SPEC Partners, Preparing Prior Year and Amended Returns at VITA/TCE sites* (Oct. 2014), available at http://www.irs.gov/pub/irs-utl/Fact_Sheet_Prior_Year_and_Amended_Returns%20with%20Addendum_Updated%2010-3-14.pdf (last visited Oct. 30, 2014).

59 IRM 22.30.1.3.13.1.2, *Intake and Interview Process* (Oct. 1, 2014). The IRS provides training to volunteers through the Link and Learn application. IRM 22.30.1.3.7.1.3, *Link and Learn Taxes (LLT)* (Oct. 1, 2014).

60 *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014) (upholding the District Court's decision to enjoin the IRS's enforcement of the testing and CE requirements).

61 The IRS is required by law to facilitate electronic filing (e-file) of returns. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, § 2001, 112 Stat. 723 (1998). IRS, *Fact Sheet for SPEC Partners, Preparing Prior Year and Amended Returns at VITA/TCE sites* (Oct. 2014), available at http://www.irs.gov/pub/irs-utl/Fact_Sheet_Prior_Year_and_Amended_Returns%20with%20Addendum_Updated%2010-3-14.pdf (last visited Oct. 30, 2014).

who has several years of returns to be filed.⁶² The IRS's restrictions on which volunteers can prepare prior year or amended returns, combined with the limitations of software, discourage sites from preparing these returns. And because the IRS no longer prepares them in the TACs, taxpayers no longer have access to free assistance in this area.

Taxpayers *have a right to pay no more than the current amount of tax due*. However, restrictions on VITA sites with respect to the types of permitted return preparation may lead to taxpayers failing to file a timely return, which could result in the taxpayer owing more than the original amount, due to penalties and interest.⁶³

In light of the restrictions and limitations discussed above, the IRS grant funding process must change to reduce the additional burdens on taxpayers and the VITA and TCE sites. As stated earlier, the IRS does not fund quality reviewers, yet the volunteer sites need them (even in a part-time funded capacity) to ensure the accuracy of returns; TIGTA has consistently noted quality issues in its reports about VITA and TCE sites.⁶⁴ Because the programs have to depend on volunteers to verify the quality of the prepared returns, some taxpayers are burdened with improperly prepared returns, possibly causing reduced or delayed refunds, or payment of unnecessary taxes.⁶⁵

In addition to the lack of funding for quality reviewers, the IRS restricts funding of Certified Acceptance Agents (CAAs) at VITA and TCE sites, creating an additional burden to taxpayers who need an Individual Taxpayer Identification Number (ITIN).⁶⁶ The National Taxpayer Advocate has drawn attention to issues with the ITIN application process multiple times.⁶⁷ Taxpayers who are ineligible for a Social Security

62 This has always been an issue for taxpayers in need of filing returns for immigration reasons. These taxpayers are sometimes required to provide several years of tax returns to meet certain immigration related requirements.

63 IRS, Taxpayer Bill of Rights, *available at* <http://www.irs.gov/Taxpayer-Bill-of-Rights> (last visited Oct. 20, 2014). IRC § 6651(a)(1), (b)(1). Under IRC § 6651(a)(1), a taxpayer who fails to file a return on or before its due date (including extensions) will be subject to a penalty of five percent of the tax due (minus any credit the taxpayer is entitled to receive and payments made by the due date) for each month or partial month the return is late, up to a maximum of 25 percent, unless the failure is due to reasonable cause and not willful neglect. See also Most Litigated Issue: *Failure to File Penalty Under IRC § 6651(a)(1), Failure to Pay an Amount Shown as Tax on Return Under IRC § 6651(a)(2), and Failure to Pay Estimated Tax Penalty Under IRC § 6654, supra*.

64 IRM 22.30.1.3.3.1.2, *Compensation for Grant Program* (Oct. 1, 2011). For further information on the accuracy of returns prepared by TACs, see National Taxpayer Advocate 2012 Annual Report to Congress 20-39 (Most Serious Problem: *The IRS Lacks a Servicewide Strategy that Identifies Effective and Efficient Means of Delivering Face-to-Face Taxpayer Services*). See TIGTA, Audit No. 201240049, *Additional Steps Are Needed to Ensure the Volunteer Income Tax Assistance Grant Program Reaches More Underserved Taxpayers* (Apr. 30, 2012); TIGTA, Audit No. 201340110, *Inconsistent Adherence to Quality Requirements Continues to Affect the Accuracy of Some Tax Returns Prepared at Volunteer Sites* (Sep. 15, 2013).

65 The IRS monitors the quality of the VITA and TCE sites as part of their participation in the grant programs. Quality is measured and is used to evaluate whether the site receives funding in the future. See IRM 22.30.1.3.13, *Quality Review Process* (Oct. 10, 2013). However, every tax return must be quality reviewed by a person other than the preparer. See IRM 22.30.1.3.13.1(4), *VITA and TCE Quality Site Requirements (QSR)* (Oct. 1, 2013).

66 A certified acceptance agent is a person (i.e., an individual or an entity) who, is authorized to assist alien individuals and foreign persons in obtaining ITINs from the IRS. Rev. Proc. 2006-10, 2006-2 IRB 293 (released Jan. 9, 2006).

67 See 2013 Annual Report to Congress 214-227 (Most Serious Problem: *Reporting Requirements: The Foreign Account Tax Compliance Act has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights*); National Taxpayer Advocate 2012 Annual Report to Congress 154-79 (Most Serious Problem: *The IRS's Handling of ITIN Applications Imposes an Onerous Burden on ITIN Applicants, Discourages Compliance, and Negatively Affects the IRS's Ability to Detect and Deter Fraud*); National Taxpayer Advocate 2010 Annual Report to Congress 319-338 (Most Serious Problem: *Despite Program Improvements, the IRS Policy of Processing Most ITIN Applications with Paper Returns During Peak Filing Season Continues to Strain IRS Resources and Unduly Burden Taxpayers*); National Taxpayer Advocate 2008 Annual Report to Congress 126-140 (Most Serious Problem: *IRS Handling of ITIN Applications Significantly Delays Taxpayer Returns and Refunds*); National Taxpayer Advocate 2004 Annual Report to Congress 143-162 (Most Serious Problem: *Processing Individual Taxpayer Identification Number Applications and Amended Income Tax Returns*); National Taxpayer Advocate National Taxpayer Advocate 2003 Annual Report to Congress 60-86 (Most Serious Problem: *Individual Taxpayer Identification Number (ITIN) Program and Application Process*).

number (SSN) need an ITIN to meet their tax return filing obligations or claim the personal exemptions for spouses and children, and the tax credits and refunds to which they are legally entitled. These taxpayers also need ITINs to have the proper amount of taxes withheld, claim tax treaty benefits, and comply with reporting laws such as the Foreign Account Tax Compliance Act (FATCA).⁶⁸

The problems facing ITIN taxpayers include forgoing filing a joint return and claiming exemptions, possibly resulting in the payment of more taxes than are legally due; and the hardship associated with mailing original documents to the IRS for an extended period (often many months), risking fines and incarceration in some locations, or lost documents by the IRS resulting in high replacement costs.⁶⁹ Having a paid CAA on staff at the VITA or TCE site would allow certification of documents that taxpayers bring in with their Form W7, *Application for IRS Individual Taxpayer Identification Number*, thus reducing the burden to taxpayers. It would also promote accountability and protect against fraud. The IRS's policy of not funding quality reviewers and CAAs undermines the meaning and value of the rights *to quality service*, and *to pay no more than the correct amount of tax*.

As discussed above, IRS restrictions on how the VITA and TCE sites use their funds limit the effectiveness and reach of both programs. Absent these restrictions, the IRS could develop an infrastructure that:

- Allows the VITA and TCE sites to assist more taxpayers in need (especially the hard-to-serve taxpayer communities that Congress intended the VITA program to help);
- Encourages the VITA and TCE sites to provide year-round services, as taxpayers need return preparation assistance year-round and not just during the January-April filing season; and
- Minimizes enforcement costs resulting from noncompliant taxpayers having no place to go to get free tax return preparation services that are easily accessible, or turning to unregulated and incompetent (or unscrupulous) return preparers for assistance.⁷⁰

CONCLUSION

The IRS's approach to VITA and TCE programs, in a time of significant reductions in face-to-face service, increases taxpayer burden and may adversely and significantly impact voluntary compliance, a result Congress wanted to avoid. Between elimination of tax preparation services at TACs, increased VITA and TCE activity, inadequate funding of the VITA grant program, restrictive grant guidelines, and software and volunteer training limitations, the IRS may overburden volunteer program partners and effectively eliminate any expectations that low income, disabled, rural, and elderly taxpayers can obtain free tax return preparation services. The IRS should refocus on the congressional intent behind VITA and TCE programs and tailor its administration of these programs to the specific needs of underserved taxpayer populations.

68 See National Taxpayer Advocate 2013 Annual Report to Congress 238-48 (Most Serious Problem: *Reporting Requirements: The Foreign Account Tax Compliance Act has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights*).

69 National Taxpayer Advocate 2013 Annual Report to Congress 214-27 (Most Serious Problem: *INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS: ITIN Application Procedures Burden Taxpayers and Create a Barrier to Return Filing*).

70 For a more detailed description of return preparer misconduct and IRS efforts to regulate them, see National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *REGULATION OF RETURN PREPARERS: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing its Efforts to Effectively Regulate Unenrolled Preparers*); National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 71-78 (IRS Steps to Create a Voluntary Program for Tax Return Preparer Standards in Light of the *Loving Decision* Are Well Intentioned, But the Absence of a Meaningful Competency Examination Limits the Program's Value and Could Mislead Taxpayers).

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Increase VITA funding to maximize the overall resources (federal and matching funds) available for free tax preparation assistance.
2. Remove VITA and TCE program grant restrictions for specific tax forms, schedules, and issues, including Schedules C, D, and F, and ITINs.
3. Allow grant funding for quality review, CAAs, and year-round services at select sites.
4. Require volunteers who are authorized under Circular 230 to practice before the IRS (*i.e.*, attorneys, CPAs, and Enrolled Agents) to annually recertify only on new provisions and changes in tax law.
5. Provide free tax preparation assistance at TACs in areas with limited access to VITA or TCE volunteers, along with proper staffing and hours to handle taxpayer traffic.