NATIONAL TAXPAYER ADVOCATE

Fiscal Year 2015 Objectives

REPORT TO CONGRESS

VOLUME 1

TAXPAYER ADVOCATE SERVICE

YOUR VOICE AT THE IRS

www.TaxpayerAdvocate.irs.gov/2015ObjectivesReport

June 30, 2014

Contents

I. Preface: National Taxpayer Advocate's Introductory Remarks

Honorable Members of Congress:

The Internal Revenue Code requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.[1] The National Taxpayer Advocate is required to submit these reports directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.[2] The first report, due by June 30 of each year, must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This year, the report also includes a Volume Two in which we present the IRS's responses to the 25 Most Serious Problems Encountered by Taxpayers that I identified in my 2013 Annual Report to Congress.

Shortly after I submitted my 2013 Annual Report to Congress, Commissioner Koskinen asked that I identify for his consideration select recommendations from the report that I believed could have a significant positive impact on tax administration and could be undertaken or at least explored with minimal resources. No prior commissioner had made such a request. I was pleased to provide a list of 12 recommendations, including adoption of a Taxpayer Bill of Rights, and I also made recommendations regarding preparer standards in light of the *Loving* decision. I am pleased to report that the IRS has made substantial progress on five of these issues. The memorandum, dated January 22, 2014, os published immediately following this preface.

To date, fiscal year (FY) 2014 has been an active year for the IRS. In addition to accepting my proposal to adopt a Taxpayer Bill of Rights[3], the IRS ran a generally successful filing season (although taxpayer services were sub-optimal largely due to staffing limitations),[4] instituted a more equitable approach to its Offshore Voluntary Disclosure initiative,[5] and introduced a voluntary system for educating unenrolled return preparers.[6] The IRS has also taken significant steps to implement the Foreign Account Tax Compliance Act (FATCA)[7] and the Affordable Care Act (ACA)[8] and to prepare for a 2015 filing season that will be an extremely heavy lift. All this is generally good news. But as we note in this report, the good news also raises additional questions and concerns.

1 IRC § 7803(c)(2)(B).

2 IRC § 7803(c)(2)(B)(iii).

3 *See* TAS Will Work Closely With the IRS On Implementing the Taxpayer Bill of Rights and Integrating It Into IRS Operations, *infra*.

4 *See* Review of the 2014 Filing Season.

5 See The Most Serious Problems Encountered by Taxpayers Reported in 2013: IRS and TAS Responses at taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

6 *See* 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, *infra*.

7 Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat 71 (2010) (adding Internal Revenue Code (IRC) §§ 1471-1474; 6038D).

8 *See* TAS Prepares for Implementation of Filing Season 2015 Affordable Care Act Provisions, *infra*.

The IRS's Procedures with Respect to Exempt Organizations Continue to Raise Concerns.

This next fiscal year, beginning October 1, 2014, promises to be one of great challenges for the IRS. It comes after an especially difficult year in which the IRS has yet to emerge from the controversy surrounding its scrutiny of political activity by organizations applying for tax exemption. In this report, we follow up on our 2013 Special Report, *Political Activity and the Rights of Applicants for Tax-Exempt Status*, published with last June's FY 2014 Objectives Report to Congress.[9] In that Special Report, we made 16 recommendations, and this year we describe what action, if any, the IRS or Congress has taken with respect to those recommendations. We also discuss in detail our concerns about a new approach the IRS has adopted for processing applications for tax exemption under Internal Revenue Code (IRC) § 501(c)(3). Specifically, organizations with a specified level of projected annual receipts, which we understand will be $50,000 or less, will only have to fill out a two-page Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to receive tax exempt status.

I have long recommended that the IRS adopt a Form 1023-EZ, which the IRS publicly opposed for years.[10] Therefore, it would seem at first blush that I should be very pleased the IRS has reversed its position. Yet I and many others have grave concerns about the IRS's new approach. The IRS's new Form 1023-EZ eliminates all sections of the tax-exemption application in which the organization must describe its mission and activities, and it does not require the organization to send in its formation documents for review.[11] Instead, the IRS adopts a "check-the-box" approach in which the organization merely "attests" that it meets the requirements of § 501(c)(3) and that its articles of incorporation or other formative documents contain the necessary language against self-inurement and the appropriate dissolution clause. A significant majority of applications for exempt status project annual receipts under $50,000. Therefore, instead of using the Form 1023-EZ as an opportunity to educate applicants for tax-exempt status about the legal requirements when we hold the most leverage – namely, when they are seeking the grant of exempt status – the IRS will, as practical matter, automatically grant exempt status to most applicants based solely on a promise via a check-box.

The IRS's rationale for this move is that it must get a handle on its inventory backlog, and it will pick up the difference through auditing a few of these organizations later in their life cycle. In my view, this rationale fails on several points. First, as we have recommended in numerous Annual Reports to Congress, there are many other ways to improve exempt organization (EO) processing. With the introduction of this Form 1023-EZ, the IRS has gone from subjecting small EOs to a tax administration equivalent of a complete physical exam

9 *See* Despite Improvements, TAS Remains Concerned About IRS Treatment of Taxpayers Applying for Exempt Status, *infra.*

10 *See* National Taxpayer Advocate 2011 Annual Report to Congress 437 at 445-446 (IRS Response to Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*).

11 As of the date of this report, the most recent version of Form 1023-EZ available on IRS.gov is a draft version dated Apr. 23, 2014, *available at* http://www.irs.gov/pub/irs-dft/f1023ez--dft.pdf.

to saying, "you don't need to bother with a physical – we take your word that you're in good health." Second, tax administrators throughout the world acknowledge that you cannot "audit yourself out of a compliance problem" – that up-front education and outreach are most effective for achieving voluntary compliance. Yet here the IRS will abandon the use of the Form 1023-EZ as an educational tool to achieve voluntary compliance at the outset of the entity's life and is instead relying on audits to address the noncompliance that may occur later. Recall that once these $50,000-and-under entities have their valuable exemption letters, the only annual reporting they have to make to the IRS is a *postcard*, Form 990-N. They can operate in violation of the Internal Revenue laws for years, without any oversight by the IRS. No one would propose such a "pay now, audit later" approach to the Earned Income Tax Credit (EITC). Although the improper payment rate is high in the EITC program, EITC claims are run through numerous filters to try to reduce noncompliance on the front end. By analogy, the IRS should continue to take the same approach toward exempt-organizations determinations. I have repeatedly said that I believe the IRS is underfunded to serve taxpayers, but limited resources cannot be used as an all-purpose justification for failing to administer the tax code properly.

We Recommend that Congress Enact Minimum Standards for Tax Return Preparers.

With respect to adopting minimum standards for return preparers, it is clear the IRS and taxpayers need the action and cooperation of Congress to address the problem of incompetent and unscrupulous return preparers preying on the most vulnerable part of our population. What has been lost in the post-*Loving*[12] discussion of preparer standards is just who is most threatened by the lack of mandatory testing and continuing professional education. Certainly, a middle class taxpayer may have access to a reliable unenrolled preparer and the business and financial savvy to identify a competent one. But the tax system also covers 27 million low income taxpayers who claim the EITC, 42.6 percent of whom use unregulated return preparers.[13] These low income taxpayers do not have access to unenrolled preparers who are certified financial planners or who view themselves as tax professionals. They turn to pawn shops, used car dealers, and check-cashing outlets for their return preparation assistance. It is these taxpayers – the most vulnerable in our population – who will benefit the most from establishing minimum standards for tax return preparers. Return accuracy will also benefit. By failing to enact minimum standards, we will continue to subject these low income taxpayers to the actions of incompetent or unscrupulous preparers and we will be unlikely to make progress in reducing the EITC noncompliance rate to an acceptable level, thus harming the public fisc.

12 *Loving v. IRS*, 742 F. 3d 1013 (D.C. Cir. 2014) (statutory authority to "regulate…practice… before the Department of Treasury) did not encompass authority to regulate tax-return preparers.).

13 IRS, Compliance Data Warehouse, Individual Returns Transaction File, Tax Year 2012; IRS, Individual Master File, Tax Year 2012 (net of transactions 764, 765, and 768); IRS, Return Preparers and Providers Database (through Nov. 2013). Note that the amounts paid out by the IRS may have been subsequently disallowed in post-refund audits.

The IRS is Actively Harming Victims of Return Preparer Fraud by Delaying the Release of Refunds for Years.

On June 10, 2014, the IRS adopted the Taxpayer Bill of Rights (TBOR).[14] Nowhere has the IRS failed to abide by the TBOR more than with respect to the issue of return preparer refund fraud. I have covered this topic in three Annual Reports to Congress,[15] issued two proposed Taxpayer Advocate Directives (TADs) and two final TADs, and elevated 25 Taxpayer Assistance Orders (TAOs) to Commissioners (both appointed and acting).[16] As of June 9, 2014, TAS has 113 TAOs currently outstanding involving this issue. Between 2000 and 2011, the IRS Office of Chief Counsel has issued four opinions and other guidance that, read together, authorize the IRS to issue replacement refunds to victims of return preparer fraud – and yet no refunds have been issued to these taxpayers. As I discuss in the Area of Focus, *Return Preparer Fraud: A Sad Story*, the IRS has consistently dragged its heels, making one excuse after another, because providing relief to these victims just is not a high enough priority or, more disturbingly, because the IRS simply does not want to provide relief.

On March 14, Commissioner Koskinen decided that the IRS will issue refunds to victims of preparer fraud who have filed police reports with the appropriate law enforcement agencies and met certain other substantiation requirements. To date, the IRS has not implemented the Commissioner's decision, saying it must first resolve certain accounting issues and declining even to provide a date certain by which it will issue the refunds. Some taxpayers have been waiting for their refunds since 2008! I am now in my 14th year of service as the National Taxpayer Advocate, and I have never seen the IRS act so callously in the face of grievous taxpayer harm as in this instance.

The Role of a Taxpayer Bill of Rights in Tax Administration

As I have stated before, I believe a strong Taxpayer Bill of Rights provides a roadmap for effective tax administration. The Taxpayer Bill of Rights (TBOR) adopted and announced by the IRS in June 2014 has the potential to be an important milestone in tax administration. If the tax system measures its performance through the lens of the TBOR, taxpayers can be confident that they will be treated right, even when they don't get the relief they hope for. But there is a pressure in tax administration today that mitigates against this approach. I don't quite know the right word for it – it is not "efficiency" or "automation" *per se*, nor is it the result of the sheer size and scope of the tax system. What I do know is that the IRS operates such that on a daily basis it ignores the needs of specific groups of taxpayers until the harm is so great that their concerns become something the IRS *has* to address. This, of

14 Publication 1, *Your Rights as a Taxpayer* (June 2014), *available at*: http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights/What-the-Taxpayer-Bill-of-Rights-Means-for-You.

15 *See* National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (RETURN PREPARER FRAUD: *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds*); National Taxpayer Advocate 2012 Annual Report to Congress 68-94 (*The IRS Harms Victims of Return Preparer Misconduct by Failing to Resolve Their Accounts Fully*); and National Taxpayer Advocate 2011 Annual Report to Congress 48-73 (*Tax-Related Identity Theft Cotinues to Impose Significant Burdens on Taxpayer and the IRS*).

16 Of these 25 TAOs, the median Adjusted Gross Income was $17,548 and the median refund was $2,511. Some of these TAOs related to 2008 tax returns.

course, is highly inefficient, because the IRS inflicts harm and then must create procedures to undo that harm. How much easier, not to mention more compassionate, it would be to address these concerns up front, either before the harm occurs or at the initial instance. However, today, the IRS cannot be bothered – it has too much on its plate, it has to deal with the masses, and it cannot address the individual.

I do not agree with this approach or see it as inevitable. My vision of tax administration is one in which the agency is guided by broad principles of tax administration – the Taxpayer Bill of Rights – and uses those principles to analyze its programs and actions. Even as it develops programs that deal with millions of taxpayers, it should seek out information from different sources – internal and external – to identify the unintended downstream consequences of those initiatives on other groups of taxpayers. Reflexively, it should ask itself: How does this initiative impact other, more vulnerable groups of taxpayers who may not be the intended focus of this initiative? This approach keeps the faith with the millions of other taxpayers who are going about their lives doing the best they can. This approach furthers voluntary compliance, because it fulfills the promise of the TBOR – that taxpayers have the right to a fair and just tax system.[17]

But when the IRS has too much work to do, and is under such public scrutiny to get that work done, it turns inward and focuses on the major initiatives. What hits the cutting room floor, so to speak, are the hundreds of things that make the tax system work for the average or vulnerable taxpayer.

The Office of the Taxpayer Advocate was created by Congress, in part, to mitigate this trend toward "one size fits all" tax administration. In many ways, the Taxpayer Advocate Service (TAS) is the safety valve for tax administration.[18] That is, TAS may be able to address the specific needs of taxpayers for whom the "one size" just doesn't fit. But if the IRS designs a system that gets it right for 99 percent of the taxpayers, that still leaves over a million taxpayers for whom the system fails. Think about it. There are over 140 million individual tax returns filed each year. If the system doesn't work for just one percent of those returns, that means about 1.4 million taxpayers have needs that the IRS is not addressing.

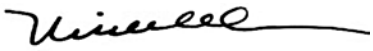
There is no way that TAS can assist all these people, nor should it. The IRS has to build into its processes from the start an awareness of its power and the potential harm it can cause to taxpayers. It can do this by bringing TAS in at the beginning of the planning process. And it can do this by consulting with external stakeholder groups, including tax professional organizations, low income taxpayer clinics, and the Taxpayer Advocacy Panel, early in the process, not just as a courtesy heads-up before it announces a decision that has already been made. Most importantly, it can live and breathe by the Taxpayer Bill of Rights.

17 The 10th taxpayer right (to a fair and just tax system) provides that '[t]axpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely."

18 The 10th taxpayer right (to a fair and just tax system) also provides that "[t]axpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels."

Some commentators have questioned the significance of the IRS's adoption of a TBOR, noting the lack of enforcement mechanisms. It is true that the TBOR alone does not provide taxpayers with specific enforceable rights, unlike the Bill of Rights in the United States Constitution. We are dependent on Congress enacting remedies and the IRS adopting procedures that give meaning to the TBOR. My office has developed a crosswalk that links existing statutory and administrative remedies to each of the ten rights. But that is only the beginning. As anyone can see, there are many gaps, notably with respect to the right to quality service. As we describe in our TBOR Area of Focus, TAS will be very active in FY 2015 and years to come in advocating for and working with Congress and the IRS to fill those gaps, and educating taxpayers about those rights. This activity is central to our mission. As always, we look forward to working with Congress and the IRS to fulfill it.

Respectfully submitted,



Nina E. Olson
National Taxpayer Advocate
30 June 2014

Attachment

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

January 22, 2014

MEMORANDUM FOR JOHN A. KOSKINEN, COMMISSIONER OF INTERNAL REVENUE

FROM: Nina E. Olson
National Taxpayer Advocate

SUBJECT: National Taxpayer Advocate Priority Recommendations

At your request, I am submitting for your consideration a summary of select recommendations from my recent Annual Report to Congress that I believe will have significant positive impact on tax administration and can be undertaken or explored with minimal resources. Each of these recommendations will enhance taxpayer rights and minimize taxpayer burden. Equally important from an enterprise perspective, I believe they will promote voluntary tax compliance and reduce IRS rework and the downstream use of unnecessary resources.

1. **Taxpayer Bill of Rights: Adopt a thematic, principle-based Taxpayer Bill of Rights (TBOR) and post it on IRS.gov.** At Acting Commissioner Werfel's direction, NTA has taken the lead in developing a TBOR and coordinating the language with C&L (Terry Lemons) and Chief Counsel (Chris Sterner). TAS has just completed focus groups with taxpayers and preparers to test out the language we developed, and we plan to tweak the language in light of the feedback we received. Posting a TBOR has seemed noncontroversial because the intent is not to create new rights, but simply to organize the dozens of existing taxpayer rights into categories that taxpayers and IRS employees will more easily grasp and remember. The TBOR would serve as an organizing principle for the IRS in establishing agency goals, provide foundational principles to guide IRS employees in their dealings with taxpayers, and provide information to taxpayers to assist them in their dealings with the IRS. More specifically, we recommend that you direct C&L to work with the NTA to coordinate details of website posting and develop an education campaign. We also recommend the development of performance measures and individual commitments for managers and senior leaders regarding taxpayer rights. We further recommend that you direct IRS operating divisions to cooperate with TAS in revising IRM audit and collection provisions to incorporate more discussion of taxpayer rights. [NTA 2013 Report, Most Serious Problem #1, *Taxpayer*

Rights: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration (pages 5-19).]

2. **Performance Measures: Adopt the suite of taxpayer-centric performance measures we set out in our annual report.** We proposed a set of performance measures geared specifically to gauge the IRS's effectiveness in protecting taxpayer rights and promoting voluntary tax compliance. [See NTA 2013 Report, Preface (especially pages xvi-xviii) and *National Taxpayer Advocate Report Card: Measuring the IRS's Protection of Taxpayer Rights and Promotion of Voluntary Compliance* (pages xxiv and xxv).]
3. **Identity Theft: Direct the Wage & Investment (W&I) Operating Division to collaborate with TAS to test the effectiveness of creating a meaningful "single point of contact" for taxpayers, at least for taxpayers with cases that require the involvement of multiple IRS functions.** For this test, we recommend that the IRS IPSU unit, using the TAS case management system and procedures, assign identity theft cases to specific IPSU employees, who would act as the sole person interfacing with the taxpayer, obtain from the taxpayer the information necessary to resolve the case and all issues in the case, forward that information to the appropriate IRS unit[s], and monitor and follow-up on the timeliness of requested actions. [NTA 2013 Report, Most Serious Problem #4, *The IRS Should Adopt a New Approach to Identity Theft Victim Assistance that Minimizes Burden and Anxiety for Such Taxpayers* (pages 75-83).]
4. **Collection: With respect to IRS attempts to collect delinquent tax debts, instruct the Collection Governance Council to study and test TAS's recommendations to improve the collection of debts, particularly for employment taxes, while also maximizing future voluntary tax compliance.** The IRS typically prioritizes collection cases based on the dollar value of the debt (rather than the recency of the debt), uses its Automated Collection System (ACS) to serve levies and file liens by automation (rather than utilizing Revenue Officers to make personal contact), and emphasizes what we regard as the fairly heavy-handed use of levies and liens over more flexible collection approaches like installment agreements and offers-in-compromise. The NTA has long recommended that the IRS measure the effectiveness of its collection approach in terms of timely interventions, personal contact, and enhancing long-term voluntary tax compliance, particularly with respect to employment tax debts. [See NTA 2013 Report, Most Serious Problem #11, *Collection Strategy: The Automated Collection System's Case Selection and Processes Result in Low Collection Yields and Poor Case Resolution, Thereby Harming Taxpayers and the Public Fisc* (pages 124-133); Most Serious Problem #12, *Collection Process: IRS Collection Procedures Harm Business Taxpayers and Contribute to Substantial Amounts of Lost Revenue* (pages 134-146); Volume 2, Research Study, *A Comparison of Revenue Officers and the Automated Collection System in Addressing Similar Employment Tax Delinquencies* (Vol. 2, pages 15-32).]

5. **EITC 2-Year Ban: Direct W&I to issue guidance regarding its application.** When the IRS makes a "final determination" that an individual improperly claimed the EITC due to "reckless or intentional disregard of rules and regulations", Section 32(k)(1)(B)(ii) of the Internal Revenue Code authorizes the IRS to ban the individual from receiving EITC benefits for the succeeding two years. This standard requires more than mere negligence on the part of the taxpayer. Yet the IRS has automatically applied the 2-year ban in many cases, which I believe is inconsistent with the statutory requirement of a "determination" that the improper claim was due to more than mere negligence (our MSP also cites Chief Counsel guidance to this effect) and which violates multiple provisions of the Internal Revenue Manual. I have discussed this issue with the W&I commissioner; she expressed a willingness to work with TAS to resolve this issue. [NTA 2013 Report, Most Serious Problem #9, *Earned Income Tax Credit: The IRS Inappropriately Bans Many Taxpayers from Claiming EITC* (pages 103-115).]
6. **Civil Tax Penalties: Create a cross functional task force to review the rationale and application of the more than 130 penalties contained in the Internal Revenue Code.** The primary objective of civil tax penalties is to promote voluntary compliance with the tax laws. In 1989, Congress recommended that the IRS "develop better information concerning the administration and effects of penalties." Over the last 20 years, the IRS has increasingly applied penalties automatically. TAS research shows that taxpayers against whom automatic penalties have been applied show significantly lower levels of voluntary compliance after five years than those not subject to a penalty. We recommend the IRS conduct a review of its penalty policies to ensure it receives sufficient information from the taxpayer to make a determination as to whether the penalty actually applies and will enhance voluntary compliance, rather than being purely punitive. I have discussed this proposal with the SB/SE commissioner, and she expressed support for such a review. [See NTA 2013 Report, Volume 2, *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?* (Vol. 2, pages 1-14); see also Most Serious Problem #17, *Accuracy-Related Penalties: The IRS Assessed Penalties Improperly, Refused to Abate Them, and Still Assesses Penalties Automatically* (pages 182-187).]
7. **Exempt Organizations: Provide administrative review before automatically revoking an organization's exempt status.** By law, the IRS is now required to revoke the exempt status of organizations that do not file returns for three consecutive years. The Exempt Organizations (EO) function ordinarily receives about 60,000 applications for exempt status each year, and the number of existing organizations whose exempt status was revoked and applied anew added about 50,000 cases to EO's workload over the past three years. Some of those revocations were erroneous and others required needless rework. If the IRS sent a letter to exempt organizations at least 30 days before revoking their exempt status that provided them with an opportunity to correct the condition (e.g., by filing returns), the heavy burdens on the organizations and the IRS alike could be reduced. I have already discussed this proposal with the new TEGE commissioner, who has expressed interest in this approach as a way to minimize

unnecessary reinstatements. [NTA 2013 Report, Most Serious Problem #15, *Exempt Organizations: The IRS Continues to Struggle with Revocation Processes and Erroneous Revocations of Exempt Status* (pages 165-172).]

8. **Offshore Accounts: Revamp the Offshore Voluntary Disclosure Program to reduce the disproportionate burden imposed on taxpayers who lacked willful intent or had reasonable cause for their mistakes.** NTA proposed a three-tier penalty structure that would (1) provide full relief from FBAR penalties for taxpayers whose under-reporting falls below a threshold amount, (2) impose "non-willful' FBAR penalties on qualifying taxpayers, and (3) impose higher penalties on taxpayers who either acted willfully or lacked reasonable cause. I have met with the deputy commissioner of LB&I (Mike Danilack), who expressed general support for the approach of differentiating penalties. [NTA 2013 Report, Most Serious Problem #22, *Offshore Voluntary Disclosure: The IRS Offshore Voluntary Disclosure Program Disproportionately Burdens Those Who Make Honest Mistakes* (pages 228-237).]
9. **International Taxpayer Service: Explore the use of voice-over-Internet-protocol and other alternative methods of telephone services that will allow taxpayers to contact the IRS, or the IRS to contact taxpayers, without paying international call rates.** Taxpayers living overseas generally do not have the option of calling IRS customer service representatives toll-free to seek help in complying with their U.S. tax obligations. This recommendation is designed to plug that hole. NTA has briefed the commissioner of W&I on a U.S. embassy contract in the United Kingdom that allows the U.S. Tax Attaché to make an unlimited number of international outbound calls for the same low rate. [NTA 2013 Report, Most Serious Problem #20, *International Taxpayer Service: The IRS Is Taking Important Steps to Improve International Taxpayer Service Initiatives, But Sustained Effort Will Be Required to Maintain Recent Gains* (pages 205-213).]
10. **Revenue Protection: Reinstate the cross-functional Pre-Refund Program Executive Steering Committee to coordinate the development of fraud-detection filters.** Imprecise filters produce both underinclusive results (failing to catch refund fraud) and overinclusive results (substantially delaying and in some cases denying the payment of refunds to eligible taxpayers). A cross-functional group can help ensure that multiple perspectives are considered, allowing the IRS to target its filters more precisely. [NTA 2013 Report, Most Serious Problem #16, *Revenue Protection: Ongoing Problems with IRS Refund Fraud Programs Harm Taxpayers by Delaying Valid Refunds* (pages 173-181).]
11. **Bitcoin: The IRS should issue guidance now to advise the growing number of Bitcoin users how the digital currency will be taxed.** The IRS has an obligation to be transparent and tell taxpayers up front what the tax treatment of common transactions will be. It should not wait in ambiguous areas to impose tax on audits after-the-fact. [NTA 2013 Report, Most Serious Problem #24, *Digital Currency: The IRS Should Issue Guidance to Assist Users of Digital Currency* (pages 249-255).]

12. **"Real Time" Tax System: Create a cross-functional task force to explore and make specific plans to transition to a system whereby the IRS matches tax returns against third-party information reports (e.g., Forms W-2 and 1099) before paying out refunds, and makes this information available in electronic form to taxpayers for assistance in preparing their returns.** [NTA 2013 Report, Volume 2, *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments* (Vol. 2, pages 67-96).]

In addition, I made several recommendations in my annual report regarding steps to mitigate the impact of the Loving decision (assuming it is affirmed on appeal) and allow the IRS to do a better job of raising minimum competency and ethical standards in the return preparation industry. Some of these steps likely will require more than minimal resources, but they could be substantially accomplished using the resources currently allocated to the Return Preparer Office. Preparer oversight would protect taxpayers from unscrupulous preparers and, in my view, would be extremely cost effective in the long-term by improving return accuracy and helping to reduce improper payments.

Specifically, I recommended that the IRS take the following steps: (1) offer unenrolled preparers the opportunity to earn a voluntary examination and continuing education certificate; (2) restrict the ability of unenrolled preparers to represent taxpayers in audits of returns they prepared unless they earn the certificate; (3) restrict the ability of unenrolled preparers who have not earned the certificate to be named as a third-party designee on Form 1040, U.S. Individual Income Tax Return; (4) mount a consumer protection campaign to educate taxpayers about the value of selecting a qualified preparer; (5) develop a research-driven and service-wide preparer compliance strategy similar in nature to the Earned Income Tax Credit preparer compliance strategy; and (6) recommend that Congress revise 31 U.S.C.§ 330(a)(2) to expressly authorize the IRS to regulate unenrolled preparers. [NTA 2013 Report, Most Serious Problem #5, *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* (pages 61-74).]

I have met with the Director of the Office of Professional Responsibility, the Director of the Return Preparer Program, and the Associate Chief Counsel for Procedure and Administration about the next steps for instituting voluntary testing and continuing education of unenrolled tax return preparers, and there appears to be general consensus about these recommendations.

I look forward to working with you on these issues and appreciate the opportunity to discuss them with you.

II. Areas of Focus

A. TAS Will Work Closely With the IRS on Implementing the Taxpayer Bill of Rights and Integrating It into IRS Operations

Taxpayer rights are essential for promoting voluntary compliance. If taxpayers believe they are treated, or can be treated, in an arbitrary and capricious manner, they will mistrust the tax system and be less likely to comply of their own volition. By contrast, taxpayers will be more likely to comply if they have confidence in the fairness and integrity of the tax system. The National Taxpayer Advocate has repeatedly recommended that Congress enact a comprehensive Taxpayer Bill of Rights to capture and organize all these rights in one place in the law.[1] This Taxpayer Bill of Rights would act as an organizing principle for tax administrators, an educational framework for IRS employees, and a tool to empower taxpayers.

To its great credit, the IRS on June 10, 2014 adopted the Taxpayer Bill of Rights (TBOR) that the National Taxpayer Advocate has long advocated, pulling together in one basic statement the principles that underlay the substantive rights scattered throughout the Internal Revenue Code.[2]

The IRS has incorporated the TBOR into a revamped version of Publication 1, *Your Rights as a Taxpayer*,[3] which traditionally has been its main vehicle for explaining taxpayer rights to taxpayers. By launching the revised publication in June at the same time it formally accepted the TBOR, the IRS ensured the new version would be available at a time when many notices are going out to taxpayers. The IRS has also created a webpage that lists the ten core taxpayer rights and prominently displays the TBOR on its homepage.[4]

In addition, the IRS has committed to keeping the TBOR prominently displayed on the IRS.gov homepage after it moves from the spotlight section to a more permanent location. The IRS has created TBOR call-out boxes, *i.e.,* prominent graphics, on 49 web pages, 23 of which are the most visited on IRS.gov.

1 *See e.g., Hearing on Internal Revenue Service FY 2015 Budget Request before the Subcomm. on Financial Services and General Government, Comm. on Appropriations, U.S. Senate* (April 30, 2014) (Written Statement of Nina E. Olson); National Taxpayer Advocate 2011 Annual Report to Congress 493-518; National Taxpayer Advocate 2007 Annual Report to Congress 478-89.

2 *See* National Taxpayer Advocate 2013 Annual Report to Congress 5 (Most Serious Problem: *TAXPAYER RIGHTS: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration*).

3 Publication 1, *Your Rights as a Taxpayer* (June 2014).

4 http://www.irs.gov/Taxpayer-Bill-of-Rights (last visited June 18, 2014); http://www.irs.gov/ (last visited June 18, 2014).

FIGURE II. 1, TAXPAYER BILL OF RIGHTS

TAXPAYER BILL OF RIGHTS

The Right to be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

Learn more at **www.TaxpayerAdvocate.irs.gov/taxpayer-rights**

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

We have asked, and the IRS is considering, to place a link to the TBOR pages in the footer of every page on the site.

These steps by the IRS are laudable, but they are only the first of many.[5] The work of integrating the TBOR into tax administration and the IRS's daily interactions with taxpayers now begins in earnest.

The National Taxpayer Advocate intends to make this a major goal of her office — to ensure that every taxpayer understands the fundamental rights afforded him in his interactions with the tax system.

Beginning now and continuing in fiscal year (FY) 2015, TAS is launching a public outreach effort that will be crucial to overcome taxpayers' current lack of knowledge about their rights and inform them the IRS has adopted the TBOR.[6] TAS will also work with the IRS to integrate the TBOR into the Internal Revenue Manual (IRM) as part of a broader effort to embed awareness of these rights throughout the IRS workplace and culture.

The National Taxpayer Advocate intends to make this a major goal of her office — to ensure that every taxpayer understands the fundamental rights afforded him in his interactions with the tax system; to ensure that every IRS employee understands the role taxpayer rights play in tax administration as a whole and in the particular aspect of the system with which that employee is involved; and to ensure that IRS decisions, processes, procedures, guidance (both to employees and taxpayers), training, and publications promote, educate, and explain the TBOR. This is the work of a lifetime, on which TAS embarks today.

TAS Will Work to Promote and Provide Access to Taxpayer Rights on a Daily Basis.

TAS research shows that many taxpayers are not aware they have rights. The results of a recent nationwide survey of taxpayers found fewer than half of U.S. taxpayers believed they have rights before the IRS, and only 11 percent said they knew what those rights were.[7] Taxpayer knowledge and education is the best taxpayer protection there is. A comprehensive public outreach campaign is crucial to overcome taxpayers' lack of knowledge about their rights and inform them that the IRS has adopted the TBOR. These initiatives will

5 For a list of actions the IRS has committed to take regarding the Taxpayer Bill of Rights, see IRS Response to Recommendations, National Taxpayer Advocate 2013 Annual Report to Congress (Most Serious Problem: *TAXPAYER RIGHTS: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration*, *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

6 In a 2012 nationwide TAS study, only 46 percent of taxpayers contacted believed they had any rights before the IRS, and only 11 percent said they knew what their rights were. Forrester Research Inc. *The TAS Omnibus Analysis, from North American Technographics Omnibus Mail Survey, Q2/Q3 2012, 20m* (Sept. 17, 2012), *available at* http://tasnew.web.irs.gov/files/ResearchStudies/Communications/North_American_Technographics_Omnibus_Mail_Survey.ppt.

7 Forrester Research Inc., *The TAS Omnibus Analysis, from North American Technographics Omnibus Mail Survey,* Q2/Q3 2012, 20 (Sept. 17, 2012).

require a variety of communication plans and tools, all with the goal of making taxpayer rights a part of every IRS communication with the taxpayer.

The National Taxpayer Advocate's report to the Acting Commissioner in November of 2013, urging adoption of a TBOR, included a comprehensive list of steps to expand knowledge of taxpayer rights among both the public and IRS employees.[8] TAS is working with the IRS on steps to implement this campaign both internally and externally. This effort will employ all available media and the outreach skills of TAS employees. At the time of the June 10 launch, TAS had already taken many actions to make the TBOR real. TAS created a bilingual (English and Spanish) poster version of Publication 1 to be displayed in Low Income Taxpayer Clinics (LITCs), the IRS's Taxpayer Assistance Centers, local TAS offices, and all other taxpayer-facing offices and worked with the IRS for them to be placed in each office noted above and where taxpayers come for appointments, including Exam, Appeals, and Collection. TAS has worked with the IRS to display a prominent taxpayer rights message on the IRS.gov homepage in addition to new taxpayer rights pages on IRS.gov.

TAS also is developing a bilingual brochure that will list and explain the ten rights for all offices where posters will be displayed. This publication will have additional information about TAS's role and contact information, including the web address for the page that explains what these rights mean to the taxpayer.[9]

Along with the IRS.gov pages, TAS has created its own TBOR webpage on the TAS Tax Toolkit at www.TaxpayerAdvocate.irs.gov, which provides a central location for taxpayers to learn about all aspects of the TBOR.

This webpage links to further pages that explain each of the individual rights. It also includes links to the relevant IRS publications that inform taxpayers of their rights. In order to help taxpayers understand what the core principles mean, one webpage titled "What the Taxpayer Bill of Rights Mean to You" includes a "crosswalk" that provides specific examples and plain language explanations of the different Internal Revenue Code provisions, administrative provisions, and IRS publications that fall under each of the core principles.[10] TAS plans to continue expanding its TBOR webpage over time by adding more examples of Code sections and administrative provisions for each of the rights, as well as remedies that exist when those rights are violated. By the end of the year, TAS expects to have its website revamped to be mobile-friendly, providing taxpayers easy access to their rights on any portable device. TAS is also exploring a mobile application that would be anchored by the Taxpayer Bill of Rights and how taxpayers can apply them.

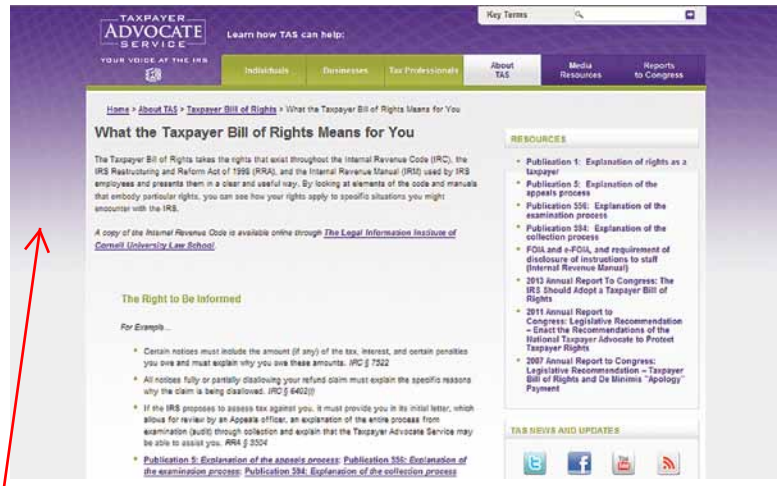
8 National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration* (Nov. 4, 2013), *available at:* http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf. The National Taxpayer Advocate also issued a report to the Acting Commissioner in August 2013 on ways to increase awareness of taxpayer rights and TAS. *National Taxpayer Advocate's Report in Response to the Acting Commissioner's 30 Day Report: Analysis and Recommendations to Raise Taxpayer and Employee Awareness of the Taxpayer Advocate Service and Taxpayer Rights* (Aug. 19, 2013), *available at:* http://www.taxpayeradvocate.irs.gov//userfiles/file/2013FullReport/30-Day-Report.pdf.

9 Available at: http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights/What-the-Taxpayer-Bill-of-Rights-Means-for-You.

10 http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights (last visited June 18, 2014).

TAS publicized the release of the TBOR through social media. As of June 20, TAS has distributed seven Facebook posts and ten tweets via Twitter since the IRS's adoption of the TBOR. Over 6,548 people have been reached via Facebook; including instances where Facebook posts were shared or reposted.

FIGURE II. 2, TBOR ON TAS'S TAX TOOLKIT



sent you new graphic

In addition to educating taxpayers on the TBOR, TAS is taking actions to ensure IRS employees are reminded about the TBOR on a day-to-day basis. This effort includes the following steps:

- TAS is working with IRS in distributing a Taxpayer Bill of Rights poster in all employee areas.
- The IRS will email all employees a smaller version of the poster that they can print out for their own workstations.
- W&I will distribute a copy of the employee flier in its August employee newsletter, Offline, in such a way that employees can cut a copy of the TBOR from the newsletter.
- TAS employees will receive individual copies of TBOR for their workstations.
- TAS plans to develop taxpayer rights language for use by other business units on their IRS.gov pages, including references to TAS and LITCs, as well as specific taxpayer rights and links to the U.S. Tax Court website where appropriate.
- To help orient employees to the concept of the TBOR and its application, TAS is considering a "test your TBOR IQ" multiple-choice test for IRS employees on the agency intranet.

A coordinated outreach program with the IRS to spread awareness of the TBOR among members of Congress, tax professionals, community organizations, and other stakeholders is vital to the success of the TBOR. Toward this end, TAS has a toolkit and is creating additional TBOR resources for Local Taxpayer Advocates (LTAs) to use at different outreach events, including the brochures mentioned above. TAS is developing PowerPoint presentations and possible videos for external audiences. All LTAs will have a commitment in FY 2015 to conduct outreach on the TBOR to the public. To increase awareness among legislators, TAS has drafted a letter for LTAs to send to all local Congressional offices, along with a copy of the TAS taxpayer rights brochure and links to the TBOR webpages.

To target practitioners, TAS plans to distribute TBOR posters and brochures at the IRS Nationwide Tax Forums, targeting participants in the Focus Groups and the Case Resolution Rooms. TAS has created a TBOR flier that will be given to each of the thousands of attendees at the IRS Nationwide Tax Forums in five cities across the country this summer. We also created slides highlighting the TBOR announcement and the ten rights to be shown throughout the day between sessions at the Tax Forums, and have posters to be placed at registration and in the Case Resolution rooms managed by TAS.

TAS Will Ensure the TBOR Is Integrated into IRS Guidance.

The IRM is the "primary, official source of IRS 'instructions to staff' that relate to the administration and operation of the Service."[11] As such, the IRM is a major vehicle for educating IRS employees about the importance of taxpayer rights overall, how they apply with respect to specific IRS procedures and actions, and when and how to inform taxpayers about their rights. When these instructions are unclear or incomplete, or do not explain *why* an action is important from a taxpayer rights perspective, employees may misinterpret them, take shortcuts, skip steps, and thus act (or fail to act) in ways that undermine taxpayer rights.

For example, IRM 4.19.2.2.28.3 discusses procedures involving undelivered Statutory Notices of Deficiency (SNODs) in the Automated Underreporter unit.[12] This IRM states, "All undelivered Stat notices are considered high priority work. Issuance of the Statutory Notice to the most recent address of record protects the assessment statute." While this section explains why the SNOD is high priority work from the function's perspective (i.e., the need to protect the assessment statute), it does not explain why the SNOD is high priority work from the *taxpayer's* perspective – *i.e.,* it actualizes the taxpayer's *right to appeal an IRS decision in an independent forum,* without having to pre-pay the proposed tax deficiency. The guidance does not explain what is considered "undeliverable" or the impact on the taxpayer if the notice is undeliverable - the taxpayer might lose the important right to petition the United States Tax Court to dispute the IRS's proposed deficiency before the tax is assessed

11 IRM 1.11.2.2 (May 11, 2012).

12 IRM 4.19.2.2.28.3 (Sept. 1, 2013).

or paid.[13] This explanation is crucial if IRS employees and taxpayers alike are to understand the role the SNOD plays in the fairness of the tax system.

In 2013, the National Taxpayer Advocate convened a Taxpayer Rights IRM Review Team to undertake a comprehensive audit of all non-administrative IRM sections and to recommend revisions to enhance taxpayer rights. The team has identified an initial group of about 570 high-impact subsections in IRM 4, *Examining Process*, IRM 5, *Collecting Process*, and IRM 21, *Customer Account Services*.[14] In determining "high impact" status, the team considered the following factors:

- The number of taxpayers likely to be impacted by the process discussed in the subsection;
- The vulnerability of the particular taxpayer population impacted by the subsection;
- The length of time since the IRS last revised the IRM subsection;
- Whether the taxpayer would have limited time or options to appeal a decision made under the subsection; and
- The need to educate taxpayers about their rights at the earliest point in their interaction with the IRS.

The team then developed the following uniform criteria to determine whether a given IRM subsection would educate employees and give them clear instructions to safeguard taxpayer rights:

> ***Criterion #1:*** *Does the procedure described in the IRM or other internal or external IRS guidance provide proper consideration of taxpayer rights?* The guidance should be designed to ensure IRS employees perform their duties using procedures that conform to and protect taxpayer rights.
>
> ***Criterion #2:*** *Does the IRM or other internal guidance provide sufficient employee education about taxpayer rights to enable employees to honor, protect, and communicate those rights?* Guidance should provide employees with foundational knowledge about taxpayer rights, including the existence of the rights, the legal basis for those rights, and the consequences to both the taxpayer and the IRS if rights are compromised. This knowledge can empower an employee to raise possible taxpayer rights risks in procedures or ask for further guidance.
>
> ***Criterion #3:*** *Does the IRS communicate information about taxpayer rights in a way that the average taxpayer can understand?* IRS communications to the public, whether

13 Other IRM subsections specifically on the topic of the Statutory Notice of Deficiency contain more thorough explanations, but IRM 4.19.2.2.28.3 does not link to or reference them. *See, e.g.*, IRM 4.8.9.21 (July 9, 2013) and IRM 4.8.9.8.2.5 (July 9, 2013). *See* IRC § 6212(b) (explaining that mailing the notice of deficiency to the taxpayer's last known address is sufficient). IRC § 6213(a) provides the taxpayer with 90 days (or 150 days if addressed to a person outside of the United States) to petition the U.S. Tax Court after the Statutory Notice of Deficiency is mailed.

14 The IRM is organized by Part, Chapter, Section, and Subsection. For example, IRM 1.11.2.2 is a subsection.

a conversation with the taxpayer, a letter or publication, or public sections of the IRM, should provide information about taxpayer rights in plain language.

Criterion #4: *Does the IRS inform taxpayers of their rights at various points in their interaction with the agency and explain what specific appeal remedies or other protections exist at different points in the tax process?* IRS guidance to its employees should help taxpayers learn about their rights at key junctures when they may need to exercise those rights or when specific, available remedies are triggered. Moreover, taxpayer rights information should be communicated at various stages of taxpayers' interaction with the IRS, including during the filing season, and not only when the taxpayer already has a problem with the IRS, which may be too late.[15]

To date, the Taxpayer Rights IRM Review Team has reviewed about 425 of the approximately 570 high impact subsections using the above criteria. The team has developed over 140 recommendations for adding taxpayer rights information and has sent 36 to IRS operating divisions for review. At this point, the IRS has accepted one recommendation fully and one partially. The review team has also identified 25 priority IRM subsections, based on the number of recommended revisions. As the review process continues, the team will expand its list of high priority subsections to include parts of IRM 7, *Rulings and Agreements*, IRM 8, *Appeals*, IRM 20, *Penalty and Interest*, IRM 25, *Special Topics,* as well as additional subsections in IRM 5, *Collecting Process*.

IRS Response to the 2013 Annual Report to Congress Most Serious Problem on Taxpayer Bill of Rights

In its response to the National Taxpayer Advocate's 2013 Annual Report to Congress, which identified the need for a TBOR as the number one Most Serious Problem, the IRS has committed to take the following actions in collaboration with the National Taxpayer Advocate:

- Revise IRS Publication 1, *Your Rights as a Taxpayer*, to reflect revised language of the Taxpayer Bill of Rights. The first part of this publication will explain some of the most important rights as a taxpayer. The second part will explain the examination, appeal, collection, and refund processes. This publication will also be available in Spanish. Publication 1, *Your Rights as a Taxpayer*, was first published in 1988.
- Engage in communications and discussions with IRS managers and employees about the Taxpayer Bill of Rights and demonstrate leadership support. This will include communicating with employees throughout the year about the importance of the Taxpayer Bill of Rights and its application to everyday work activities and taxpayers.
- Inform external stakeholders about the Taxpayer Bill of Rights and the IRS's commitment to ensuring taxpayers are afforded those rights. This will include highlighting the

15 Practitioners have commented that the IRS only provides Publication 1, *Your Rights as a Taxpayer*, once the taxpayer already had a problem with the IRS and it should be provided before this point. *See* 2011 IRS Nationwide Tax Forums TAS Focus Group Report: Publication 1- Taxpayer Rights (Oct. 2011).

Taxpayer Bill of Rights on the agency's public-facing website, IRS.gov, and including it in materials delivered to taxpayers, the media, and tax professionals.

- Determine the most efficient and cost-effective way of delivering materials on the Taxpayer Bill of Rights to all public-facing IRS sites so that they are in place as soon as possible.
- Establish a reference landing page on the IRS.gov website to communicate official information about the Taxpayer Bill of Rights and its application to everyday interactions with the IRS.
- Feature a link to the Taxpayer Bill of Rights landing page on the IRS.gov homepage, consistent with strategies to increase the number of online visitors exposed to information about the Taxpayer Bill of Rights.
- Update information about the Taxpayer Bill of Rights on key pages within the IRS.gov website, where appropriate, to ensure that the official IRS.gov website provides accurate and up-to-date information to all online visitors.
- For IRS employees, post information about the Taxpayer Bill of Rights on key Business Unit pages.
- Determine the most efficient and cost-effective way of delivering materials on the Taxpayer Bill of Rights to all public-facing IRS sites.
- Ensure all materials are in place as soon as possible.

Focus for FY 2015

In FY 2015, the National Taxpayer Advocate's Taxpayer Rights IRM Review Team, in conjunction with TAS Internal Management Documents Single Point of Contact (IMD SPOC), will continue to review the IRM subsections identified as "high impact" and recommend revisions to strengthen taxpayer rights. TAS will work with the IRS to adopt and deploy the taxpayer rights review criteria explained above to all IRS employees who create or review IRM content going forward. TAS also plans to propose a TBOR Policy Statement to be included in the IRM.

TAS will work with the IRS to audit and analyze all IRS employee training to determine what training on taxpayer rights is now available and what employees will need in the future. This will include developing guidelines and examples for incorporating taxpayer rights into training as well as creating a stand-alone module on taxpayer rights. TAS will revise its own *Roadmap to a Tax Controversy* training for use by all IRS employees. This training provides an overview of statutory and administrative taxpayer rights protections available at all stages of the tax controversy process.

During FY 2015, TAS will distribute the TBOR outreach materials to all appropriate offices and work with the IRS to include the taxpayer rights information on various pages on the

IRS.gov website. In FY 2015, TAS will conduct a survey of taxpayers to learn whether taxpayers have greater awareness of their rights as a result of these activities. Local Taxpayer Advocates will have performance commitments in FY 2015 to conduct outreach to community and grassroots groups. TAS will continue expanding its TBOR webpage, including the crosswalk, and linking to additional materials and sites that can assist taxpayers in availing themselves of their rights. TAS will continue creating materials that inform taxpayers of their rights in various situations, including planned Consumer Tax Tips Brochures on the examination process and appeals process. TAS plans to create videos to be posted on the webpage that focus on various rights in the TBOR.

B. Return Preparer Fraud: A Sad Story

Background

Unscrupulous tax return preparers sometimes alter taxpayers' returns by inflating income, deductions, credits, or withholding without their clients' knowledge or consent. They then pocket the entire refund, or the difference between the revised refund amount and the amount the taxpayer expected, by diverting all or part of the direct deposit refund to a bank account under the preparer's control.

The IRS has chosen not to take the actions necessary to assist victims of preparer fraud.

In some cases, the taxpayer has a copy of the legitimate (unaltered) return, receives the refund he or she was expecting, and has no reason to suspect fraud. In many situations, the taxpayer learns of the fraud only after the IRS discovers the taxpayer's return is incorrect and attempts to recover the excess refund (paid to the preparer) from the taxpayer through levies or refund offsets.

In situations where the preparer diverted even the legitimate portion of the refund to his own account, victimized taxpayers have little hope of obtaining their refunds from the preparer, who may have closed up shop and disappeared.

Despite Being Aware of This Issue Since 2000, the IRS Has Not Yet Developed Procedures to Fully Unwind the Harm to Victims of Preparer Fraud.

Return preparer fraud is not a novel issue. The IRS has known about this problem and its severe impact on victims for many years. The IRS Office of Chief Counsel ("Counsel") has provided advice on such situations dating as far back as 2000, when it concluded that there is "no legal impediment to reissuing a direct deposit refund" to a taxpayer whose return was altered after visiting a Volunteer Income Tax Assistance site.[1]

In 2003, Counsel again addressed a situation where an electronically filed tax return was altered without the taxpayer's knowledge, and declared that a return altered by a preparer after the victim has verified the accuracy of the return is a "nullity" and, therefore, invalid.[2] In 2008, Counsel once again looked at a situation where a refund was improperly directed to a preparer and made clear that the IRS "can and should" adjust each affected taxpayer's account for any refund (or portion of one) illegally obtained by the preparer.[3] In 2011, Counsel reiterated that "[a] tax return signed by a taxpayer that is altered by a tax return preparer without the taxpayer's knowledge and submitted to the IRS by the preparer is not a valid tax return."[4]

1 Field Service Advice 200038005 (June 6, 2000). While Field Service Advice is not binding and may not be cited as precedent, it does allow us some insight on how similar situations may be analyzed.

2 *See* IRS Office of Chief Counsel Memorandum, *Horse's Tax Service,* PMTA 2011-13 (May 12, 2003).

3 *See* IRS Office of Chief Counsel Memorandum, *Refunds Improperly Directed to a Preparer*, POSTN-145098-08 (Dec. 17, 2008).

4 *See* IRS Office of Chief Counsel Memorandum, *Tax Return Preparer's Alteration of a Return*, PMTA 2011-20 (June 27, 2011).

To recap: since 2000, the IRS has received four legal opinions from its Office of Chief Counsel that, when read together, permit the IRS to (1) disregard the altered return filed by the preparer, (2) accept an unaltered return signed by the taxpayer, and (3) issue a refund to the victim even if a payment had already been made to the preparer. Chief Counsel recently reaffirmed to the National Taxpayer Advocate and the IRS Commissioner that the IRS is not prohibited from issuing refunds to victims of preparer fraud.

Yet in all this time, the IRS has chosen not to take the actions necessary to assist victims of preparer fraud. Current IRS procedures instruct Accounts Management employees to suspend preparer fraud cases, "pending Counsel guidance" – even though Counsel has stated that there is no legal prohibition for the IRS to issue such refunds.[5] It is one thing if the government is unaware of a problem, but when it learns of one (as far back as 2000) and receives advice from its Counsel on how it can unwind the harm, the fact that it drags its feet and throws up so many obstacles makes it an act of intent and commission. It is embarrassing that the IRS has acted so callously toward victims of preparer fraud who were trying to comply with the law, and who have demonstrated that they were not complicit in fraud. These taxpayers deserve better.

TAS Has Been Unable to Obtain Complete Relief for Victims of Preparer Fraud.

Beginning in fiscal year (FY) 2011, TAS started tracking preparer fraud cases using a special code. As shown below, TAS has continued to work a substantial number of cases in which taxpayers are harmed by return preparer fraud or misconduct.

As of May 31, 2014, TAS had 316 return preparer fraud cases in inventory.[6] Since 2013, the National Taxpayer Advocate has elevated 25 Taxpayer Assistance Orders (TAOs) on this issue to Acting Commissioners Steven Miller and Danny Werfel from January through September 2013.[7] These victims are typically low income taxpayers, with a median adusted gross income of $17,548 and a median refund claim of $2,511.[8] Some of the victims who have come to TAS for help have been waiting for refunds since they filed 2008 tax returns.[9] On December 20, 2013, Deputy Commissioner for Services and Enforcement John Dalrymple rescinded *en masse* the 24 TAOs elevated to the Acting Commissioners which requested the IRS issue a refund to the victim of preparer fraud (one of the 25 TAOs elevated involved a victim who was not seeking a refund from the

5 See Director, Accounts Management, *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0813-02 (Aug. 5, 2013).

6 Data obtained from TAMIS (June 25, 2014). The current inventory of preparer fraud cases include unresolved cases received in prior FYs.

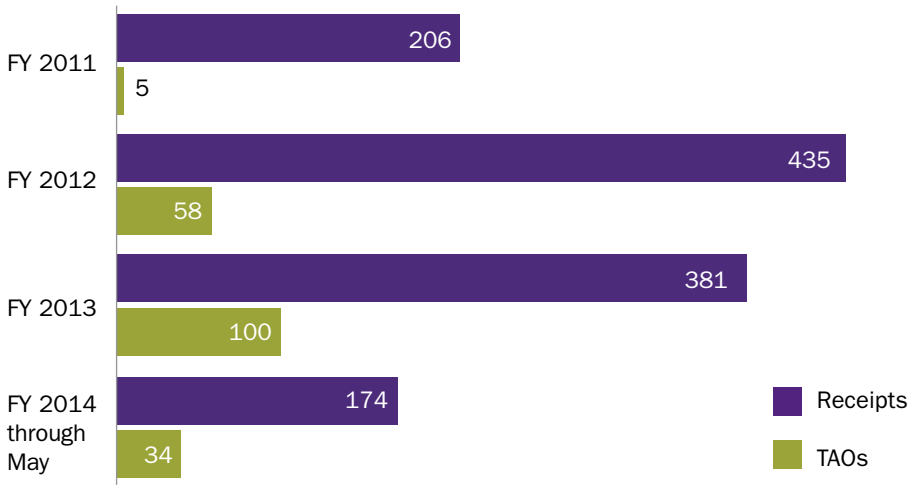
7 As of June 9, 2014, 113 TAOs involving return preparer misconduct have been elevated to the National Taxpayer Advocate. These elevated TAOs are included as part of the TAOs issued noted in Figure II.3. The National Taxpayer Advocate has decided not to elevate these TAOs to the Commissioner at this time, pending the IRS development of procedures to implement the Commissioner's decision to issue refunds to victims of preparer misconduct who are able to meet certain substantiation requirements, discussed below.

8 National Taxpayer Advocate 2013 Annual Report to Congress 96.

9 *See, e.g.*, TAMIS case numbers 4757753, 5269873, and 5361465.

IRS). As a result, none of the victims of preparer fraud for whom TAS has issued TAOs have received refunds.

FIGURE 11.3, TAS PREPARER FRAUD CASES[10]



The National Taxpayer Advocate Has Worked Tirelessly to Convince IRS Leadership to Develop Procedures to Make Victims of Preparer Fraud Whole.

While working to help these individual taxpayers, we have also been pursuing this issue from a systemic perspective. Since 2011, the National Taxpayer Advocate has raised and discussed this issue with four Commissioners (two acting) and has directed the IRS to develop procedures to remedy this problem via two proposed Taxpayer Advocate Directives (TADs)[11] and a TAD (see timeline).[12] The National Taxpayer Advocate has also covered the subject extensively in the last two Annual Reports to Congress.[13]

Commissioner Koskinen Has Decided That the IRS Will Issue Refunds to Victims of Preparer Fraud Who Provide a Copy of a Police Report.

In recent discussions with the National Taxpayer Advocate, Commissioner Koskinen decided that the IRS will issue refunds to victims of preparer fraud who can show that they were not complicit in the preparer's fraud. Under the Commissioner's approach, the victim will

10 Data obtained from TAMIS June 25, 2014. The current inventory of preparer fraud cases include unresolved cases in priors FYs.

11 *See* IRM 13.2.1.6.1.2, *Proposed TAD* (July 16, 2009).

12 Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers." IRM 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

13 *See, e.g.*, National Taxpayer Advocate 2013 Annual Report to Congress 94-102; National Taxpayer Advocate 2012 Annual Report to Congress 68-94.

be required to provide a copy of an incident report filed with local law enforcement (*i.e.*, a police report) before the IRS issues a replacement refund, to alleviate the IRS's concern about collusion between the preparer and taxpayer. While the Commissioner's decision to require a police report to accompany all claims of preparer fraud will not provide relief to all victims, it constitutes a major step forward. Moreover, having a bright line rule will make it easier for IRS employees to process these claims.

Since 2011, the National Taxpayer Advocate has raised and discussed this issue with four Commissioners (two acting) and has directed the IRS to develop procedures to remedy this problem via two proposed Taxpayer Advocate Directives (TADs) and a TAD.

While the National Taxpayer Advocate is pleased with the Commissioner's decision, she remains concerned about victims of preparer fraud who will be unable to obtain a police report. Some will not be able to obtain the report because the particular police department does not accept incident reports related to tax fraud, or refuses to accept a report for an incident that occurred several years ago (as stated earlier, some of our cases relate to 2008 tax returns). Additionally, some taxpayers who have questionable immigration status may be hesitant to go to the police for fear of being reported to immigration authorities. TAS is developing interim guidance on how Local Taxpayer Advocates can continue to advocate for such victims on a case-by-case basis by providing alternate documentation to alleviate the IRS's concern about possible collusion.

The IRS Chief Financial Officer has raised some concerns regarding the proper accounting entries that need to be made for such refunds. While these are legitimate concerns, the National Taxpayer Advocate wants these issues resolved immediately so that refunds are not further delayed. Recognizing that some victims waiting for refunds from their 2008 tax returns, the National Taxpayer Advocate has issued yet another TAD ordering the IRS to finalize procedures in time to start issuing refunds by October 1, 2014 (see Taxpayer Advocate Directive 2014-1, *infra*). If the IRS does not have procedures in place by October 1, 2014, the National Taxpayer Advocate will sustain and forward all pending return preparer fraud TAOs to the Deputy Commissioner for Services and Enforcement. If they remain unresolved, she will elevate them to the Commissioner of Internal Revenue. In her Annual Report to Congress, she will report to Congress on all TAOs on which the IRS has failed to act in accordance with her order.

For the remainder of FY 2014 and FY 2015, TAS will:

- Work with the Wage & Investment division to develop guidance on when it is appropriate to issue refunds to victims of preparer fraud;
- Meet with the Chief Financial Officer's staff to work through concerns related to financial reporting and accounting for such refunds;
- Update guidance to TAS employees on how to advocate for victims of return preparer fraud and what documentation should be submitted to the IRS; and
- If necessary, continue to elevate return preparer fraud TAOs to the highest levels of the IRS.

FIGURE II.4, NATIONAL TAXPAYER ADVOCATE'S ELEVATION OF PREPARER FRAUD ISSUE

The following chronology sets forth the procedural history of the National Taxpayer Advocate's involvement in elevating the preparer fraud issue.

2010	
December 2010	Nashville Local Taxpayer Advocate (LTA) issues TAOs to AM on behalf of four taxpayers who had been victimized by the same unscrupulous preparer.
2011	
June 13, 2011	NTA issues Proposed TAD 2011-1 to the W&I Commissioner, directing W&I to establish procedures for adjusting taxpayer accounts in instances where a preparer alters the return without the taxpayer's knowledge or consent.
July 6, 2011	NTA and Deputy NTA meet with W&I Commissioner Rick Byrd to discuss the concerns raised in Proposed TAD 2011-1.
December 31, 2011	NTA highlights return preparer fraud issue in 2011 Annual Report to Congress.
2012	
January 12, 2012	NTA issues TAD 2012-1 to the W&I and SB/SE division commissioners, directing them to establish procedures to assist victims of preparer fraud.
February 3, 2012	W&I Commissioner Peggy Bogadi appeals TAD 2012-1, indicating that W&I intends to comply with the substance of the TAD, but that it was not feasible to comply with the established timelines.
March 20, 2012	NTA testifies before Senate Committee on Finance, Subcommittee on Fiscal Responsibility and Economic Growth, regarding preparer fraud.
May 8, 2012	NTA testifies before House Committee on Ways and Means, Subcommittees on Oversight and Social Security, regarding preparer fraud.
June 5, 2012	SB/SE issues interim guidance to its employees regarding collection activity in cases where the taxpayer has been victimized by a tax return preparer.
June 25, 2012	Special Counsel to the NTA requests a legal opinion from the subject matter experts in the Office of Chief Counsel, specifically asking whether the IRS has the legal authority to issue a "second" refund.
June 26, 2012	W&I issues interim guidance to its employees that only partially addresses the problem, and does not address the "second" refund issue.
June 28, 2012	NTA testifies before House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, regarding preparer fraud.
October 17, 2012	NTA issues Proposed TAD 2012-5 specifically directing the W&I Commissioner to develop procedures to issue refunds to victims of return preparer fraud who are due a refund after they file a correct original return.
November 6, 2012	W&I Commissioner Peggy Bogadi responds to Proposed TAD 2012-5, indicating that "We are working to resolve the open issues related to Preparer Misconduct. There are several meetings set up with Counsel, staff and senior leadership in an effort to reach resolution."

December 5, 2012	NTA meets with W&I Commissioner Peggy Bogadi and W&I Counsel to discuss what legal barriers, if any, preclude the IRS from issuing refunds to victims of preparer fraud.
December 13, 2012	NTA meets with Acting Commissioner Steven Miller regarding preparer fraud.
December 31, 2012	NTA includes MSP entitled *The IRS Harms Victims of Return Preparer Misconduct by Failing to Resolve Their Accounts Fully* in 2012 Annual Report to Congress.
2013	
January 24-September 17, 2013	NTA elevates a total of 25 preparer fraud TAOs to Acting Commissioners Steven Miller and Danny Werfel.
June 19, 2013	NTA has one-on-one meeting with Acting Commissioner Werfel in which they discussed return preparer fraud issues.
September 13, 2013	Office of Chief Counsel provides an options paper to Acting Deputy Commissioner for Services and Enforcement (DCSE) Heather Maloy outlining the various legally permissible options available to resolve return preparer fraud cases.
September 18, 2013	At Acting Commissioner Werfel's request, NTA meets with DCSE Dalrymple, the Associate Chief Counsel (Procedure and Administration), the Commissioner of W&I, and the Director of the Return Preparer Office, among others, regarding preparer fraud.
October 23, 2013	NTA holds meeting with Acting Commissioner Werfel in which they discussed return preparer fraud issues.
November 5, 2013	Deputy Chief Counsel (Operations) sends email to NTA confirming that "the IRS has authority to make the refunds."
December 18, 2013	NTA meets with Acting Commissioner Werfel and DCSE Dalrymple regarding preparer fraud.
December 20, 2013	Deputy Commissioner for Services and Enforcement John Dalrymple rescinded *en masse* the 24 TAOs elevated to the Acting Commissioners that requested the IRS issue a refund to the victim of preparer fraud (one of the 25 TAOs elevated involved a victim who was not seeking a refund from the IRS.)
December 31, 2013	NTA includes MSP entitled *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds* in 2013 Annual Report to Congress.
2014	
January 22, 2014	NTA meets with Commissioner Koskinen to elevate preparer fraud issues.
March 14, 2014	NTA meets with Commissioner Koskinen, DCSE Dalrymple, and Chief Counsel to discuss preparer fraud issues; Commissioner Koskinen decides that the IRS will issue refunds to victims of preparer fraud who provide a police report and meet the other substantiation requirements.
May 28, 2014	NTA meets with the Chief Financial Officer (CFO), Deputy CFO, and W&I Commissioner to discuss concerns over the proper accounting of proposed payouts to victims of preparer fraud.

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

Response Due: July 15, 2014
Actions Completed By: September 30, 2014

June 30, 2014

MEMORANDUM FOR	John M. Dalrymple, Deputy Commissioner for Services and Enforcement Peggy Sherry, Deputy Commissioner for Operations Support
FROM:	Nina E. Olson, National Taxpayer Advocate
SUBJECT:	Taxpayer Advocate Directive 2014-1, Establish Procedures for Issuing a Replacement Refund for Victims of Return Preparer Misconduct

TAXPAYER ADVOCATE DIRECTIVE

Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a Taxpayer Advocate Directive (TAD). A TAD may be issued to (1) mandate administrative or procedural changes to improve the operation of a functional process, or (2) grant relief to groups of taxpayers (or all taxpayers) when its implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.[14]

Internal Revenue Manual (IRM) 13.2.1.6.1 (July 16, 2009) provides that in advance of issuing a TAD, the National Taxpayer Advocate attempts to work with and communicate with the owners of the process in order to correct the problem. I issued Proposed TAD 2012-5 to the Commissioner of the Wage and Investment Division (W&I) on October 17, 2012. This Proposed TAD directed W&I to, among other things, develop procedures to issue refunds to victims of return preparer fraud who are due a refund after they file a correct original return. On November 6, 2012, the W&I Commissioner responded to the Proposed TAD,

14 Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers." Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

indicating that W&I is "working to resolve the open issues related to Preparer Misconduct." I have also included this issue as a Most Serious Problem in my most recent Annual Report to Congress, with specific recommendations.15 As detailed more fully below, the issues related to preparer misconduct have been outstanding for several years; I now direct you to take the following actions:

1. By September 30, 2014, issue interim guidance memoranda (IGM) that modify existing IGM to:
   a. authorize the release of refunds to victims of preparer misconduct who submit a police report (in addition to existing documentation requirements); and
   b. eliminate the requirement that a perpetrator involved in the misconduct be "in the business of preparing returns for consideration" in order for the victim to be provided relief;
2. By September 30, 2014, establish procedures to:
   a. pay refunds to victims of preparer misconduct who have met the requirements of the IGM; and
   b. move the original refund to separate account for tracking and financial audit purposes.
3. By September 30, 2014, finalize the recommendations made by the team, comprised of representatives from W&I, CFO, TAS, Counsel, CI, PGLD, SB/SE, and RPO, as to what actions can be taken to recover the fraudulent refund paid to preparers; and
4. By October 1, 2014, commence issuing refunds to taxpayers who have met the requirements of the IGM for establishing return preparer fraud.

Please provide a written response to this TAD on or before July 15, 2014, or file an appeal of this TAD to the Commissioner of Internal Revenue ten (10) calendar days of the date on this TAD.[16]

I. Issues

Unscrupulous preparers sometimes prey on unsuspecting taxpayers by altering return information without their clients' knowledge or divert refunds for their personal benefit. Often, victims are individuals who are facing economic hardship and are in dire need of their refunds. In situations where the preparer diverted even the legitimate portion of the refund to his own account, victimized taxpayers have little hope of obtaining their refunds from the preparer, who may have closed up shop and disappeared.

15 National Taxpayer Advocate 2013 Annual Report to Congress 94-102 (Most Serious Problem: *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds*).

16 IRM 13.2.1.6.2(1), *TAD Appeal Process* (July 16, 2009).

I have written extensively about the need for the IRS to develop procedures to ensure that the tax accounts of the victims are appropriately adjusted and that the victims are not denied refunds they are legally entitled to because of the illegal actions of these return preparers.[17]

II. Procedural History

On December 16, 2010, we issued the first of many Taxpayer Assistance Orders (TAOs) on behalf of victims of preparer fraud. When no systemic changes were made, I began to elevate this issue to senior IRS leadership through TADs and Proposed TADs. Since 2011, I have raised and discussed this issue with four Commissioners (two acting), urging the IRS to make these vulnerable taxpayers whole, just as the IRS works to make identity theft victims whole. Attachment 1 provides a detailed chronology of my office's extensive involvement in elevating this issue.

The National Taxpayer Advocate elevated a total of 25 of these preparer misconduct TAOs to Acting Commissioners Steven Miller and Danny Werfel from January through September 2013. These victims are typically low income taxpayers, with a median adjusted gross income of $17,548 and a median refund claim of $2,511.[18] Some of the victims who have come to TAS for help have been waiting for refunds since they filed 2008 tax returns.[19] On December 20, 2013, Deputy Commissioner for Services and Enforcement John Dalrymple rescinded these 25 preparer misconduct TAOs. As a result, none of the victims of preparer misconduct for whom TAS has issued TAOs have received refunds.

As of May 31, 2014, TAS had 316 return preparer fraud cases in inventory.[20] As of June 9, 2014, TAS Local Taxpayer Advocates have elevated 113 TAOs involving preparer misconduct to the National Taxpayer Advocate.

III. Analysis

Return preparer fraud is not a novel issue. The IRS has known about this problem and its severe impact on victims for many years. The IRS Office of Chief Counsel ("Counsel") has provided advice on such situations dating as far back as 2000, when it concluded that there

17 *See* Proposed Taxpayer Advocate Directive 2011-1, *Establish procedures for adjusting the taxpayer's account in instances where a tax return preparer altered the return without the taxpayer's knowledge or consent, and the preparer obtained a fraudulent refund* (June 13, 2011); National Taxpayer Advocate 2011 Annual Report to Congress 59-60; Taxpayer Advocate Directive 2012-1, *Establish procedures for adjusting the taxpayer's account in instances where a tax return preparer altered the return without the taxpayer's knowledge or consent, and the preparer obtained a fraudulent refund* (Jan. 12, 2012); *Identity Theft and Income Tax Preparation Fraud*, Hearing Before the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security, 112th Cong. (June 28, 2012) (statement of Nina E. Olson, National Taxpayer Advocate); Proposed Taxpayer Advocate Directive 2012-5, *Establish procedures for issuing a replacement refund for victims of return preparer misconduct* (Oct. 17, 2012); National Taxpayer Advocate 2012 Annual Report to Congress 68-94 (Most Serious Problem: *The IRS Harms Victims of Return Preparer Misconduct by Failing to Resolve Their Accounts Fully*); National Taxpayer Advocate 2013 Annual Report to Congress 94-102 (Most Serious Problem: *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds*).

18 National Taxpayer Advocate 2013 Annual Report to Congress 96.

19 *See, e.g.*, Taxpayer Advocate Management Information System (TAMIS) case numbers 4757753, 5269873, and 5361465.

20 Data obtained from TAMIS (June 25, 2014). The current inventory of preparer fraud cases include unresolved cases received in prior FYs.

is "no legal impediment to reissuing a direct deposit refund" to a taxpayer whose return was altered after visiting a Volunteer Income Tax Assistance site.[21]

In 2003, Counsel again addressed a situation where an electronically filed tax return was altered without the taxpayer's knowledge, and declared that a return altered by a preparer after the victim has verified the accuracy of the return is a "nullity" and, therefore, invalid.[22] In 2008, Counsel once again looked at a situation where a refund was improperly directed to a preparer and made clear that the IRS "can and should" adjust each affected taxpayer's account for any refund (or portion of one) illegally obtained by the preparer.[23] In 2011, Counsel reiterated that "[a] tax return signed by a taxpayer that is altered by a tax return preparer without the taxpayer's knowledge and submitted to the IRS by the preparer is not a valid tax return."[24]

To recap: since 2000, the IRS has received four legal opinions from its Office of Chief Counsel that, when read together, permit the IRS to (1) disregard the altered return filed by the preparer, (2) accept an unaltered return signed by the taxpayer, and (3) issue a refund to the victim even if a payment had already been made to the preparer. The Deputy Chief Counsel (Operations) recently reaffirmed this position, both orally and in writing, to the National Taxpayer Advocate and the IRS Commissioner.

The Commissioner Has Agreed the IRS Will Release Refunds to Victims of Preparer Misconduct Who Have Provided Certain Documentation, Including a Police Report

Recent discussions with Commissioner Koskinen have been encouraging. The Commissioner has agreed the IRS will issue refunds to victims of preparer fraud if the victims can show that they were not complicit in the preparer's fraud. To alleviate the IRS's concern about collusion between the preparer and taxpayer, the victim will be required to provide a copy of an incident report filed with local law enforcement (i.e., a police report) before the IRS issues a replacement refund.

Some taxpayers will be unable to obtain a police report, perhaps because the particular police department does not accept incident reports related to tax fraud, or refuses to accept a report for an incident that occurred several years ago (as noted earlier, some of our cases relate to 2008 tax returns). Additionally, some taxpayers who have questionable immigration status may be hesitant to go to the police for fear of being reported to immigration authorities. While the Commissioner's decision to require a police report to accompany all claims of preparer fraud will not provide relief to all victims, it constitutes a major step forward. Moreover, having a bright line rule will make it easier for IRS employees to process

21 Field Service Advice 200038005 (June 6, 2000). While Field Service Advice is not binding and may not be cited as precedent, it does allow us some insight on how similar situations may be analyzed.

22 *See* IRS Office of Chief Counsel Memorandum, *Horse's Tax Service*, PMTA 2011-13 (May 12, 2003).

23 *See* IRS Office of Chief Counsel Memorandum, *Refunds Improperly Directed to a Preparer*, POSTN-145098-08 (Dec. 17, 2008).

24 *See* IRS Office of Chief Counsel Memorandum, *Tax Return Preparer's Alteration of a Return*, PMTA 2011-20 (June 27, 2011).

these claims. The focus of this Taxpayer Advocate Directive is to ensure that the IRS moves forward with all due speed in implementing the Commissioner's decision.

The IRS Needs to Develop Procedures to Implement the New Policy

For taxpayers able to provide sufficient documentation supporting their claims, the IRS must act quickly to issue the refunds to which they are entitled. We should not further victimize such taxpayers, some of whom are awaiting refunds from their 2008 tax returns, by making them wait any longer.

Therefore, given that (1) there are no outstanding legal considerations preventing the IRS from issuing refunds to victims of preparer misconduct, and (2) the Commissioner has agreed that the IRS should issue refunds to victims who have substantiated the preparer misconduct by filing a police report, the IRS should move forward to develop guidance implementing this policy decision.

Definition of "Return Preparer" in This Context Should Be Expanded

As I mentioned above, taxpayers often use the services of return preparers to comply with their federal tax obligations. Often, these return preparers are professionals who are licensed and regulated. However, some taxpayers rely upon the services of neighbors, co-workers, clergy, or family friends who may offer to assist in filing their tax returns. Under current guidance, the IRS will not provide relief to taxpayers who have been defrauded by tax return preparers who are not "in the business of preparing returns for consideration."[25] As a result, many taxpayers victimized by return preparers who are not in the business of preparing returns will not receive assistance from the IRS.

Rather than inquiring about the relationship between the taxpayer and the return preparer, the IRS should instead focus on whether the taxpayer authorized the filing of the particular return that was submitted for processing. I fully recognize the IRS's concern that some taxpayers with a non-business relationship with their return preparers may not truly be innocent victims of fraud. I do not suggest that the IRS relax its requirement that the taxpayer support with appropriate documentation his or her assertion that the particular return filed by the return preparer was an unauthorized return. However, once the IRS is convinced that the return submitted by the return preparer was not the one authorized by the taxpayer, it matters not whether the return preparer was in the business of preparing tax returns. Moreover, the additional requirement that the taxpayer obtain a police report with respect to theft of a tax refund will guard against any concerns about collusion between the taxpayer and the preparer. If a taxpayer is willing to report his friend, neighbor, or relative to the police, the IRS's risk will be minimal.

25 *See Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)* 8, WI-21-0813-02 (Aug. 5, 2013).

IV. Requested Actions

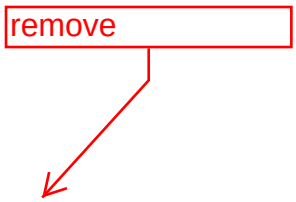
Because the IRS has a history of delay and failure to act with respect to this issue, and has not provided me with a timeline for implementation of the Commissioner's decision to issue refunds to victims of return preparer fraud, I am issuing this TAD to protect the rights of taxpayers and prevent undue burden. In light of the significant harm taxpayers are suffering as a result of the IRS's inability to develop a process for providing relief to these victims, I direct you to take the following actions:

1. By September 30, 2014, issue interim guidance memoranda (IGM) that modify existing IGM to:
   a. authorize the release of refunds to victims of preparer misconduct who submit a police report (in addition to existing documentation requirements); and
   b. eliminate the requirement that a perpetrator involved in the misconduct be "in the business of preparing returns for consideration" in order for the victim to be provided relief;
2. By September 30, 2014, establish procedures to:
   a. pay refunds to victims of preparer misconduct who have met the requirements of the IGM; and
   b. move the original refund to separate account for tracking and financial audit purposes.
3. By September 30, 2014, finalize the recommendations made by the team, comprised of representatives from W&I, CFO, TAS, Counsel, CI, PGLD, SB/SE, and RPO, as to what actions can be taken to recover the fraudulent refund paid to preparers; and
4. By October 1, 2014, commence issuing refunds to taxpayers who have met the requirements of the IGM for establishing return preparer fraud.

Attachments:

1. Timeline of the National Taxpayer Advocate's involvement in elevating the preparer fraud issue
2. Proposed Taxpayer Advocate Directive 2012-5 (*Establish procedures for issuing a replacement refund for victims of return preparer misconduct*)
3. Taxpayer Advocate Directive 2012-1 (*Establish procedures for adjusting the taxpayer's account in instances where a tax return preparer altered the return without the taxpayer's knowledge or consent, and the preparer obtained a fraudulent refund*) (Jan. 12, 2012)
4. National Taxpayer Advocate 2013 Annual Report to Congress 94-102 (Most Serious Problem: *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct Despite Ample Guidance Allowing the Payment of Such Refunds*)
5. *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0813-02 (Aug. 5, 2013)

cc: with attachments: John A. Koskinen, Commissioner of Internal Revenue



C. ~~Area of Focus:~~ Despite Improvements, TAS Remains Concerned About IRS Treatment of Taxpayers Applying for Exempt Status

In a Special Report that accompanied the Fiscal Year 2014 Objectives Report to Congress, the National Taxpayer Advocate described the management and other failures in the Exempt Organizations (EO) function that led to violations of taxpayers' rights and the inappropriate activity reported by the Treasury Inspector General for Tax Administration (TIGTA) in May of 2013.[1] These failures, affecting taxpayers seeking recognition of exempt status under IRC § 501(c)(4), brought to light both procedural issues (lengthy delays, excessive questioning, and intrusive document production) and substantive issues (such as the degree to which an entity may engage in political activity and still qualify as an exempt social welfare organization under IRC § 501(c)(4)).

As discussed extensively in the Special Report, EO was largely unfamiliar with TAS's role and TAS's authority to issue Taxpayer Assistance Orders (TAOs) under IRC § 7811.[2] In 19 TAS cases in which the IRS delayed approval of exempt status due to concerns about political activity during the period covered by TIGTA's audit, EO was not forthright in explaining why their applications for recognition of exempt status were being delayed.

The National Taxpayer Advocate made 16 recommendations to address the problems discussed in the TIGTA report as well as other conditions in EO that burden taxpayers. In this Area of Focus, we will discuss the status of each recommendation and highlight additional areas of concerns.

National Taxpayer Advocate Recommendation 1: *Clarify the level of political activity that exempt organizations may conduct, and establish an objective test to identify when an organization exceeds that level.*[3]

Background

Since its inception in 1913, the federal income tax has provided for exempt status for organizations organized and operated "exclusively" for charitable or general welfare purposes.[4] However, the Supreme Court in 1945 held that a single non-exempt purpose, "*if substantial in nature*, will destroy the exemption" (emphasis added), implying that an insubstantial non-exempt purpose would not be fatal to the tax-exemption.[5] In 1954,

1 National Taxpayer Advocate Special Report to Congress: *Political Activity and the Rights of Applicants for Tax-Exempt Status* (June 30, 2013) [hereinafter the Special Report]; TIGTA, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013), available at http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf [hereinafter the TIGTA report].

2 Under IRC § 7811, the National Taxpayer Advocate or her delegate can issue a Taxpayer Assistance Order (TAO) to order the IRS to take certain actions, cease certain actions or refrain from taking certain actions. A TAO may also be issued to order the IRS to expedite consideration of a taxpayer's case, reconsider its determination in a case or review the case at a higher level. Once a TAO is issued, the IRS can either comply with action ordered or appeal the issue for resolution at a higher level. IRM 13.1.20.5, *TAO Appeal Process* (Dec. 15, 2007).

3 National Taxpayer Advocate Special Report to Congress: TIGTA, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

4 *See* Tariff Act of 1913, 38 Stat. 114 (1913).

5 *Better Business Bureau of Washington, D.C. v. U.S.*, 326 U.S. 279, 283 (1945).

Congress enacted the unrelated business income tax, confirming that exempt organizations may conduct certain non-exempt activities.[6]

The regulations under IRC § 501(c)(3), published in 1959, allow organizations to qualify for exempt status if they are operated "primarily" for charitable purposes.[7] The regulations under IRC § 501(c)(4), also issued in 1959 and applicable to social welfare organizations that must be operated "exclusively" for the promotion of social welfare, allow exempt status to organizations "*primarily engaged* in promoting in some way the common good and general welfare of the people of the community."[8] Neither regulation defines or quantifies the term "primarily."

With respect to political activity specifically, organizations exempt under IRC § 501(c)(3) have since 1934 been permitted to engage in only "insubstantial" lobbying activity, a term that appears, undefined, in the regulations today.[9] In 1954, exempt status was further limited in section 501(c)(3) by a prohibition against *any* participation or intervention in political campaigns on behalf of candidates for public office, a restriction not found in the statute or regulations under IRC § 501(c)(4).[10] Thus, by implication, section 501(c)(4) organizations can engage in some amount of political campaign activity.

In her 2013 Special Report, the National Taxpayer Advocate noted that

> [i]n the absence of clear, publicly disclosed criteria to determine whether organizations are (or are not) engaged in too much political campaign activity to qualify as tax-exempt under IRC § 501(c)(4), the IRS may not be able to make decisions in an objective and consistent manner. Even if it can, it may not be *perceived* as making decisions in an objective and consistent manner.[11]

The IRS Safe Harbor for IRC § 501(c)(4) Organizations

In July of 2013, the IRS began issuing Letter 5228, *Application Notification of Expedited 501(c)(4) Option,* to certain organizations whose applications for recognition of exempt status under IRC § 501(c)(4) indicated the organizations could potentially be engaged in political campaign intervention or be providing private benefit to a political party, and whose

6 IRC § 511 et seq.

7 *See* Treas. Reg. § 1.501(c)(3)-1(c)(1).

8 IRC § 501(c)(4)(A); Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (emphasis added).

9 See Revenue Act of 1934, Pub. L. No. 73-216, § 101(6), 48 Stat. 680 , 700 (1934), recognizing exempt status for an organization "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes" only if "[n]o substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," a provision still in effect; Treas. Reg. § 1.501(c)(3)-1(b)(3)(i), providing that an organization "is not organized exclusively for one or more exempt purposes if its articles expressly empower it: (i) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise." See below for a discussion of IRC § 501(h), providing an alternative to the "no substantial part" standard for electing organizations.

10 Internal Revenue Code of 1954, 68A Stat. 163, sec. 501(c)(3), providing that a charity may "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office," a provision still in effect.

11 National Taxpayer Advocate Special Report at 15.

applications had been outstanding for 120 days as of May 28, 2013.[12] The letter offered a "safe harbor" to these organizations if they could certify that:

6. They devote 60 percent or more of both their spending and time (including volunteer time) to activities that promote social welfare as defined by section 501(c)(4). Activities that promote social welfare do not include "direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office;" (campaign intervention); and
7. Campaign intervention amounts to less than 40 percent of both their spending and time (including volunteer time).[13] Campaign intervention includes, among other things,
   a. Conducting a voter registration drive *that selects potential voters to assist on the basis of their preference for a particular candidate or party*;
   b. Conducting a "get-out-the-vote" drive *that selects potential voters to assist on the basis of their preference for a particular candidate or (in the case of general elections) a particular party*;
   c. Preparing and distributing a voter guide *that rates favorably or unfavorably one or more candidates*; and
   d. Conducting an event *at which only one candidate is, or (in case of a general election) candidates of only one party are, invited to speak* (emphasis added).

For purposes of the safe harbor, campaign intervention also includes any expenditure incurred or time spent by the organization on "any public communication within 60 days prior to a general election or 30 days prior to a primary election that identifies a candidate in the election."[14]

Organizations providing the required certifications within 45 days of the date of the letter would receive recognition of exempt status within one month.[15] On December 23, 2013, the Tax Exempt/Government Entities Division (TE/GE) made the safe harbor available to all

12 Tax Analyst Tax Notes Today, 2013 TNT 129-15 IRS *Provides Instructions For Optional Expedited Process For Some Tax-Exempt Applications* (July 5, 2013).

13 These representations, made under penalties of perjury, regard past, present, and future activities.

14 The concept of "campaign intervention" in the safe harbor is similar in some respects to activities taken into account under Federal election campaign laws. See Federal Election Campaign Act (FECA) of 1971, 2 U.S.C. 431 (20) as amended, defining Federal election activity as "(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or (iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election."

15 As discussed below, applications from organizations that did not respond within 45 days were reviewed pursuant to additional special procedures.

other similarly situated IRC § 501(c)(4) applicants (not only those whose applications were outstanding for a given length of time).[16]

TE/GE did not clear Letter 5228 with TAS pursuant to normal review procedures, nor is the National Taxpayer Advocate aware of the IRS's rationale for adopting a 60/40 ratio of social welfare to campaign intervention activity as an appropriate metric for exempt status under IRC § 501(c)(4). Members of the American Bar Association (ABA) Tax Section have in the past suggested a safe harbor of 40 percent of expenditures (*i.e.*, not taking into account the efforts of volunteer workers) for nonexempt activities.[17] The ABA commenters acknowledged that the IRS had never acquiesced to that standard.[18] Moreover, much of the analysis about the statutory requirements regarding what activities are eligible for tax-exemption occurs in the context of unrelated business taxable income (UBIT).[19] As at least one writer noted, "the IRS requirements for exemption and UBIT relatedness may be conflated in practice."[20] In any event, we note that since the 2004 ABA suggestion, the U.S. Supreme Court decided *Citizens United v. FEC*, which may have increased the number of groups engaged in political activity seeking exemption under IRC § 501(c)(4).[21]

The Proposed Treasury Regulation under IRC § 501(c)(4)

On November 29, 2013, the Treasury Department and the IRS requested public comment on a proposed regulation that would provide guidance to tax-exempt social welfare organizations on political activities related to candidates that will not be considered to promote social welfare.[22] Neither the IRS nor Treasury shared this proposed regulation with the National Taxpayer Advocate, her staff, or her counsel for comment prior to submitting it to the Federal Register for publication, nor was the National Taxpayer Advocate consulted dur-

16 See Interim Guidance, TEGE-07-1213-24, *Request for EO Technical Assistance* (Dec. 23, 2013) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1213-24%5B1%5D.pdf. TE/GE did not share this guidance with TAS until Jan. 7, 2014. As discussed below, TAS training for its employees on exempt organization procedures was recorded on Dec. 3, 2014; this new procedure could have been included in the training had TE/GE advised us that it was forthcoming.

17 See ABA Section of Taxation, *Comments of the Individual Members of the Exempt Organizations Committee's Task Force on Section 501(c)(4) and Politics* 44 (2004), available at http://abanet.org/tax/pubpolicy/2004/040525exo.pdf.

18 The ABA commenters noted that "Speaking at a conference in 1990, then Director of the IRS's Exempt Organizations Technical Division Marc Owens responded to a question about how much political activity a § 501(c)(4) organization could engage in by stating '[w]hen it comes to political activities, that is, giving money to a candidate, telling people to vote for a certain candidate, the rule is that it has to be less than primary. If it's 49 percent of their *income*, that is less than primary'" (emphasis added). ABA Section of Taxation, Comments of the Individual Members of the Exempt Organizations Committee's Task Force on Section 501(c)(4) and Politics n 82 (2004), *available at* http://abanet.org/tax/pubpolicy/2004/040525exo.pdf.

19 These rules are summarized as follows: "[B]usiness income arising from activities in furtherance of the organization's charitable purpose is never taxed, while the consequences of unrelated business income turns on whether the unrelated business activity is substantial: (1) If substantial, loss of exemption results (along with taxation of the income) or (2) if insubstantial, the income is subject to unrelated business income tax, but the tax exemption is not lost." Profs. Bishop and Kleinberger, *Exempt Organization Commercial Activity And Joint Ventures*, Limited Liability Companies: Tax and Business Law § 1.09 (Thomson Reuters Tax Accounting 2014).

20 Peter Molk, *Reforming Nonprofit Exemption Requirements*, 17 Fordham J. Corp. & Fin. L. 475, 491-492 (2012).

21 558 U.S. 310 (2010) (holding unconstitutional a statute banning corporate and union independent expenditures on express advocacy). According to the TIGTA report, the number of applications for exempt status under IRC § 501(c)(4) increased from 1,735 in FY 2010 to 3,357 in FY 2012. Moreover, "tax-exempt groups, such as I.R.C. § 501(c)(4), I.R.C. § 501(c)(5), and I.R.C. § 501(c)(6) organizations, spent $133 million in Calendar Year 2010 on Federal candidate-oriented expenditures. In Calendar Year 2012, this figure increased to $315 million." TIGTA report at 3.

22 Prop. Treas. Reg. § 1.501(c)(4)-1, 78 Fed. Reg. 71535 (Nov. 29, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001.

ing the drafting process. Therefore, the National Taxpayer Advocate had no opportunity to influence the content of the proposed regulation prior to publication.

The proposed regulation would revise Treasury Regulation § 1.501(c)(4)-1(a)(2)(ii) to, among other things, provide that the promotion of social welfare does not include direct or indirect "candidate-related political activity."[23] The proposed regulation does not posit a "bright line" ratio between social welfare and "candidate-related political activity," but it borrows some of the other safe harbor concepts the IRS adopted in Letter 5228. For example, the proposed regulation provides that public communications made within 60 days of a general election (or within 30 days of a primary contest) that refer to one or more clearly identified candidates, or refer to one or more political parties represented in a general election, would be considered "candidate-related political activity."[24] Volunteer activities, including public communications in the timeframe described above, are attributed to the organization, and could therefore count as "candidate-related political activity."[25]

In some respects, the proposed regulation impedes more political activity than the IRS safe harbor because the regulation includes some nonpartisan activities in the definition of "candidate-related political activity."[26] Examples are:

- Voter registration and get-out-the-vote drives;[27]
- Preparation or distribution of voter guides that refer to candidates (or to parties in a general election);[28] and
- Hosting events within 60 days of an election or within 30 days of a primary that one or more candidates attend as part of the program.[29]

The National Taxpayer Advocate finds the sweep of "candidate-related political activity" under the proposed regulation unacceptably broad. It appears that many others have views about the proposed regulations; 169,013 comments were received as of June 30, 2014.[30] On

23 The proposed regulations also requested public comments on the advisability of amending regulations under IRC § 501(c)(5) (labor, agricultural, or horticultural organizations), IRC 501(c)(6) (certain business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues organizations that promotes the common business interest), or political organizations exempt under IRC § 527 to provide that exempt purposes do not include "candidate-related political activity."

24 Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(2),78 Fed. Reg. 71535 (Nov. 29, 2013), *available a*t http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001.

25 *Id. See also Explanation of Provisions: Definition of Candidate-Related Political Activity. Public Communications Close in Time to an Election*, noting "In addition, the expansion of the types of communications covered in the proposed regulations reflects the fact that an organization's tax exempt status is determined based on all of its activities, even low cost and volunteer activities, not just its large expenditures."

26 The definition of "candidate-related political activity" is derived from Federal election campaign laws. See Federal Election Campaign Act (FECA) of 1971, 2 U.S.C. 431 (20); Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii) and *Explanation of Provisions: Definition of Candidate-Related Political Activity.*

27 Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(5), 78 Fed. Reg. 71535 (Nov. 29, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001.

28 *Id.*

29 Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(8), 78 Fed. Reg. 71535 (Nov. 29, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001.

30 *See Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities available at* http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001.

May 22, 2014, the IRS announced that "[g]iven the diversity of views expressed and the volume of substantive input," it would revise the proposed regulation before proceeding with a public hearing.[31]

Because the proposed guidance does not quantify the acceptable amount of political activity, it may be inadequate guidance for many organizations that are trying to abide by the law. The National Taxpayer Advocate would prefer an approach that not only establishes an acceptable level of activity that does not promote social welfare and does so with reference to the organization's exempt social welfare activity, but that also takes into account the size and budget of the organization. As an alternative to the "candidate related political activity" test, the National Taxpayer Advocate recommends that Treasury and the IRS consider a rule similar to the IRC § 501(h) election applicable to 501(c)(3) organizations.

The IRC § 501(h) Expenditure Election and Lobbying Activities of IRC § 501(c)(3) Organizations

In an effort "to set relatively specific expenditure limits to replace the uncertain standards of present law" (permitting section 501(c)(3) organizations to engage in only "insubstantial" lobbying activity), Congress in 1976 enacted IRC § 501(h).[32] This provision allows certain organizations to elect the use of a numerical test based solely on their expenditures (i.e., use of tax-exempt dollars) to determine whether they have engaged in excessive lobbying activities, thereby causing them to lose tax-exempt status under IRC § 501(c)(3).[33] To be clear, this numerical test is purely elective and thus operates as a "safe harbor." Organizations that do not meet the numerical test or are uncertain may still apply through the regular EO application process.

Under the election, the amount of time an organization spends on an activity is not relevant except to the extent an expenditure (*e.g.*, compensation) thereby arises. Volunteer activity is relevant to the determination only to the extent it triggers an expenditure. Section 501(h) limits are determined by reference to IRC § 4911, which imposes an excise tax on "excess lobbying expenditures."[34] If the section 501(c)(3) organization's lobbying expenditures do not exceed the IRC § 4911(c) limits, then the organization will not be taxed under section 4911 or lose its section 501(c) exemption.[35]

For electing organizations, permissible lobbying expenditures (not including grassroots expenditures) are calculated on a sliding scale expressed as a fixed dollar amount plus a

31 John Hicks, *IRS Postpones Hearing on Exempt-Group Rules*, The Washington Post, A-14 (May 23, 2014).

32 H.R. Rep. No. 94-1210, pt. 1, at 8 (1976); S. Rep. No. 94-938, pt. 2, at 80 (1976). For a discussion of the lengthy legislative history of the provision, described as representing "a compromise on a compromise on a compromise on a compromise" see Jill S. Manny, *Nonprofit Legislative Speech: Aligning Policy, Law, and Reality*, 62 Case W. Res. L. Rev. 757 (2012).

33 Tax Reform Act of 1976, Pub. L. No. 94-455, § 1307, 90 Stat. 1520, 1720 (1976).

34 IRC § 501(h)(2).

35 Treas. Reg. § 1.501(h)-1(a)(3).

percentage of the organization's "exempt purpose expenditure."[36] For example, under IRC § 4911, an organization with exempt purpose expenditures of more than $500,000 but not over $1 million could spend $100,000 plus 15 percent of its exempt purpose expenditures over $500,000 on lobbying activities.[37] An organization with exempt purpose expenditures of more than $1 million but not over $1.5 million could spend $175,000 plus ten percent of its exempt purpose expenditures over $1 million on lobbying activities.[38] However, the maximum amount of lobbying expenditures cannot exceed $1 million for any organization, and "grassroots" expenditures must always be less than or equal to 25 percent of the permissible lobbying expenditure as calculated with the sliding scale.[39]

There is no provision available to organizations exempt under IRC § 501(c)(4) analogous to the election available to IRC § 501(c)(3) organizations under IRC § 501(h). The proposed Treasury regulations do not relate the amount of permissible political activity to another metric such as the organization's expenditures in furtherance of its exempt (social welfare) purpose. The National Taxpayer Advocate believes organizations requesting the right to receive contributions exempt from tax should be evaluated on how they expend those contributions. Under this analysis, as with the 501(h) election, volunteer time and activity, which do not generate taxable income for which tax exemption would be available in the first instance, are irrelevant to this determination (except to the extent an expenditure arises as a consequence of volunteer activity, *e.g.*, amounts spent to solicit and train volunteers or transport them to rallies or shopping malls where they campaign). Because it is unclear whether the IRS could adopt this approach by regulation, the National Taxpayer Advocate will make a legislative recommendation that incorporates these premises in her 2014 Annual Report to Congress.

Natonal Taxpayer Advocate Recommendation 2: *Consider legislation to provide applicants for exemption under IRC § 501(c)(4) with the ability to seek a declaratory judgment if denied or unanswered after nine months so that more judicial guidance can develop.*

As noted in the Special Report, an IRC § 501(c)(3) applicant may, upon exhaustion of administrative remedies, have judicial recourse to a declaratory judgment on exempt status if its application is denied or remains unanswered after about nine months (270 days).[40] Applicants for exempt status under IRC § 501(c)(4) do not have the same right to seek judicial review. Judicial review for section 501(c)(4) applicants would, among other things, provide for better guidance and transparency for IRS and taxpayers as to how this

36 IRC § 4911(c)(2). IRC § 4911(e)(1)(A) provides that "the term 'exempt purpose expenditures' means, with respect to any organization for any taxable year, the total of the amounts paid or incurred by such organization to accomplish purposes described in section 170(c)(2)(B) (relating to religious, charitable, educational, etc., purposes)." Under IRC § 4911(c) and (d) "grass root expenditure" means expenditures for the purpose of influencing legislation "through an attempt to affect the opinions of the general public or any segment thereof" (as opposed to "communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation").

37 IRC § 4911(c)(2).

38 *Id.*

39 *Id.*

40 See IRC § 7428.

tax exemption should be administered. The National Taxpayer Advocate has discussed this recommendation with congressional committee staff members, and the Chairman of the House Ways and Means Committee has released draft legislation that would create a right to declaratory judgment for section 501(c)(4) applicants.[41] We will continue to advocate for this important judicial remedy.

National Taxpayer Advocate Recommendation 3: ***Explore the feasibility of requiring the FEC [Federal Election Commission] or another specialized agency to certify to the IRS that political activity proposed by an applicant for exemption under IRC § 501(c)(4) is not excessive.***

The IRS cites privacy rules as an impediment to sharing information between the two agencies, but notes that it does use information made publicly available by the FEC, among other sources, "in considering examination potential of referrals received or when reviewing operations of an organization under examination."[42] As for having the FEC actually make a determination relating to an applicant's proposed activities,[43] the IRS responds:

> The IRS must determine whether an organization meets the requirements for exemption from tax, which may include making a determination of whether the organization is participating or intervening in a political campaign on behalf of or in opposition to a candidate for public office. This determination is based on all the facts and circumstances, and the scope of activity that will not further tax exempt purposes is not necessarily the same as the activity that is subject to regulation by the FEC. For example, participating or intervening in a political campaign on behalf of or in opposition to a candidate for public office includes activity at the state or local level, while the FEC only regulates federal election campaigns.[44]

It does not appear that the IRS has recently investigated the possibility of FEC certification or how obstacles to such certification could be overcome. However, the National Taxpayer Advocate is pleased the IRS still considers itself responsible for making a determination concerning the political activity of organizations applying under section 501(c)(4). As described below, TE/GE will essentially abdicate its responsibility to determine whether an organization is exempt under section 501(c)(3) - to the applicant itself.

41 See U.S. Congress, House Committee on Ways and Means, The Tax Reform Act of 2014, § 6002, 113 Cong., 2 sess., Feb. 2014, *available at* http://waysandmeans.house.gov/uploadedfiles/statutory_text_tax_reform_act_of_2014_discussion_draft__022614.pdf.

42 TE/GE response to TAS information request (May 30, 2014), noting that a number of years ago, EO and the FEC "explored the possibility of sharing information about actions both agencies may be taking with respect to the same organizations. Due to the privacy rules applicable to the two agencies (the FEC may only make its investigations public when they are complete which is frequently after the statute of limitations for tax purposes has passed), it was determined that there was no useful method for sharing information."

43 As noted above, the concept of "candidate-related political activity" in the proposed Treasury regulation is derived from federal election law. See Prop. Treas. Reg. § 1.501(c)(4)-1(a)(2)(iii) and *Explanation of Provisions: Definition of Candidate-Related Political Activity.*

44 TE/GE response to TAS information request (May 30, 2014).

National Taxpayer Advocate Recommendation 4: *Consider revising the IRC § 501(c)(4) application (Form 1024) to make further review unnecessary in most cases.*

The application form used to request exempt status under IRC § 501(c)(4), Form 1024 (*Application for Recognition of Exemption Under Section 501(a) or for Determination under Section 120*), asks simply if the organization plans to spend any money to influence the selection of any candidate.[45] Adding more detailed questions to Form 1024 could help the IRS make a determination about excessive political activity and could also help educate applicants about activity that could potentially disqualify them from being tax exempt. The IRS is not considering changes to Form 1024, in light of the safe harbor procedures, described above, for organizations whose applications indicate they could potentially be engaged in political activity.[46] The National Taxpayer Advocate is disappointed that TE/GE evidently intends to continue to rely on applicants' attestations that they meet the 60/40 safe harbor rather than revising Form 1024 to elicit information that would allow EO to determine whether there is or will be excessive political activity.

National Taxpayer Advocate Recommendation 5: *Gather data from random audits and thereby develop a risk model to deploy in compliance reviews of organizations after operations have commenced.*

EO initially selects organizations for examination on the basis of referrals from outside sources and by analyzing data from Forms 990 to identify organizations engaging in possible impermissible campaign intervention.[47]

The EO Review of Operations (ROO) function then researches each case to determine whether to proceed with an examination, and its findings are reviewed by the Political Activity Referral Committee (PARC), which consists of three career civil service managers.[48] A cross-divisional team reviewed this process and "determined that, as implemented, the process promotes impartiality in the selection of organizations for examination."[49] EO notes that "Results of examinations will be used to determine the effectiveness of data analytics in case selection."[50] We interpret this to mean that EO agrees with the National Taxpayer Advocate's recommendation.

45 Question 15 on Form 1024 is: "Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization?"

46 TE/GE response to TAS information request (May 30, 2014).

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

National Taxpayer Advocate Recommendation 6: *Publish on the Internet objective criteria that may trigger additional review of applications for exemption and the procedures IRS specialists use to process applications involving political campaign activity.*

On September 30, 2013, TE/GE issued interim guidance directing employees to route applications involving political activity to a specialty group within the division.[51] Interim guidance issued on December 10, 2013, outlines procedures for sending additional information request letters to IRC § 501(c)(3) applicants with certain types of potential political activities.[52] The guidance, while publicly available, is not readily accessible. A search of IRS.gov using terms "501(c)(3) political activity" or "501(c)(3) potential political activity" or "501(c)(3) political guidance" does not reference or link to it. Even searching for the control number of the guidance (TEGE-07-1213-23) on IRS.gov does not produce it. Taxpayers using a generic Internet search engine can locate the guidance if they search for it by control number, but a taxpayer would not be able to find this guidance without knowing that cite. The IRS should make this guidance more easily accessible to the public, including exempt organizations.

As noted above, IRC § 501(c)(3) prohibits any participation or intervention in political campaigns on behalf of candidates for public office. The guidance notes:

> The following types of activities may suggest the potential for political campaign intervention (see also IRM 7.20.5, *Review Procedures for EO Determinations*):
>
> - Voter registration
> - Inaugural and convention host committees
> - Post-election transition teams
> - Voter guides
> - Voter polling
> - Voter education
> - GOTV [get out the vote] drives
> - Events at which candidates speak
> - Communications expressing approval or disapproval of candidates' positions or actions
> - Other activities that appear to support or oppose candidates for public office

51 *See* Interim Guidance, TEGE-07-0913-15, *Interim Guidance on Initial Classification of Applications* (Sept. 30, 2013) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-0913-15[1].pdf. "Political/Advocacy" applications indicating "Actual or potential political campaign intervention," "Lobbying activity that exceeds permitted thresholds," or "Benefits to a political party or a candidate for public office" were to be routed to a specialized group for secondary screening.

52 See Interim Guidance, TEGE-07-1213-23, *Processing Guidelines for Section 501(c)(3) Applications Involving Potential Political Campaign Intervention* (Dec. 10, 2013) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1213-23[1].pdf.

Sample questions that might be asked of these section 501(c)(3) applicants are publicly available on IRS.gov.[53]

As discussed above, TE/GE adopted and notified applicants under section 501(c)(4) of the new "safe harbor" provisions where the applications "indicate the organization may be involved in political campaign intervention or issue advocacy."[54] The "safe harbor" guidance does not set out what the" indications" may consist of. However, Internal Revenue Manual (IRM) guidance (referenced in the guidance pertaining to 501(c)(3) applicants) does not distinguish between organizations applying under section 501(c)(3) and those applying under section 501(c)(4) in this respect.[55] Sample questions that might be asked of section 501(c)(4) applicants are also publicly available on IRS.gov.[56]

National Taxpayer Advocate Recommendation 7: *The IRS Commissioner should require all IRS functions to clear all guidance and procedures that affect taxpayer rights in any way with TAS and incorporate it into the public IRM (or clear it with internal stakeholders, including TAS, and then post it to the Internet in the same manner as the IRM).*

The National Taxpayer Advocate has repeatedly urged the IRS to share IRM provisions and other guidance affecting taxpayer rights with TAS for review and comment prior to issuance.[57] TE/GE, however, has published several important pieces of guidance without any consultation with TAS. The proposed regulation, discussed above, is one example. The guidance extending the "safe harbor" option to all organizations seeking exemption under section 501(c)(4) is another. Making available to the public,on March 31, a new draft Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* discussed below, is yet a third. These oversights have occurred despite monthly meetings between TE/GE and TAS senior leadership and staff that began in June of 2013. We believe that TE/GE's continuing insistence on implementing procedures and notices without consultations with TAS is unacceptable, uncollaborative, and in violation of the stated congressional purpose of TAS. We expect a change.

53 *See Applying for Exemption/Misc. Determination: Sample Questions: Attempting to Influence Legislation or Political Campaign Intervention Activities, available at* http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organization-Sample-Questions-Attempting-to-Influence-Legislation-or-Political-Campaign-Intervention-Activities. The first question, which follows an explanation of the difference between a section 501(c)(3) organization and a section 501(c)(4) organization is "State whether or not you would like us to consider you as an organization described under Section 501(c)(4) as a social welfare organization rather than as a Section 501(c)(3) organization."

54 Tax Analyst Tax Notes Today, 2013 TNT 129-15 *IRS Provides Instructions For Optional Expedited Process For Some Tax-Exempt Applications* (July 5, 2013).

55 *See* IRM 7.20.5.4, Cases Subject to Review (Mar.7, 2008) par. (3)(x) providing for mandatory review of "[a]pplications that present sensitive political issues, including the following types of activities: Voter registration; Inaugural and convention host committees; Post-election transition teams (to assist the elected official prior to officially assuming the elected position); Voter guides; Voter polling; Voter education; Other activities that may appear to support or oppose candidates for public office."

56 *See Applying for Exemption/Misc. Determination: Sample Questions: Attempting to Influence Legislation or Political Campaign Intervention Activities, available at* http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organization-Sample-Questions-Attempting-to-Influence-Legislation-or-Political-Campaign-Intervention-Activities.

57 *See, e.g.*, National Taxpayer Advocate's Report in Response to the Acting Commissioner's 30 Day Report, *Analysis and Recommendations to Raise Taxpayer and Employee Awareness of the Taxpayer Advocate Service and Taxpayer Rights* (Aug. 19, 2013), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/30-Day-Report.pdf. *See also* Area of Focus: Guidance Clearance Process, below, describing the lack of currency of many IRM provisions and the use of interim guidance.

The National Taxpayer Advocate has raised concerns about TE/GE's pattern of ignoring TAS as a participant in the internal comment cycle, or giving TAS insufficient time to comment prior to publication, to both the TE/GE Commissioner and the Commissioner of Internal Revenue. Both have committed to ensure that TE/GE improves in this regard, and as discussed below, TE/GE recently shared draft interim guidance conferring administrative appeal rights, which has now been issued.[58]

National Taxpayer Advocate Recommendation 8: *Implement the National Taxpayer Advocate's recommendation to create a Taxpayer Bill of Rights.*

As discussed in the Special Report, according to TIGTA EO did not always operate in accordance with the rights articulated in the Taxpayer Bill of Rights (TBOR).[59] Thus, in the Special Report, the National Taxpayer Advocate recommended the adoption of TBOR as a means of improving handling of EO cases, among other things. She found that based on TIGTA's description of IRS actions with respect to 501(c)(4) organizations, the IRS violated at least eight of the ten taxpayer rights proposed by the National Taxpayer Advocate.[60]

As discussed below, on June 10, 2014, the IRS adopted a TBOR and has incorporated it into Publication 1, *Your Rights as a Taxpayer*.[61] In FY 2015, TAS will work to educate taxpayers and IRS employees, including EO employees, about the TBOR and to embed the TBOR into IRS practices and procedures.

National Taxpayer Advocate Recommendation 9: *Authorize the National Taxpayer Advocate to make an "apology" payment of up to $1,000 to a taxpayer where the action or inaction of the IRS caused excessive expense or undue burden, and the taxpayer experienced a "significant hardship."*

The National Taxpayer Advocate recommended that Congress authorize apology payments. If enacted, an organization could seek an apology payment if EO violated the taxpayer's rights, such as when EO delayed taking action on an application for recognition of exempt status.[62] The National Taxpayer Advocate is not aware of any steps that Congress has taken to implement this recommendation since the issuance of last year's Special Report.[63]

58 Interim Guidance,TEGE-07-0514-0012 (May 19, 2014), *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-0514-0012[1].pdf. The National Taxpayer Advocate has also recommended that the IRS allow administrative review of automatic revocations of tax exempt status. See National Taxpayer Advocate 2011 Annual Report to Congress 562, Legislative Recommendation: *Provide Administrative Review of Automatic Revocations of Exempt Status, Develop a Form 1023-EZ, and Reduce Costs to Taxpayers and the IRS by Implementing Cyber Assistant*.

59 Special Report at vii.

60 Special Report vii-viii.

61 See Area of Focus: Taxpayer Rights, *supra*; *IRS Adopts Taxpayer Bill of Rights.* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights; William Hoffman, *Koskinen and Olson Unveil IRS's New Taxpayer Bill of Rights* 2014 TNT 112-2 (June 10, 2014) (noting the Commissioner's commitment to include TBOR in Pub. 1, *Your Rights as a Taxpayer,* which reaches about 30 million taxpayers each year); Pub. 1 (rev. June 2014) *available at* http://www.irs.gov/pub/irs-pdf/p1.pdf.

62 Special Report at 5.

63 The National Taxpayer Advocate initially recommended that Congress authorize the IRS to make symbolic apology payments in her 2007 report for reasons unrelated to problems with TE/GE. See National Taxpayer Advocate 2007 Annual Report to Congress 478-489 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis "Apology" Payment*). The proposal was included in The TAX GAP Act, S. 1289, 112th Cong. § 107 (2011).

National Taxpayer Advocate Recommendation 10: ***Reinstate the annual joint oversight hearings held after RRA 98 to help identify and address problem areas, with specific focus on how the IRS is meeting the needs of particular taxpayer segments, including individuals, small businesses, and exempt organizations.***

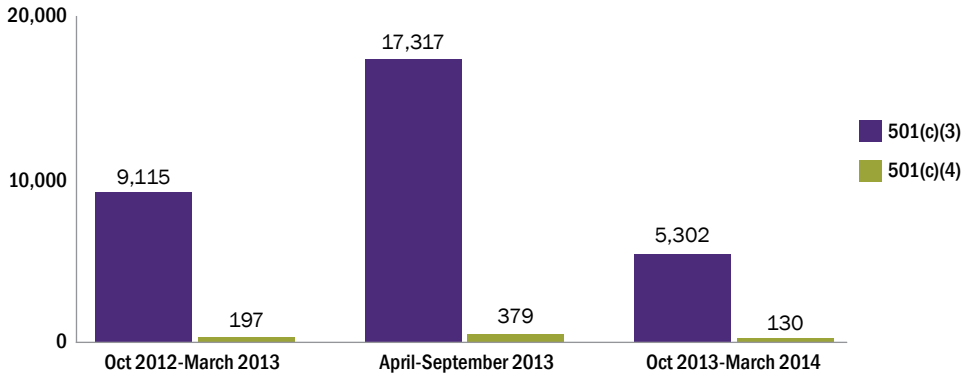
The National Taxpayer Advocate is not aware of any steps Congress has taken to implement this recommendation.

National Taxpayer Advocate Recommendation 11: ***EO should track the age and cycle time of all of its cases, including those referred to EO Technical, so that it can detect backlogs early in the process and conduct periodic reviews of over-aged cases to identify the cause of the delays.***

EO uses the Exempt Determination System, its system of record, to track inventory, and provided data about its determinations inventory over the past two years.[64]

As Figure II.5 shows, from FY 2013 to the first half of FY 2014, EO closed many of its cases by approving the applications, without any contact with the taxpayer.[65] It closed many more applications under section 501(c)(3) than under section 501(c)(4).

FIGURE II.5, EXEMPT ORGANIZATION APPLICATIONS APPROVED WITH NO CONTACT



Average cycle time for all approved applications actually increased from the first half of FY 2013 to the first half of FY 2014, from 195 to 315 days or 62 percent.[66] The cycle time of applications approved with no contact with the taxpayer or with accelerated procedures rose at an even greater rate, climbing from 160 days in the first half of FY 2013 to 298 days in the first half of FY 2014, an increase of 86 percent. The number of over-age cases (in

64 TE/GE response to TAS information request (May 30, 2014).

65 EO approved 3,764; 7,471; and 3,219 applications in the first half of FY 2013, the second half of FY 2013, and the first half of FY 2014, respectively. EO approved, without any contact with the taxpayer, an additional 9,115; 17,317; and 5,302 cases in the same respective periods, and an additional 7,282; 12,852; and 9,706 cases using streamlined procedures in the same respective periods. It disapproved 41; 72; and 41 applications in the same respective periods.

66 Cycle time is the number of days that elapse between the date the application was received and the date it was closed. IRM 7.22.7.3 (Jan. 1, 2003).

which the application had been outstanding for more than 270 days) that were ultimately approved, however, began at 7,701 in the first half of FY 2013, peaked at 15,963 in the second half of FY 2013, and declined to 10,978 in the first half of FY 2014.[67]

This data is consistent with EO's approach of working its older inventory first. While this approach is appropriate, cycle times remain unacceptably high. The TE/GE Commissioner announced a goal of having year-end inventory with no applications under section 501(c)(3) that have been pending for more than nine months. The ultimate goal is to process all applications within six months.[68] The National Taxpayer Advocate finds these goals admirable and has heard them announced in earlier years, but as described below, she now has serious concerns about how EO intends to accomplish them.[69]

National Taxpayer Advocate Recommendation 12: *EO should track requests for guidance or assistance from the EO Technical Unit so that management can assess the timeliness and quality of the guidance and assistance it provides to both Determinations Unit employees and the public.*

In interim guidance issued on July 15, 2013, TE/GE advised EO Determinations employees how to request technical assistance from EO Technical. According to the guidance:

> Technical assistance may involve any tax matter or emerging technical issue(s) and is requested when:
>
> a. A potential problem is recognized from a newspaper or magazine article.
>
> b. A relevant state or local law or ordinance was recently enacted.
>
> c. Uncertainty exists regarding the interpretation of internal revenue laws, related statutes and regulations, published revenue rulings, revenue procedures, or any other published precedent.[70]

The interim guidance imposes timeframes for responding to requests for technical assistance and provides for tracking of the requests. EO established a dedicated email account for EO Determinations employees to submit technical assistance requests to EO Technical.[71] These requests, which management is expected to expedite, are logged and monitored to ensure they are completed within 30 to 120 days, and are subject to monthly mandatory

67 For applications that were ultimately disapproved, average cycle time also increased, going from 793 days in the first half of FY 2013 to 1,039 days in the first half of FY 2014 an increase of 31 percent. The number of over-age cases that were ultimately disapproved went from 41 in the first half of FY 2013 to 70 in the second half of FY 2013, then back to 41 for the first half of FY 2014.

68 Jeff Carlson, *IRS Making Progress in Improving 501(c)(3) Application Process, Says Koskinen*, CCH News (April 8, 2014), reporting on Commissioner Koskinen's testimony before the House Appropriations Committee Subcommittee on Financial Services and General Government on the fiscal year 2015 IRS budget.

69 *See, e.g.*, IRS response, National Taxpayer Advocate 2012 Annual Report to Congress 202-203 (Most Serious Problem: *Overextended IRS Resources and IRS Errors in the Automatic Revocation and Reinstatement Process are Burdening Tax-Exempt Organizations*);IRS response, National Taxpayer Advocate 2007 Annual Report to Congress 217 (Most Serious Problem: *Determination Letter Process*).

70 See Interim Guidance, TEGE-07-0713-11, *Interim Guidance on Requests for Technical Assistance* (July 15, 2013).

71 TE/GE response to TAS information request (May 30, 2014).

reviews.[72] Since the July 15, 2013, guidance was issued, EO Technical received two requests, both of which it answered and closed expeditiously.[73]

In interim guidance issued on September 30, 2013, TE/GE advised employees that it had formed a new EO Emerging Issues Committee (EIC) "as part of our efforts to ensure that potential issues needing coordination are properly handled, decisions documented, and employees provided sufficient guidance, procedures, and training to perform their duties."[74] The guidance includes the new committee's charter, a detailed flowchart explaining its processes and timeframes, and a form to refer issues to the committee. The EIC tracks the receipt and disposition of elevated issues and communicates the disposition to the originating employee.[75] It has received eight elevated issues, all in the first half of FY 2014,[76] and has vetted and completed review of four.[77] Of the remaining four issues, three are under review, and one could be resolved by current internal processes.[78]

With respect to individual applications for status under section 501(c)(4), in interim guidance issued on December 23, 2013, TE/GE instructed employees how to handle cases in which an organization received Letter 5228, *Application Notification of Expedited 501(c)(4) Option*, discussed above, but did not respond with the required certifications within 45 days.[79] Those applications would be sent for further review to EO Technical, which could request additional information from the organization. If the unit recommended an adverse determination, Chief Counsel attorneys would review the application. If Chief Counsel did not agree with the EO Technical recommendation, the application would be further reviewed by the newly-formed Advocacy Application Review Committee, comprised of the Director, EO; Commissioner (TE/GE); and Division Counsel/Associate Chief Counsel (TE/GE), or their delegates. As described below, these procedures have been supplanted by normal administrative appeal procedures.[80]

National Taxpayer Advocate Recommendation 13: *The IRS should create an administrative appeal process for organizations whose exempt status was automatically revoked in error.*

The National Taxpayer Advocate recommended in her 2013 Annual Report to Congress that the IRS

72 TE/GE response to TAS information request (May 30, 2014).

73 *Id.*

74 See Interim Guidance, TE[illegible]*sue Committee* (Sept. 30, 2013), *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-0913-17%5b1%5d.p

should be four issues, "two

75 TE/GE response to TAS information request (May 30, 2014).

76 *Id.*

77 Of these four issues," two pertained to procedural items associated with application case work and not particular to technical case law. The remaining two issues pertained to established tax law and resolution was provided back to the originator." TE/GE response to TAS information request (May 30, 2014).

78 "A reminder of that existing process was provided to the originator of the issue." TE/GE response to TAS information request (May 30, 2014).

79 See Interim Guidance, TEGE-07-1213-24, *Request for EO Technical Assistance* (Dec. 23, 2013) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1213-24%5B1%5D.pdf .

80 Interim Guidance,TEGE-07-0514-0012 (May 19, 2014) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-0514-0012[1].pdf.

> [i]ssue a letter informing the organization when the IRS proposes to treat it as having had its exempt status automatically revoked and providing an opportunity to correct the condition that caused the proposed automatic revocation within 30 days. The letter should specify the availability of administrative review for organizations raising concerns that the IRS is proceeding in error.[81]

The IRS responded to this recommendation by noting that when it notifies organizations that they did not file a return, it also advises them of the consequences of failing to file for three consecutive years, and that "the effectiveness of yet another letter thirty days before automatic revocation would be unclear."[82] Moreover, according to the IRS,

> The statute does not provide for administrative review of automatic revocation. Once an organization has failed to file the third required return, it is revoked by operation of law. In addition to its existing efforts, the IRS will consider further steps to advise organizations of their filing obligation, particularly by reviewing the content of Notice 259A and Notice CP 575E ("We assigned you an Employer Identification Number"), which is generally received at inception, and revising them as appropriate.[83]

The National Taxpayer Advocate urged the IRS to reconsider its position, noting that administrative review is not prohibited by statute, and that even if exempt status is revoked by operation of law, nothing requires the IRS to immediately remove the organization from the list of those eligible to receive deductible contributions (which could be fatal to the organization).[84] She noted that the IRS already adjusts its records, and the list the public relies on, after it erroneously lists organizations as no longer exempt, a procedure that takes time. Sound tax administration would allow organizations to show the IRS is in error beforehand, and would minimize damage and rework.[85]

The IRS has not changed its response to the recommendation. However, as noted above, on June 9, 2014, the IRS adopted the Taxpayer Bill of Rights (TBOR), which includes "administrative appeal of most IRS decisions ..."[86] These positions seem inconsistent. Thus, in accordance with TBOR principles, in FY 2015, the National Taxpayer Advocate will continue to advocate that the IRS provide organizations with an opportunity to disagree with the automatic exemption before removing them from the public list of exempt organizations. She will also recommend a legislative change in her 2014 Annual Report to Congress.

81 National Taxpayer Advocate 2013 Annual Report to Congress 165, 172, Most Serious Problem: *EXEMPT ORGANIZATIONS: The IRS Continues to Struggle with Revocation Processes and Erroneous Revocations of Exempt Status*.

82 IRS Response to recommendation 15-1, National Taxpayer Advocate 2013 Annual Report to Congress 165, 172, Most Serious Problem: *EXEMPT ORGANIZATIONS: The IRS Continues to Struggle with Revocation Processes and Erroneous Revocations of Exempt Status.*

83 IRS Response to recommendation 15-1, National Taxpayer Advocate 2013 Annual Report to Congress 165, 172, Most Serious Problem: *EXEMPT ORGANIZATIONS: The IRS Continues to Struggle with Revocation Processes and Erroneous Revocations of Exempt Status* (May 23, 2014), *available at* taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

84 June 2, 2014 comment from the National Taxpayer Advocate to IRS operating divisions on their responses to the 2013 Annual Report to Congress recommendations.

85 *Id.*

86 See *IRS adopts Taxpayer Bill of Rights, available at* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights.

National Taxpayer Advocate Recommendation 14: ***The National Taxpayer Advocate should provide training to EO employees about her authority under IRC § 7811 to order expedited processing of applications for exempt status and advocate for taxpayers.***

As described in the National Taxpayer Advocate's 2013 Special Report, the TE/GE Director of Exempt Organizations had for years maintained that the "expedite" criteria specific to EO determinations cases, found in the IRM and other IRS guidance, governed TAS EO cases.[87] The National Taxpayer Advocate maintained that TAS's statutory authority to direct the IRS to act where a taxpayer is experiencing a significant hardship applied to EO cases, regardless of EO's "expedite" criteria. The attitude that EO did not have to be responsive to TAS permeated the organization. In two two-hour face-to-face meetings with managers and employees in the EO Determinations Unit on August 7, 2013, the National Taxpayer Advocate explained the Office of the Taxpayer Advocate's statutory authority under IRC § 7811 and the role of TAS in EO cases. By the end of August 2013, under instructions from newly-appointed EO leadership, the unit's employees no longer insisted on applying only EO expedite criteria and routinely accepted TAS requests for expedited processing where TAS determined that the taxpayer was suffering or about to suffer a significant hardship within the meaning of IRC § 7811.[88]

We have encountered resistance from EO leadership and employees in ways that demonstrate they still do not understand TAS's role.

On June 26, 2014, the National Taxpayer Advocate recorded additional training for TE/GE employees on TAS's role and TAS procedures, which is expected to be delivered in July of 2014. In the meantime, we have encountered resistance from EO leadership and employees in ways that demonstrate they still do not understand TAS's role. In addition to overlooking TAS's role in reviewing proposed guidance that affects taxpayer rights, EO has refused to share information in its files with TAS, claiming it is "nondisclosable."[89] EO initially declined to allow TAS employees access to a database that would allow TAS to advocate more effectively for taxpayers.[90]

87 National Taxpayer Advocate's Special Report at 28.

88 Email from Acting Director, EO Rulings and Agreements, to front-line managers (Aug. 13, 2013).

89 For example, EO employees sometimes prepare checksheets, which are similar to inventories of information the organization has submitted, to assist in evaluating applications for exempt status. TAS learned of the checksheets when the National Taxpayer Advocate met with EO managers and employees in August of 2013. She noted that case advocates, by consulting a checksheet, could more easily identify missing or insufficient information in an application for exempt status and could assist the taxpayer in obtaining additional documents. EO assisted TAS in including a discussion of the checksheets in TAS's December 2013 training for TAS employees, discussed below, and provided the checksheets for inclusion in TAS's written training materials. When case advocates, after taking the training, began requesting the checksheets, EO employees refused to provide them, citing "problems" with "disclosure."

90 TE/GE databases, such as TEDS (for Tax Exempt Determination System) may contain the organization's application for exempt status, or supporting documents, such as the organization's articles of incorporation. Review of these materials may assist a TAS case advocate in determining whether the application appears sufficient, or whether a required document or provision in a document is lacking, and to work with the taxpayer to rectify any error. The National Taxpayer Advocate has since obtained a commitment from the Commissioner of TE/GE to provide licenses to ten TAS employees in various geographic locations to access TEDS, but this access has yet to be implemented.

National Taxpayer Advocate Recommendation 15: *TAS and the National Taxpayer Advocate should provide guidance and training to EO employees about when to refer cases to TAS.*

The National Taxpayer Advocate's June 26 training included examples of the types of cases and requests TE/GE (primarily EO employees, who handle applications for recognition of exempt status) would receive from TAS. The training also instructed TE/GE employees about how and when to refer cases to TAS, and clarified their obligation to share information in IRS files with TAS employees who have a business reason to review it.

National Taxpayer Advocate Recommendation 16: *TAS and the National Taxpayer Advocate should provide guidance and training to EO employees about when to refer systemic issues to TAS.*

The National Taxpayer Advocate's training for TE/GE employees also included instruction on how to identify systemic issues and record them on TAS's tracking system, Systemic Advocacy Management System (SAMS).

New Developments

The National Taxpayer Advocate Provided Training to TAS Employees, But EO Substantially Changed its Procedures

In December 2013, the National Taxpayer Advocate and her staff developed courses that TAS employees were required to complete by March 14, 2014.[91] Notwithstanding our best efforts and communications with EO, however, EO changed whole elements of its procedures within weeks after the TAS training. The first portion of the training consists of written materials and a video in which TAS Attorney Advisors explain the rules for obtaining exempt status under IRC § 501(c)(3) and (c)(4). The training, based on materials EO uses to train its own employees, clarifies matters such as why an EO employee needs certain documentation from the taxpayer, such as articles of incorporation or other organizational documents, in order to make a determination. The second portion of the training consists of written materials and another video in which the National Taxpayer Advocate discusses the issues that most frequently arise in TAS cases involving exempt organizations.[92] The training instructs employees how to advocate for taxpayers in light of EO's processes and procedures. At TAS's request, EO advised TAS of items it believes would be helpful to include in the training, and the National Taxpayer Advocate incorporated those suggestions into her presentation.

EO's procedures changed shortly after TAS taped its training. For example, EO no longer prepared the same checksheets that helped identify elements of an application, such as

91 The National Taxpayer Advocate has steadfastly committed to provide this training. National Taxpayer Advocate Special Report 28-34; National Taxpayer Advocate's Report in Response to the Acting Commissioner's 30 Day Report, *Analysis and Recommendations to Raise Taxpayer and Employee Awareness of the Taxpayer Advocate Service and Taxpayer Rights* at 3 (Aug. 19, 2013).

92 The two videos were recorded on DVDs, designated as C01 and C02, and accompanying written training materials were prepared, designated with course numbers of 55250-102 (student guide) and 55250-103 (facilitator guide).

articles of incorporation, that were missing or insufficient.[93] As described below, even more drastic was EO's shift to a streamlined application process, previously reserved for existing inventory, for new applications.

EO Adopted Streamlined Procedures for Reducing Existing Inventory

In addition to attending to its inventory of applications for exempt status under section 501(c)(4), EO adopted streamlined procedures for managing its backlog of 501(c)(3) applications.[94] The streamlined procedures, which initially applied only to cases more than a year old, allowed certain aspects of the application to be "developed through attestation" rather than substantiating documents.[95] For example, if the organization did not submit an organizing document with its application, or if the document was not a filed or conformed copy, then the organization would be asked to attest that it had an "appropriate organizing document," and to give the date the organizing document was filed (in the case of a corporation) or adopted (in the case of an association or trust). The organization would also be asked to attest that its organizing document meets statutory and regulatory requirements or had been amended to meet these requirements.[96] If the organizing document appeared to be insufficient, the organization would be directed to amend it to include the appropriate provisions and attest that the necessary amendments had been made.

If the IRS needed clarification regarding the activities of the organization (*e.g.*, because the organization did not include a narrative statement of its activities as required by Form 1023 or because the statement was simply a mission statement or did not provide sufficient detail to evaluate it), then it asked the organization to attest that it met the operational test for exempt status.[97] If there was clear evidence of an issue that would cause the organization to be denied exemption under the organizational test, this option of attestation was not available, and the application was evaluated under normal (non-streamlined) procedures.

93 Moreover, as described above, EO refused to provide checksheets it had already prepared, citing "disclosure" concerns.

94 *See Danny Werfel Updates AICPA on IRS Accomplishments* (Nov. 5, 2013), describing the IRS's use of Lean Six Sigma methodology as a means of reducing inventory backlog, *available at* http://irweb.irs.gov/AboutIRS/co/news/38749.aspx.

95 On Dec. 9, 2013, EO provided TAS with a detailed description of the streamlined process. See SAMS 28975. In a Jan. 26, 2014, memorandum from the Acting Director, Exempt Organizations, *Streamlined Processing Guidelines for Cases Over One Year Old*, EO adopted the streamlined procedures for inventory over a year old as of Oct. 1, 2013.

96 IRS Letter 1312, *Request for Additional Information*, would advise that "Section 1.501(c)(3)-1(b) of the Treasury Regulations describes the requirements an organizing document must meet in order for an organization to be organized for one or more exempt purposes under section 501(c)(3). The organizing document must: (a) Limit the purposes of such organization to one or more exempt purposes under IRC 501(c)(3); and (b) not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes; and (c) provide that an organization's assets must be dedicated to an exempt purpose within IRC 501(c)(3), either by an express provision in its governing instrument or by operation of law."

97 IRS Letter 1312, *Request for Additional Information*, would advise "It is not evident from the information you submitted whether or not you meet the operational requirements to be exempt under section 501(c)(3). Therefore, please sign below to attest that you are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

In February of 2014, EO extended the streamlined procedures for processing applications under section 501(c)(3) to all existing inventory (*i.e.*, not only to applications that were more than a year old).[98]

EO Will Now Extend Streamlined Processing to New Applications Through a New Form 1023-EZ

In her 2011 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS develop a Form 1023-EZ for use by small organizations.[99] It was her position that a Form 1023-EZ could be designed to elicit relevant information without imposing undue burden on exempt organizations.[100] The IRS responded that it did "not believe that a less comprehensive application satisfies Congress' intent in requiring automatically revoked organizations to apply to the IRS for recognition of exemption." Rather, the IRS said it believed "its obligation to decide whether an organization qualifies for exemption, by itself, justifies the extent of information requested on the Form 1023." Moreover, "the Form 1023 also serves an educational purpose because it provides applicants either an introductory or a refresher course on the rules for tax exemption. Finally, the law encourages transparency and accountability to the public by requiring organizations to make their Form 1023 exemption applications and their Form 990-series information returns available to the public."[101]

Despite these previous demurrals, on March 31, 2014, the IRS made available to the public, without first consulting with the National Taxpayer Advocate, a proposed draft of IRS Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.[102] The form adopts the same "streamlined" approach described above: organizations with a specified level of annual gross receipts, which we understand will be $50,000 or less, will not be required to furnish any documents in support of their claim that they are tax exempt. They will merely attest that they meet the requirements for

98 Memorandum from the Acting Director, *Exempt Organizations Streamlined Processing Guidelines for All Cases* (Feb. 28, 2014).

99 National Taxpayer Advocate 2011 Annual Report to Congress 437 (Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*), 562 (Legislative Recommendation: *Provide Administrative Review of Automatic Revocations of Exempt Status, Develop a Form 1023-EZ, and Reduce Costs to Taxpayers and the IRS by Implementing Cyber Assistant*).

100 For example, question 11 of Part VII could be described as "mindnumbing" and likely inapplicable to small organizations. That question is: "Do you or will you accept contributions of: real property; conservation easements; closely held securities; intellectual property such as patents, trademarks, and copyrights; works of music or art; licenses; royalties;automobiles, boats, planes, or other vehicles; or collectibles of any type? If 'Yes,' describe each type of contribution, any conditions imposed by the donor on the contribution, and any agreements with the donor regarding the contribution." Another example is in Part V, question 1b: "List the names, titles, and mailing addresses of each of your five highest compensated employees who receive or will receive compensation of more than $50,000 per year." A Form 1023-EZ could simply ask if any employees received more than $50,000 per year in compensation from the organization. If the answer is "yes", then the EO could be required to file the full Form 1023.

101 IRS Response, National Taxpayer Advocate 2011 Annual Report to Congress 437 at 445-446 (Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*).

102 The IRS notified the public it was developing a Form 1023-EZ and requested comment. Submission for OMB Review; Comment Request, 79 Fed. Reg.18124 (Mar. 31, 2014), *available at* https://www.federalregister.gov/articles/2014/03/31/2014-07066/submission-for-omb-review-comment-request. The notice did not contain the draft Form 1023-EZ, but a copy of a Feb. 19, 2014, version of the form was available at www.reginfo.gov/public/do/DownloadDocument?documentID=454039&version=0.

tax exemption.[103] Form 1023-EZ does not even provide a space for, much less require, a narrative description of the organization's proposed activities.

On May 5, 2014, TAS raised its concerns in comments on the draft form through internal review procedures. The National Taxpayer Advocate also had extensive conversations with the Commissioner and raised her concerns in additional conversations with officials in the Treasury's Office of Tax Policy. On May 19, 2014, the IRS Office of Chief Counsel included the National Taxpayer Advocate in its circulation of proposed regulations that would amend current regulations to allow certain applicants for recognition of exempt status under IRC § 501(c)(3) to apply using Form 1023-EZ. On May 29, 2014, the IRS Office of Chief Counsel included the National Taxpayer Advocate in its circulation of a proposed revenue procedure implementing Form 1023-EZ.

On May 27, 2014, the National Taxpayer Advocate sent a memorandum to the Chief Counsel, the Commissioner of TE/GE and the Assistant Secretary (Tax Policy) of the Department of the Treasury, with a copy to the IRS Commissioner, outlining her concerns with the draft form.[104] The memorandum is attached to this report.

The IRS, by granting near-automatic exempt status to organizations anticipating less than $50,000 in annual receipts, which, according to TE/GE, constitute a significant majority of new EOs, evidently believes these organizations pose low risks to compliance simply by virtue of their limited size, an assumption not based on any reliable empirical data.

The National Taxpayer Advocate continues to be deeply concerned about the IRS's abdication of its responsibility to *determine* whether an organization is organized and operated for an exempt purpose and not merely accept an organization's statement to that effect. By adopting this approach, the IRS will undo, in the space of less than six months, decades of practice in this area. Moreover, it appears the IRS intends to implement Form 1023-EZ by issuing temporary regulations and a revenue procedure for which it never sought public comment.[105] The National Taxpayer Advocate submitted her formal comments to the draft implementing materials on June 9, 2014.[106] In her comments, the National Taxpayer Advocate noted that:

- The IRS, by granting near-automatic exempt status to organizations anticipating less than $50,000 in annual receipts, which, according to TE/GE, constitute a significant majority of new EOs, evidently believes these organizations pose low risks to compli-

103 As of the date of this report, the most recent version of Form 1023-EZ available on IRS.gov is a draft version dated April 23,2014, *available at* http://www.irs.gov/pub/irs-dft/f1023ez--dft.pdf. There are no draft instructions for the form available on IRS.gov, but a Feb. 2, 2014 version of the instructions is available at . http://www.bing.com/search?q=instructions+form+1023-ez&src=IE-SearchBox&Form=IE8SRC. The draft instructions reference a level of gross receipts of $200,000 and assets of $500,000; our understanding is that the gross receipts eligibility ceiling will actually be $50,000.

104 Memorandum from the National Taxpayer Advocate to IRS Chief Counsel, the Commissioner of TE/GE and the Assistant Secretary (Tax Policy), of the Department of the Treasury (May 27, 2014).

105 Additionally, on June 25, 2014, TE/GE shared with TAS draft interim guidance on processing Form 1023-EZ. *See* SAMS 30656.

106 Memorandum from National Taxpayer Advocate to IRS and Treasury officials, *Comment on Proposed Changes to Exempt Organization Application Procedures* (June 9, 2014).

ance simply by virtue of their limited size, an assumption not based on any reliable empirical data;

- The IRS's ability to monitor compliance after an organization obtains its exemption approval will be limited because organizations with receipts of less than $50,000 have minimal reporting obligations once recognized as exempt;[107]
- The taxpaying public will have little or no ability to determine whether an organization is conforming with the purpose for which it was granted tax exemption, because (1) the IRS no longer requires the organization to describe that purpose on the Form 1023-EZ application and (2) the public has no way to determine, from reviewing the annual e-Postcard, the only information return these small organizations are required to submit, whether there has been any deviation from the (undescribed) purpose;
- Small EOs inevitably will endure "gotcha" audits because anyone – literally anyone – will be able to answer the questions on the draft Form 1023-EZ and operate for years without the IRS's ever noticing any problems; and
- By failing to conduct a comprehensive evaluation of the downstream consequences and other impacts of the current piloted approach to streamlined EO application processing, the IRS appears to be ignoring the serious compliance concerns raised by the National Taxpayer Advocate and other stakeholders, including officials who oversee the activities of nonprofits operating at the state level.[108]

EO has been using streamlined procedures to process existing inventory for the past nine months at least. The National Taxpayer Advocate proposed that EO, before proceeding with Form 1023-EZ, analyze a representative sample of applications processed with streamlined procedures and determine whether the organizations are compliant. For example, if an organization was told to amend its articles of incorporation (but not required to actually demonstrate that it had done so), EO could verify whether this had been done. EO could look at the organization's documents, websites, licensing, and information returns, among other things, to determine whether the attestations made pursuant to the streamlined procedures were reliable and whether the activities the EO is undertaking are, in fact, charitable, scientific, or educational. The efficacy of any post-exemption compliance approach EO is contemplating could be tested now, as a pilot, on a sample of organizations.

The IRS declined to adopt the National Taxpayer Advocate's suggestion. The National Taxpayer Advocate has been advised that the IRS intends to conduct audits of a

107 Form 990-N, or e-Postcard, is submitted by organizations with $50,000 in annual gross receipts or less. It is filed electronically and contains fields for the following information: the organization's name; any other names the organization uses; the organization's mailing address; the organization's website address (if applicable); the organization's employer identification number (EIN); the name and address of a principal officer of the organization; the organization's annual tax period; a statement that the organization's annual gross receipts are still normally $50,000 or less; and if applicable, a box to indicate the organization is going out of business. See IRM 21.3.8.12.24 (Nov. 16, 2012).

108 *See, e.g.*, Letter from President, National Association of State Charity Officials commenting on proposed Form 1023-EZ (April 30, 2014), *available at* http://www.nasconet.org/wp-content/uploads/2014/05/FINAL-NASCO-comments-re-Form-1023-EZ1.pdf; National Council of Nonprofits, *Is the 1023-EZ a Step Backward for Regulators and Nonprofits?* (June 4, 2014), *available at* http://www.councilofnonprofits.org/news/council-nonprofits-news/1023-ez-step-backward-regulators-and-nonprofits.

representative sample of EOs using the streamlined procedures at the mid- and full-year mark, and will adjust its procedures to address any noncompliance it identifies. The National Taxpayer Advocate finds this approach to determining EO eligibility misguided – walking away from the one moment in time when the IRS holds the greatest leverage to obtain compliance right from the start, and relying instead on the limited effect of a small number of audits to correct the compliance problems it creates by not ensuring compliance at the outset. No one would suggest the IRS stop preventing questionable Earned Income Tax Credit (EITC) refunds from being paid and instead rely solely on post-refund EITC audits to drive compliance. With most new EOs merely having to "attest" to their exempt purpose, the IRS significantly increases the risk of tax evasion and revenue loss.

It remains to be seen whether states that currently confer benefits on the basis of a favorable IRS determination will continue to do so for Form 1023-EZ filers.[109] If not, the benefits of an abbreviated form will be restricted, as organizations eligible to file Form 1023-EZ may file Form 1023 instead. Similarly, grant-making entities may require tax-exempt organizations to submit Form 1023 in order to be eligible for grants. In the meantime, Forms 1023-EZ, like inventory worked using streamlined procedures, will be processed by 25 newly-hired tax examiners and about 40 employees from the Wage and Investment division (who do not necessarily have any background in EO principles and, like the new hires, would need training unless they are merely applying a "checklist" approach to the so-called determination process).[110] TE/GE also announced that it would conduct predetermination checks on a statistically valid random sample of Form 1023-EZ filers "about items they have checked on the form."[111]

EO Limited the Types of Cases that Would be Referred to EO Technical, and Provided for Administrative Review of EO Technical Determinations

In April of 2014, TE/GE issued interim guidance that restricted matters to be referred to EO technical to:

- Applications under section 501(c)(3) from hospitals subject to requirements under section 501(r), pending training for EO Determinations personnel on this technical matter, scheduled for summer 2014;
- Applications under IRC § 501(c)(4), pursuant to the interim guidance issued on December 23, 2013, (*i.e.*, those that did not respond with the required certifications within 45 days); and

109 The Texas Comptroller of Public Accounts, for example, advises that "If your organization has received exemption from federal taxation under 501(c)(3), (4), (8), (10) or (19), it qualifies for exemption from sales tax and, if incorporated, franchise tax." *See Frequently Asked Questions About Exemptions, available at* http://www.window.state.tx.us/taxinfo/exempt/exemptfaq.html.

110 See transcript of April 10, 2014 TE/GE Town Hall meeting *available at* http://tege.web.irs.gov/special/comm-corner/messages/4-10-town-hall-transcript.pdf at which the Director of Exampt Organizations discussed the hiring of 25 new tax examiners to process Form 1023-EZ applications; Wage & Investment Business Performance Review, Second Quarter 2014, (May 15, 2014), noting that "AM [the accounts management function] has approximately 40 CSRs [customer service representatives] answering TE/GE calls in the Cincinnati call site. These employees will be available to work cases for the remainder of the fiscal year, as telephone requirements allow."

111 Fred Stokeld, *ABA Meeting: IRS Official Addresses Concerns About EO Form*, 2014 TNT 91-32 (May 12, 2014).

- Technical assistance requests pursuant to the procedures described in interim guidance issued on July 15, 2013,(*i.e.*, where a potential problem is recognized from a newspaper or magazine article; a state or local law or ordinance is recently enacted; or uncertainty exists regarding the interpretation of internal revenue laws, related statutes and regulations, published revenue rulings, revenue procedures, or any other published precedent).[112]

On May 7, 2014, while testifying in a hearing before the House Ways and Means Committee's Subcommittee on Oversight,[113] the IRS Commissioner was asked about the administrative appeal rights of certain organizations that receive a proposed adverse determination from EO Technical.[114] The Commissioner testified that administrative appeal rights had not previously been made available but the IRS was changing its policy to allow administrative appeal rights to these organizations.[115] As noted earlier, the National Taxpayer Advocate recommended that the IRS adopt such rights in her June 2013 Special Report.

On May 9, EO shared with TAS draft interim guidance for allowing administrative review of proposed adverse determinations made by EO Technical.[116] The guidance, which was published on May 19, 2014, permits any organization whose application has been referred to EO Technical (not only those seeking exemption under section 501(c)(4)) to request an administrative appeal of a proposed adverse determination under the same procedures applicable to organizations receiving a proposed adverse determination from EO Determinations.[117] The National Taxpayer Advocate welcomes this development, and notes that this approach is consistent with the principles adopted by the IRS in the Taxpayer Bill of Rights.

EO Extended Relief to Organizations Seeking Reinstatement of Exempt Status

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n December 19, 2013, EO shared with TAS a proposed revenue procedure that included a simplified process for obtaining reinstatement of exempt status that had been

112 *See* Interim Guidance, TEGE-07-0414-0009, *Identification of Cases Transferred to EO Technical* (April 8, 2014) *available at* http://irm.stg.web.irs.gov/irmd/ig/IG_Uploads/IRS.gov_Yes/OUO_No/TEGE-07-0414-0009.pdf.

113 See Written Testimony of John A. Koskinen, ...ice, before the House Ways and Means Committee, Subcommittee on Oversight, *On the 2014 Filing Se...*, 2014), *available at* http://docs.house.gov/meetings/WM/WM06/20140507/102190/HHRG-113-W...pdf.

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114 As described above, pursuant to Interim Guidance, TEGE-07-1213-24, *Request for EO Technical Assistance* (Dec. 23, 2013) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1213-24%5B1%5D.pdf, applications of organizations seeking exemption under section 501(c)(4) that did not respond with the required certifications within 45 days, or for whom EO otherwise proposed to issue an adverse determination, were referred to EO Technical for further review and then to a trio of IRS executives .

115 William Hoffman, *Exemption Applicants Can Appeal Determinations, Koskinen Says* 2014 TNT 89-3 (May 8, 2014).

116 SAMS 30178 (May 9, 2014).

117 Interim Guidance, TEGE-07-0514-0012 (May 19, 2014) *available at* http://www.irs.gov/pub/foia/ig/spder/TEGE-07-0514-0012[1].pdf. For clarification about what procedures apply, see the May 15, 2014 IRS response to TAS's request for clarification, SAMS issue 30178, referencing procedures under "Rev. Proc 2014-9, section 7. Primarily 7.02, 7.05, and 7.06." The cited guidance refers to appeals of a proposed adverse determination letter issued by EO Determinations. Rev. Proc. 2014-9, I.R.B 2014-2 (Jan. 6, 2014) is available at http://www.irs.gov/irb/2014-2_IRB/ar17.html.

automatically revoked for failing to file a return for three consecutive years.[118] The new procedures are available to organizations eligible to file Form 990-N (i.e., gross receipts of $50,000 or less) or Form 990-EZ (i.e., gross receipts of less than $200,000 and total assets of less than $500,000 at the end of the taxable year).[119]

Among other things, under Section 4 of the guidance, eligible organizations that apply for reinstatement (using Form 1023 or Form 1024) within 15 months of the date of automatic revocation may be deemed to have had reasonable cause for failing to file the required returns and may obtain reinstatement retroactive to the date of revocation.[120]

The National Taxpayer Advocate welcomes this aspect of the guidance.[121] She remains concerned, however, about the delay in updating Select Check, the list of exempt organizations on which the public and potential donors rely, sometimes exclusively.[122] Because Select Check is updated only monthly, a new or newly reinstated exempt organization may lose grants or funding in the weeks it takes for its name to appear on Select Check as exempt.[123]

The reinstatement guidance also notes: "This rule will apply to Applications submitted before the date the IRS revises the Form 1023 and Form 1024 to permit organizations that otherwise qualify for retroactive reinstatement under this Section 4 to demonstrate reasonable cause by attesting that the organization's failure to file was not intentional and that it has put in place procedures to file in the future. After such date, reasonable cause may be demonstrated through that attestation."[124] Consistent with this provision, Part V of Form 1023-EZ, captioned Reinstatement After Automatic Revocation, permits an organization seeking reinstatement under section four of Revenue Procedure 2014-11 to attest that it "meet[s] the specified requirements of section 4, that its failure to file was not intentional, and that it has put in place procedures to file required returns or notices in the future."

118 Under IRC § 6033(i), EOs not required to file Form 990 or 990-EZ are generally required to file Form 990-N, *Electronic Notice* (e-Postcard). IRC § 6033(j) provides for automatic revocation of tax-exempt status for failing to file a required return or e-Postcard for three consecutive years. IRC § 6033(j)(2) provides that an organization must reapply for reinstatement following automatic revocation, and IRC § 6033(j)(2) provides that the IRS can reinstate an organization's exempt status retroactively to the date of automatic revocation if the organization shows reasonable cause for its failure to file the required return or e-Postcard.

119 The revenue procedure was published on Jan. 13, 2014 (Rev. Proc. 2014-11, 2014-3 I.R.B. 411.) This guidance is not the first time EO has provided relief to small EOs whose exempt status was automatically revoked. See National Taxpayer Advocate 2012 Annual Report to Congress 194, Most Serious Problem: *Overextended IRS Resources and IRS Errors in the Automatic Revocation and Reinstatement Process are Burdening Tax-Exempt Organizations*, describing transitional relief provided in Notice 2011-43, 2011-25 I.R.B. 882. Notice 2011-43 also provided for a reduced user fee of $100. TAS advocated for a reduced user fee for organizations applying under revenue procedure 2014-11 but EO declined.

120 Rev. Proc. 2014-11, sec. 4.

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3 provides "For any year for which the organization was eligible to file a Form 990-N, the organization is not required to file a m 990-EZ for such year." Form 990-N cannot be filed for prior taxable years in any event. However, the IRS continues to send ganizations soliciting prior year returns. See SAMS issue 30416. TAS will alerte case advocates to this condition in a July, 2014 edition of the weekly all-employee TAS newsletter and will work with EO in FY 2015 to address this problem.

122 National Taxpayer Advocate 2012 Annual Report to Congress 192 (Most Serious Problem: *Overextended IRS Resources and IRS Errors in the Automatic Revocation and Reinstatement Process are Burdening Tax-Exempt Organizations*).

123 See answer to question 11, *Exempt Organizations Select Check: Frequently Asked Questions, Exempt Organizations Select Check: Timing of Database Updates for Organizations Whose Exempt Status Is Reinstated, available at* http://www.irs.gov/Charities-&-Non-Profits/Exempt-Organizations-Select-Check:-Timing-of-Database-Updates-for-Organizations-Whose-Exempt-Status-Is-Reinstated. TAS will remind case advocates of this condition in a July 2014 edition of the weekly all-employee TAS newsletter.

124 Rev. Proc. 2014-11, sec. 4.02.

The National Taxpayer Advocate believes allowing mere attestation, without a description of the procedures the organization has adopted to avert future nonfiling, is inadvisable. As with the requirement that organizations provide a narrative description of their activities in the initial application, the act of explaining in writing how the organization will avert future noncompliance would itself lead to future compliance.

Planned Projects for FY 2015

TAS will advocate for exempt organizations by:

- Continuing to request administrative review of automatic revocations before the IRS publishes the names of an organization on the list of those no longer exempt;
- Recommending legislation that would make existing procedures similar to those under IRC § 501(h) available to 501(c)(4) applicants;
- Exploring why EO uses a system to publish the names of exempt organizations, Select Check, that is updated only monthly;
- Reviewing the IRS's procedures for monitoring compliance with all laws, rules, and regulations applicable to IRC § 501(c)(3) organizations for those organizations whose exempt status is based on Form 1023-EZ;
- Submitting a legislative recommendation that the IRS adopt an administrative review procedure that would allow organizations treated as having had their exempt status automatically revoked to demonstrate the revocation was erroneous; and
- Providing refresher guidance or training to TAS employees as necessary.

Attachment

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

May 27, 2014

MEMORANDUM to William J. Wilkins, Chief Counsel
Sunita B. Lough, Commissioner, Tax Exempt and Government Entities Division
Mark Mazur, Assistant Secretary (Tax Policy), U.S. Department of the Treasury

FROM: Nina E. Olson /s/ Nina E. Olson
National Taxpayer Advocate

SUBJECT: Proposed IRS Form 1023-EZ and Green Circulation Draft of Regulations on the Streamlined Application for Recognition of Exemption Under Section 501(c)(3)

On March 31, 2014, the IRS made available to the public, without first consulting with the National Taxpayer Advocate, a proposed draft of IRS Form 1023-EZ, S*treamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.[1] On May 5, 2014, TAS provided comments on draft Form 1023-EZ pursuant to internal review procedures. Those comments, together with the IRS's responses, are attached to this memo. On May 19, 2014, the IRS Office of Chief Counsel included the National Taxpayer Advocate in its circulation of proposed regulations that would amend current regulations to allow certain applicants for recognition of exempt status under IRC § 501(c)(3) to apply using Form 1023-EZ.

1 The IRS notified the public it was developing a Form 1023-EZ and requested comment. Submission for OMB Review; Comment Request, 79 Fed. Reg.18124 (Mar. 31, 2014), *available at* https://www.federalregister.gov/articles/2014/03/31/2014-07066/submission-for-omb-review-comment-request. The notice did not contain the draft Form 1023-EZ, but a copy of a Feb. 19, 2014, version of the form was available at www.reginfo.gov/public/do/DownloadDocument?documentID=454039&version=0. The draft form has since been revised, and an April 24, 2014 version is available at http://www.irs.gov/pub/irs-dft/f1023ez--dft.pdf.

In 2011, I called on the IRS to develop a Form 1023-EZ, and made specific suggestions about what information a Form 1023-EZ should elicit.[2] Exempt Organizations (EO) rejected my recommendation, stating:

> The report of the National Taxpayer Advocate questions why the IRS needs all of the information requested by a Form 1023. The IRS believes that its obligation to decide whether an organization qualifies for exemption, by itself, justifies the extent of information requested on the Form 1023. The Form 1023 also serves an educational purpose because it provides applicants either an introductory or a refresher course on the rules for tax exemption. Finally, the law encourages transparency and accountability to the public by requiring organizations to make their Form 1023 exemption applications and their Form 990-series information returns available to the public.[3]

EO has now changed its position with respect to the benefits of a Form 1023-EZ, a welcome development. However, I am concerned the approach adopted in the proposed Form 1023-EZ and the proposed regulation for "determining" an entity's tax exempt status goes too far in the opposite direction, effectively making a mockery of the IRS's significant oversight function. More specifically, EO is now proposing a Form 1023-EZ that accomplishes none of the objectives it identified less than three years ago. The proposed form allows organizations simply to attest that they meet the statutory requirements for exempt status without providing documentation or detail, rendering the application process not "streamlined" but automatic and unverifiable.

My concerns with the draft Form 1023-EZ center on four specific areas: the lack of any requirement to provide a narrative statement of activities; the lack of any requirement to submit documentation; the lack of any probing questions that would reveal issues of inurement or private benefit; and the $200,000 eligibility threshold. As a consequence, the IRS would relinquish its primary leverage to ensure an organization, at its inception, meets the criteria for tax exemption and remains compliant thereafter. The treasured exemption ruling would be issued without requiring applicants to demonstrate why, unlike other organizations, they should be exempt from paying tax.

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2 National Taxpayer Advocate 2011 Annual Report to Congress 437 (*Status Update: The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*), *available at* http://tasnew.web.irs.gov/Files/Communications/NTAReports/irs_tas_arc_2011_vol_1.pdf., (noting "[f]or example, Part V, question 1b is: 'List the names, titles, and mailing addresses of each of your five highest compensated employees who receive or will receive compensation of more than $50,000 per year.' A Form 1023-EZ could simply ask if any employees received more than $50,000 per year in compensation from the organization. If the answer is 'yes', then the EO could be required to file the full Form 1023." I also described question 11 of Part VII as "mind-numbing" and likely inapplicable to small organizations. That question is: "Do you or will you accept contributions of: real property; conservation easements; closely held securities; intellectual property such as patents, trademarks, and copyrights; works of music or art; licenses; royalties; automobiles, boats, planes, or other vehicles; or collectibles of any type? If 'Yes,' describe each type of contribution, any conditions imposed by the donor on the contribution, and any agreements with the donor regarding the contribution." *See also* National Taxpayer Advocate 2011 Annual Report to Congress 562 (Legislative Recommendation: *Provide Administrative Review of Automatic Revocations of Exempt Status, Develop a Form 1023-EZ, and Reduce Costs to Taxpayers and the IRS by Implementing Cyber Assistant*), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/2011_ARC_Legislative%20Recommendations.pdf.

3 IRS Response, National Taxpayer Advocate 2011 Annual Report to Congress 446 (Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*), *available at* http://tasnew.web.irs.gov/Files/Communications/NTAReports/irs_tas_arc_2011_vol_1.pdf.

Substituting Attestations for IRS Review of Applications is Inconsistent with Good Tax Administration

As a process-driven organization, the IRS routinely identifies key points of leverage to promote compliance with legal requirements. Within the EO application process, the IRS has leverage to ensure that organizations are compliant with the requirements for tax-exempt status under IRC § 501(c) – namely, that they are organized correctly (the "organizational" test) and operated correctly (the "operational" test). With the draft Form 1023-EZ and proposed regulation, EO proposes to abandon any review or level-setting of either of these foundational tests. EO, in its responses to TAS's comments on the draft Form 1023-EZ, stated that "[m]any applicants are unsure of their proposed activities, and it takes multiple development letters to clarify the planned activities they expect to conduct." Thus, EO appears willing to simply recognize organizations as exempt even where they *admittedly* do not actually know what their activities will be. EO also responded to TAS that "[a]llowing applicants to attest to basic operating requirements will reduce the burden of the current application process, allowing them to commence their activities more quickly. Then, if we review their activities in the future, we will have actual activities to evaluate, as opposed to planned activities that could easily change."

This approach, apparently an inventory management technique, contravenes a core tenet of effective tax administration – that providing front-end assistance and education and establishing norms is a more effective and efficient use of resources than back-end, labor-intensive audits.[1] The only norm that would be established with the draft Form 1023-EZ and the proposed regulation is that exempt status would be as easy to obtain as an Employer Identification Number. In lieu of using the application process to drive compliant behavior while organizations are forming, the IRS's proposed approach is unavoidably setting up a situation where compliance will be monitored almost exclusively through audits. Under the IRS's proposed approach, small EOs inevitably will endure "gotcha" audits because anyone – literally anyone – will be able to answer the questions on the draft Form 1023-EZ and operate for years without the IRS's ever noticing any problems. An organization with $200,000 of gross receipts paying its founder a salary of $199,000 would not, as an initial matter, attract the IRS's attention. During the period of time before the IRS conducts an audit (if ever), tax dollars and taxpayer donations will be inappropriately diverted. For this reason, in addition to the reasons stated above, I believe the threshold eligibility for filing Form 1023-EZ should be set at $50,000, consistent with the threshold for filers of Form 990-N (the e-Postcard).

Requiring Organizing Documents and a Narrative Statement Serves Applicants as Well as the IRS and the Public

EO, in its responses to TAS, stated the form "was created to lessen the burden on the applicant and the Service." It noted that "[p]rocessing more paper documents would utilize more

1 Moreover, I note that this is the opposite of the approach the IRS is taking in the EITC area. There, it is adopting myriad front-end requirements, including demonstrations of due diligence, at the time of *filing* – *i.e.*, at the time of *application* for the EITC – on the theory that pre-filing evidence will drive compliance.

resources, funding, and slow down the process for the other applicants in the pipeline. Additionally, F. 1023-EZ asks for state of incorporation so that taxpayers have avenue for access to articles if taxpayer does not post on Web" and "the Form 1023-EZ and any letters or other documents issued by the Service will be open to public inspection, thus meeting the requirements of IRC 6104. Form 990 would continue to be publicly accessible." Thus, at the same time that EO expresses concern for the "burden" on new EOs to provide (1) the articles of incorporation (2) the bylaws (3) a narrative statement (4) attestations of core requirements such as having a conflicts of interest policy – all of which drive better practices and behavior at the outset of the entity's existence - it is effectively transferring much of the responsibility for ensuring that organizations comply with tax-exemption requirements to the entire taxpaying public. The public – rather than the IRS – would be expected to police the EO sector by checking with Secretaries of State to obtain copies of articles of incorporation, and review Form 1023-EZ and Form 990.

This approach, even if it could constitute responsible tax administration, overlooks that Form 1023-EZ would provide no relevant information, and the corresponding Form 990 would have *minimal* relevant information to enable the public to fulfill this intended role. The taxpaying public would have little or no ability to determine whether the organization is conforming with the purpose for which it was granted tax exemption, because (1) the IRS would not be requiring the organization to describe that purpose on the Form 1023-EZ application and (2) the public therefore would have no way to determine, from reviewing Form 990, whether there has been any deviation from the (undescribed) purpose.

EO also responded to TAS that "[i]n many cases, articles are not dispositive, and as a practical matter, may be boilerplate." To put it mildly, I believe this dismissal of foundational documents would be deeply concerning to State Attorneys General and State Corporation Commissions. They would likely be astonished to learn that the IRS believes the very documents that create an entity and define the scope of its activities have such limited value. Moreover, as the head of an IRS function that has recently handled between 225,000 and 300,000 taxpayer cases each year, I am not convinced that requiring documentation for key components of the application would drain IRS resources. To the contrary, if processes are properly designed and employees are properly trained, these requirements would be an effective use of the IRS's resources – driving future voluntary compliance instead of opening the doors to non-compliance from the start.

Requiring a full description of an organization's activities not only permits the Service to make an intelligent assessment about whether the organization meets the statutory requirements for exemption and allows the public to evaluate the organization, but equally important, it forces the submitter to think about why the organization's activities are charitable, educational or otherwise exempt, and render it worthy of not paying taxes. I know this from first-hand experience. Prior to my appointment as the National Taxpayer Advocate, I was a tax practitioner who created and operated a tax-exempt organization and assisted other individuals seeking EO status for organizations they created and managed. I

observed repeatedly how disorganized these entities can be and how an organization may be managed by one person who has a very good and charitable idea but no infrastructure that will guard against self-inurement and other abuses. The existing requirement that tax-exempt organizations provide a narrative statement often requires organizers, for the first time, to think through the scope of their intended activities and may expose flaws in the organizers' thinking – sometimes demonstrating that an entity is essentially a sole proprietorship, or otherwise one whose activities do not meet the tests for being subsidized by the taxpaying public. Instructions will not be an effective substitute for this process. It is the *act* of having to write a statement and attach organizational documents that alerts applicants to the need to check what their documents say and make sure they are correct. Currently, for example, an applicant sees that the IRS requires certified documents with specific language pertaining to exempt purpose and dissolution. The IRS also inquires about a conflict of interest policy. This drives applicants' behavior because they know the IRS is actually looking at their documents, even if only to detect abuse.

I asked to attend the meeting to discuss draft Form 1023-EZ scheduled by the Chief Counsel for May 28, 2014, but the Chief Counsel denied my request. I therefore respectfully request that you consider these written comments at that meeting and that I have an opportunity to discuss my concerns with you directly before any decisions are made.

Attachment: May 5, 2014 TAS comments to Form 1023-EZ and IRS responses.

cc: John Koskinen, Commissioner of Internal Revenue

IMD TITLE: Form 1023-EZ, Streamlined Application for Recognition Exemption Under 501(c)(3) of IRC

SAMS ID #: 29932

DATE: 05/05/2014

REVIEWER: Taxpayer Advocate Service

CONTACT: TAS IMD/SPOC Coordinator

We suggest the following changes and/or clarifications:

IRM Subsection (or Other Document Paragraph Number) and Page Number	CURRENT TEXT (Enter the current draft text related to your comment)	TPR or TPB Issues? Y or N	TAS COMMENTS & RECOMMENDATIONS	IMD SPOC USE ONLY	Operating Division Response to TAS Comments/ Recommendations (IMD Use Only)
		Y	There should be space for a narrative description of the proposed exempt activity		---OD RESP--- Non-Adopt – Form 1023-EZ was created to lessen the burden on the applicant and the Service. We currently have an inventory that is unmanageable causing extreme wait times for § 501(c)(3) applicants. Substantial time is currently expended corresponding with applicants to perfect applications. In many cases, a narrative description is not dispositive. We considered the relative efficiencies and risks. The 1023-EZ will be used only by small (less than $200,000 in revenue and $500,000 in assets) and historically compliant types of organizations, limiting our risk of accepting attestations that the applicants' purposes and activities meet § 501(c)(3) requirements. Also, we have included more educational material in the F. 1023-EZ instructions to better educate the taxpayer on the requirements. Do not concur, see responses below.

IRM Subsection (or Other Document Paragraph Number) and Page Number	CURRENT TEXT (Enter the current draft text related to your comment)	TPR or TPB Issues? Y or N	TAS COMMENTS & RECOMMENDATIONS	IMD SPOC USE ONLY	Operating Division Response to TAS Comments/ Recommendations (IMD Use Only)
		Y	The form should require the submission of the organization's articles of incorporation.		---OD RESP--- Non-Adopt – Similar to an activity description, requiring the submission of organizing documents would cause us to follow the same processes that are currently in place for the full Form 1023. In many cases, articles are not dispositive, and as a practical matter, may be boilerplate. Requiring the submission of organizing documents would defeat the purpose of having a fully electronic submission process. Processing more paper documents would utilize more resources, funding, and slow down the process for the other applicants in the pipeline. Additionally, F. 1023-EZ asks for state of incorporation so that taxpayers have avenue for access to articles if taxpayer does not post on Web. Do not concur, see responses below.
Form 1023-EZ	The form is silent on the need to file any supporting information with the application, so presumably no such requirement exists. Organizations are not required to provide copies of their organizing instrument or a narrative of planned activities.	Y	I am concerned about the transparency rights all taxpayers have to review documents subject to public inspection under IRC § 6104. The draft Form 1023-EZ includes no narrative description of activities equivalent to Part IV of Form 1023, and any description of purpose in the organizing instrument would also be missing from the application. The public would have no way to understand the most basic purpose of the organization. Information available from the NTEE code in Part III line 1 and the checkboxes of Part III line 2 is not sufficient for the public to understand the organization's exempt purpose and methods used to fulfill its exempt purpose. I recommend Form 1023-EZ require that organizations file a copy of their organizing instrument with Form 1023-EZ, and Form 1023-EZ also require organizations to provide a narrative description of activities similar to Part IV of Form 1023.		---OD RESP--- Non-Adopt – IRC § 6104 requires the application and any supporting documents along with any letter or other document issued by the Service with respect to such application be open to public inspection. It does not state that such application must contain an activity narrative or organizing documents. The Form 1023-EZ and any letters or other documents issued by the Service will be open to public inspection, thus meeting the requirements of IRC 6104. Form 990 would continue to be publicly accessible. SME Response I do not concur. Although the draft Form 1023-EZ might meet the letter of IRC § 6104, it does not satisfy the public interest inherent in the spirit of the law. Instead, the purpose of this form appears to be purely in the interest of ease of tax administration, so the application can be "processed," not reviewed and approved in any meaningful way.

IRM Subsection (or Other Document Paragraph Number) and Page Number	CURRENT TEXT (Enter the current draft text related to your comment)	TPR or TPB Issues? Y or N	TAS COMMENTS & RECOMMENDATIONS	IMD SPOC USE ONLY	Operating Division Response to TAS Comments/ Recommendations (IMD Use Only)
Form 1023-EZ	The form is silent on the need to file any supporting information with the application, so presumably no such requirement exists. Organizations are not required to provide copies of their organizing instrument or a narrative of planned activities.	Y	This version of Form 1023-EZ not only does not serve the public interest because it promotes a lack of transparency, it also does not serve exempt organizations. Form 1023, even a Form 1023-EZ, should serve an educational purpose by providing applicants either an introductory or a refresher course on the rules for tax exemption. It should force organizations, perhaps for the first time, to articulate what activites they intend to conduct and how those activities further an exempt purpose. It should draw attention to the rules on inurement and private benefit. It should ensure organanizing documents contain appropriate clauses, with which the founders are acquainted. The form as drafted is an abdication of the IRS's responsibility to determine, beyond relying on attestations by its organizers, whether an organization is exempt.		---OD RESP--- Non-Adopt – Educational information regarding the rules for tax exemption are contained in the 1023-EZ instructions and other documents such as Publication 557, referenced in the 1023-EZ instructions. These documents clearly explain the requirements the applicant is attesting it meets under the penalties of perjury. The IRS is still upholding its responsibility of reviewing applications and determining, based on representations, that the applicant meets § 501(c)(3) requirements. Congress enacted the F. 1023 requirement in § 508 not for an educational purposes but because it "believe[d] that the Internal Revenue Service has been handicapped in evaluating and administering existing laws by the lack of information with respect to many existing organizations." S. Rep. 91-552, 91st Cong. 1st Sess. 1969 USCCAN 2027, 2081. Do not concur, and evidently EO is changing its position. The yellow highlighted portion above is a direct quote from EO's response to the National Taxpayer Advocate's 2011 Annual Report to Congress (page 446) available at http://tasnew.web.irs.gov/Files/Communications/NTAReports/irs_tas_arc_2011_vol_1.pdf.

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1023-EZ	1) Parts II allow organizations to attest that they have an organizing document and required verbiage to meet the organizational test under 501(c)(3). 2) Part III allow organizations to attest to their exempt activities.	Y	Form 1023-EZ will be filed electronically; without an organizational document or a narrative of activities. Under IRC § 6104, the public has the right to review the application and annual information returns to ensure confidence. Based on this form and the possibility many of these organizations will only file form 990-N, there will be minimum transparency of public charities' activities. I am also concerned applicants will not be in compliance with exempt tax law. Under IRC § 501(c)(3), if an organization fails to meet either the organizational or operational test, it is not exempt. I recommend applicants submit copies of their organizational documents if it not available for review on the State's website. Also there should be a fill in section included on Form-EZ for applicants to list a narrative of their activities.		---OD RESP--- Non-Adopt – Reasons for not requiring the submission of organizing documents or narrative descriptions of activities are explained above. Additionally, we would like to point out the following. The current method of soliciting narratives of proposed activities on Form 1023 can be very time-consuming, and as a result increase wait times for other applicants. Many applicants are unsure of their proposed activities, and it takes multiple development letters to clarify the planned activities they expect to conduct. Generally, the current process does not yield valuable information. Allowing applicants to attest to basic operating requirements will reduce the burden of the current application process, allowing them to commence their activities more quickly. Then, if we review their activities in the future, we will have actual activities to evaluate, as opposed to planned activities that could easily change. RATA's response – Do not concur : I agree with the SME's comments. Also, this process opens up exempt organizations to abuse. Applicants don't have to even be a business entity to obtain an exemption. What happens in the future if you find inurement or private benefit on a public charity other than revoking the organization?

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1023-EZ	**Without a narrative or financial information there is no place on Form 1023-EZ to indicate if organizations are required to file Form 941 for their employees.**		New exempt organizations are not aware of their obligations to file tax return for their employees. I suggest adding another question to alert organizations of their responsibilities. Example: Do you or will you pay wages to employees? (If yes, consider filing Form 941, see Publication 557, *Tax Exempt Status for Your Organization.*	P	—OD RESP— Non-Adopt – Employment tax responsibilities are not exclusive to exempt organizations. All entities with employees are required to file Form 941. Numerous IRS documents and publications describe these responsibilities (including publication 557 referenced several times in the 1023-EZ instructions). It is the taxpayers' responsibility to understand and comply with these requirements. It is not a specific requirement for exemption and is not needed on the Form 1023-EZ to make a determination. RATA's response I concur.

D. 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

In the wake of an appellate court's decision in the *Loving v. Internal Revenue Service* case,[1] the IRS has announced plans to create a voluntary continuing education (CE) program for unenrolled preparers as an interim step to protect taxpayers during the 2015 filing season.[2] The IRS has acknowledged that a voluntary CE program is not an ideal solution and does not accomplish the same goals as the mandatory program in place before *Loving*.[3] Nonetheless, the agency is moving ahead with this voluntary program.[4] The IRS has said it "continues to believe regulation of paid tax return preparers is important for the proper functioning of the U.S. tax system," and accordingly, it urges Congress to provide the agency with the authority to impose mandatory testing and CE requirements.[5]

The National Taxpayer Advocate is particularly concerned about the low income taxpayer population, which is especially vulnerable to incompetent or unscrupulous unenrolled preparers.

The National Taxpayer Advocate agrees that the only effective way to increase competency throughout the return preparer profession is for Congress to provide the IRS with the authority to implement a mandatory program substantially similar to the one already in place before *Loving*. Since 2002, we have recommended the enactment of preparer standards as a taxpayer protection measure. The National Taxpayer Advocate is particularly concerned about the low income taxpayer population, which is especially vulnerable to incompetent or unscrupulous unenrolled preparers. For tax year (TY) 2012, over 76 percent of the preparers preparing Earned Income Tax Credit (EITC) returns, where the taxpayers are by definition low income, were unenrolled.[6]

Unless and until legislation is passed authorizing the IRS to re-institute mandatory preparer standards, the IRS must act within the scope of its existing authority. In our 2013 Annual Report, we recommended that the IRS implement a voluntary examination and continuing education certificate program identical in most respects to the mandatory

1 *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).

2 IRS, *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers,* IR-2014-75 (June 26, 2014); *Protecting Taxpayers from Incompetent and Unethical Return Preparers Hearing Before the S. Comm. On Finance* 4 (April 8, 2014) (statement of John Koskinen, Commissioner, IRS).

3 Letter from John Koskinen, IRS Commissioner to Lonnie Gary, President, NAEA, dated June 6, 2014.

4 Rev. Proc. 2014-42, 2014-29 IRB 1 (released June 30, 2014).

5 IRS, *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers,* IR-2014-75 (June 26, 2014); *Protecting Taxpayers from Incompetent and Unethical Return Preparers Hearing Before the S. Comm. On Finance* 4 (April 8, 2014) (statement of John Koskinen, Commissioner, IRS).

6 IRS, Compliance Data Warehouse, Individual Returns Transaction File; IRS, Individual Master File (net of transactions 764, 765, and 768); IRS, Return Preparers and Providers Database (through Nov. 2013). Note that the amounts paid out by the IRS may have been subsequently disallowed in post-refund audits.

program the IRS previously developed.[7] The IRS's recently-announced voluntary program is a step in the right direction, but it is missing one of the most important components – competency testing. The IRS has committed to "assess the feasibility of administering a uniform voluntary examination in future years in order to ensure basic return preparer competency." We applaud the IRS for taking these interim measures, but we are concerned that the voluntary program does not require unenrolled preparers to pass a competency test in order to be listed in the IRS database. As a consequence, some taxpayers may erroneously assume that preparers listed in the database have been determined by the IRS to meet basic competency standards. For this reason, the database should clearly explain the different credentials and authorities for each type of preparer listed in the database.

Minimum Competency Standards Are Necessary to Protect Taxpayers.

Preparers play a critical role in the tax system, which relies heavily on voluntary compliance. In tax year (TY) 2012, for example, taxpayers filed about 142 million 1040-series individual returns,[8] with slightly over 79 million taxpayers using paid preparers.[9] More than half (almost 43 million) of these returns were prepared by preparers unregulated by the IRS.[10] Furthermore, a significant number of low income taxpayers use unenrolled preparers. As the below table shows, approximately 75 percent of the preparers who prepared TY 2010 through TY 2012 returns claiming the EITC were unenrolled.

FIGURE II.6, PREPARATION OF EITC CLAIMS BY ENROLLED PREPARERS IN TY 2010-2012[11]

Tax Year	EITC Paid	Count	Total Preparers	Unenrolled Preparers	Percent Unenrolled
2010	$58,573,186,452	27,627,852	16,464,493	12,430,967	75.5%
2011	$61,109,934,146	27,816,576	16,549,166	12,198,085	73.7%
2012	$62,981,818,983	27,081,228	15,132,562	11,523,814	76.2%

7 National Taxpayer Advocate 2013 Annual Report to Congress 61-74.

8 The TY 2012 returns were prepared in 2013. For tax year 2012, the IRS received 141.9 million individual income tax returns. IRS Compliance Data Warehouse, Individual Returns Transaction File, TY 2012 (filed through Dec. 2013).

9 IRS Compliance Data Warehouse, Individual Returns Transaction File and Return Preparers and Providers Database, TY 2012 (filed through Dec. 2013).

10 For a more detailed discussion of this data and its import, see Nina E. Olson, *More Than a 'Mere' Preparer: Loving and Return Preparation,* 2013 TNT 92-31, Tax Analysts Tax Notes Today (May 13, 2013). IRS Compliance Data Warehouse, Individual Returns Transaction File and Return Preparers and Providers Database, TY 2011 (filed through Mar. 2013). The category "unregulated preparer" reflects returns prepared by individuals with preparer tax identification numbers who did not list a profession when registering with the IRS. IRS Compliance Data Warehouse, Individual Returns Transaction File and Return Preparers and Providers Database, TY 2012 (filed through Dec. 2013). IRS records show about one million returns as paid preparer returns that did not have a Preparer Tax Identification Number (PTIN) match in the Return Preparers and Providers Database.

11 IRS, Compliance Data Warehouse, Individual Returns Transaction File; IRS, Individual Master File (net of transactions 764, 765, and 768); IRS, Return Preparers and Providers Database (through Nov. 2013). Note that the amounts paid out by the IRS may have been subsequently disallowed in post-refund audits.

Despite the data showing high usage of unenrolled preparers among the low income taxpayer population, there are currently no standards for hanging out a shingle and preparing returns. There is considerable evidence that a significant number of preparers either simply lack the knowledge and ability to prepare accurate returns or seek to exploit taxpayers. The Government Accountability Office (GAO), the Treasury Inspector General for Tax Administration (TIGTA), and others have conducted undercover "shopping visits," in which auditors posed as taxpayers and visited preparers for help in preparing returns. The results of such shopping visits have consistently substantiated the National Taxpayer Advocate's longstanding concerns, finding that a significant percentage of visited preparers prepared inaccurate returns (requiring taxpayers to pay thousands of dollars more than they owe or causing taxpayers to substantially understate tax), failed to perform sufficient due diligence, and even took positions that they knew were not supportable.[12]

There is Broad Support for a Preparer Oversight Program with Minimum Competency Standards.

To protect taxpayers from preparer incompetence and misconduct, the National Taxpayer Advocate has recommended since 2002 that Congress create minimum standards for the return preparation industry. Our proposed oversight program includes the following four key components for the IRS:

1. Require return preparers to register with the IRS to promote accountability;
2. Require unenrolled preparers to pass a one-time "entrance" examination to ensure basic competency in return preparation;
3. Require unenrolled preparers to satisfy annual continuing education requirements to ensure they keep up to date with the many frequent tax law changes; and
4. In conjunction with the oversight of preparers, conduct a comprehensive education campaign to enable taxpayers to protect themselves. This would include the creation of a publicly accessible and searchable database of registered preparers that taxpayers can use to determine whether a preparer has met the standards of the profession.[13]

12 Government Accountability Office, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* 5, 23 (Apr. 4, 2006) (Finding preparers made significant mistakes on 17 of the 19 returns prepared for GAO employees posing as taxpayers. In 17 instances, the preparers computed the wrong refund amounts, with variations of several thousand dollars. In ten of the 19 cases, preparers failed to report cash side income. In five cases, the prepared returns reflected unwarranted excess refunds of nearly $2,000, and in two cases, the prepared returns would have caused the taxpayer to overpay by more than $1,500); TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* 2 (Sept. 3, 2008) (Finding preparers made mistakes on 17 of the 28 returns prepared for TIGTA employees posing as taxpayers, including six willful or reckless errors. If the incorrect returns had been filed, the net effect would have been $12,828 in understated taxes, or an average net understatement per return of $755.). *See also*, Brief of National Consumer Law Center and National Community Tax Coalition, *as amici curiae*, supporting Defendants-Appellants, *Loving v. IRS,* No. 13-5061 (D.C. Cir. filed Apr. 5, 2013) (Doc. #1429234); National Consumer Law Center, *Riddled Returns: How Errors and Fraud by Paid Tax Preparers Put Consumers at Risk and What States Can Do* (Nov. 2013), *available at* http://www.nclc.org/issues/riddled-returns.html (last visited Apr. 2, 2014).

13 National Taxpayer Advocate 2013 Annual Report to Congress 61-74; National Taxpayer Advocate 2009 Annual Report to Congress 41-69; National Taxpayer Advocate 2008 Annual Report to Congress 503-512; National Taxpayer Advocate 2006 Annual Report to Congress 197-221; National Taxpayer Advocate 2005 Annual Report to Congress 223-237; National Taxpayer Advocate 2004 Annual Report to Congress 67-88; National Taxpayer Advocate 2003 Annual Report to Congress 270-301; National Taxpayer Advocate 2002 Annual Report to Congress 216-230; *Fraud in Income Tax Return Preparation: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means,* 109th Cong. (2005) (statement of Nina E. Olson, National Taxpayer Advocate).

Despite bipartisan support and Senate passage of such a proposal, Congress has taken no final action.[14] Beginning in 2009, the IRS decided to implement standards on its own. In January 2010, the IRS published a study of federal tax return preparers that in most important respects reflected the proposals of the National Taxpayer Advocate.[15] The IRS subsequently issued regulations requiring all preparers to register with the IRS by obtaining a preparer tax identification number (PTIN),[16] and requiring certain preparers to meet testing and continuing education standards. Unenrolled preparers would obtain the designation "registered tax return preparer" if they satisfied the program requirements.[17]

In light of the *Loving* decision, we once again find ourselves in the position where anyone can hold himself out as a "preparer" with no tax law knowledge or experience required.

Implementation began with the 2011 filing season, when the IRS required paid return preparers to obtain PTINs.[18] The IRS launched the registered tax return preparer competency test in November 2011 with a deadline to take the test by December 31, 2013. The continuing education requirement began during the 2012 calendar year.[19]

However, the IRS's efforts to impose standards came to a sudden halt in January 2013 when, in *Loving v. Internal Revenue Service*, the U.S. District Court for the District of Columbia enjoined the IRS from further enforcing the testing and continuing education components. The court made clear that its decision did not invalidate the registration (PTIN) requirement.[20] The U.S. Court of Appeals for the District of Columbia Circuit upheld the district court's decision.[21]

After *Loving*: The IRS's New Voluntary Program is a Temporary Measure But Does Not Include the Necessary Competency Testing Component.

The return preparer oversight program developed by the IRS before *Loving* was well planned after extensive consultation with stakeholder groups. In light of the *Loving* decision, we once again find ourselves in the position where anyone can hold himself out as a "preparer" with no tax law knowledge or experience required. Therefore, the National Taxpayer Advocate urges Congress to enact legislation granting the Treasury Department and the IRS the authority to establish minimum preparer standards by implementing exactly the program it had in place.

14 S. 1219, § 4, 110th Cong. (2007); H.R. 5716, § 4, 110th Cong. (2008); S. 3215, §202. 111th Cong. (2010). We are also pleased that the Senate Finance Committee has produced bipartisan support for the preparer due diligence provision in the proposed Preserving America's Transit and Highways Act of 2014. The provision requires paid tax return preparers who prepare American Opportunity Tax Credit returns to meet due diligence requirements. Joint Committee on Taxation, *Description of the Chairman's Modification to the "Preserving America's Transit and Highways Act of 2014"* 7-11 (June 25, 2014).

15 IRS Publication 4832, *Return Preparer Review* (Dec. 2009).

16 Treas. Reg. § 1.6109-2(d).

17 31 C.F.R. §§ 10.4(c) (testing) and 10.6(e) (continuing education).

18 *See* IRS News Release, IR-2010-106, *IRS Begins Notifying Tax Return Preparers on PTIN Renewals* (Oct. 25, 2010).

19 IRS News Release, IR-2011-111, *IRS Moves to Next Phase of Return Preparer Initiative; New Competency Test to Begin* (Nov. 22, 2011).

20 920 F. Supp. 2d 108 (D.DC. 2013), clarifying 917 F. Supp. 2d 67 (D.D.C. 2013).

21 *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

Until Congress passes legislation, the IRS must act within the scope of existing authority. While the IRS has enhanced its ability to track preparers through registration and the issuance of PTINs, after *Loving* it retains no meaningful oversight of preparers. In our 2013 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS take four interim administrative steps to ensure that taxpayers receive competent and ethical preparation, regardless of what type of preparer they choose:[22]

1. Offer unenrolled preparers the opportunity to distinguish themselves by earning a voluntary examination and continuing education certificate;
2. Restrict the ability of unenrolled preparers to represent taxpayers in audits of returns they prepare unless they earn the certificate;
3. Restrict the ability to name an unenrolled preparer as a Third Party Designee on Form 1040; and
4. Mount a consumer protection campaign that educates taxpayers about the need to select competent preparers who can demonstrate competency.

The IRS Announces a Voluntary Continuing Education Program Without an Examination Component.

In response to *Loving*, the IRS has developed a new voluntary program, called the Annual Filing Season Program.[23] Commissioner Koskinen has stated that the "voluntary program is not the ideal solution. But until legislation is enacted, we think we have the responsibility to taxpayers and to our tax system to keep moving forward with our efforts to improve service to taxpayers."[24]

The new program will provide unenrolled preparers the opportunity to earn a "Record of Completion" when they voluntarily complete 18 hours of IRS-approved instruction, including:

- A six-hour "refresher" course in basic tax filing issues and updates;
- Two hours of ethics; and
- Ten hours of other federal tax law topics.[25]

22 National Taxpayer Advocate 2013 Annual Report to Congress 61-74.

23 Rev. Proc. 2014-42, 2014-29 IRB 1 (released June 30, 2014).

24 *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers*, IR-2014-75 (June 26, 2014); Kelly Phillips Erb, *IRS Announces New Tax Preparer Program to Mixed Reactions*, Forbes.com (June 27, 2014).

25 The required hours will be prorated during the first year of the program. To earn the Record of Completion for the 2015 filing season, a return preparer would need to take the six-hour refresher course, two hours of ethics and three hours of other federal tax law topics. IRS, *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers*, IR-2014-75 (June 26, 2014). The American Institute of Certified Accountants has questioned whether the IRS has statutory authority to develop this program. Letter to Hon. John A Koskinen, Commissioner of Internal Revenue Service from William E. Balhoff and Barry C. Melancon, American Institute of CPAs, dated June 24, 2014. In response, IRS Commissioner Koskinen has stated, "the IRS has vetted the program and they believe that the program complies with the existing statutes." Kelly Phillips Erb, *IRS Announces New Tax Preparer Program to Mixed Reactions*, Forbes.com (June 27, 2014).

Preparers who earn the Record of Completion will be included in a publicly accessible and searchable preparer database on IRS.gov, along with attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries who are registered with the IRS.

The new program will not require preparers to pass an IRS-administered competency test to earn a voluntary Record of Completion. The terms of the new voluntary program do require uncredentialed preparers to pass a knowledge-based comprehension test at the end of the refresher continuing education (CE) course in order to obtain course credit. However, this CE-based comprehension test merely assesses whether the CE participant gained a basic understanding of the limited amount of material presented during the class. In addition, each CE provider will develop and administer its own test, so the subject matter tested, the level of difficulty of the test, and the CE provider's diligence in ensuring the test-taker completes the test on his own will vary from course to course. In no way will this CE-based comprehension substitute for a uniform, comprehensive competency examination designed to measure whether a preparer possesses basic knowledge of tax return preparation generally.

We fully recognize that the IRS is working within tight time constraints and had a limited capability to develop and implement a program to be in place for the 2015 filing season. Moreover, we are pleased that the IRS recognizes the importance of a competency examination. For the 2016 filing season and beyond, we believe it is imperative that taxpayers know which unenrolled preparers have demonstrated minimum competency by taking an IRS-administered examination. We applaud the IRS for its commitment to "assess the feasibility of administering a uniform voluntary examination in future years to ensure basic return preparer competency," and we will work with the IRS Return Preparer Office toward that end.[26]

The New Voluntary Program Appropriately Restricts Representation Rights.

As part of the Annual Filing Season Program, the IRS plans to also restrict the representation rights of unenrolled preparers who do not earn the voluntary Record of Completion. Currently, unenrolled preparers can engage in limited practice before the IRS, representing taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if they signed the tax return or claim for refund for the tax period under examination.[27] These preparers cannot, however, represent taxpayers before Appeals or Collection.[28] Under the new program, unenrolled preparers who do not earn the voluntary Record of

26 IRS, *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers*, IR-2014-75 (June 26, 2014).

27 Section 10.7 of Circular 230 (31 C.F.R. § 10.7) was amended before *Loving* to remove the authorization for unenrolled, unlicensed individuals to represent before the agency on returns they signed. However, Notice 2011-6, 2011-3 I.R.B. 315 provided interim authority for these individuals to represent in this context during "the transition years" of the return preparer program.

28 31 C.F.R. § 10.3(f)(3).

Completion will not be able to represent taxpayers before the IRS during an examination of a return that they signed or prepared after the end of 2015.[29] The National Taxpayer Advocate made a similar recommendation in the 2013 annual report and believes that the IRS has taken a major step to protect taxpayers.[30] Representing a taxpayer before Examination requires a certain level of knowledge, competence and skill, the absence of which can have a significant economic impact on the taxpayer.

The Outreach and Education Component of the Return Preparer Program is Crucial for Taxpayer Protection.

Regardless of how the IRS addresses the testing component of the voluntary program, it is crucial that the IRS take a proactive role in a public awareness campaign to educate taxpayers on the various preparer designations available. The development and marketing of a publicly accessible and searchable preparer database, listing all preparers who have obtained valid PTINs with their basic information such as location, contact information, and credentials or qualifications, will provide taxpayers with important information. The database should also allow the user to scroll over and obtain a basic description of the preparer credential or qualification along with any associated limitations on representation, such as the inability to represent taxpayers in Collection or Appeals.

The IRS has announced it will develop a preparer database for the 2015 filing season. Unenrolled preparers who have not obtained the voluntary Record of Completion will not be included in the database.[31] We commend the IRS for committing to develop the preparer database by the next filing season, but as discussed above, we are concerned that the database will include preparers who earned the Record of Completion but have not demonstrated competency by passing an IRS-approved examination. By including these untested preparers in the public database on the IRS official website, the IRS risks misleading taxpayers, who could erroneously assume that all preparers in the database have been determined by the IRS to be qualified to prepare returns. For this reason, the database should clearly note the different credentials and authorities for each of the included preparer types (attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, enrolled actuaries, and unenrolled preparers). In that way, taxpayers will understand that unenrolled preparers have not passed an IRS-given competency examination but have completed 18 hours of continuing education.

Fiscal Year 2015 Actions

In FY 2015, TAS will take the following actions to protect taxpayers and promote the establishment of minimum competency standards in the return preparer industry:

29 Rev. Proc. 2014-42, 2014-29 IRB 1 (released June 30, 2014); IRS, *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers*, IR-2014-75 (June 26, 2014).

30 National Taxpayer Advocate 2013 Annual Report to Congress 61-74.

31 IRS, *New IRS Filing Season Program Unveiled for Tax Return Preparers: Voluntary Program to Focus on Continuing Education for Unenrolled Preparers*, IR-2014-75 (June 26, 2014).

- Continue to recommend that Congress authorize the IRS to establish minimum standards for tax return preparers;
- Work with the IRS Return Preparer Office (RPO) to assess the feasibility of the IRS developing and offering a true competency examination prior to the 2016 filing season;
- Work with RPO on the design and information included in the searchable database;
- Develop outreach and education materials for TAS's Local Taxpayer Advocates to include in their grassroots outreach work; and
- Work with the IRS Communications and Liaison Office (C&L) on the outreach campaign to the general public.

E. The IRS's Decision Not to Except Any TAS Employees During the Government Shutdown Resulted in Violations of Taxpayer Rights and Undermined TAS's Statutory Authority to Assist Taxpayers Suffering or About to Suffer Significant Hardship

Introduction

All TAS employees, including the National Taxpayer Advocate, were furloughed when the federal government shut down from October 1 through October 16, 2013. This IRS action was a departure from the agency's previous Shutdown Contingency Plan, which excepted 57 TAS employees from a possible furlough in 2011.[1] As a result, in 2013, taxpayers facing imminent hardships who could not reach TAS were at risk of suffering significant or irreparable harm, including risk to the safety to human life. A more detailed analysis of the law follows, including what we believe are flaws in the IRS's interpretation of the Antideficiency Act (ADA), the imminent dangers this interpretation posed for taxpayers, and the actions TAS took to ease the impact of the furlough.

Particular areas of concern include:

- IRS Chief Counsel interpreted the ADA to cover only the protection of public health and government property. This interpretation allowed the IRS to take certain enforcement actions for which taxpayers were unable to avail themselves of taxpayer protections.
- The IRS's narrow interpretation denied TAS the ability to fulfill its statutory mandate of assisting taxpayers facing a significant hardship as a result of IRS action or inaction.
- The furlough of all TAS employees led to multiple violations of the statutory requirement that TAS maintain confidential and separate communications with taxpayers, including opening mail addressed to TAS.

Chief Counsel's interpretation assumes the ADA permits the government (*i.e.,* the IRS) to take enforcement actions with impunity during a shutdown, actions that would carry with them significant taxpayer protections in the absence of a shutdown. Given Congress' consistent efforts to couple IRS enforcement actions with statutory protections such as levy releases, lien withdrawals, and access to the Taxpayer Advocate Service, it is reasonable to interpret the ADA as requiring where the IRS excepts employees who will take actions to protect government revenue, it must also except employees who ensure those actions do not create significant risk to the safety of human life or property. The recently-adopted Taxpayer Bill of Rights provides additional support for this interpretation.[2]

1 *IRS FY 2011 Shutdown Contingency Plan (During Lapsed Appropriations)* 18 (Apr. 7, 2011).

2 *See* TAS, *What the Taxpayer Bill of Rights Means for You*, *available at* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights/What-the-Taxpayer-Bill-of-Rights-Means-for-You.

The Antideficiency Act Has Always Allowed Excepted Employees to Work During Emergencies Involving the Safety of Human Life and Protection of Property.

The ADA prevents government officers or employees from entering into contracts or obligations prior to an appropriation, unless authorized by law.[3] The ADA creates an exception to this rule "for emergencies involving the safety of human life or the protection of property."[4] The ADA was amended in 1990 to clarify that emergencies do not include ongoing, regular functions of government, "the suspension of which would not imminently threaten the safety of human life or the protection of property."[5] In January 1981 the Attorney General articulated that two factors must be present for this exception to apply:

1. A reasonable and articulable connection between the obligation (the opinion involved a contract or grant) and the safety of life or the protection of property; and
2. Some reasonable likelihood that either the safety of life or the protection of property would be compromised in some significant degree by failure to carry out the function in question – and that the threat to life or property can be reasonably said to be near at hand and demanding of immediate response.[6]

Based on guidance from the Attorney General, the Office of Management and Budget (OMB) in November 1981 issued guidance and examples of activities that could continue during a lapse of appropriations. Essential activities related to protecting life and property can include such things as "medical care of inpatients and emergency outpatient care" as well as "activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials."[7]

In 1995, the Assistant Attorney General issued an opinion reiterating the two-prong analysis and interpreting the 1990 amendment. The opinion determined that the amendment clarifies that the emergencies exception only applies where the threat is "near at hand and demanding of immediate response."[8] The threat also has to be significant in nature:

> It is conceivable that some would interpret this phrase to be satisfied even if the threat were *de minimis*, in the sense that the increased risk to life or property were insignificant, so long as it were possible to say that safety of life or protection of property bore a reasonable likelihood of being compromised at all. This would be too expansive an application of the emergency provision.[9]

3 *See* 31 U.S.C. § 1341.

4 *See* 31 U.S.C. § 1342.

5 *Id.*

6 43 U.S. Op. Atty. Gen. 293, 302 (Jan. 16, 1981).

7 OMB *Memorandum for Heads of Executive Departments and Agencies* 1-2 (Nov. 17, 1981).

8 OMB Memorandum M-95-18 Assistant Attorney General Walter Dellinger, *Memorandum for Alice Rivlin, Director, Office of Management and Budget* 9 (Aug. 16, 1995).

9 *Id.*

As recently as 2011, OMB reiterated this two-prong interpretation of the emergency exception.[10] Based on OMB guidance, the IRS implemented the FY 2011 Shutdown Contingency Plan, under which 57 TAS employees would be excepted, all on the basis of being necessary for the safety of human life or protection of property.[11] These employees, including the National Taxpayer Advocate, were deemed necessary for the "protection of statute expirations, bankruptcy, liens and seizure cases (ensuring statutory deadlines are met)."[12]

The IRS Chief Counsel Interpretation of the ADA in 2013 Recognized Only Risks to Public Health and Protection of Government Property.

In October 2013, the federal government faced another shutdown scenario but this time the IRS did not except any TAS employees from furlough.[13] In this decision, the IRS relied on the advice of the Office of Chief Counsel, General Legal Services (Counsel), which concluded that "[t]he [National Taxpayer Advocate] has not identified any activity during a shutdown that fits within one of [the emergency] exceptions."[14] Counsel's narrow view is that the exception for protection of life and property applies only to prevent imminent loss of life or property and the protection of property exception applies only to government property.[15] Furthermore, the IRS concluded that activities related to preventing significant hardship to individual taxpayers do not fit the exception. "The types of activities the [National Taxpayer Advocate] performs to prevent taxpayer hardship are not the types of activities related to protecting the public welfare that OMB has identified."[16] Upon questioning by the National Taxpayer Advocate, Chief Counsel personnel maintained that "safety of life" applied only in the context of public health, such as meat inspectors, and did not apply to a taxpayer's need for a refund or levy release in order to have the funds to obtain a life-saving operation, for example.

OMB guidance excepts tax-related activities of the Treasury.[17] The way in which the IRS interprets this exception can be seen in its shutdown plan. In 2011, some of the activities that the IRS included in the category of necessary for the safety of human life or protection of property are: processing of tax returns, taxpayer service centers and call sites, and protection of statute expiration, bankruptcy, liens, and seizure cases.[18] As noted above, the IRS excepted 57 TAS employees under this category in 2011. It also excepted 1,263 ACS

10 OMB Memorandum M-11-13, *Planning for Agency Operations During a Lapse in Government Funding* 5 (Apr. 7, 2011). *See also* OMB Memorandum M-13-22, *Planning for Agency Operations During a Potential Lapse in Appropriations* (Sept. 17, 2013).

11 *IRS FY 2011 Shutdown Contingency Plan (During Lapsed Appropriations)* 18 (Apr. 7, 2011).

12 *Id.*

13 *IRS FY 2014 Shutdown Contingency Plan (Non-Filing Season)* 21 (Sept. 26, 2013).

14 Office of Chief Counsel, General Legal Services, *Points on Government Shutdown Issues Pertaining to National Taxpayer Advocate* 1 (Sept. 27, 2013). OMB *Memorandum for Heads of Executive Departments and Agencies* (Nov. 17, 1981) includes a list of the types of activities that are excepted.

15 Office of Chief Counsel, General Legal Services, *Points on Government Shutdown Issues Pertaining to National Taxpayer Advocate* (Sept. 27, 2013).

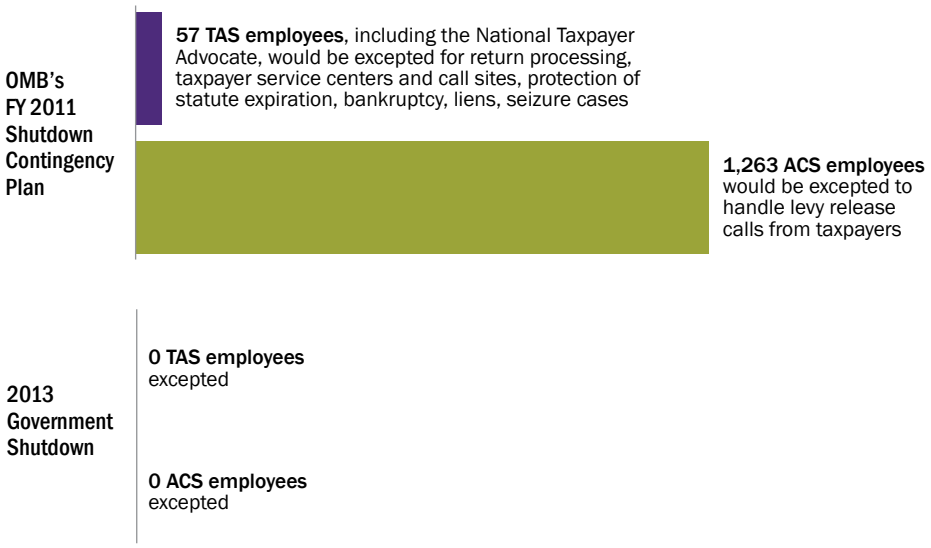
16 *Id.*

17 OMB *Memorandum for Heads of Executive Departments and Agencies* 2 (Nov. 17, 1981).

18 *IRS FY 2011 Shutdown Contingency Plan (During Lapsed Appropriations)* 6 (Apr. 7, 2011).

employees to handle levy release calls from taxpayers.[19] In 2013, the IRS did not consider taxpayer service centers and call sites necessary for the safety of human life or protection of property exceptions nor did it except any ACS employees to handle levy release calls from taxpayers.

FIGURE II.7, EXCEPTED IRS EMPLOYEES DURING GOVERNMENT SHUTDOWNS



The IRS Chief Counsel's Recent Interpretation of the ADA is a Departure From Previous Interpretations and Overlooks TAS's Statutory Mandate.

The IRS relied on OMB guidance when it determined that the life and property exception applied only to public welfare and to government property. However, the OMB guidance makes no distinction between individual lives and public welfare. In fact, the OMB guidance allows for medical care of inpatients and emergency outpatient care.[20] That is a very individualized protection of human life. Moreover, OMB guidance makes no distinction between protection of government property and private property. For instance, the allowance for emergency and disaster assistance does not stipulate that it applies only for government property.[21]

Second, Counsel believes that "preventing taxpayer hardship would not protect the IRS's ability, during a shutdown, to collect revenue that the agency otherwise would not be able

19 *IRS FY 2011 Shutdown Contingency Plan (During Lapsed Appropriations)* (Apr. 7, 2011).

20 OMB *Memorandum for Heads of Executive Departments and Agencies* 1 (Nov. 17, 1981).

21 *Id*. at 2.

to collect."[22] This analysis overlooks the statutory requirement that the National Taxpayer Advocate must assist taxpayers who are facing significant hardships.

The Role of the National Taxpayer Advocate is to Protect Taxpayers From Significant Hardship and Government Overreaching.

Section 7803 of the tax code creates the Office of the National Taxpayer Advocate. One of the main purposes of the National Taxpayer Advocate is "to assist taxpayers in resolving problems with the Internal Revenue Service."[23] In 1998, Senator John Breaux articulated his support for the creation of the National Taxpayer Advocate as follows:

> The concept was not very complicated. It was, when people have a problem with the Internal Revenue Service, they generally are at the mercy of the system. The Government has literally thousands of attorneys and tax attorneys and prosecutors to go after individuals, but the individual citizens don't have anyone to represent their interests in dealing with the Internal Revenue Service. The National Taxpayer Advocate concept was to have someone who was on the side of the taxpayers, to help the taxpayers put together what they need to show what they have done was entirely honest and appropriate.[24]

When a taxpayer is facing a significant hardship "as a result of the manner in which the internal revenue laws are being administered by the Secretary," the National Taxpayer Advocate may issue a Taxpayer Assistance Order (TAO).[25] The Internal Revenue Code defines "significant hardship," in part, "as an immediate threat of adverse action" or "irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted."[26] The TAO could require the IRS to release levied property or "to cease any action, take any action as permitted by law, or refrain from taking any action."[27]

If the IRS is allowed during a shutdown to take enforcement action, then it must provide for the rights of taxpayers to ensure that significant and imminent harm to safety of life or protection of property is avoided, as Congress intended when it created the Office of the National Taxpayer Advocate.[28] The significant hardships that the National Taxpayer Advocate is meant to address are in line directly with the exceptions provided by the ADA, as explained in the 1995 Attorney General opinion. Likewise, the function of the National Taxpayer Advocate is essential to tax collection activities, which the OMB has identified as an excepted activity.

italicize

22 Office of Chief Counsel, General Legal Services, *Points on Government Shutdown Issues Pertaining to National Taxpayer Advocate* 3 (Sept. 27, 2013).

23 See IRC § 7803(c)(2)(A)(i).

24 Statement of Senator John Breaux, Cong. Rec., S4239 (May 5, 1998).

25 *See* IRC § 7811(a)(1)(A).

26 *See* IRC § 7811(a)(2).

27 *See* IRC §§ 7811(b)(1) & (2).

28 In fact, the public expected involvement by the National Taxpayer Advocate during the shutdown. *See* Kelly Phillips Erb, *With Shutdown, Taxes Still Due But You Can't Ask IRS For Help*, Forbes, Oct. 1, 2013, *available at* http://www.forbes.com/sites/kellyphillipserb/2013/10/01/with-shutdown-taxes-still-due-but-you-cant-ask-irs-for-help/.

Other Federal Agencies Interpret the "Safety of Human Life" and "Protection of Property" Exceptions to include Individual Rights and Personal Property.

Other agencies based the decision whether to furlough employees on more expansive interpretations of "safety of human life" and "protection of property." For instance, the Equal Employment Opportunity Commission (EEOC) determined the following activities impacted the safety of human life or protection of property:

- Preserving the rights of aggrieved individuals under the federal employment discrimination statutes by docketing new charges and federal sector appeals;
- Continuing to litigate lawsuits where a continuance has not been granted; and
- Examining new charges to determine whether prompt judicial action is necessary to protect life or property.[29]

None of these activities include protection of public health or government property, two distinctions drawn by IRS Chief Counsel. Instead they address the particularized interests that individuals have in protection from erroneous or harmful government actions.

Similarly, the Employee Benefits Security Administration (EBSA), part of the Department of Labor, retained 46 of its 986 employees during the furlough.[30] EBSA continued two activities pertinent to this discussion: it pursued "civil proceedings and remedies necessary to prevent an imminent threat to property, *particularly including plan assets*" (emphasis added), and addressed situations "imposing an imminent threat to human life due to the denial of health or disability benefits by an ERISA-covered plan."[31] EBSA's mission is to "assure the security of the retirement, health and other workplace-related benefits of America's workers and their families."[32] When EBSA employees were excepted from the furlough to protect plan assets, they were protecting the property of individuals. Similarly, EBSA employees who addressed denials of health or disability benefits were protecting individuals and not the general public.

The Furlough of All TAS Employees Violated Taxpayer Rights and May Have Resulted in Irreparable Harm to Taxpayers, Risking Safety of Human Life.

During the shutdown, the IRS continued enforcement, particularly collection, against taxpayers who could not request TAS's assistance to protect their rights. During the shutdown, taxpayers were subject to the following IRS compliance and enforcement actions:

29 *See EEOC Shutdown Contingency Plan in the Event of Lapsed Appropriations available at* http://www.1.eeoc.gov//eeoc/shutdown_plan/cfm?renderforprint=1.

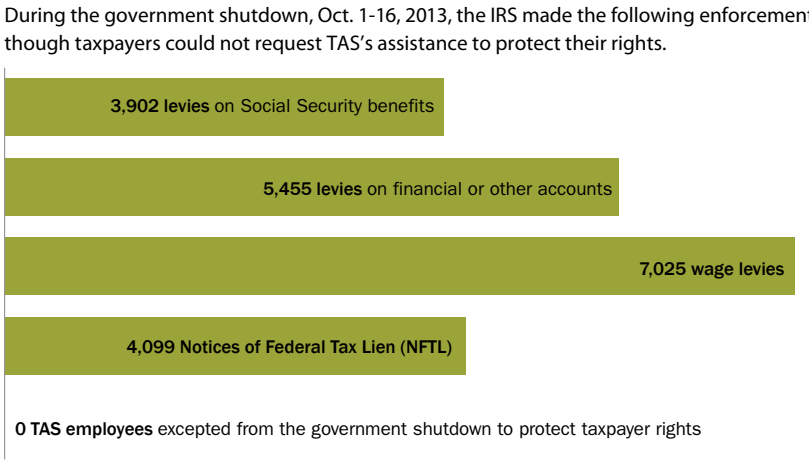
30 *See* Memorandum from the Solicitor of Labor, to the Deputy Secretary 2 (Sept. 25, 2013) *available at* http://www.dol.gov/opa/media/press/opa/shutdown_plan2013.pdf. It appears that EBSA initially proposed that 85 employees be excepted from the furlough. *See* Memorandum from the Deputy Assistant Secretary for Program Operations, to the Solicitor of Labor 1 (Sept. 12, 2013) available at http://www.dol.gov/opa/media/press/opa/shutdown_plan-2013.pdf.

31 *See* Memorandum from the Deputy Assistant Secretary for Program Operations, to the Solicitor of Labor 2 (Sept. 12, 2013) *available at* http://www.dol.gov/opa/media/press/opa/shutdown_plan-2013.pdf.

32 *See* EBSA, Mission Statement *available at* http://www.dol.gov/ebsa/aboutebsa/org_chart.html#mission.

- 3,902 levies on Social Security benefits;[33]
- 5,455 levies on financial or other accounts;
- 7,025 wage levies; and
- 4,099 Notices of Federal Tax Lien (NFTL).[34]

FIGURE II.8, CONTINUED ENFORCEMENT ACTIVITIES DURING THE GOVERNMENT SHUTDOWN



The 2014 Shutdown Plan provided for excepted IRS field collection personnel to "protect statute expiration/assessment activities, bankruptcy or other revenue generating issues."[35] The IRS protects tax collection by reducing IRS liens to judgments or enforcing liens with respect to property,[36] by filing public NFTLs,[37] levying upon financial accounts (including Social Security benefits) and other property belonging to the taxpayer,[38] or garnishing wages.[39] In addition, the IRS can impose a 15 percent continuous levy on Social Security benefits.[40] All of these activities must be initiated within the statutory period for collecting tax (the Collection Statute Expiration Date or CSED).

33 These levies on Social Security benefits were likely part of the Federal Payment Levy Program (FPLP). An FPLP levy is a continuous levy that can take up to 15 percent of the Social Security benefit. Because an FPLP levy is continuous, it will continue until it is released. See IRC § 6331(h).

34 Preliminary information from IRS Office of Taxpayer Correspondence, Individual Master File (IMF), and Automated Lien System.

35 *IRS FY 2014 Shutdown Contingency Plan (Non-Filing Season)* 34 (Sept. 26, 2013).

36 *See* IRC § 7403.

37 *See* IRC § 6323(a).

38 *See* IRC § 6331(a).

39 *See* IRC § 6331(e).

40 *See* IRC § 6331(h).

The IRS protects the integrity of tax collection by issuing Notices of Deficiency[41] or making summary assessments of tax for mathematical or clerical errors.[42] All of these activities must be initiated within the statutory period for assessing tax (the Assessment Statute Expiration Date or ASED). Thus, when the IRS says it will protect "statute expiration, bankruptcy, or other revenue generating issues," it is stating that it could conduct significant enforcement actions against taxpayers during the shutdown to protect government tax collections. However, as noted above, Congress intended that TAS be available to assist taxpayers in challenging these actions. If these actions occur, then TAS employees must be able to protect taxpayers from any imminent hardships arising from these actions.

Although the IRS publicly stated that it was not undertaking certain enforcement actions during the shutdown, the data presented above demonstrate that the IRS already had significant enforcement activity programmed to take place automatically while employees were furloughed.[43] During the shutdown, the IRS reported to the public that it would cease issuing liens and levies.[44] However, the IRS admitted that some levy and lien letters would be mailed because they were prepared prior to the shutdown. It also did not exclude automatic levies – *i.e.*, levies already scheduled to occur during the shutdown would take place.

In at least one instance, an attorney filed suit to prevent the IRS from issuing and enforcing automatic levies during the shutdown because she had no other avenue for relief.[45] In that case, the intent to levy notice was sent prior to the shutdown but before the period to appeal had expired.[46] If some select TAS employees had been excepted, this problem could have been avoided. It should be noted that the hardship situation faced by the taxpayers in this case was not unique.

The IRS received payments from many banks in response to account levies within 21 days of the beginning or end of the shutdown. Financial institutions are required to pay over account proceeds up to the amount of the levy by the 21st day following levy issuance or else become liable for that amount.[47] This 21-day period gives taxpayers the opportunity to contact the IRS, make payment arrangements, and obtain a release of levy before the funds are actually remitted.

41 *See* IRC § 6212.

42 *See* IRC § 6213(b)(1).

43 *See* Ward Affidavit, ¶ 5, *Johnson and Johnson v. Werfel and IRS*, No. 4:13-cv-134 (E.D. Va. Oct. 16, 2013). In this case, an IRS employee submitted an affidavit explaining that the FPLP matching program was suspended until operations were restored. This statement is not accurate, as we know that 3,902 levies on Social Security benefits occurred during this time. *See also* Kelly Phillips Erb, *With Shutdown, Taxes Still Due But You Can't Ask IRS For Help*, Forbes, Oct. 1, 2013, *available at* http://www.forbes.com/sites/kellyphillipserb/2013/10/01/with-shutdown-taxes-still-due-but-you-cant-ask-irs-for-help/.

44 American Institute of CPAs, *Questions and Answers on the Impact of the Government Shutdown on IRS and Tax Administration*, *available at* http://www.aicpa.org/interestareas/tax/resources/irspracticeprocedure/pages/shutdown-2013_irs-impact.aspx (Oct. 1, 2013).

45 *See* Complaint, *Johnson and Johnson v. Werfel and IRS*, No. 4:13-cv-134 (E.D. Va. Oct. 10, 2013). *See also* Matthew R. Madara, *Shutdown Blocks Taxpayers' Right to Levy Hearing, Complaint Says*, Tax Analysts 199-4 (Oct. 15, 2013).

46 IRC § 6330 provides taxpayers with the right to request a hearing within 30 days of the issuance of a levy notice. Among other things, the taxpayer may raise issues related to the appropriateness of the collection activity at the hearing and may propose collection alternatives. This protection is important particularly for low-income taxpayers who often face significant hardships when their source of income is levied.

47 *See* IRC § 6332(c); *see also* Treas. Reg. § 6332-3.

Between September 10 and October 30, 2013, the IRS issued 37,385 Forms 8519, *Taxpayer's Copy of Notice Levy*, and 35,699 Forms 668-A, *Notice of Levy*.[48] Because the National Taxpayer Advocate and her employees were furloughed, taxpayers facing imminent economic hardship as a result of a levy were unable to reach anyone in the IRS, and were **unable to request** and receive levy releases as mandated by IRC § 6343.[49] Thus, **these taxpayers** may have experienced *significant and imminent harm,* including the inability to pay for reasonable *basic* living expenses, *risking safety of human life.*

The 1995 assistant attorney general's opinion stated that exceptions under the ADA require "a threat to human life or property of such a nature that immediate action is a necessary response to the situation."[50] TAS cases that meet the significant hardship criteria of IRC §§ 7811(a)(2)(A) and (D) *(i.e.,* immediate threat or irreparable harm) satisfy this exception. Particularly where the case impacts the taxpayer's ability to provide for medical expenditures, food, and shelter, IRS levy action can cause irreparable and imminent harm - that is, *harm that cannot be undone.*

The IRS's decision to furlough all TAS employees, including the National Taxpayer Advocate, violated taxpayer rights and, in some cases, resulted in irreparable harm to taxpayers, risking safety of human life.

Thus, the IRS's decision to furlough all TAS employees, including the National Taxpayer Advocate, violated taxpayer rights and, in some cases, resulted in irreparable harm to taxpayers, risking safety of human life.

Significant harm as a result of IRS action is not a mere theoretical possibility. Nearly every day, TAS receives cases in which taxpayers will have their utilities disconnected or their homes foreclosed upon as a result of the IRS's failure to pay a refund or release a levy. TAS has cases in which taxpayers make suicide threats, or in which they need emergency surgery and need levies released or refunds released. During a shutdown, how do you restore to the taxpayer the harm that occurred during that period when she had no utilities? How do you restore the sixteen days of no heat, no warmth, no electricity? Because TAS wasn't there to answer the phone or open the mail, how do we know, during the shutdown, that someone didn't lose his or her job, threaten (or even commit) suicide, or not get emergency surgery in a timely manner? We don't know. We won't ever know. That's the problem. We weren't there. Such significant harm could have been avoided if the National Taxpayer Advocate and select personnel, such as campus LTAs, analysts, and a limited number of case advocates and support staff, were excepted to address cases where immediate threat or irreparable harm was present due to IRS actions (or failure to act) during the shutdown.

48 Information from IRS Office of Taxpayer Correspondence (April 11, 2014).

49 The shutdown affected all of the IRS. For instance, Small Business/Self-Employed (SB/SE) only excepted 90 employees in field collection, which includes 68 territory managers and eight area directors who had "oversight of the collection of taxes and processing of returns." *See* IRS FY 2014 Shutdown Contingency Plan (Non-Filing Season) 33-34 (Sept. 26, 2013).

50 OMB Memorandum M-95-18, Assistant Attorney General Walter Dellinger, *Memorandum for Alice Rivlin, Director, Office of Management and Budget* 9 (Aug. 16, 1995).

TAS Issued Guidance to Mitigate the Negative Impact of the Furlough on Taxpayers.

TAS anticipated that some taxpayers would appear in imminent danger of significant hardship and irreparable harm from IRS enforcement actions during the shutdown. To minimize the potential harm from the IRS's decision to furlough all TAS employees, the National Taxpayer Advocate issued internal guidance that directed all TAS case advocates to bypass the typical process in certain cases, and instead directed them to issue Taxpayer Assistance Orders (TAOs) to protect taxpayer rights.[51] This action prioritized cases affected by the furlough and ensured that any hardships were alleviated as soon as possible.

TAS has issued 96 TAOs related to the shutdown,[52] of which the vast majority (82) were issued because of an economic burden.[53] Further, the IRS has complied with 91.4 percent of all TAOs issued due to the shutdown.[54] This means not only that the government shutdown created a situation where taxpayers faced economic harm, but the harm could have been alleviated if some TAS employees were excepted from furlough and performing their duties in cases involving significant and imminent harm. Figure II 9 shows the breakdown of TAOs issued related to the shutdown.

FIGURE II.9, TAS CASES BY ISSUE AND TAOS ISSUED RELATED TO GOVERNMENT SHUTDOWN[55]

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Issue Description	TAOs Issued	% of TAO Case Type to All TAO Types
Stolen identity	1	1%
Levy (including Federal Payment Levy Program)	34	35%
Processing amended return	8	8%
Pre-refund wage verification hold	9	9%
Other	44	46%
Total	**96**	**99%*** *Total does not add to 100% due to rounding.

51 National Taxpayer Advocate, *Interim Guidance on Advocating for Taxpayers Adversely Affected by Government Shutdown* (Oct. 21, 2013). The guidance required that all case advocates review open cases and post-shutdown cases to determine if "significant economic or irreparable harm occurred during the [s]hutdown." Four things to consider in making the determination included: if the IRS or TAS was unavailable during the Shutdown, and the harm could have been avoided if the taxpayer had been able to make contact with the IRS or TAS; the timeframes for the exercise of important taxpayer rights (such as exercising appeal rights, responding to a proposed adjustment or to a penalty notice) lapsed during the Shutdown or timeframes lapsed immediately after the Shutdown; there are now short timeframes for obtaining relief because of the Shutdown; and other situations which are substantially similar to the examples provided below. *Id*.

52 Business Performance Report FY 2014 Quarter 2, at 16 (Apr. 16, 2014).

53 *Id*.

54 *Id*.

55 Data obtained from TAMIS (April 29, 2014). This list includes three rescinded TAOs.

FIGURE II.10, TOP 10 GOVERNMENT SHUTDOWN CODED CASES BY PRIMARY CASE ISSUE CODE (PCIC)

Rank	Primary Issue Code	Description	TAS Case Receipts	% of All Government Shutdown Receipts
1	425	Identity theft	162	19.2%
2	710	Levy	102	12.1%
3	610	Open audit	82	9.7%
4	330	Proessing amended returns	57	6.8%
5	045	Pre-refund wage verification	55	6.5%
6	630	Earned Income Tax Credit claim	44	5.2%
7	310	Processing original return	27	3.2%
8	340	Injured spouse claim	24	2.8%
9	712	FPLP Levy - SSA benefits	22	2.6%
10	620	Reconsideration of audits and substitute for return under IRC 6020(b)	19	2.3%

IRS Enforcement Personnel Opened TAS Mail during the Furlough in Violation of TAS's Statutory Confidentiality Rules.

The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) contained a number of changes to IRC § 7803(c) to ensure that TAS would be viewed, both in perception and reality, as an independent and impartial voice for the taxpayer within the IRS.[56]

Confidentiality plays an important role in promoting this independence. In this regard, Congress added IRC § 7803(c)(4)(A)(iv), which provides that each Local Taxpayer Advocate "may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer."

To ensure that the TAS is truly independent from the rest of the IRS, Congress also added the following requirement to the Code in 1998:

> "MAINTENANCE OF INDEPENDENT COMMUNICATIONS Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address."[57]

Congress envisioned that each Local Taxpayer Advocate (LTA) office "would operate separately from the local IRS office (including having its own telephone and fax lines and a separate listing in the telephone book)."[58]

56 *See* Pub. L. No. 105-206, 112 Stat. 685 (1998).

57 *See* IRC §7803(c)(4)(B).

58 *See* Description of Senate Finance Committee Chairman's Mark Relating to Reform and Restructuring of the Internal Revenue Service, Joint Committee on Taxation, JCX-17-98.

On October 9, 2013, during the shutdown, the Small Business/Self-Employed (SB/SE) Director, Field Collection, issued a memorandum to all SB/SE Field Collection and Examination Area Directors, Territory Managers, Group Managers, and Technical Analysts, setting forth the "Revised Shutdown Procedures for Processing Mail, Posting Payments." This memo directed enforcement personnel in designated locations to open and sort mail for *all* functions, including TAS.[59]

TAS has since learned that IRS Field Collection, Examination, Insolvency, and Criminal Investigation personnel opened mail addressed to local TAS offices during the shutdown and extracted any payments that were in the mail. This activity violated the statutory requirement that TAS maintain confidential and separate communications with taxpayers, and exposed taxpayer communications with TAS to the eyes of IRS enforcement employees. Such risk could have been avoided had a few TAS employees selected by the National Taxpayer Advocate, such as LTAs, support staff, and case advocates, been excepted from the furlough for the limited task of opening mail, or at least kept on call, to open mail and receive payments. As noted earlier, collection of tax is an excepted function for the protection of government property.

TAS Will Urge the IRS to Reconsider Its Position and Allow TAS Employees to Be Excepted if the Government Shuts Down Again.

As Congress intended, much of the case work that TAS performs involves emergency situations. In enacting § 1342 of the ADA, Congress contemplated the fact that emergencies involving the safety of human life or the protection of property would occur during a lapse in appropriations, and such emergencies would justify incurring obligations for the excepted employees addressing imminent "emergencies involving the safety of human life or the protection of property."[60]

Congress created TAS as an independent office within the IRS to preserve taxpayer rights at times when taxpayers are most vulnerable - when they are facing significant hardships. The IRS's decision not to except any TAS employees from furlough during the shutdown allowed the IRS to initiate or complete enforcement actions without providing taxpayers with recourse to statutory taxpayer rights protections, including TAS's statutory mission and authority to assist taxpayers experiencing *significant* hardship. The National Taxpayer Advocate is concerned that such a departure from the principles of fair tax administration and misinterpretation of legal authority would compromise the safety of life and property in any future shutdowns.

The National Taxpayer Advocate urges the IRS to reconsider its position and revise its Shutdown Plan to bring its Plan into conformity with the promises made in the

59 Memorandum from Robert L. Hunt, SB/SE Director, Field Collection, *Revised Shutdown Procedures for Processing Mail, Posting Payments* (Oct. 9, 2013).

60 43 U.S. Op. Atty. Gen. 293, 302 (Jan. 16, 1981).

recently-adopted Taxpayer Bill of Rights.[61] The revised Plan should except the National Taxpayer Advocate and those of her employees essential to performing excepted duties as outlined above, including the protection of taxpayer rights when IRS undertakes enforcement actions during the furlough and provision of relief where the protection of human life is implicated, as well as the protection of taxpayer confidentiality when it is deemed necessary to open taxpayer correspondence addressed to the Taxpayer Advocate Service.

61 *See* TAS, *What the Taxpayer Bill of Rights Means for You*, *available at* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights/What-the-Taxpayer-Bill-of-Rights-Means-for-You.

F. IRS Funding Gap Creates Severe Risk to the Delivery of the Taxpayer Advocate Service Integrated System (TASIS)

On March 28, 2014, IRS Information Technology (IT) informed TAS that IT would not release incremental funding to continue development of the Taxpayer Advocate Service Integrated System (TASIS) through the remainder of FY14 since it allocated funds to other priorities. TASIS is the TAS's decade-long effort to redesign and integrate its case management, case assignment, systemic advocacy, research, communications, and storage systems. The IRS put the project on a "strategic pause" while the Chief Technology Officer (CTO) and Chief Financial Officer (CFO) evaluate funding options for continuation. The IRS has never provided TAS full transparency regarding the overall status of funding and resources aligned to the project. Further, TASIS has never had a budget; therefore, all dollars were based on the Out of Cycle (OOC) process.[1]

Prior to March 2014, the IRS repeatedly advised the National Taxpayer Advocate that funding would never be an issue because it was a high-profile project with executive support from the highest levels of the IRS and portrayed the project as securely and adequately funded through at least the first release scheduled for December 2014. Instead, TASIS is now an unfunded project without adequate IT resource support, and TAS is at risk of losing the ability to fulfill its statutory mission of advocating for all taxpayers.

Due to the lack of transparency in project funding, TAS requested that this critical issue be officially tracked as a project risk by the TASIS Risk Review Board (RRB) and through the Enterprise Risk Management (ERM) process. The RRB has continually pressed the IRS for a clear outline of the expended and projected project funding for all TASIS releases, but to date there is no established process for such products. TAS has learned that initial TASIS funding was supplied in FY 2010, which carried the project only through the end of FY 2012, leaving remaining development to be funded "out of cycle" and "at risk." The CTO has verbally committed to complete the project, but that commitment is subject to the vagaries of IRS funding and other unexpected organizational changes and priorities. For these reasons, the news of TASIS production halting due to funding issues is deeply disturbing.

The concept of TASIS began years ago, when TAS learned that our primary case management system, the Taxpayer Advocate Management Information System (TAMIS)[2] was slated for imminent retirement. Early in the planning stages, TAS recognized and seized this event as an opportunity to not only replace TAMIS, but to create an integrated system that would pull all of our systems into a single application. This would bring our organization into the modern day, where the American people have become electronically savvy and expect federal agencies to offer the same modern advances as in the private sector. TASIS was created, if only in concept, at that point. This replacement effort became the highest of priorities so that our employees and the taxpayers they serve would see no lapse in advocacy.

1 The IT Out-of-Cycle (OOC) process determines which service wide enhancements receive current-year funding. This funding is a set aside in the appropriated budget.

2 TAMIS is an Oracle web-based inventory control and report systems used to control and track TAS cases and provide management information.

With the termination of funding for TASIS, TAS must now focus on contingency activity to ensure the TAMIS system will remain available to employees with no interruption to their advocacy efforts. If this is to take place, TAMIS must be moved and re-hosted from the IRS's Detroit Computing Center (ECC-DET) to Memphis before April 2015, when the Detroit center is scheduled to remove all IT assets. In other words, TAMIS will cease to exist unless the move to Memphis is completed by April 2015. Initially, IT was expecting TAMIS to be decommissioned with the delivery of TASIS but now must give priority to the move of TAMIS, which is on antiquated infrastructure and using software that is no longer supported.

Our understanding is that IT is planning the move and has a draft schedule with a target of October 2014, but that is neither confirmed nor agreed upon by TAS. We have identified major risks in this process, *i.e.*, TAMIS is not only being relocated but it also requires extensive changes to the support software and will need extensive testing to determine *if* the application can function in the new Computing Center location. TAMIS also needs other software changes, because it was not being brought into compliance with IT enterprise standards largely due to the assumption TASIS would be created and TAMIS decommissioned.

There are many unanswered questions and imminent risks, such as:

1. Even if the CTO and CFO secure funding for TASIS, it will likely be only for Release 1, which includes 40 percent of the overall project requirements. Where will that leave future releases to cover the remaining 60 percent?
2. If we secure Release 1 funding, will the first release be made prior to the TAMIS re-hosting deadline of April 2015?
3. If Release 1 funding is secured but cannot be deployed until after the April 2015 deadline, can IT fully support TAMIS in the interim?

TASIS is not just a replacement for TAMIS, it is the vehicle to elevate our systems to the level the public deserves and demands.

Most importantly, TASIS is not just a replacement for TAMIS, it is the vehicle to elevate our systems to the level the public deserves and demands. Without TASIS, we cannot transition from paper files to electronic ones. We cannot automate work processes such as Operations Assistance Requests, technical advice requests, systemic advocacy issues, workload balancing, or work assignments. Nor can we proceed with numerous other technological advances planned with the delivery of TASIS.

The end of TASIS would mean the end of a decade of hard work, millions of dollars and the incalculable benefits that employees and taxpayers would have reaped from the new technology. This leaves TAS, the IRS, and the public with an archaic application and no clear vision for the future.

G. Providing Current and Accurate Instructions and Guidelines For IRS Employees and Taxpayers

IRS employees depend upon accurate, up-to-date instructions to perform their duties and use the proper procedures. Similarly, taxpayers depend on guidance and publications from the IRS to help them understand their obligations and how to fulfill them. Current instructions and guidelines are especially important given the frequency of tax law changes, which in recent years have occurred on an average of more than one a day.[1]

When principal sources of employee instructions, such as the Internal Revenue Manual (IRM), are not updated, employees may rely on outdated, incorrect information or no guidance at all. Letters, notices, publications, and forms must also be kept accurate and up to date, which includes having them reviewed by all relevant internal stakeholders. Published instructions and guidance, whether to employees or to taxpayers, are essential to fulfillment of the taxpayer's *right to be informed*.[2]

TAS Found the IRM Is Not Always Current, Leaving Employees Without Current Instructions for How to Perform their Jobs.

IRS procedures and instructions must adapt and change frequently to accommodate changes in the law, IRS policy, tax compliance challenges, and taxpayer needs. According to IRM 1.11.2.3, *Keeping the IRM Current*, "to maintain the [capitalize T in their] ent, the IRM owner is responsible for reviewing the IRM at least annually."[3] During its ongoing audit of the IRM for places to include taxpayer rights information, TAS found the manual is frequently not kept up to date.[4] We reviewed IRMs published through May 28, 2014. We found 121 sections of Part 7 of the IRM, *Rulings and Agreements,* of which 51 percent are more than ten years old and only 21 percent were published within the last year.[5] IRM Part 4, *Examining Process*, has 460 sections, but only 19 percent were issued since the end of May 2013, and over 50 of these sections were more than ten years old.[6]

When the IRS does not review and update instructions to staff regularly, especially instructions that concern compliance and enforcement functions, it creates the risk that evolving

1 Between 2001 and December 2012, there were approximately 4,680 changes to the tax code, an average of more than one a day. National Taxpayer Advocate 2012 Annual Report to Congress 6.

2 On June 10, 2014, the IRS adopted the Taxpayer Bill of Rights. *See http://www.irs.gov/Taxpayer-Bill-of-Rights* (last visited June 19, 2014) and http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights (last visited June 19, 2014). *See also* Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration (Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights) (Nov. 4, 2013), *available at*: http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf.

3 IRM 1.11.2.3 (May 11, 2012). The "program owner" is the organization or office responsible for establishing the program policy, process and procedures necessary to implement and manage the program area for the IRS. Each program owner is responsible for developing and publishing procedures in the IRM.

4 For a detailed discussion of TAS's ongoing audit of the IRM, see Implementing the Taxpayer Bill of Rights, *supra.*

5 IRS Intranet, http://publish.no.irs.gov/pubsys/irm/indp07.htm (last visited May 28, 2014).

6 IRS Intranet, http://publish.no.irs.gov/pubsys/irm/indp04.htm (last visited May 28, 2014). Because the IRM review team started with the IRM parts where taxpayers might be the most at risk if there was not sufficient taxpayer rights information, such as the compliance and enforcement parts, TAS has not yet reviewed its own Part 13. TAS expects to find that its own IRM sections are similarly out of date.

policies and procedures will not be timely communicated to employees and taxpayers will be harmed. An example of the problems caused by not having an updated IRM involves the IRS "Fresh Start" initiative.[7] Although the IRS implemented these procedural changes through interim guidance memoranda (IGM) in fiscal years 2011 and early 2012, it took a few years to add this material to the formal IRM. This prevented employees from easily finding current instructions on how to help taxpayers benefit from the initiative. Where there is a vacuum in instructions, some employees may even develop their own informal procedures.[8]

The Entire IRM, Including Interim Procedural Updates, Should be Easily Accessible to Employees in One Place and Available to Taxpayers on IRS.gov.

In addition to the IRM not being updated regularly, employees may not be able to find the most current version of an IRM[9] because the manual is housed on multiple sites. IRM authors use two main sites to "host" instructions to IRS employees. The first site, IRM Online, includes all IRMs but because they are not automatically updated, it may take as long as a year for an updated IRM to appear.[10]

The second internal site, the Servicewide Electronic Research Program (SERP), is used by authors to distribute interim procedural updates (IPUs) to the IRM. These post within 48 hours of receipt.[11] However, because the authors can decide whether to put their IRMs on SERP for employees to access, some IRMs remain unavailable. Even some IRMs on SERP may not actually provide the content of the interim guidance that is the reason for the update and instead instruct the user to view the interim guidance on the public IRS.gov site.[12] Thus, if an employee wants to find updated instructions about how to perform his or her job, the employee may have to navigate three different sites to find them. If employees do not choose the right site and fail to access the most current IRM, they may not follow the proper procedures, which could mislead or even harm taxpayers.

In addition to the internal sites, the IRS also posts the IRM on its public site, IRS.gov – but this version does not include the updated IRMs found on SERP. A user who wants to know if the IRS has interim procedures or instructions must check a separate page that lists interim guidance.

7 The IRS's Fresh Start Initiative encompassed a number of changes to the IRS's lien filing and collection practices, such as significantly increasing the dollar threshold when liens are generally issued, resulting in fewer tax liens, and making it easier for taxpayers to obtain lien withdrawals after paying a tax bill. IRS, *IRS Announces New Effort to Help Struggling Taxpayers Get a Fresh Start; Major Changes Made to Lien Process*, IR-2011-20 (Feb. 24, 2011), *available at*: http://www.irs.gov/uac/IRS-Announces-New-Effort-to-Help-Struggling-Taxpayers-Get-a-Fresh-Start;-Major-Changes-Made-to-Lien-Process.

8 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013).

9 "An IRM" refers to an individual IRM section or subsection.

10 See IRM 1.11.8.7.1 (Feb. 1, 2013). IRM Online is not updated automatically when authors issue Interim Procedural Updates (IPUs). Authors must incorporate the guidance into the published copy of the IRM within one year of the date of the IPU.

11 IRM 1.11.8.7.1.3 (April 25, 2013).

12 For example, SERP IPU 14U0483, issued for IRM 5.1.5 on March 13, 2014, does not contain the actual instructions to employees, but instead provides the reason why the interim guidance was issued. The IPU provides a link for the reader to use to go to IRS.gov to read the actual interim guidance. In this case, the guidance was also posted to the SB/SE website.

Table II. 11, *IRS Sites That Host IRMs*, compares the coverage of the three sites. To obtain a complete set of instructions, employees must understand the limitations and differences across all these sites, and be willing to jump back and forth among them, all while trying to resolve issues for taxpayers.

TABLE II.11, IRS SITES THAT HOST IRMs

IRM Part	Servicewide Electronic Research Program (SERP)[1]	IRM Online[2] or Electronic Publishing[3]	IRS.gov (public access)[4]
Part 4, Examining Process	Less than half available (42% of the Part 4 is available - 195 sections out of 460)	Available, but requires a separate search for Interim Guidance	Available, but requires a separate search for Interim Guidance Only Interim Guidance that the IRS determines meets e-FOIA criteria is available
Part 5, Collecting Process	Largely available (96% of Part 5 is available - 174 out of 181 sections)	Available, but involves separate search for Interim Guidance	Available, but involves separate search for Interim Guidance Only Interim Guidance that the IRS determines meets e-FOIA criteria is available
Part 7, Rulings and Agreements	NOT available	Available, but involves separate search for Interim Guidance	Available, but involves separate search for Interim Guidance Only Interim Guidance that the IRS determines meets e-FOIA criteria is available
Part 13, Taxpayer Advocate Service	Largely available (97% of Part 13 is available - 32 of 33 sections)	Available, but involves separate search for Interim Guidance	Available, but involves separate search for Interim Guidance
Part 21, Customer Account Services	Available (All 65 sections are on SERP	Available, but involves separate search for Interim Guidance	Available, but involves separate search for Interim Guidance Only Interim Guidance that the IRS determines meets e-FOIA criteria is available

insert) after SERP

[1] SERP was designed to facilitate access to IRMs by employees and has grown from hosting a few IRM sections in the 1990s to nearly 900 sections in 2013. SERP News, Apr. 2013, http://serp.enterprise.irs.gov/databases/local-sites-other.dr/author_resource/SERP_Newsletter.html (last visited Mar. 31, 2014).
[2] http://irm.web.irs.gov/ (last visited Mar. 31, 2014).
[3] http://publish.no.irs.gov/pubsys/irm/numind.html (last visited Mar. 31, 2014). Note: this site does not contain any interim guidance.
[4] Does not include "Official Use Only" information.

Due to the difficulty of finding accurate and consistent information, IRS employees may not be able to do their jobs properly, and taxpayers may be unable to find correct and up-to-date information on the IRS website. TAS recommends the IRS merge its internal sites into one streamlined source under the guidance of the Office of Servicewide Policy Directives and Electronic Research (SPDER).[13] In addition, all interim procedural updates, redacted to exclude official use only information, should be incorporated into the IRM that is posted on IRS.gov.

13 SPDER has responsibility for the overall management of the IMD program. IRM 1.11.1.1(3) (Sept. 4, 2009).

TAS Will Continue Advocating for a Servicewide Clearance Process for Tax Forms, Publications, Letters, and Notices.

TAS and other internal stakeholders play a pivotal role in reviewing documents before they are issued to the public to ensure they provide for protection of taxpayer rights and contain accurate, helpful information. However, the lack of a well-defined review process creates a risk to taxpayers and the IRS. For example, the IRS recently changed various form letters for taxpayers to prepare for the implementation of the Affordable Care Act (ACA).[14] TAS was not given an opportunity to review these letters until very late in the process. TAS recommended a change to alert taxpayers that their liability for individual shared responsibility payments would be subject to the IRS Refund Offset program. This important information, which the IRS accepted, not only protects a taxpayer's *right to be informed*, but it may save the IRS resources in not having to respond to inquiries about reduced refunds. The IRS should enable its offices to work more collaboratively by creating a formal clearance process that provides all internal stakeholders, like TAS, with a chance to review these documents.

Due to the difficulty of finding accurate and consistent information, IRS employees may not be able to do their jobs properly, and taxpayers may be unable to find correct and up-to-date information on the IRS website.

Over the last year, TAS has made some progress in coordinating the review of IRS products. TAS reached an informal agreement with IRS Tax Forms and Publications (TF&P), the Wage and Investment (W&I) Division, and the Small Business/Self Employed (SB/SE) Division to create liaisons to help TAS find document owners (authors) who can address questions and concerns early in the review, improving the chances of resolving any differences through negotiation. However, these *ad hoc* processes are only a partial solution. The IRS still has no universal process for all internal stakeholders to clear forms, letters, notices, and publications.

Focus for FY 2015

TAS will continue to advocate for merging SERP IRM and IRM Online into a single, streamlined site that includes all IRM sections and interim procedural updates. This will allow employees to easily access the most current procedures and treat taxpayers fairly. TAS recognizes the process of updating tax forms, publications, letters, and notices involves many stakeholders who have different areas of responsibility. TAS will work with all stakeholders to develop guidance for clearing these documents. In FY 2015, TAS will advocate for the following IRS-wide clearance process:

1. The process for clearing tax forms, publications, letters, and notices should follow the guidance in IRM 1.11.9 for clearing internal management documents.[15] IRM 1.11.9 serves as a model because it provides for reviewing and approving changes to IRMs,

14 These include letters used to advise taxpayers of IRS decisions on claims.

15 IRM 1.11.9 (Nov. 1, 2011).

as well as soliciting responses from all affected IRS functions. It also describes how reviewers resolve conflicts prior to publication and when documents must be published expeditiously.[16]

2. The review process should give all affected IRS functions an opportunity to provide substantive changes as early as possible.
3. The clearance process should establish a method of controlling the flow of comments during reviews. TAS recommends sending all substantive review comments directly to the authors, with a copy to key stakeholders like Tax Forms and Publications and the Office of Taxpayer Correspondence (OTC). TAS recommends establishing a review matrix or similar template, such as the form (Form 2061) used in the IRM clearance process.
4. The SPDER office should have overall responsibility for the clearance process for forms, publications, letters, and notices.[17] This would ensure the IRS applies the same scope of internal review to communications to the public as it does to guidance for employees.

Creating a robust clearance process will provide all internal stakeholders with the opportunity to review these documents, ensuring the documents are not only correct and helpful to taxpayers but provide for taxpayer rights.

16 See IRM 1.11.9.9.1, Issuing IMD While Disagreements are Negotiated (Apr. 7, 2014).

17 The owner of the form, publication, letter, or notice would still be responsible for updating the content.

H. TAS Prepares for Implementation of Filing Season 2015 Affordable Care Act Provisions

For the past few years, TAS has maintained a careful watch on all IRS activities concerning the Affordable Care Act (ACA). The IRS is implementing complicated ACA provisions that require updating information technology systems, issuing guidance, and collaborating with other federal agencies.[1] The true test for the IRS and individual taxpayers will begin in 2015, when these taxpayers begin filing their 2014 federal income tax returns and will have to report that they have minimal essential health coverage or are exempt from the responsibility to have the required coverage. If the taxpayer does not have health coverage and is not exempt, he or she must make an individual shared responsibility payment (ISRP) when filing a return.[2] Additionally, many taxpayers will have to reconcile the Premium Tax Credit (PTC) amounts they received in advance with the amounts to which they are entitled.[3] At the same time, the IRS must receive and process a significant amount of new information returns from insurers and exchanges to identify errors and noncompliance.

The Taxpayer Advocate Service's focus during IRS ACA program design and implementation is to ensure that the IRS treats both individual and business taxpayers appropriately and fairly, and protects taxpayer rights. The National Taxpayer Advocate represents TAS on the ACA Executive Steering Committee while TAS employees participate on many ACA joint implementation teams.[4]

Health Care Training for TAS Employees and Low Income Taxpayer Clinics

During fiscal year (FY) 2014, TAS developed high-level training on the ACA provisions to prepare all its employees to help taxpayers.[5] In the remaining months of FY 2014 and the beginning of FY 2015, TAS will progress to more in-depth instruction on specific provisions of the law such as the Premium Tax Credit, Individual Shared Responsibility, and Employer Shared Responsibility provisions. All TAS employees will receive this training, with additional instruction for technical advisors who will serve as experts for complicated ACA cases. TAS will also conduct another round of training to prepare case advocates to handle cases they may receive when taxpayers begin filing their tax year 2014 returns.

During FY 2014, TAS conducted initial training on ACA provisions for key personnel working at Low Income Taxpayer Clinics (LITCs). In FY 2015, TAS will provide a second round of training at the LITC annual conference to educate those tax professionals about the

1 See Patient Protection & Affordable Care Act of 2009, Pub. L. 111-148, 124 Stat. 119 (Mar. 2010), as amended by the Health Care & Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

2 IRC § 5000A.

3 The Premium Tax Credit is a refundable tax credit available paid both in advance and at return filing to help taxpayers with low to moderate income purchase health insurance through the Marketplace. IRC § 36B.

4 TAS is represented on the following ACA Joint Implementation Teams: Customer Service Operations, Outreach, Tax Return Receipt and Processing, ACA Notices and Correspondence, Compliance – Individuals, Compliance – Business, and Collection.

5 TAS has developed the following three high-level ACA self-study courses for its employees: (1) Course 55213 – *Introduction*; (2) Course 55447 – *Part 1, Individual Topics*; and (3) Course 55449 – *Part 2, Employer Topics.* The courses discussed ACA provisions that took effect in 2014.

provisions relevant to the low income taxpayers they assist. We will also look for opportunities to provide virtual training for the clinics to prepare them for cases involving the ACA.

TAS Case Advocacy Prepares to Track Health Care Cases

To prepare for implementation of the main tax provisions of the ACA, TAS has developed issue codes to track health care cases in our case management system and enable offices to advocate for taxpayers by identifying trends or systemic issues. The new issue codes will help the National Taxpayer Advocate identify the most serious taxpayer problems related to the new provisions. TAS will assess the skills of its employees in using the new codes accurately before the filing season to determine if supplemental training is necessary.

Communications and Outreach Efforts

TAS has taken substantive steps to provide assistance and education to taxpayers regarding the ACA. TAS developed an estimator for the Small Business Health Care Tax Credit, which allows small businesses to estimate their credits and find out how changes in circumstances will impact their eligibility.[6] TAS will expand its outreach through the end of FY 2015 by requiring all Local Taxpayer Advocates (LTAs) to conduct grassroots outreach to health care groups in their communities as well as grassroots organizations that serve the population impacted by the Premium Tax Credit.

A focus of TAS's outreach efforts will be to educate taxpayers who receive premium tax credits (in the form of premium subsidies) about the critical need to update their information with the exchanges throughout the year, either to increase their credit amount or avoid a tax liability if changes result in eligibility for a smaller credit.

A focus of TAS's outreach efforts will be to educate taxpayers who receive premium tax credits (in the form of premium subsidies) about the critical need to update their information with the exchanges throughout the year, either to increase their credit amount or avoid a tax liability if changes result in eligibility for a smaller credit. TAS believes this is a critical message that taxpayers should hear regularly. TAS has also created a calculator that estimates how changes in circumstances affect the amount of the credit.[7]

TAS also plans to develop outreach materials on a number of health care issues that LTAs and others can use. Further, TAS will develop outreach videos for the TAS toolkit (at www.TaxpayerAdvocate.irs.gov) to educate taxpayers on the ACA provisions and what they need to know prior to the 2015 filing season.

6 The small business health care tax credit estimator is available at http://www.taxpayeradvocate.irs.gov/calculator/SBHCTC.htm.

7 At the date of publication, the PTC calculator is undergoing internal IRS review and testing.

The unique intersection of taxes and health care in the ACA also makes it important to talk with health care and social services groups about the tax implications of certain health care decisions so they provide their clients with the most comprehensive and accurate information. Because many such organizations do not regularly deal with tax issues, it is critical for the IRS and TAS to educate them about where to go if they have questions or concerns.

TAS Continues to Monitor Emerging Systemic Issues.

As the IRS implements the ACA provisions, TAS's Office of Systemic Advocacy will monitor emerging systemic issues. In FY 2015, Systemic Advocacy will continue to identify such issues before they impact taxpayers and work with the IRS to resolve them. TAS will do this through its representation on multiple ACA joint implementation teams, by working with LTAs to identify health care case trends, and by tracking issues submitted on the Systemic Advocacy Management System (SAMS).[8]

TAS will continue to review draft guidance as well as solicit comments and observations from taxpayers, TAS and IRS employees, and stakeholders on potential systemic issues that require elevation to IRS leadership and potential discussion in the Annual Report to Congress. Our ability to identify and mitigate issues during implementation depends in part on our ability to review IRS forms, instructions, and other guidance before they are finalized. Review of ACA-related forms and instructions has been challenging because of the shortened review periods, necessitated by the time required for programming changes.

TAS Has Identified Several ACA Implementation Issues.

Through TAS's involvement on the ACA executive steering committee and implementation teams, as well as discussions with internal and external stakeholders, we have identified the following concerns about the IRS implementation of ACA provisions for the 2015 filing season:

- Training assistors to respond to taxpayer questions on health care issues should be a high priority;
- The IRS should focus on increasing taxpayer awareness of the need to update information with the Exchange throughout the year;
- ACA audit and collection activity may unduly burden low income taxpayers;
- Taxpayers may receive incorrect Advance Premium Tax Credit amounts;
- The IRS may take inappropriate collection actions on Individual Shared Responsibility Payment (ISRP) liabilities;
- The use of "Combination Letters" for disallowed Premium Tax Credit (PTC) may confuse taxpayers; and

8 To access SAMS, visit IRS.gov/sams.

- The IRS should expand its Q&A web page to provide additional guidance to employers on how to calculate the number of full time equivalents.

Training assistors to respond to taxpayer questions on health care issues should be high priority.

The new work caused by the ACA will likely compound the IRS's already low level of service on its phone lines, as well as increase the existing backlog of correspondence from taxpayers.[1] The IRS has estimated that it needs almost 2,000 new employees to handle ACA implementation requirements, additional calls, and correspondence.[2] The IRS also must ensure that employees who work ACA-related issues, especially those in taxpayer-facing roles, are properly trained. TAS is aware that the IRS is developing training for its employees even as ACA-related forms and instructions are being finalized. Ideally, TAS will have an opportunity to review the content of this training and plans to supplement it with additional content for training TAS employees.

The IRS Should Focus on Increasing Taxpayer Awareness of the Need to Update Information with the Exchange Throughout the Year.

During the 2015 filing season, many taxpayers will need to reconcile the advanced Premium Tax Credit amounts they received in 2014 based on projected 2014 income with the credit amounts to which they are entitled, based on their actual income.[3] TAS remains concerned that the IRS could do more to educate taxpayers as early as possible about the importance of updating their information throughout the year with the Exchange if they are receiving the advance credit.[4] To avoid receiving an excess credit, taxpayers must update their information with the marketplace if their income or other relevant circumstances change. Educating taxpayers early and repeatedly about this requirement will help prevent them from owing money to the IRS (or reducing their refunds), or qualifying for too little advanced credit during the year.[5] Because almost 80 percent of individual returns are refund returns, in which the IRS may offset some or all of a reconciliation amount (resulting in a reduced credit), the IRS should do all it can to ensure that as few taxpayers as possible have excessive advanced premium tax credit payments and instead receive the correct amount throughout the year.[6]

1 National Taxpayer Advocate 2013 Annual Report to Congress 20; National Taxpayer Advocate 2012 Annual Report to Congress 34.

2 IRS FY 2014 Congressional Budget Submission, Table 4.9 at 177.

3 The Premium Tax Credit is a refundable, advanceable tax credit available to help certain low and moderate income taxpayers purchase health insurance through a Marketplace. IRC § 36B

needs period

4 To apply for the advanced premium tax credit, an individual goes to an Exchange, which will attempt to verify household income with the IRS. The Exchange can verify data with the Department of Health and Human Services (HHS). If a taxpayer's household status at year's end is other than anticipated – due to a change in income or family size – the premium tax credit may be more or less than the amount advanced. Consequently, the IRS may recover the excess as a tax or owe the taxpayer a refund. IRC § 36B(f)(2)(B). Note, however, that taxpayers who are below certain income levels may not have to repay the excess.

5 The IRS has developed Publication 5152, *Report Changes to the Marketplace as They Happen*. Other IRS publications explaining the PTC include: Publication 5120, *Facts About the Premium Tax Credit* (Flyer) and Publication 5121, *Facts about Premium Tax Credit* (Brochure).

6 IRS Compliance Data Warehouse, Individual Returns Transaction File Tax Year 2012 (June. 2014).

remove extra period

TAS is developing an estimator to help taxpayers and practitioners understand how changes in circumstances will impact their Premium Tax Credit amounts. The Commissioner has instructed the IRS to incorporate the estimator into its ACA outreach once the tool is finalized.

In addition, taxpayers may have their refunds delayed if, due to an unreported change in circumstances, they claim a larger Premium Tax Credit on their returns than what is advanced to the insurance company during the year. If the IRS flags these returns as potentially fraudulent, it may hold up legitimate refunds, which TAS has seen happen with other refundable credits, especially when large dollar amounts are at stake.[7] While there is always a risk of individuals trying to game the system, the risk of fraud may be less with the PTC than with other refundable credits because the advanced PTC is paid directly to established insurance companies when the policy is actually in place. When the taxpayer reconciles the advanced PTC on the return and is due a refund, the excess PTC amount claimed has already been paid as premiums by the taxpayer throughout the year. The IRS will also be able to verify coverage and premium through third-party information reporting, assuming the reports are accurate and timely.

Finally, after taxpayers file their TY 2014 returns in the 2015 filing season, TAS plans to explore whether the IRS could have alleviated taxpayer burden by identifying earlier in the process any discrepancies between income reported on taxpayers' health care applications and income actually reported on their TY 2013 returns. Currently, the IRS sends TY 2012 data to the Exchanges to determine income discrepancies. However, a substantial portion of TY 2013 data may be available months before the 2015 filing season. We plan to use filing season 2015 data to evaluate whether the issuance of soft notices in 2014 based on TY 2013 return data would have been an effective way to inform taxpayers that they potentially need to report their change in circumstances to the Exchange based on information reported on their most recently filed tax return. The sooner the taxpayers are aware of any income discrepancies, the sooner they can address the issue.

IRS ACA Audit and Collection Activity May Unduly Burden Low Income Taxpayers.

The IRS uses different software to assess liability under the ACA than to process returns.[8] Where a taxpayer's return presents both ACA and non-ACA issues, this process may prolong the time taxpayers must wait to fully and finally resolve their tax liabilities for a given year and burden them with additional IRS contacts or audits. In addition, these issues may disproportionately affect low income taxpayers. For example, if the IRS audits a taxpayer and denies a qualifying child, it would decrease both the Earned Income Tax Credit (EITC) and the Individual Shared Responsibility Payment. The IRS would assess additional tax

7 See National Taxpayer Advocate 2012 Annual Report to Congress 111-113; National Taxpayer Advocate 2012 Objectives Report to Congress 28-32; National Taxpayer Advocate 2011 Annual Report to Congress 687-689.

8 The traditional software the IRS uses for audits, Report Generating Software, is not yet programmed to assess ACA tax liabilities on the same audit record.

during the first audit, but the taxpayer's final liability, determined after the ISRP issue is addressed, may be lower. Meanwhile, the taxpayer would receive demands for payment related to the disallowed EITC, and the IRS may have collected too much once the ISRP reduction is factored in.[9]

Taxpayers May Receive Incorrect Advance Premium Tax Credit Amounts.

It has been reported that over one million taxpayers may receive an incorrect advanced PTC due to income discrepancies on their health care applications.[10] For example, if a consumer inadvertently understates her projected 2014 income on an application for insurance coverage through the Marketplace, the advanced PTC may be too high. When the taxpayer subsequently reconciles the advanced PTC amount with the actual amount on her 2014 tax return, she might find that she must return the excess. The Marketplace verifies the income listed on the Marketplace insurance applications with IRS data from the most recent tax returns and upon identifying a discrepancy, the Marketplace (which is the Centers for Medicare and Medicaid Services (CMS) in the case of the federal insurance exchange)) asks the taxpayer to submit proof of income. Only a fraction of these taxpayers have submitted such proof to CMS, and their documents are sitting in a queue waiting for CMS to build a matching system.[11]

For those who underestimated their income, the more time that passes, the more advanced PTC they will need to return at year's end. Moreover, it is unclear whether taxpayers who have reported a change in circumstance throughout the year are caught up in this CMS queue as well, creating a disincentive for reporting changes.

The IRS May Take Inappropriate Collection Actions on Individual Shared Responsibility Payment Liabilities.

The ACA prohibits the IRS from filing a notice of lien or levying on any ISRP liabilities.[12] However, when the IRS levies to collect non-ISRP liabilities, it could potentially receive levy payments that exceed the amount of the non-ISRP liabilities, and these excess payments might then be applied to the ISRP liabilities. Because the IRS cannot levy on the ISRP liabilities, the IRS should return any levy payments applied to the ISRP liabilities.[13] IRS programming, however, may cause the IRS to automatically apply excess levy proceeds to ISRP liabilities instead. Ensuring that levy proceeds are not applied to ISRP liabilities would require manual processing.

9 IRS ACA Individual Compliance Joint Implementation Team Meetings (Feb. 14, 2014; Feb. 25, 2014; Mar. 14, 2014).

10 Amy Goldstein and Sandhya Somashekhar, *Health Payouts May Be Wrong, Subsidies Too High or Low for 1 Million, Government Flags Errors But Cannot Fix Them Yet*, Washington Post (May 17, 2014).

11 *Id.* The article states that the Marketplace identified income discrepancies in 1.1 to 1.5 million applications but taxpayers only mailed in proof documents for approximately one out of every six inconsistency identified. Those proof documents were sitting in the queue waiting to be addressed.

12 IRC § 5000A(g)(2)(B).

13 IRC § 6343(d).

In addition, IRS collection efforts may indirectly burden taxpayers with ISRP liabilities. For example, we believe the IRS should not include an ISRP liability in calculating the dollar threshold when determining whether to file a Notice of Federal Tax Lien on non-ISRP liabilities.[14]

The Use of "Combination Letters" for Disallowed PTC May Confuse Taxpayers.

The National Taxpayer Advocate is concerned that the IRS will use combination or "combo" letters to notify taxpayers of disallowed PTCs or advanced PTCs that have not been reconciled. These letters, which the IRS sometimes sends in an effort to "streamline" examination processes, merge two distinct audit letters: (1) the initial contact letter and (2) the 30-day letter that includes the preliminary audit report and describes the taxpayer's appeal rights. The National Taxpayer Advocate has consistently opposed the IRS's use of combo letters.[15] They are confusing because taxpayers do not know whether to respond to the exam and risk forfeiting their appeal rights, file an appeal and risk annoying the examiner, or both. Further, in addition to information about appeal rights, we believe the 30-day letters should include information about the Taxpayer Advocate Service and LITCs.

The IRS should expand its Q&A web page to provide additional guidance to employers on how to calculate the number of full time equivalents.

Employers not in compliance with the provisions under IRC § 4980H will be subject to an assessable payment, referred to as the "Employer Shared Responsibility" payment. Section 4980H(a)(1) provides that an applicable large employer (ALE) must offer minimum essential coverage to its full-time employees. In general, an employer is considered an ALE if it employs 50 or more full-time workers (or full-time equivalents (FTE)).[16] The Employer Shared Responsibility provisions generally are not effective until January 1, 2015, meaning that no Employer Shared Responsibility payments will be assessed for the 2014 tax year.[17] Under the statute, an employee is deemed full-time for a calendar month if he or she averages at least 30 hours of work per week.[18]

14 It is our understanding that the IRS is looking into this issue. IRS ACA Compliance Joint Implementation Team (May 22, 2014). See IRM 5.19.4.5.2 for general lien determination procedures.

15 Statement of Procedural Rules, § 601.105(d)(1)(iv) authorizes the 30-day letter, which explains the proposed changes and advises the taxpayer of the liability and of the right to file a protest within 30 days to be considered by IRS Appeals. Concerns about the use of the combination letter in Examination were raised in the National Taxpayer Advocate's 2001 Annual Report to Congress 20-22; National Taxpayer Advocate 2002 Annual Report to Congress 55-63; National Taxpayer Advocate 2003 Annual Report to Congress 87-98, National Taxpayer Advocate 2004 Annual Report to Congress 163-180; National Taxpayer Advocate 2005 Annual Report to Congress 95-122, National Taxpayer Advocate 2006 Annual Report to Congress 289-310; National Taxpayer Advocate 2007 Annual Report to Congress 222-241; National Taxpayer Advocate 2008 Annual Report to Congress 227-259; National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 85.

16 IRC § 4980H(c)(2).

17 Notice 2013-45 2013-31 I.R.B. 116.

18 IRC § 4980H(c)(4).

On February 12, 2014, the IRS and Treasury issued final regulations on the Employer Shared Responsibility payment provisions.[19] The guidance acknowledges that there are certain categories of employees whose hours of service will be particularly challenging to identify and track, and advises their employers to use "a reasonable method of crediting hours of service that is consistent with section 4980H." While far from comprehensive, the preamble does provide examples of what may be considered a reasonable method in certain industries.

In addition to the final regulations, the IRS provides additional guidance in the form of a Q&A page located on IRS.gov.[20] While they contain helpful information, the limited Q&As on this page do not adequately address many questions that employers may have about the calculation of FTEs. It would not be realistic to expect the IRS to post the answers to every single possible scenario, but it should expand this page. For example:

- What would be a reasonable method of determining FTE for the clergy (who have not taken a vow of poverty)? Often, members of religious orders have responsibilities that do not fit within a typical "9 to 5" work schedule. Arriving at hours to include in the calculation of FTE seems problematic for such a profession.
- What would be a reasonable method of determining FTE for commission-based salespersons? If a significant portion of a salesperson's compensation comes from commissions, and the employer does not require (or track) a certain number of hours to be worked, determining FTE could be problematic.
- What would be a reasonable method of determining FTE for pilots? Pilots have a lot of downtime, so hours in the air may not be an ideal way of determining FTE. How would an employer count a pilot who is available for three flights a month for purposes of the FTE calculation for the small business health care credit?

To educate small business taxpayers, TAS developed an online estimator for the SBHCTC.[21] This tool allows small businesses to estimate their credits and find out how changes in circumstances will impact their eligibility. Since its launch in November 2012, we have promoted the SBHCTC estimator on the TAS Tax Toolkit[22] where small businesses and tax

19 Treas. Reg. § 54-4890H, 79 FR 8543 (Feb. 12, 2014), *available at* https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage.

20 http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Identification.

21 The estimator is available at http://www.taxpayeradvocate.irs.gov/Businesses/Small-Business-Health-Care-Tax-Credit-Estimator.

22 The TAS Tax Toolkit is a website that contains useful tax information for individuals, businesses, tax professionals and media, including news and updates, ways TAS helps taxpayers, and important information about tax topics and rights and is available at http://www.taxpayeradvocate.irs.gov/.

professionals can access it easily, and have continually promoted the estimator through social media, including Twitter and Facebook.[23]

In FY 2015, TAS will:

- Provide more in-depth training to employees on specific provisions of the law such as the Premium Assistance Tax Credit, Individual Responsibility Requirement, and Employer Responsibility Requirement.
- Assess the skills of its case advocacy employees in using the new ACA issue codes before the 2015 filing season to determine if they need supplemental training.
- Provide a second round of training at the LITC annual conference to educate those tax professionals about ACA provisions relevant to the low income taxpayers they assist.
- Launch the estimator to help taxpayers calculate changes in the Premium Tax Credit after a change in circumstances.
- After taxpayers file their TY 2014 returns in the 2015 filing season, explore whether the IRS could have alleviated taxpayer burden by identifying earlier in the process any discrepancies between income reported on taxpayers' health care applications and income actually reported on their TY 2013 returns.
- Expand Premium Tax Credit-related outreach by requiring all Local Taxpayer Advocates to conduct grassroots outreach to health care groups in their communities as well as grassroots organizations that serve the population impacted by the Premium Tax Credit.
- Develop outreach materials for LTAs and others on health insurance tax issues.
- Create outreach videos for the TAS toolkit (at www.TaxpayerAdvocate.irs.gov) to educate individual taxpayers on various ACA provisions and what they need to know prior to the 2015 filing season.
- Continue to review draft guidance as well as solicit comments and observations from taxpayers, TAS and IRS employees, and stakeholders on potential systemic ACA issues that require elevation to IRS leadership and potential discussion in the Annual Report to Congress.

23 The IRS linked to the estimator on IRS.gov and the Kaiser Permanente health care company placed a link to the estimator on its website.. On March 10, during the 2014 filing season, the IRS placed a link to the estimator in a news release on helpful resources and tax tips. See http://www.irs.gov/uac/Newsroom/IRS-Encourages-Small-Employers--to-Check-Out-Small-Business-Health-Care-Tax-Credit;-Helpful-Resources,-Tax-Tips-Available-on-IRS.gov. After the new release, the number of views went from a quarterly average of 110 per day to 1,502 and 614 for March 10 and March 11, respectively. The estimator introduction page has received high traffic overall so far in fiscal year 2014, with 30,990 views through May 2014, an average of over 3,800 per month. Weber Shandwick TAS Electronic Toolkit Usage Report (Oct.2013 - May 2014).

needs a space

I. The IRS Has Improved at Detecting Identity Theft and Assisting Victims, But Victims with Multiple Tax Issues Still Lack One IRS Contact Person to Oversee All Aspects of Their Cases

Stolen Identity Cases Still Top the List of TAS Receipts.

In general, tax-related identity theft (IDT) occurs when an individual intentionally uses the personal identifying information of another person to file a false tax return with the intention of obtaining an unauthorized refund. Through improved filters, the IRS detected and stopped the release of refunds on more than 3.6 million returns it suspects were filed by identity thieves in the 2014 filing season (through May 31).[1] In addition, the IRS has expanded the use of its Identity Protection Personal Identification Number (IP PIN) program,[2] which allows IDT victims to protect their accounts in future years. As a result of these efforts, the IRS has seen a significant reduction in its IDT case inventory. At the end of May 2014, the IRS had 398,121 identity theft cases with taxpayer impact (excluding duplicates) in its inventory, down from 689,802 in May 2013, a decrease of 42 percent.[3]

Stolen identity is still by far the most common reason taxpayers seek help from TAS.

One barometer of the effectiveness of the IRS's IDT prevention efforts is the Taxpayer Advocate Service's (TAS) level of stolen identity receipts. After years of steady growth, these cases are finally declining.[4] Through May of fiscal year (FY) 2014, TAS received 30,302 stolen identity cases, representing 21 percent of all receipts.[5] This represents a 26 percent decrease from the same period in FY 2013, when TAS received 40,977 stolen identity cases, which represented 25 percent of all TAS receipts.[6]

Even with this decrease, stolen identity is still by far the most common reason taxpayers seek help from TAS. As shown below, IDT case receipts remain higher than in FY 2011 and FY 2012.[7]

1 IRS Global Identity Theft Report (May 31, 2014).

2 The IRS issued 772,666 IPPINs to identity theft victims for Filing Season (FS) 2013. For FS 2014, 1,207,581 were issued. IRS Global Identity Theft Report (May 31, 2014).

3 IRS Global Identity Theft Report (May 31, 2014); IRS Global Identity Theft Report (May 31, 2013).

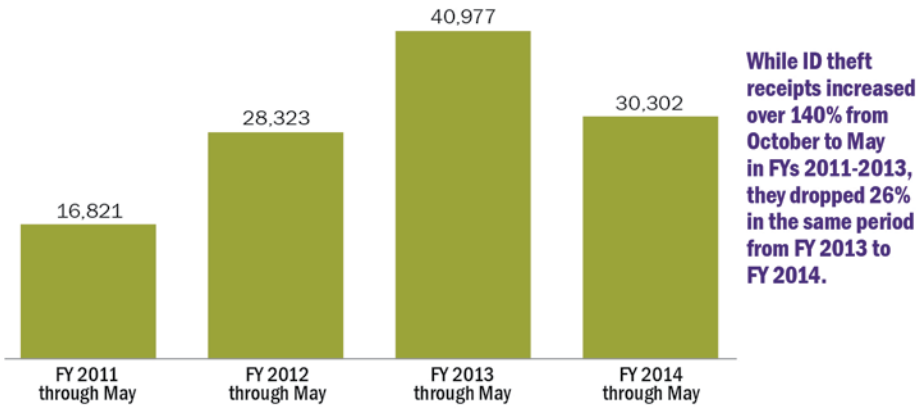
4 Data obtained from TAS Business Performance Management System (BPMS) reports (dated Oct. 1, 2011, Oct. 1, 2012, and Oct. 1, 2013), showing TAS received 34,006 stolen identity cases as of Sept. 30, 2011, 54,748 cases as of Sept. 30, 2012, and 57,929 as of Sept. 30, 2013).

5 Data obtained from TAS BPMS Report, dated June 1 2014.

6 Data obtained from TAS BPMS Report dated June 1, 2013.

7 Data obtained from TAS BPMS Reports dated June 1, 2011, June 1, 2012, June 1, 2013, and June 1, 2014.

FIGURE II.12, TAS ID THEFT RECEIPTS



The number of ID theft receipts was nearly 40 percent higher than the second most common issue (pre-refund wage verification) through May of FY 2014.[8]

IRC § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) to require that the IRS cease any action, take any action, or refrain from taking any action, when a taxpayer is suffering (or about to suffer) a significant hardship. In FY 2014 (through May), TAS issued 33 TAOs on identity theft-related issues. The IRS complied with 25 of the TAOs, with seven still in process.[9]

Identity Theft Cases Are Complex, Often Involving Multiple Issues.

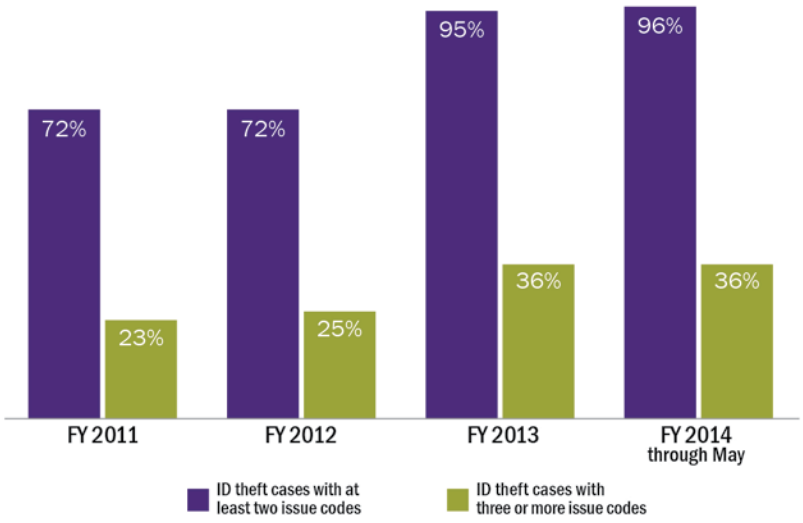
Many identity theft cases are very complex, requiring actions by employees from different IRS organizations and with different skills. As the chart below illustrates, TAS Case Advocates must often address more than two issue codes to fully resolve a victim's case.[10]

8 TAS received 21,759 pre-refund wage verification cases in FY 2014 through May 2014. Data obtained from TAS BPMS reports dated June 1, 2014.

9 TAS rescinded one TAO. Data provided by Executive Director Case Advocacy report for Fiscal Year 2014 through May 31, 2014.

10 When TAS opens a case, it assigns a primary issue code based on the most significant issue, policy, or process within the IRS that needs to be resolved. When a TAS case has multiple issues to resolve, a secondary issue code will be assigned. *See* Internal Revenue Manual (IRM) 13.1.16.13.1.1 (Feb. 1, 2011).

FIGURE II.13, CLOSED TAS ID THEFT CASES INVOLVING MULTIPLE ISSUE CODES



In addition to a combination of primary and secondary issues, TAS IDT cases often involve several tax years, increasing the difficulty and time needed to resolve the cases. However, even as the issues have grown more complex, TAS Case Advocates have learned to resolve these cases more efficiently. In FY 2014 through May, TAS took an average of 84 days to close IDT cases, compared to 126 days during the same period in FY 2010. Case Advocates have obtained relief for the taxpayers at a rate of 83 percent in FY 2014 (through May), compared to 77 percent for non-IDT cases.[11]

IDT Victims with Multiple Issues Need One IRS Contact Person to Oversee All Aspects of the Case.

In the prior section, we discussed cycle time and relief rate for IDT victims who come to TAS. While TAS cases are not necessarily representative of IRS cases, we suspect that a significant percentage of the IRS's IDT cases involve multiple issues. When IDT theft cases are limited to a single issue that the IRS Accounts Management (AM) function can resolve, it is reasonable to allow AM to work the cases, especially since AM has improved its processes and reduced its IDT case cycle time to approximately 120 days, as the IRS states in its response to the IDT recommendations in the National Taxpayer Advocate's 2013 Annual Report to Congress.[12]

11 Data obtained by TAS Office of Technical Analysis and Guidance.

12 *See* http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

However, the IRS does not really know if an IDT case worked by AM is a single-issue case because AM assigns its workload on a module-by-module basis (*i.e.*, it is concerned with resolving a specific tax issue in a given year). As a result, an AM assistor may not know that the taxpayer has an exam or collection issue related to the IDT, or if the case affects a second or even third tax year. In such cases, the 120-day cycle time would not represent the full impact on the victim.

The Wage and Investment Division (W&I) Commissioner, in discussions with the National Taxpayer Advocate, has agreed in principle that victims in cases with multiple issues should have a sole contact person in the IRS through the duration of their cases. Because identity theft is an invasive, traumatic crime, victims should not have to navigate the maze of IRS operations, recounting their experience time and again to different employees. This kind of behind-the-scenes activity should be invisible to the taxpayer.

TAS and W&I to Study ID Theft Process and Resolution Time

To gain a better understanding of what is really going on in the IRS inventory of IDT cases, TAS is coordinating with W&I to pull a representative sample of IDT cases from W&I inventory. This summer, we intend to quantify the number of IRS units involved in the resolution of ID theft cases and the number of contacts with the taxpayer. We will also determine the time required for the IRS to work a case, both in AM and in other functions. Ultimately, we plan to quantify the total time necessary to resolve all IDT-related issues, the number of affected modules, and the time to process any refunds.

This research, then, forms the background for an approach where AM would conduct a global account review upon case receipt (and closure) and handle true single-issue IDT cases. AM has shown, with its improved cycle time, that it is proficient in handling these cases. IDT victims with multiple issues would be assigned a sole IRS contact person who would interact with them throughout the case, no matter how many different IRS functions need to be involved behind the scenes.

In May 2014, the IRS announced it will realign many of its functions. Although details have not yet been articulated, the IRS is considering moving taxpayer-facing identity theft functions under a centralized unit in W&I.[13] This proposal may be an opportunity for the IRS to create a new group with employees who act as the "IDT sole contact person" with the responsibility to shepherd accounts from inception to resolution when multiple functions are involved.

13 Email from Commissioner Koskinen to IRS employees (May 7, 2014).

The IRS Needs to Develop a Method to Track Identity Theft Servicewide Cycle Time from the Taxpayer's Perspective.

In a September 2013 audit, the Treasury Inspector General for Tax Administration (TIGTA) reported the average cycle time for the 100-case sample of IDT cases it reviewed was 312 days.[14] In its response to recommendations from the National Taxpayer Advocate's 2013 Annual Report to Congress, the IRS commented that the TIGTA report painted an "inaccurate picture of how the IRS currently works identity theft cases, as well as current cycle time and timeliness."[15]

While some IRS functions can track how long IDT cases stay in their inventory, the IRS still cannot provide a servicewide cycle time measure for resolving IDT cases from the taxpayer's perspective.

We concur that the TIGTA report reviewed IDT cases that were closed prior to full implementation of the specialized approach to victim assistance, and is not the preferred source of data on IDT cases. Unfortunately, the IRS has no data of its own regarding cycle time *from the perspective of the taxpayer*. While some IRS functions can track how long IDT cases stay in their inventory, the IRS still cannot provide a servicewide cycle time measure for resolving IDT cases from the taxpayer's perspective.

The cycle times reported by various IRS IDT specialized units do not reflect the time that has passed since the taxpayer filed his or her return, or the time spent in interactions with other IRS functions. For example, the 120-day cycle time touted by the IRS, while commendable, pertains only to the AM portion of the case. All that means is that it took 120 days for AM to resolve one module. It does *not* mean all of the victim's tax issues were resolved in 120 days.[16]

We also recognize that cycle time start dates may differ depending on the facts and circumstances of the cases, but the IRS should be able to count cycle time in a way that reflects the taxpayer's experience more closely and flags over-aged cases more accurately. Currently, the IRS cannot easily compute overall IDT case cycle time, in part because many of the IDT specialized units use incompatible case management systems. The IRS should invest the information technology (IT) resources necessary to allow it to calculate an accurate IDT case cycle time from the taxpayer's perspective.

14 *See* TIGTA, Ref. No. 2013-40-129, *Case Processing Delays and Tax Account Errors Increased Hardship for Victims of Identity Theft* (Sept. 26, 2013).

15 *See* http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

16 As the IRS says in its response to recommendations from the National Taxpayer Advocate's 2013 Annual Report to Congress (see http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf), AM does count cycle time from the IRS victim's return received date. However, as noted above, in many cases AM deals with only one aspect of the of the overall victim's interactions with the IRS as a result of the IDT.

In FY 2015, TAS will:

- Working with W&I, review a representative sample of IRS IDT cases to determine the scope and size of the population of cases with more than one issue, then design an approach that enables a sole IRS employee to coordinate resolution of the issues and be the contact for that taxpayer;
- Collaborate with the IRS to arrive at a servicewide cycle time for IDT casework;
- Continue to work with the IRS on identity theft issues, recommending improvements and alternative approaches, with a particular focus on reducing the time it takes to resolve the case fully and accurately from the victim's perspective;
- Encourage Local Taxpayer Advocates to issue TAOs in appropriate cases to expedite relief to taxpayers when IRS processes are inadequate or too lengthy to assist taxpayers suffering from significant hardship;
- Improve our own case processing by timely alerting case advocates to any changes in IRS procedures to avoid delays in correcting the taxpayers' accounts; and
- Elevate emerging identity theft schemes and processing issues identified in TAS casework for collaborative solutions with the IRS.

J. Collection: Levies

The IRS Does Not Adequately Protect Low Income Taxpayers from the Harmful Effects of Levies.

The National Taxpayer Advocate believes personal contacts are necessary to ensure IRS levy actions are not creating hardships for low income taxpayers.

The law requires the IRS to release a levy it knows is causing an economic hardship due to the financial condition of the taxpayer.[1] In the *Vinatieri* case, the U.S. Tax Court held that when the IRS sustains even a proposed levy on a taxpayer it knows is in economic hardship, it abuses its discretion because the IRS would have to release such a levy immediately.[2] Despite urging by the National Taxpayer Advocate to reevaluate and adjust its practices in this area, the IRS continues to resist changes to ensure levies do not create or exacerbate economic hardships.[3]

This problem is particularly evident in the Federal Payment Levy Program (FPLP), under which 15 percent of a taxpayer's monthly Social Security benefit is automatically levied and applied against an outstanding tax liability.[4] While the IRS has modified the FPLP to screen out low income taxpayers who rely on Social Security payments to meet basic living expenses, it has chosen to *not* screen out taxpayers if IRS data indicate they *may* have unfiled tax returns, even if those records also indicate the taxpayer's income would otherwise meet the screening criteria.

In her 2013 Annual Report to Congress, the National Taxpayer Advocate raised a number of concerns regarding the use of IRS levies in cases where the taxpayers appeared to be suffering economic hardship.[5] In its response to this report, the IRS continues to insist that taxpayers must provide additional information before it can verify an economic hardship. The IRS even goes so far as to assert that the FPLP low income filter (LIF) is "not determinative of economic hardship or inability to pay."[6] This statement is inaccurate, as the LIF *is* determinative of economic hardship. As described in the 2013 report, the LIF was established based on a TAS research study that applied the IRS's formula for economic hardship to a

1 IRC § 6343(a)(1)(D); Under the regulations, "economic hardship" is established "if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses." Treas. Reg. § 301.6343-1(b)(4).

2 *Vinatieri v. Comm'r,* 133 T.C. 392 (2009).

3 For a complete discussion of the Federal Payment Levy Program (FPLP) and the IRS's implementation of the FPLP filter, see National Taxpayer Advocate 2011 Annual Report to Congress 350-365 (Most Serious Problem: *The New Income Filter for the Federal Payment Levy Program Does Not Fully Protect Low Income Taxpayers from Levies on Social Security Benefits*). *See also* National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri V. Commissioner, the IRS Continues to Levy on Taxpayers It Acknowledges Are in Economic Hardship and Then Fails to Release the Levies*).

4 The Federal Payment Levy Program is an automated program used by the IRS to collect delinquent tax debts. The FPLP is used by the IRS to issue continuous levies on funds received by delinquent taxpayers from the federal government. Retirement and disability payments issued by the Social Security Administration (SSA) are included in the program.

5 National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri v. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges Are in Economic Hardship and Then Fails to Release the Levies)*.

6 IRS response to recommendation 7-4, National Taxpayer Advocate 2013 Annual Report to Congress Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri v. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges Are in Economic Hardship and Then Fails to Release the Levies* (May 23, 2014), available at http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

representative sample of taxpayers in the Social Security FPLP population. The LIF is the result of that study and was implemented because the Deputy Commissioner for Services and Enforcement at the time accepted the LIF as the proxy for economic hardship.

The National Taxpayer Advocate believes the IRS can and should do more in this area. In cases where data (*e.g.,* information on tax returns and information provided by third parties) indicate the taxpayer is low income and likely to experience hardship, the IRS should not issue levies without trying to personally contact the taxpayer to determine his or her actual financial condition. While the IRS contends that information provided by the taxpayer is needed to verify economic hardship, the National Taxpayer Advocate believes personal contacts are necessary to ensure IRS levy actions are not creating hardships for low income taxpayers. These contacts can also confirm the taxpayers are legally required to file any returns the IRS believes may be delinquent. Further, the IRS must be more flexible in returning levy proceeds that have caused an economic hardship or made it worse.

This fiscal year, the National Taxpayer Advocate has received commitments from the Commissioner to exclude more taxpayer cases from the FPLP process. Specifically, taxpayers over 65 years of age will be filtered out if they have filed at least one return within the last three tax years and the IRS has not identified a potential delinquent return after the last filed return. Although the IRS response to the recommendations in the 2013 Annual Report to Congress refers to plans to include in the FPLP LIF taxpayers who receive supplemental security income (SSI), we note that these cases are already excluded from the FPLP program. Alternatively, we believe the IRS has conceptually agreed to exclude from the FPLP process taxpayers who are receiving any disability payments from the Social Security Administration (SSA).

In FY 2015, the National Taxpayer Advocate will continue to advocate for proper safeguards in systems and procedures driving the use of FPLP levies. TAS will work with IRS and SSA to explore systemically identifying taxpayers who are recipients of SSA disability payments and excluding them from the FPLP process.

TAS will also continue researching the impact of FPLP levies on low income taxpayers, the benefits the IRS has obtained through the FPLP low income filter, and opportunities to expand the LIF criteria to include more taxpayers who the current process may be harming. TAS will work with the IRS to clarify procedural guidance governing pre-levy considerations, and the return of levy proceeds in appropriate situations.

K. TAS Is Working with the IRS to Resolve Certain Taxpayer Accounts with Extensions of Time for Collection That Exceed Current Policy Limits.

Prior to enactment of the IRS Restructuring and Reform Act of 1998 (RRA 98), IRS collection employees routinely solicited waivers to extend the collection statute expiration date (CSED) when it did not appear the taxpayer could pay the tax owed within the limits of the collection statute. The IRS extended some CSEDs as much as 50 years.[1] RRA 98 limited this practice by restricting CSED waivers to extensions secured in connection with Installment Agreements (IAs).[2]

The IRS recently adopted the Taxpayer Bill of Rights, which provides that taxpayers have the *right to finality*. Lengthy extended periods during which the IRS can collect tax violate this foundational right.

Despite adopting a policy in 1991 of limiting CSED waivers to five years in connection with IAs, the IRS continued soliciting waivers of longer than five years in certain cases until the law changed in 2000.[3] Later, the American Jobs Creation Act of 2004 amended IRC § 6159 to provide for partial payment installment agreements (PPIAs).[4] The IRS responded by limiting its five-year CSED extension policy to certain PPIAs.[5]

Since 2004, the National Taxpayer Advocate has identified these lengthy CSEDs as a most serious problem for taxpayers because they "do not comply with current policies" and consequently lead to disparate treatment and significant burden for many taxpayers.[6] As of December 31, 2013, 3,853 individual taxpayers had accounts that remained subject to IRS collection action because the taxpayers had entered into lengthy extensions of the CSED in connection with an installment agreement prior to RRA 98.[7] This situation does not comport with the principles underlying RRA 98 or current IRS policy. Moreover, the IRS recently adopted the Taxpayer Bill of Rights, which provides that taxpayers have *the right to finality*.[8] Lengthy extended periods during which the IRS can collect tax violate this foundational right.

1 IRS, Compliance Data Warehouse (CDW), Integrated Data Retrieval System (IDRS), analysis of IDRS transaction code (TC) 550, definer code (DC) 0 and 1 for Individual Master File (IMF) accounts for tax periods ended on or before Dec. 31, 1998 (Apr. 20, 2013).

2 Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3461, 112 Stat. 685, 764 (1998).

3 IRM 5331.1(12)(b)2 (Oct. 30, 1991).

4 American Jobs Creation Act of 2004 (AJCA), Pub. L. No. 108-357, § 843(a) and (b), 118 Stat. 1600 (Oct. 22, 2004). Prior to 1998, IRS employees sometimes entered into monthly payment agreements that would not fully pay the tax liability over the term of the agreement. In 1998, IRS Counsel concluded that these partial payment agreements were not permitted. In 2004, Congress enacted the AJCA to legally provide for partial payment installment agreements. H.R. Conf. Rpt. 108-755, at 649-650 (Oct. 7, 2004).

5 IRM 5.14.2.1 (July 12, 2005). The procedure permits waivers of five years plus one year may be added for administrative actions.

6 National Taxpayer Advocate 2004 Annual Report to Congress 180-192; National Taxpayer Advocate 2009 Annual Report to Congress 217-227; National Taxpayer Advocate 2012 Annual Report to Congress 469-474; National Taxpayer Advocate 2013 Annual Report to Congress 147-154.

7 IRS, Compliance Data Warehouse (CDW), Integrated Data Retrieval System (IDRS), analysis of IDRS transaction code (TC) 550, definer code (DC) 0 and 1 for IMF accounts for tax periods ended on or before Dec. 31, 1998 (Apr. 20, 2013). The actual number of unique individual taxpayers is 3,853. This does not include the 452 business taxpayers (and 2,115 modules) with excessive CSEDs.

8 IRS Publication 1, *Your Rights as a Taxpayer* (June 10, 2014); *see also* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights. *The right to finality* states, "Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit."

In response to Taxpayer Advocate Directive (TAD) 2010-3, the Small Business/Self-Employed Division (SB/SE) and TAS formed a workgroup to investigate and resolve CSED extensions exceeding five years.[9] The group, with the assistance of the IRS Office of Chief Counsel, recently provided IRS and TAS management with several options that would resolve accounts with lengthy CSED extensions systemically rather than case by case. IRS and TAS management plan to brief the Commissioner, who has the authority to implement their recommendations, in the near future.

In the meantime, the group identified approximately 150 cases that might need to be excluded from any systemic solution. Those cases have indicators of a prior criminal investigation, bankruptcy, litigation, or an offer in compromise account freeze codes.[10] In FY 2015, TAS will work with SB/SE to determine which cases should be excluded. Cases that no longer have the exclusion conditions will be part of the systemic solution.

9 Taxpayer Advocate Directive (TAD) 2010-3 and responses to the TAD, *available at*: http://www.irs.gov/Advocate/Taxpayer-Advocate-Directives-and-Related-Documents. A TAD, authorized by Delegation Order 13-3 (formerly DO-250, Rev. 1), grants the National Taxpayer Advocate authority to issue a Taxpayer Advocate Directive (TAD) to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers). TADs are used when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers. The only avenue of appeal of a TAD is to the Deputy Commissioner for Services and Enforcement. IRM 1.2.50.4 (Jan. 17, 2001); IRM 13.2.1.6.2 (July 16, 2009).

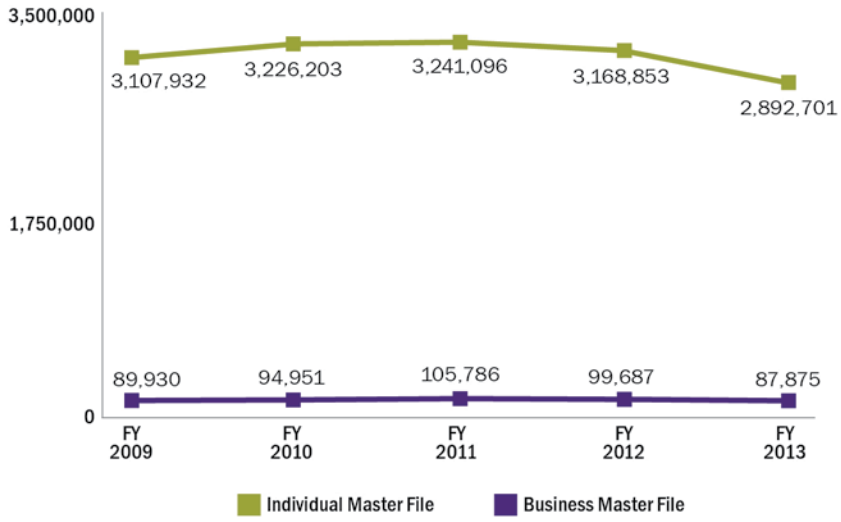
10 IRS, Compliance Data Warehouse (CDW), Integrated Data Retrieval System (IDRS), analysis of IDRS transaction code (TC) 550, definer code (DC) 0 and 1 for Individual Master File (IMF) accounts for tax periods ended on or before Dec. 31, 1998 (Apr. 20, 2013). The transaction codes in the modules indicated prior activity in those categories. A freeze code is an account action that prevents credits from transferring out of those accounts.

L. The IRS Needs to Improve Service and Access to Payment Options for Taxpayers with Collection Problems

Historically, taxpayers with IRS collection problems have found it difficult to make payment arrangements, including installment agreements (IAs).[1] With the advent of the "Fresh Start" initiative, TAS was hopeful that taxpayers would have easier and increased access to payment options.[2] While the IRS has made some gains, it needs to improve both service and access to collection alternatives for taxpayers.

Although the IRS changed its policies in fiscal year (FY) 2011 in an effort to increase taxpayer access to IAs, the IRS has accepted fewer IAs every year since.[3] In FY 2014 through May, the IRS has entered into 10 percent fewer individual IAs than during the same period in FY 2011, and IAs granted to business taxpayers have dropped by 34 percent.[4] As such, data collected since 2011 indicates a decrease in accepting individual IAs. Business agreements have also shown a decrease since the Fresh Start Initiative began.

FIGURE II.14, INSTALLMENT AGREEMENTS



1 IRC § 6159. IAs are arrangements by which the IRS allows taxpayers to pay their tax liabilities over time. There are several types, including Direct Debit, Partial Pay, and Payroll Deduction Installment Agreements depending on the circumstances. A Partial Payment Agreements may be granted if full payment cannot be achieved by the Collection Statute Expiration Date, and taxpayers have some ability to pay.

2 The "Fresh Start" initiative, a series of significant operational policy changes in fiscal years 2011 and 2012 introduced some significant changes to the IRS Collection program, particularly in the areas of flexible payment options, lien-filing practices, and flexibility in issuing lien withdrawals. See http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Struggling-with-Paying-Your-Taxes-Let-IRS-Help-You-Get-a-Fresh-Start for more information.

3 IRS, IR-2011-20, *IRS Announces New Effort to Help Struggling Taxpayers Get a Fresh Start; Major Changes Made to Lien Process* (Feb. 24, 2011).

4 IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Report* May 2011 & May 2014). In FY 2011, through May, the IRS entered into 2,023,518 IAs, of which 70,985 involved Business Master File (BMF) taxes. During the same time in FY 2014, the IRS entered into 1,798,125 IAs, of which 47,012 involved BMF tax liabilities.

The National Taxpayer Advocate believes IRS case assignment practices and internal policies for granting IAs are overly restrictive and burdensome. For example, although taxpayers with delinquencies are initially directed to IRS toll-free phone assistors, these employees have limited authority to grant IAs, particularly for business taxpayers.[5] Further, if the taxpayer's delinquency includes an unfiled return, the telephone assistors will not even discuss payment options until the return is filed.[6] Coupled with the IRS's current low levels of service in responding to taxpayer calls and the low number of outbound calls to taxpayers, these practices appear to be counterproductive for the IRS, and exceptionally frustrating for taxpayers.[7] The recently-adopted Taxpayer Bill of Rights provides that taxpayers have the *right to a fair and just tax system*, meaning the IRS will "consider facts and circumstances that might affect their ability to pay."[8] If the IRS does not pick up the phone and talk with taxpayers, it will never get the information it needs to make this taxpayer right more than just a promise on paper.

The recently-adopted Taxpayer Bill of Rights provides that taxpayers have the *right to a fair and just tax system*, meaning the IRS will "consider facts and circumstances that might affect their ability to pay."

Although the offer in compromise (OIC)[9] program has produced noteworthy improvements since FY 2010, FY 2014 data indicate these gains have decreased. After four years of increased offer acceptances, through May 2014, accepted OICs are down 19 percent from the prior year, and overall OIC dispositions are down by 14 percent.[10]

In her 2013 Annual Report to Congress, the National Taxpayer Advocate raised a number of concerns regarding the Automated Collection System's (ACS) reliance on notices of intent to levy or systemic levies that are often not effective and can place taxpayers in an economic hardship.[11] In its response to this report, the IRS states that ACS collection representatives are trained to discuss payment options with the taxpayer. However,

5 See IRM 21.3.12.4.7(1) (Oct. 1, 2013). The IRS disagreed with this statement in its response to recommendation 12-1, National Taxpayer Advocate 2013 Annual Report to Congress Most Serious Problem: *Collection Process: IRS Collection Procedures Harm Taxpayers and Contribute to Substantial Amounts of Lost Revenue* (May 23, 2014), available at http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf. The IRS response notes that the Accounts Management (AM), Compliance Services Collection Operation (CSCO), and Automated Collection System (ACS) operations have limited criteria for working these business cases, and "AM and CSCO are not well suited for working cases that require follow-up actions." The IRS seems to recognize the need to provide business taxpayers better access to installment agreements, and indicates that the online payment agreement (OPA) application has recently been modified accordingly. However, through May 2014, the IRS reports only a few IAs have been issued via the OPA involving business-related taxes, while overall business-related IAs have declined by 22 percent from the same time in FY 2013.

6 Internal Revenue Manual (IRM) 21.3.12.2.1(3) (Oct. 1, 2013).

7 Wage and Investment division (W&I) response to TAS research request (June 5, 2014). In 2013, the total number of ACS inbound calls/services provided was 4,192,501, the average handle time was 21.16 minutes, and average hold time was 5.17 minutes. ACS made only 109,217 outbound calls, or three percent of total calls, whose average handle time was 6.52 minutes, and average hold time was .77 minutes.

8 See Publication 1 at http://www.irs.gov/pub/irs-pdf/p1.pdf and Taxpayer Bill of Rights at http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights.

9 IRC § 7122. An OIC is an agreement between a taxpayer and the IRS that settles a tax liability for less than the full amount owed. The IRS may accept an OIC based on doubt as to collectibility, doubt as to liability, or effective tax administration.

10 IRS, Collection Activity Report, NO-5000-108, *Report of Offer in Compromise Activity* (September 2013 & May 2014). In FY 2014, through May, the IRS accepted 16,715 offers, and processed 41,016 offers. During the same period in FY 2013, the IRS had accepted 20,697 offers and processed 47,472.

11 National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *The Automated Collection System's Case Selection and Processes Result in Low Collection Yields and Poor Case Resolution, Thereby Harming Taxpayers)*.

the IRS believes that offering collection alternatives before the issues and facts of the case are known can be misleading to taxpayers[12] The National Taxpayer Advocate disagrees with this IRS analysis. It is her experience that when the IRS sets out alternatives up front, taxpayers are more forthcoming about their facts and circumstances because they know there are options available. Thus, informing taxpayers early in the process about collection alternatives actually results in more positive case resolutions.

Moreover, as described in the Most Serious Problem, ACS collects tax largely by offsetting taxpayers' refunds and eliminates much of its inventory by passing cases to other parts of the IRS. TAS believes there is room for improvement, and that greater flexibility in offering and approving collection alternatives to taxpayers in advance would yield better collection results and cause less harm to taxpayers.

The IRS recently proposed a realignment of its compliance operation to consolidate some organizations and policymakers under the same leadership. The IRS expects the combined organization to better identify compliance issues, provide more consistency in the way these issues are handled, and improve customer service for both taxpayers and tax preparers. Employees will also benefit from enhanced management accountability, consistent guidance, and potential improvements to workplace resources such as training.[13] TAS is uncertain whether these expectations are reasonable, and will monitor the implementation of the realignment.

TAS Is Working to Inform Taxpayers About Collection Alternatives and Help Them Resolve Their Cases on Their Own.

To help taxpayers resolve collection problems, TAS is developing a series of self-help instructional videos on what taxpayers can do if they cannot pay their taxes in full. These videos have information not readily available or accessible on IRS.gov and explain the various options available for resolving tax debt. TAS expects to make these instructional videos available by the end of FY 2014 on the TAS YouTube channel and the Tax Toolkit site.[14] The tax toolkit, where these videos will reside, is currently being redesigned to be mobile friendly on all portable devices.

12 IRS response to recommendation 11-5, National Taxpayer Advocate 2013 Annual Report to Congress Most Serious Problem: *The Automated Collection System's Case Selection and Processes Result in Low Collection Yields and Poor Case Resolution, Thereby Harming Taxpayers* (May 23, 2014), available at http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf. Response 11-5 completed by the IRS states, "All ACS Collection Representatives are trained to discuss payment options with the taxpayer. Once the ACS employee has identified the issue with the taxpayer, the employee is trained to discuss payment options with the taxpayer. Offering collection alternatives before the issue and facts of the case can mislead taxpayers. They may think an option is appropriate for them only to find out later that not all taxpayer situations allow the taxpayer to qualify for all payment options. The IRS is, however, looking broadly at collection activities, and if research indicates that this recommendation would be helpful, the IRS will incorporate the recommendation into any redesign of collection processes."

13 IRS, *IRS Looks at Realigning Compliance Operations* (May 2014).

14 A recent enhancement to the TAS websites is the removal of the "exit disclaimer" that previously appeared when taxpayers moved from IRS.gov to the Taxpayer Advocate website (also called the Tax Toolkit). The exit disclaimer made it appear that the taxpayer was entering a non-governmental website, which could be misleading to the taxpayer. It is now transparent to taxpayers when they move between the two sites that they remain on a government website.

TAS also produces Consumer Tax Tip brochures to help taxpayers in identifying specific issues and contacting TAS for further information. TAS recently published a new brochure, Publication 5107, *The IRS Collection Process – Your Rights and Responsibilities*. This brochure, available on the Consumer Tax Tips Product Page, assists taxpayers facing collection issues or experiencing financial struggles.[15] It describes specific actions a taxpayer can take if the IRS is attempting to collect a tax debt and discusses collection alternatives, collection actions, and the appeals process. In FY 2014, focus groups of taxpayers and tax return preparers unanimously found the brochure very helpful.[16]

To help taxpayers who contact TAS directly before working with the IRS or who are referred to TAS with issues that do not meet TAS case acceptance criteria, TAS has developed (and is negotiating with the National Treasury Employees Union) self-help approaches and tools for taxpayers who can resolve their specific issues on their own. TAS case intake advocates will be required to assess, through conversation with the taxpayer, whether the issue is one TAS has designated as a self-help issue and whether the taxpayer can resolve it without TAS opening a case. The benefit of this approach is that taxpayers may be able to resolve their own cases quickly, immediately in many instances, with information provided by intake advocates through the TAS intake process.

A self-help video for collection issues will cover all collection alternatives the taxpayer may be entitled to with guidance on what to do and what information may be necessary for each one. TAS will also provide specific guidance to taxpayers who cannot full pay and who want to make monthly payments. Dependent on the amount owed, many taxpayers qualify for a streamlined or guaranteed installment agreement, and with minimal guidance, can be directed to the IRS website to establish an installment agreement the same day, on their own, without the need to create a TAS case. In addition, intake advocates will provide taxpayers with information on contacting TAS again if they cannot resolve the issue(s) on their own.

Assisting taxpayers in resolving their own issues up front during the intake process and reducing the volume of cases unnecessarily assigned to TAS inventory will allow TAS case advocates to focus on more complex cases that truly need their involvement. Of course, taxpayers who cannot resolve their issues through self-help can come back to TAS for assistance, and we will have a record of their initial contact. This information will enable us to identify what functions are not providing adequate assistance.

Focus for 2015

TAS will continue to develop progressive tools, such as the self-help instructional videos, to assist taxpayers facing collection issues or experiencing financial difficulty. Additional collection videos may deal with currently not collectible status, OICs, and bankruptcy. TAS

15 Available at: http://www.irs.gov/pub/irs-pdf/p5107.pdf.

16 TAS completed a study entitled "A Taxpayer Advocate Service Study on A Potential Publication 1C – A Collections-Focused Version of Pub 1" in January 2014. It included eight focus groups: two in each of four cities (East Rutherford, NJ; Chicago, IL; Dallas, TX; Los Angeles, CA).

also will pursue agreements with the IRS to update guidance to employees that addresses the following concerns:

- Liquidation of equity in assets prior to consideration of IAs;
- The requirement of a Direct Debit Installment Agreement (DDIA) or Payroll Deduction Installment Agreement (PDIA) when entering into a Partial Pay Installment Agreement (PPIA);
- Filing a Notice of Federal Tax Lien on accounts in the amount of $10,000 or over that are being placed in the queue; and
- Pre-levy considerations in cases involving low income taxpayers on fixed incomes where the IRS is likely to have financial information in its own databases that can be used to establish economic hardship.

M. The Earned Income Tax Credit is an Effective Anti-Poverty Tool That Requires a Non-Traditional Compliance Approach by the IRS.

The Earned Income Tax Credit (EITC) is a refundable credit, enacted as a work incentive in the Tax Reduction Act of 1975.[1] Low income taxpayers use the credit to supplement their wages to pay for basic living expenses such as food, housing, and transportation. Most importantly, the EITC is now one of the largest federal anti-poverty programs.

Unlike traditional anti-poverty programs, which require an application process to determine eligibility, taxpayers "apply" for the EITC by filing a tax return. This means that the upfront administrative costs typically found in a welfare program have shifted to post-claim compliance costs, which can include audits, audit reconsiderations, and even judicial review by the United States Tax Court.

Reducing post-claim compliance costs is important for both taxpayers and the IRS. For low income taxpayers who are already struggling to make ends meet, defending an EITC claim is an additional burden. On the other hand, the IRS has a responsibility to reduce program costs.[2] It is important for the IRS to adopt a comprehensive education and compliance strategy to address EITC errors based on research.

The EITC population has a unique set of attributes, setting these taxpayers apart from the average taxpayer. For example, the average low income taxpayer may have:

- Limited English proficiency;
- Limited computer access;
- Low literacy rates;
- Low education levels; or
- Disabilities.[3]

The correspondence audit is the primary compliance tool that the IRS uses for EITC cases. This audit process often involves automated notices that fail to identify a specific contact person for the taxpayer. TAS has drawn much attention to the needs of low income

1 *See* Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975). For a detailed history of the EITC, *see* Dennis J. Ventry, Jr., *The Collision of Tax and Welfare Politics: The Political History of the Earned Income Tax Credit, 1969-99*, The National Tax Journal, 983-1026 (Dec. 2000).

2 *See* GAO, GAO-09-628T, *Improper Payments: Progress Made but Challenges Remain in Estimating and Reducing Improper Payments*, App, 1, at 20 (Apr. 22, 2009) (identifying EITC as the Treasury improper payment).

3 *See* National Taxpayer Advocate 2009 Annual Report to Congress 110 (*Most Serious Problem: Beyond EITC: The Needs of Low Income Taxpayers Are Not Being Adequately Met*).

taxpayers, how the audit process creates barriers, and why it will not be as effective with this taxpayer population.[4]

The IRS Harms Low Income Taxpayers and Future Compliance When It Does Not Integrate Research Results Into Its EITC Strategy.

The National Commission on Restructuring the Internal Revenue Service emphasized research to prevent noncompliance, urging the IRS to incorporate research findings into audit selection.[5] A TAS analysis of data from the Dependent Data Base (DDB) and the IRS National Research Program (NRP) shows the IRS does not focus on EITC errors with the highest level of noncompliance and misses an opportunity to educate taxpayers about the requirements for claiming EITC and preventing future noncompliance.

Low audit participation rates also prevent some taxpayers with valid claims from receiving the credit to which they are entitled, while the IRS misses an opportunity to educate those who erroneously claimed the credit about EITC requirements.

One area of concern is a low EITC audit participation rate, which prevents an understanding of the true causes of errors. The current non-response rate in EITC audits is over 40 percent.[6] Low audit participation rates also prevent some taxpayers with valid claims from receiving the credit to which they are entitled, while the IRS misses an opportunity to educate those who erroneously claimed the credit about EITC requirements.

TAS recently conducted a study of the IRS audit process in collaboration with the Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) divisions' correspondence examination units (the "Enhanced Communication Study").[7] A test group of about 900 taxpayers underwent EITC audits that involved two or more outbound call attempts, which are not usually part of the correspondence examination process (Phase 1). A control group of about 2,500 taxpayers underwent traditional correspondence examination processing, which is primarily automated and gen-

4 *See, e.g.*, National Taxpayer Advocate 2011 Annual Report to Congress 296, 304 (Most Serious Problem: *The IRS Should Reevaluate Earned Income Tax Credit Compliance and Take Steps to Improve Both Service and Compliance*) ("IRS letters are legalistic, not tailored to the taxpayer's particular situation, and do not discuss alternate sources of documentation. Low income persons may live without written leases or may not have school records for their children because of their living situation or patterns of moving. Migratory living patterns, lack of education, lack of time (*e.g.* holding multiple jobs), lack of transportation, and limited access to technology (internet, faxes, etc.) add to the difficulty of finding and submitting documents."); National Taxpayer Advocate 2009 Annual Report to Congress 110 (Most Serious Problem: *Beyond EITC: The Needs of Low Income Taxpayers Are Not Being Adequately Met*) ("Low income taxpayers tend to be more transitory than the general population, with 27.5 percent of those below the poverty level moving in 2007 while only 15 percent of the general population moved during the same time."); National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 9 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*) ("In more than 40 percent of the cases [analyzed for the study], difficulties with IRS documentation requirements were identified as the reason for EITC audit reconsideration. Communication challenges . . . were the trigger 38 percent of the time.")

5 The Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 26-28 (June 25, 1997).

6 IRS, Compliance Data Warehouse, Audit Information Management System, Closed Case Database – FY 2013. The National Taxpayer Advocate has recommended increasing the EITC audit response rate as a key way to improve EITC compliance. *See Internal Revenue Service Oversight, Hearing Before the H. Subcommittee on Financial Services and General Government Committee on Appropriations*, 113th Cong. (2014) (statement of Nina E. Olson, National Taxpayer Advocate), *available at* http://www.finance.senate.gov/imo/media/doc/Olson%20Testimony1.pdf.

7 Taxpayer Advocate Service, *Enhanced EITC Communication Project* (Nov. 2013) (unpublished report, on file with the Taxpayer Advocate Service). *See also* National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2, 63-90 (*Research Study: An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*).

erally involves no outbound call attempts.[8] When the audit resulted in disallowance of all or part of the EITC claimed on the original return and the taxpayer did not agree with the audit findings, a TAS Case Advocate contacted the taxpayer and offered assistance (Phase 2).[9]

Significant findings from the study include:

- In Phase 1, Exam successfully contacted 24 percent of the taxpayers in the test group (which received outbound calls). The response rate for these taxpayers was 61 percent (129 cases) compared to 43 percent (1,075 cases) for the control group (which did not receive any outbound calls, in line with typical examination procedures).
- In Phase 2, TAS employed additional databases (such as Accurint) and Internet searches that Exam had not used, as well as information from the tax returns filed after the return that was audited. TAS was able to successfully contact the taxpayer by phone or letter in 243 of the 662 cases (36.7 percent). In 131 (53.9 percent) of these contacts, Exam had not been able to reach the taxpayer.

Additionally, data from the National Research Program (NRP) show how attributes of the EITC population and the complex eligibility rules impact compliance.[10] The NRP Individual Income Tax study is based on a multi-year random sample of federal individual income tax returns. The IRS has completed a study of tax year (TY) 2006, 2007, and 2008 returns claiming the EITC. Since this study involves a random sample of returns claiming EITC, its results can be accurately projected to the entire population of returns claiming EITC.[11]

The NRP audit approach is more suited to accurately determining the audit results of the low income population by generally providing for in-person (instead of correspondence) audits. Since it provides information about the sources of EITC noncompliance, NRP data should be driving the IRS's EITC compliance, education, and outreach efforts. Currently, however, Examination receives most of its EITC cases from the Dependent Data Base (DDB).[12] Returns are scored in this program by comparing the return information against various business rules established by the IRS, with the highest-scoring returns selected for audits. Accordingly, returns that fail both DDB residency and relationship rules comprise the majority of EITC returns selected for audit.

8 IRM 4.19.20.1 (May 21, 2013).

9 Taxpayer Advocate Service, Enhanced EITC Communication Project (Nov. 2013) (unpublished report, on file with the Taxpayer Advocate Service).

10 Sources of Errors for the Earned Income Tax Credit Claimed on 2006-2008 Returns 4 (Feb. 12, 2014) (unpublished). Unlike the IRS's typical EITC audits, which are conducted via correspondence with a population that has limited literacy and high transiency and thus has a very high no-response rate, 95 percent of NRP EITC audits are conducted in a face-to-face environment in the office or field. They have a response rate of about 86 percent when a qualifying child is involved. The no response rate for EITC audits is just over 40 percent. For more information on NRP data and how it relates to EITC compliance, *see TAS Research Initiatives, infra.*

11 Returns claiming EITC are a subset of all Federal Individual Income Tax returns in the NRP sample.

12 IRM 4.19.14.1(2) (Nov. 25, 2011).

TAS analyzed DDB audits for tax year (TY) 2012, and preliminary data show that about 75 percent of the returns selected for audit failed both the residency and relationship DDB audit rules. However, EITC returns with qualifying children that DDB indicates as not meeting the residency and relationship rules only comprise 20 percent of all returns that broke an EITC DDB rule.[13] TAS also found that only 16 percent of the audited returns failed the residency test but not the relationship test for all children claimed, even though these returns represent about 33 percent of the returns that failed or partially failed a DDB test. This data suggests that the IRS should focus more of its audit efforts on returns that have qualifying children with only residency issues, instead of primarily focusing on returns with qualifying children having both relationship and residency issues.[14]

TAS has also compared NRP data to DDB data. Preliminary results suggest that based on residency and relationship, most noncompliant taxpayers were not detected by the DDB. Of all returns in the NRP EITC study with at least one child failing EITC eligibility for residency, only approximately 25 percent also failed a DDB residency rule (for at least one child). Likewise, of all the returns in the NRP EITC study with at least one child failing EITC eligibility for relationship, only 28 percent also failed a DDB relationship rule.

According to this NRP analysis, most returns failing EITC residency and relationship requirements are not being detected by the DDB rules. The NRP EITC study indicates that qualifying child errors are the most expensive, and account for at least 40 percent of the overclaims.[15] NRP data also show that over three-quarters of the qualifying child errors stem from failing the residency requirements, while only 20 percent result from relationship requirements. The IRS is routinely selecting returns for audit that appear to not meet residency and relationship criteria. However, the IRS does not have a significant audit coverage of those who only fail EITC residency rules, even though the NRP indicates that most children are not qualified for EITC as a result of residency criteria only.

The IRS largely relies on the DDB tests for its selection of cases to audit. However, the data show that the IRS is not selecting most of the appropriate cases and is missing many that could truly impact compliance. This also means that the taxpayers who wrongfully claim the credit miss out on an educational opportunity and may continue to file erroneous claims.

13 In order for a taxpayer to claim a child with the EITC, that child must be a "qualifying child" as defined by IRC § 152(c). Two aspects of qualifying child include relationship and residency. To be related, the child must be the child of the taxpayer or a descendent of such a child or a brother, sister, stepbrother, stepsister of the taxpayer or a descendent of any such relative. IRC § 152(c)(2). This includes relationships by marriage and by law, such as adoptions. The residency test generally requires that the child live with the taxpayer for more than half of the tax year. IRC § 152(c)(1)(B). The DDB also selects returns for audit because the taxpayer is required to recertify EITC eligibility because of prior non-compliance with EITC eligibility rules.

14 Audit strategies that are designed to maximize revenue do not necessarily maximize future voluntary compliance, *i.e.*, most of the noncompliance may be in areas the IRS is currently not good at detecting. Development of audit selection approaches that more effectively identify the largest pockets of noncompliance is an on-going challenge for the IRS.

15 Sources of Errors for the Earned Income Tax Credit Claimed on 2006-2008 Returns 4 (Feb. 12, 2014) (unpublished).

TAS research shows that low income taxpayers struggle to navigate the audit process.[16] Some taxpayers with a legitimate claim may be deemed ineligible because they could not navigate the audit process without help. Lastly, until the IRS is auditing the appropriate cases, its audits will have limited impact on future EITC compliance, and the EITC will continue to be associated with high improper payment rates.[17]

Ongoing TAS Advocacy Efforts

TAS continues to advocate for low income taxpayers through its casework. For fiscal year 2014 (through March), TAS has issued ten Taxpayer Assistance Orders (TAO) on EITC cases, with two pending.[18] To further the work done by TAS case advocates, the National Taxpayer Advocate issued guidance for working EITC cases.[19] This interim guidance acknowledged that low income taxpayers often struggle with the audit process and accordingly, instructed case advocates to "listen to the taxpayer and attempt to identify any barriers to him or her obtaining documentation."[20]

Until the IRS is auditing the appropriate cases, its audits will have limited impact on future EITC compliance, and the EITC will continue to be associated with high improper payment rates.

The National Taxpayer Advocate has also testified before Congress regarding the EITC and the needs of low income taxpayers. In particular, the National Taxpayer Advocate has drawn attention to the connection between the work of unenrolled preparers and the EITC compliance rate.[21] The National Taxpayer Advocate also offered recommendations for improving the EITC program.[22] TAS is collaborating with Return Integrity and Correspondence Service (RICS) on the EITC Audit Improvement Team, which is looking at ways to improve the audit process, correspondence, and educational materials, including videos, for taxpayers. The potential alignment of EITC exam under RICS creates an opportunity to implement some of the non-traditional

16 *See* National Taxpayer Advocate 2004 Annual Report to Congress vol. 2 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

17 Improper payments include "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements" as well as "any payment to an ineligible recipient, any payment for an ineligible service, any duplicate payment, payments for services not received, and any payment that does not account for credit for applicable discounts." Improper Payments Information Act of 2002, Pub. L. No. 107-300 § 2351, 116 Stat. 2350 (2002).

18 Taxpayer Advocate Management Information System (TAMIS) data. The National Taxpayer Advocate (or her designee) may issue a TAO in cases where it is determined that the taxpayer is "suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary." *See* IRC § 7811(a)(1)(A).

19 *See* National Taxpayer Advocate, *Reissuance of Interim Guidance on Advocacy for Taxpayers Claiming Earned Income Tax Credit (EITC) with Respect to a Qualifying Child*, TAS-13-1213-011 (Dec. 23, 2013).

20 *Id.* This guidance also provided fifty alternative documents that could satisfy the age and relationship test.

21 *See Internal Revenue Service Oversight, Hearing Before the H. Subcommittee on Financial Services and General Government Committee on Appropriations*, 113th Cong. (2014) (statement of Nina E. Olson, National Taxpayer Advocate), *available at* http://www.finance.senate.gov/imo/media/doc/Olson%20Testimony1.pdf.

22 *See Improper Payments in the Administration of Refundable Credits, Hearing Before the H. Comm. on Ways and Means*, 112th Cong. (2011) (statement of Nina E. Olson, National Taxpayer Advocate); *See also Internal Revenue Service Oversight, Hearing Before the H. Subcommittee on Financial Services and General Government Committee on Appropriations*, 113th Cong. (2014) (statement of Nina E. Olson, National Taxpayer Advocate), *available at* http://www.finance.senate.gov/imo/media/doc/Olson%20Testimony1.pdf.

and specialized approaches to EITC audits that the National Taxpayer Advocate has championed over the years.[23]

In FY 2015, TAS will:

- Continue research to determine the causes of EITC errors based on a thorough examination of the data from NRP and the Enhanced Communication Study.
- Provide an extensive and comprehensive review of the initial intent of the EITC and its economic impact on low income taxpayers, especially the working poor.
- Work with the IRS on redesigning the EITC audit selection process to increase the response rate and to educate taxpayers.
- Engage Low Income Taxpayer Clinics in reviewing the causes of noncompliance in the EITC arena. The National Taxpayer Advocate is planning to report the results of this comprehensive research project in her 2014 Annual Report to Congress.
- Continue to advocate for improved audit processes that drive responses, including the use of additional contacts, the Residency Affidavit, and alternate address databases.[24]
- Include as a FY15 performance commitment for each Local Taxpayer Advocate (LTA) to actively include EITC as an outreach topic and conduct local reviews of EITC cases to identify potential systemic issues and report as appropriate. Additionally, the FY 2015 TAS Program Letter will require consistent advocacy and processing of EITC-related cases. The focused case reviews will target no-relief and partial relief EITC, with the results included in the Area and local office Operational Reviews.
- Continue to focus on the IRS's procedures and actions in inappropriately banning taxpayers from receiving the credit under IRC § 32(k).[25]

23 *See* IRM 1.1.13.6.4 (Oct. 7, 2013).

24 For information on the Residency Affidavit, *see Internal Revenue Service Oversight, Hearing Before the H. Subcommittee on Financial Services and General Government Committee on Appropriations*, 113th Cong. (2014) (statement of Nina E. Olson, National Taxpayer Advocate), *available at* http://www.finance.senate.gov/imo/media/doc/Olson%20Testimony1.pdf; National Taxpayer Advocate 2011 Annual Report to Congress (Most Serious Problem: *The IRS Should Reevaluate Earned Income Tax Credit Compliance Measures and Take Steps to Improve Both Service and Compliance*); National Taxpayer Advocate 2005 Annual Report to Congress (Most Serious Problem: *Earned Income Tax Credit and Exam Issues*).

25 *See* National Taxpayer Advocate 2013 Annual Report to Congress (Most Serious Problem: *The IRS Inappropriately Bans Many From Claiming EITC*).

N. TAS Continues to Monitor the IRS's Implementation of the Supreme Court Decision in *Windsor* and Processing of Same-Sex Marriage Returns and Related Claims.

On June 26, 2013, in *United States v. Windsor*, the Supreme Court held unconstitutional section 3 of the Defense of Marriage Act of 1996 (DOMA) which effectively had precluded federal recognition of same-sex marriage.[1] Subsequently, the IRS issued Revenue Ruling 2013-17, effective as of September 16, 2013, to implement this decision.[2] The Revenue Ruling adopted a general rule recognizing a marriage of same-sex individuals that were lawfully married under state law for all federal tax purposes including income, estate and gift, and employment taxes. Analysis of the latest census data indicates that over a million individual taxpayers may be affected by the IRS's implementation of the *Windsor* decision and may face return filing or processing difficulties.[3]

Over a million individual taxpayers may be affected by the IRS's implementation of the *Windsor* decision and may face return filing or processing difficulties.

While the decision and guidance resolve fundamental issues, various questions about the tax status of unmarried domestic or civil union partners persist.[4] Additionally, as various state laws on same-sex marriage, civil unions, and registered domestic partnerships evolve, some same-sex couples may remain uncertain as to whether they are married for state and federal tax purposes.[5]

In its response to the recommendations contained in the National Taxpayer Advocate 2013 Annual Report to Congress, the IRS committed to continue issuing formal and informal guidance as issues arise.[6] However, the IRS has been slow to address various issues about the tax status of unmarried domestic or civil union partners. The IRS's web site seems to conflate civil unions with registered domestic partnerships and does not address distinctions by jurisdiction.[7] One-size-fits-all guidance to registered domestic partners and individuals in civil unions of various jurisdictions may exacerbate confusion and provide ambiguous or misleading advice to taxpayers.[8] The Q&As became further outdated on June 30, 2014, when thousands of registered domestic partners were deemed married under the laws of the state

1 *U.S. v. Windsor*, 133 S. Ct. 2675 (2013). *See also* 1 U.S.C. § 7, Pub. L. No. 104-199, 110 Stat. 2419.

2 Rev. Rul. 2013-17, 2013-38 I.R.B. 201.

3 National Taxpayer Advocate 2013 Annual Report to Congress 258.

4 *Id*. at 256-63 (Most Serious Problem: *Defense of Marriage Act: IRS, Domestic Partners and Same-Sex Couples Need Additional Guidance*).

5 For example, Washington State passed a law automatically converting certain state registered domestic partnerships into marriages as of June 30, 2014. *See* Wash. Rev. Code § 26.60.100 (2012).

6 *See* IRS responses to the 2013 Annual Report to Congress recommendations, *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf. *See also* U.S. Department of the Treasury, IRS Office of Chief Counsel 2013–2014 Priority Guidance Plan, *available at* http://www.irs.gov/uac/Priority-Guidance-Plan.

7 IRS, Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions, *available at* http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions (last revised September 19, 2013).

8 *See* National Taxpayer Advocate 2013 Annual Report to Congress 260 (where the IRS advised that opposite-sex Illinois civil union couples could file married jointly).

of Washington, blurring the seemingly easy distinction between marriage on one hand, and registered domestic partnerships and civil unions on the other.[9]

The IRS should carefully analyze the attributes of formal relationships that are not marriages under state law and tailor its advice to the needs of taxpayers in various jurisdictions. As the law in domestic and foreign jurisdictions continues to evolve, the IRS should work closely with TAS and all affected stakeholders.

The Impact of Federal Recognition of Same-Sex Marriage on Filing of Original and Amended Returns

The IRS guidance implementing *Windsor* explained that it would recognize a valid marriage of same-sex individuals for all federal tax purposes, including income, gift and estate, and employment taxes, regardless of whether a couple resides in a jurisdiction that recognizes same-sex marriage or in a jurisdiction that does not recognize the validity of same-sex marriages.[10] The IRS also announced that:

- For taxable year 2013 and going forward, same-sex spouses generally must file using a married filing separately or jointly filing status.
- Similarly, for tax year 2012 and all prior years, same-sex spouses who file an original tax return on or after September 16, 2013, generally must file using a married filing separately or jointly filing status.
- For tax year 2012, same-sex spouses who filed their tax return before September 16, 2013, may choose, but are not required, to amend their federal tax returns to file using married filing separately or jointly filing status.[11]
- For tax years 2011 and earlier, same-sex spouses who filed their tax returns timely may choose, but are not required, to amend their federal tax returns to file using married filing separately or jointly filing status.[12] However, in order to get a refund, generally, the taxpayer must file a claim for refund three years from the date the return was filed or two years from the date the tax was paid, whichever is later.[13]

Additionally, after *Windsor*, if the period of limitations for filing a claim for refund is open, employers may seek refunds of Social Security and Medicare taxes paid to the extent of

9 *See* Wash. Rev. Code § 26.60.100 (2012). *See also* Washington Secretary of State, Notice regarding same sex marriage and domestic partnerships, available at https://www.sos.wa.gov/corps/domesticpartnerships/Notice-regarding-same-sex-marriage-and-domestic-partnerships.aspx (last visited on June 30, 2014)

insert period

10 Rev. Rul. 2013-17, 2013-38 I.R.B. 201. *See also* IRS, *Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law*, *available at* http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples (last visited Mar. 26, 2014).

11 All items that must be reported on the return or claim and are affected by the marital status of the taxpayer must be adjusted to be consistent with the marital status reported on the amended return or claim.

12 However, if a same-sex spouse chooses to amend a return for a reason unrelated to marital status, for example to claim an increase in mortgage interest, he or she is not required to change the filing status claimed on the original return.

13 IRC § 6511.

employer-provided health coverage to the employee's same-sex spouse and dependents should have been excluded, and employees may amend returns to reduce gross income.[14]

Delayed Protective Claims and the Potential for Processing Errors

As described above, same-sex spouses who would have owed less tax but for DOMA may amend returns for open years. The period for amending returns may have been extended with respect to those taxpayers who filed "protective" claims in anticipation of the Supreme Court decision.

From July 24 to August 29, 2013, IRS instructions told employees to hold amended returns that referenced DOMA or *Windsor*.[15] Consequently, the IRS suspended hundreds of these "protective" claims in Field Exam, Employment Tax, Accounts Management, and Campuses.[16] W&I has reported closing all DOMA protective claims handled by the Accounts Management function after the formal guidance was released. SB/SE campus, excise tax, and estate and gift tax functions generally do not track cases involving DOMA claims, so there is no data available. Some data, however, is available from other functions.[17]

Of the 287 DOMA claims opened in SB/SE Field Exam, to date only 68 have been closed, with 219 claims remaining open as of May 23, 2014.[18] The majority of the remaining claims have been pending for over 300 days.[19] For amended employment tax returns, the situation is even worse – there were over 500 open DOMA claims in SB/SE Employment Tax Field and Campus Compliance Services groups as of May 27, 2014, most of which were filed during the 2009 tax year.[20] The delays in resolving these claims may impose a significant burden on affected taxpayers.[21] The National Taxpayer Advocate is concerned about the delay in processing these protective claims and urges the IRS to promptly resolve the remaining claims. In fiscal year (FY) 2015, TAS will monitor the status of the remaining open claims and, when working TAS cases that involve DOMA claims, will seek expedited treatment in appropriate cases.

14 *See* Notice 2013-61, 2013-44 I.R.B. 432 (setting forth guidance for employers and employees to make refund claims or adjustments of payroll tax withholding for some benefits provided and monies paid to same-sex spouses); IRS, *Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law*, *available at* http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples (last visited Mar. 26, 2014). *See also* IRC §§ 105 and 106.

15 Servicewide Electronic Research Program (SERP) Alert No. 13A0447 (Jul. 24, 2013) ("**If assigned a Form 1040X Amended return and "***Defense of Marriage Act* **", "***DOMA***", "***Windsor v. the United States***", or a reference pertaining to "***Recent Supreme Court Decision***" is notated on the claim, HOLD the claim.") (Emphasis added).

16 *See* IRS response to TAS information request (Oct. 29 & Nov. 1, 2013). The IRS estimated about 200 claims in Field Exam, approximately ten in Estate and Gift Tax, 188 individual taxpayer claims, and 566 employer claims in Employment Tax (including Accounts Management). The IRS could not quantify any claims being on hold at campuses, stating that campuses do not track DOMA-related cases.

17 W&I response to TAS information request (June 16, 2014); SB/SE response to TAS information request (June 19, 2014).

18 SB/SE response to TAS information request (June 19, 2014).

19 *Id.*

20 *Id.*

21 However, the IRS did not commit to promptly process the DOMA returns and related claims or to review identity theft and revenue protection filters in light of common filing scenarios by same-sex spouses to ensure that the IRS does not freeze and delay refunds to legitimately married taxpayers. *See* IRS responses to the 2013 Annual Report to Congress recommendations, *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/IRS-2013-MSP-Responses.pdf.

Assuming that following the post-*Windsor* guidance, same-sex individuals and couples are filing legitimate original and amended returns, the National Taxpayer Advocate remains concerned that the IRS automatic sorting criteria, identity theft or revenue protection filters may put certain returns in the limbo of refund fraud processes. In FY 2015, TAS will also review identity theft and revenue protection filters in light of common filing scenarios by same-sex spouses to ensure that the IRS does not freeze and delay refunds to legitimately married taxpayers. TAS will offer its perspective in training IRS employees to recognize the many and diverse scenarios that can arise as tax administration transitions to recognizing same-sex marriages.

Ongoing TAS Advocacy Efforts

Since the issuance of Revenue Ruling 2013-17, same-sex couples encountered various obstacles to amending tax returns for open years and to resolving account issues. For the period from October 1, 2013 to March 31, 2014, TAS identified 39 cases with DOMA related issues.[22] Of the 39 cases, 29 cases involved taxpayers seeking TAS assistance in filing amended returns for changing filing statuses, of which six had filed protective claims. The remaining cases involved the following issues:

- The exclusion from gross income of the value of employer-provided health coverage to the employee's same-sex spouse and dependents;
- Audit reconsiderations for previously denied dependent exemptions for step-children belonging to the same-sex spouse, denied Earned Income Tax Credit (EITC), and denied Additional Child Tax Credit (ACTC) for pre-*Windsor* filings;
- Community property issues; and
- Processing of "protective" claims for prior taxable years.

Comprehensive Training and Outreach to TAS Employees on Same-Sex Marriage Issues

TAS's own efforts to educate its employees about the impact of DOMA began with an article in TAS's weekly newsletter to all TAS employees explaining new IRS guidance and return filing issues associated with same-sex marriages.[23] In April 2014, TAS developed training regarding the legal history of same-sex marriages, IRS guidance on tax treatment as well as processing and other issues when changing marital status, and advocacy opportunities. The training was recorded and provided to all TAS case advocacy employees, and will be updated to address future developments.[24]

22 Taxpayer Advocate Management Information System (TAMIS) history analysis (June 2, 2014).

23 TAS Wednesday Weekly, *Key Points About Repeal of Defense of Marriage Act* (Mar. 12, 2014).

24 TAS announced the training video in a Special Edition all-employee newsletter on April 25, 2014, providing the May 30, 2014 due date for completion. TAS issued a reminder to take the training on May 14, 2014.

This training alerts employees of potential issues that might arise in working cases and the need to elevate those issues to management and in SAMS to assist TAS in identifying any trends or other systemic issues. The training emphasizes the following general principles to consider while advocating for same-sex individuals:

- Same-sex issues involving joint or married separate filing issues should be the same as opposite-sex couples filing with the same issues.
- The selection criteria for examination should be the same regardless of the taxpayer's gender.
- Same-sex couples should not have to produce any additional documentation, come under increased scrutiny, or wait longer than opposite sex couples with similar issues. The gender of the taxpayer should not be a factor.
- Local Taxpayer Advocates should consider using a Taxpayer Assistance Order (TAO) where same sex couples are being treated differently than opposite sex couples.

Ongoing Efforts with the IRS

TAS continues to participate in regular briefings with senior IRS officials and holds bi-weekly internal technical issues calls. Additionally, TAS is reviewing all draft IRM and other IRS guidance to identify potential same-sex marriage issues. Where same-sex partners marry in a state that recognizes same-sex marriage but reside and own property in a state that does not recognize the union, issues pertaining to collection of balances due could arise. Although for federal purposes, the couple is jointly and severally liable, when the IRS goes to collect, it determines the taxpayer's property interest under state law. Thus, if the taxpayers own property in a state that does not recognize their marriage, there may be complex real property issues that the IRS will need to consider when deciding how to collect the tax debt.

TAS will monitor issues related to the collection of the tax and will elevate any problems to the IRS. TAS will continue soliciting comments and observations from taxpayers, TAS and IRS employees, and external stakeholders on potential systemic issues, delays, and situations of disparate treatment for same-sex taxpayers in processing of returns, claims, and examinations that may need to be raised in National Taxpayer Advocate Annual Reports to Congress.

III. REVIEW OF THE 2014 FILING SEASON

A. Impact of the Government Shutdown on the Start of the 2014 Filing Season

The IRS started the 2014 filing season on January 31, 2014, ten days later than scheduled, due to the 16-day government shutdown in October 2013. Despite this late start, the volumes of individual income tax returns received and refunds issued through April 18, 2014 increased slightly from the previous year. The number of returns processed rose four percent, as shown in Figure III.1, below.[1]

this has NOT been updated with our file

FIGURE III. 1, 2014 FILING SEASON STATISTICS COMPARING 4/19/2013 AND 4/18/2014

	04/19/2013	04/18/2014	% Change
Individual income tax receipts			
Total receipts	130,203,000	131,170,000	0.7%
Total processed	120,737,000	125,604,000	4.0%
E-filing receipts			
TOTAL	112,665,000	115,969,000	2.9%
Tax professionals	69,474,000	69,992,000	0.7%
Self-prepared	43,191,000	45,977,000	6.5%
Web usage			
Visits to IRS.gov	296,468,446	269,820,598	-9.0%
Total refunds			
Number	93,839,000	94,809,000	1.0%
Amount	$250 billion	$255 billion	2.1%
Average refund	$2,659	$2,686	1.0%
Direct deposit refunds			
Number	76,135,000	76,714,000	0.8%
Amount	$217 billion	$218 billion	0.2%
Average refund	$2,853	$2,837	-0.5%

Of interest is the nine percent decline in visits to IRS.gov. The IRS has adopted an approach to customer service that directs taxpayers to online resources and away from traditional telephone and face-to-face visits, as discussed further in this report. With fewer and fewer opportunities for taxpayers to receive face-to-face service, one might think visits to the website would increase rather than decrease.

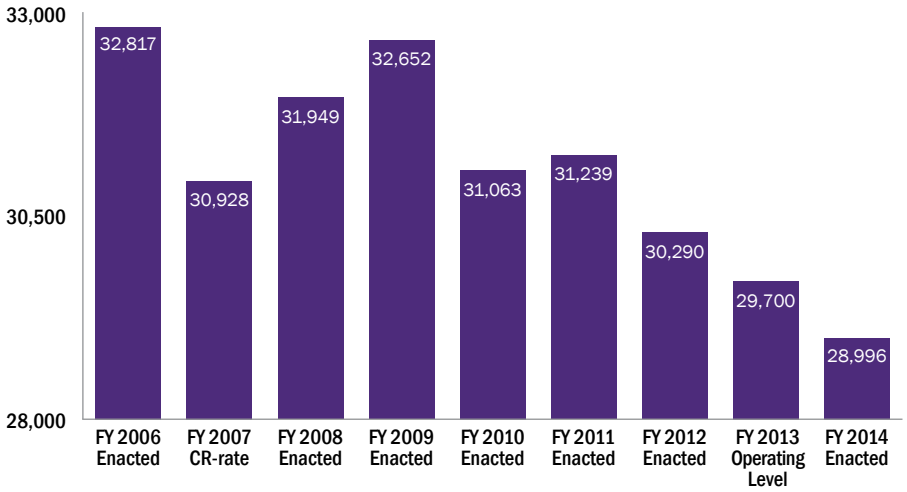
1 IRS, Filing Season Statistics for week ending Apr. 18, 2014. http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-Week-Ending-April-18-2014. The IRS also delayed the 2013 filing season, due to late legislative changes.

B. Reduced IRS Funding Continues to Limit Taxpayer Services.

Since fiscal year (FY) 2010, the IRS budget has been cut by nearly eight percent.[2] Over the same period, inflation has risen by about seven percent, further eroding the IRS's resources.[3] The requirement to pay taxes is generally the most significant burden a government imposes on its citizens; yet because of these budget reductions, the IRS is increasingly unable to provide taxpayers with the services they need.

As the IRS Commissioner testified in February, the IRS entered the 2014 filing season with 10,000 fewer employees than in 2010 while processing the largest number of tax returns in the agency's history.[4] The chart below illustrates the decline in funding for staffing taxpayer services.

FIGURE III. 2, IRS TAXPAYER SERVICES FULL TIME EQUIVALENT EMPLOYEES[5]



Taxpayers experienced a significant reduction of IRS services in this filing season, including:

- The IRS has fewer Customer Service Representatives on the phones to answer questions;
- The IRS Tax Law Assistance program now only answers the most "basic" taxpayer questions;
- The IRS ended all tax return preparation services at its Taxpayer Assistance Centers (TACs); and
- The IRS had fewer TACs in operation.

2 *Hearing Before the S. Subcommittee on Financial Services and General Government*, 113th Cong. (Apr. 30, 2014) (written testimony of John A. Koskinen, Commissioner of Internal Revenue). IRS funding for FY 2014 was set at $11.29 billion, more than $850 million below FY 2010.

3 See Office of Management and Budget, *Fiscal Year 2014 Budget of the U.S. Government, Historical Tables*, Table 10.1 at 215 (showing Gross Domestic Product and year-to-year increases in the GDP (Chained) Price Index). Data has been re-based from FY 2005 to FY 2010.

4 *State of the IRS, Hearing Before the H. Comm. on Appropriations and Subcomm. on Financial Services and General Government*, 113th Cong. (Feb. 26, 2014) (written testimony of John A. Koskinen, Commissioner of Internal Revenue).

5 IRS, FY 2015 Budget Request, Congressional Budget Submission (Mar. 2014). Staffing data is the number of funded full-time equivalent employees.

Declining IRS Resources Affect Ability to Answer Taxpayer Questions and Correspondence.

The Commissioner acknowledged that the IRS could not deliver timely service to taxpayers who phone the IRS for help, estimating 39 percent of calls would go unanswered with the average wait time rising to as much as 24 minutes.[6] The actual level of service (LOS) on the phone lines was 71.6 percent during the 2014 filing season, a slight increase from approximately 71.5 percent in 2013. However, the IRS also received more than 11 million fewer calls in 2014.[7] The 71.6 percent LOS also represents a significant decline from fiscal year 2007, when it was 82.5 percent.[8] As discussed below, the IRS achieved this higher LOS by diverting employees from other functions, notably handling correspondence. The average wait time to talk to an assistor during the filing season rose to about 14 minutes in 2014, up from 13 minutes in 2013 and from just under five minutes in FY 2007.[9]

Declining IRS Resources Create a Backlog in EITC Correspondence.

Additionally, when the IRS needs assistors to answer calls, it uses staff who would otherwise work taxpayer correspondence, which means those cases can become aged, causing taxpayer frustration and additional contacts. For example, aged correspondence related to the Earned Income Tax Credit (EITC) increased over 900,000 percent between October 2012 and October 2013.[10] The IRS has procedures to monitor correspondence to ensure a response within 30 days.[11] Figure III.3 shows the difficulty the IRS had keeping up with correspondence related to low income taxpayers' EITC claims.

6 *State of the IRS, Hearing Before the H. Comm. on Appropriations and Subcomm. on Financial Services and General Government*, 113th Cong. (Feb. 26, 2014) (written testimony of John A. Koskinen, Commissioner of Internal Revenue).

7 Joint Operations Center Enterprise Snapshot Report, Week Ending Apr. 12, 2014. IRS received 58,329,922 call attempts in 2013 as compared to 47,227,259 call attempts in 2014.

8 Joint Operations Center Enterprise Snapshot Report, Week Ending Apr. 14, 2007.

9 Joint Operations Center Enterprise Snapshot Report, Week Ending Apr. 12, 2014; Apr. 14, 2007.

10 IRS, *Reporting Compliance-Correspondence Examination EITC-PAC-7F* (Oct. 2013; Nov. 2013; Dec. 2013; Jan. 2014; Feb. 2014; Mar. 2014; Apr. 2014).

11 IRM 4.19.13.10(1) (Jan. 1, 2013).

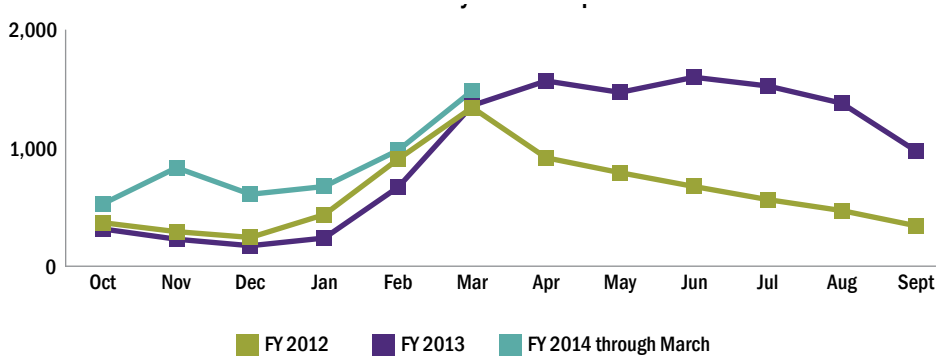
FIGURE III. 3, CUMULATIVE OVERAGE EITC MAIL (STATUS 55/57)[12, 13]

Month	FY 2013	FY 2014
October	4	36,375
November	20	27,915
December	258	19,041
January	169	15,100
February	293	14,676
March	260	12,250
April	1,186	10,704

In September of FY 2013, the IRS had 35,365 pieces of overage EITC mail in inventory compared to 46 for the same period in FY 2012, an increase of 76,780 percent.[14] Clearly, the IRS was having difficulty keeping up with EITC correspondence even before the shutdown. While the IRS is working to reduce the overage mail, thousands of taxpayers are waiting for a response. Moreover, the IRS entered the 2014 filing season with a substantial backlog of overaged correspondence, and the new filing season brought another round of EITC audits (and taxpayer correspondence) for the 2013 tax year.[15]

When the IRS cannot work correspondence timely, and taxpayers experience delays, they will seek TAS assistance. This is especially true when taxpayers face economic hardship – which is only made worse by IRS delays in releasing the EITC portion of their refunds. EITC taxpayers, by definition, are low income, so their refunds are a significant portion of their annual income. TAS noted an increase in TAS FY 2013 and FY 2014 EITC receipts, as shown in Figure III.4, below:

FIGURE III. 4, TAS MONTHLY EITC RECEIPTS, FY 2012 – FY 2014[16]



12 IRS, *Reporting Compliance-Correspondence Examination EITC-PAC-7F* (Oct. 2013; Nov. 2013; Dec. 2013; Jan. 2014; Feb. 2014; Mar. 2014; Apr. 2014).

13 IRM 4.19.13.10, if IRS does not send a reply within 70 to 115 days the taxpayer's account is updated to Status 55 and if more than 115 days, to Status 57.

14 IRS, *Reporting Compliance-Correspondence Examination EITC-PAC-7F* (Sept. 2013).

15 W&I Business Performance Review 2014 7 (May 15, 2014).

16 Data obtained from Taxpayer Advocate Management Information System (TAMIS).

The IRS Is Turning Away Taxpayers with Tax Law Inquiries.

On December 20, 2013, the IRS announced it would shift some taxpayer assistance and service programs to "automated resources" during the filing season, answering only "basic" tax-law questions on its phone lines and in its walk-in sites, and not answering any questions that are "more detailed" than "basic."[17] Moreover, the IRS said it would not answer any tax-law questions after mid-April, including "basic" questions from the millions of taxpayers who obtain filing extensions and prepare their returns later in the year. In fact, when a taxpayer calls the IRS after April 15 to ask a tax law question, he or she will hear the following message:

"This tax topic will only be answered by an IRS representative through April 15th. If you need help outside of this time period, please use our Interactive Tax Assistant or the applicable publication. Both are available on our website at www.irs.gov. Thank you for calling the Internal Revenue Service."

Some examples of questions deemed too complex to answer during the filing season are:

- *I deliver pizzas for my employer using my car. How can I deduct my car expenses?*
- *I received a 1099-MISC instead of a Form W-2 for my new job, how do I report this on my tax return?*
- *Do I have to report the inheritance I received?*
- *I have started selling some craft items I make as a hobby. Do I have to report that?*
- *I installed new windows and an efficient furnace in my house last year. Isn't there a credit I can claim for that?*
- *The restaurant I work for reported allocated tips on my Form W-2. I didn't receive that much in tips. What should I do?*
- *I opened a bank account for my child. Do I still report the interest on my return?*[18]

While the IRS boasts of 95.7 percent accuracy in answering tax law questions,[19] the basic nature of the questions that the IRS will not answer suggests it may be setting the bar for success too low. Further, if the IRS will not answer tax law questions, taxpayers likely will incur the expense of hiring tax return preparers or answer questions themselves incorrectly. Tax compliance will thus be either more costly or impaired.

17 IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013), *at* http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources.

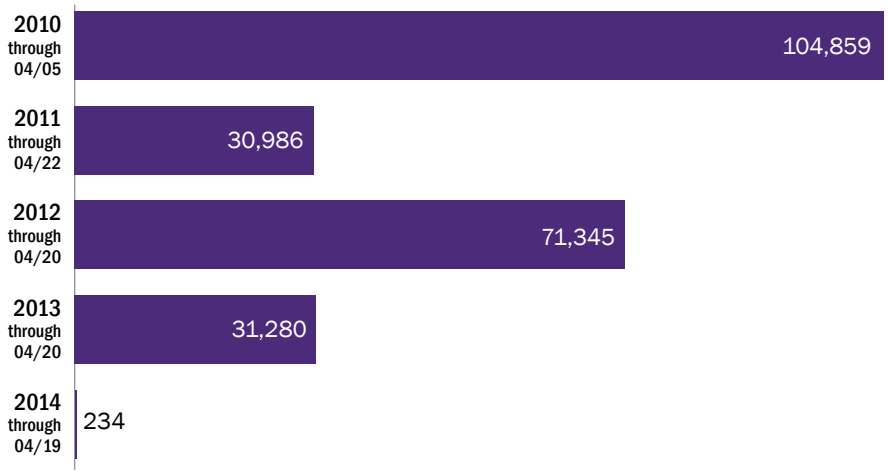
18 See IRM Exhibits 21.1.1-1 and 21.1.1-2, IRM 21.1.1.6 (6). Additionally, http://serp.enterprise.irs.gov/databases/irm.dr/current/21.dr/21.1.dr/21.1.1.dr/21.1.1.6.htm added all the topics described in the Telephone Transfer Guide (TTG) (found on the IRS intranet on http://serp.enterprise.irs.gov/TTGuide/TTGuide.jsp?s_NAME=92194#XXX) for toll-free application 92194 as out of scope during the 2014 filing season.

19 *State of the IRS, Hearing Before the H. Comm. on Appropriations and Subcomm. on Financial Services and General Government*, 113th Cong. (Feb. 26, 2014) (written testimony of Johan A. Koskinen, Commissioner Internal Revenue Service).

The IRS Will No Longer Prepare Tax Returns for Low Income, Elderly, and Disabled Taxpayers.

In addition to answering fewer tax questions, the IRS has ended its longstanding practice of preparing tax returns for low income, elderly, and disabled taxpayers who seek help.[20] The chart below shows how tax preparation service in TAC offices has declined:

FIGURE III. 5, TAXPAYER ASSISTANCE CENTERS e-FILE TAX RETURNS[21]



The most vulnerable taxpayers now have the option of:

- Paying a fee to a return preparer or buying tax preparation software, increasing their compliance burden;
- Using the IRS's Free File Service, if they have access to the Internet and are computer literate;
- Spending hours (the IRS estimates it takes approximately 15 hours to prepare a Form 1040) working through 104 pages of instructions;[22] or
- Using a Volunteer Income Tax Assistance (VITA) or Tax Counseling for the Elderly (TCE) site.[23]

While these volunteer programs provide a vital service, taxpayers may have to travel far to use them.

20 IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013), *at* http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources.

21 Electronic Tax Administration Reports, Apr. 25, 2010, Apr. 22, 2011, Apr. 20, 2012, Apr. 19, 2013, and Apr. 19, 2014. Does not include business returns or paper returns.

22 2013 Instructions for Form 1040, U.S. Individual Income Tax Return 98.

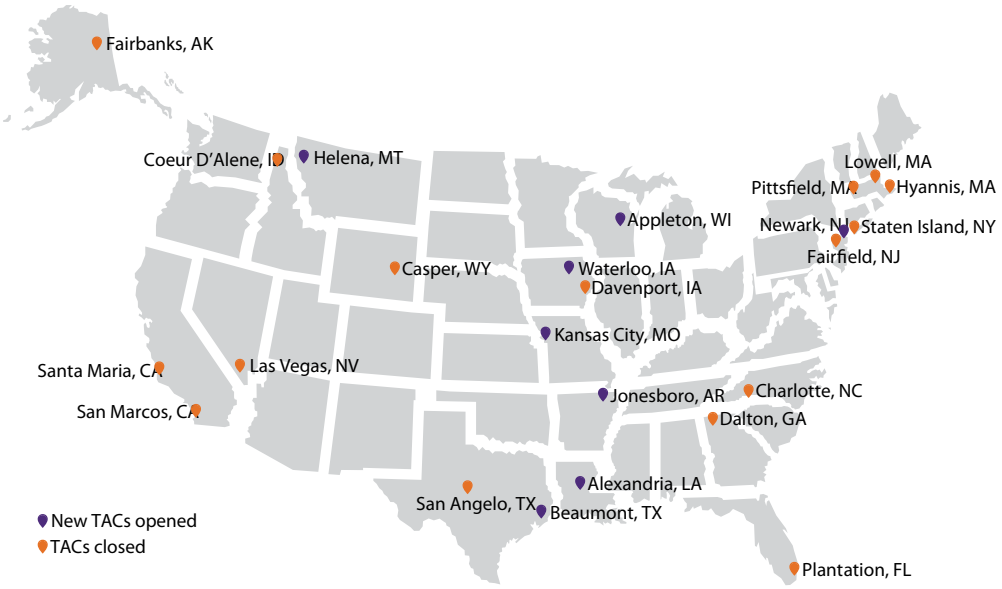
23 The VITA program offers free tax help to people who generally make $52,000 or less, persons with disabilities, the elderly, and limited English speaking taxpayers who need assistance in preparing their own tax returns. IRS-certified volunteers provide free basic income tax return preparation with electronic filing to qualified individuals.

The IRS Operated Fewer TACs in the 2014 Filing Season.

Due to budget shortfalls, the IRS had eight fewer TACs around the country at the start of the 2014 filing season.[24] Although the IRS established eight new TACs (in Arkansas, Iowa, Louisiana, Missouri, Montana, New Jersey, Texas, and Wisconsin), it eliminated 16 others in:

- Fairbanks, AK;
- San Marcos, CA;
- Santa Maria, CA;
- Plantation, FL;
- Dalton, GA;
- Davenport, IA;
- Coeur D'Alene, ID;
- Pittsfield, MA;
- Lowell, MA;
- Hyannis, MA;
- Las Vegas, NV;
- Charlotte, NC;
- Fairfield, NJ;
- Staten Island, NY;
- San Angelo, TX; and
- Casper, WY

FIGURE III.6, CHANGES IN TAXPAYER ASSITANCE CENTERS IN 2014



While the IRS assisted over 6.5 million taxpayers through TACs in FY 2013, it planned to assist 5.5 million taxpayers, or nearly 16 percent fewer, in FY 2014.[25]

24 Wage and Investment, Business Performance Review, 4th Quarter FY 2013, Nov. 20, 2013, 18.

25 *Id.*

Taxpayer Transcript Requests Are Referred to IRS.gov.

In January, the IRS launched a system called "Get Transcript" on IRS.gov to allow taxpayers to instantly view and print copies of their tax transcripts,[26] and began referring those visiting TACs or calling the toll-free lines for transcripts to the online tool. Taxpayers often need tax transcripts when applying for student loans, mortgages, etc. However, "Get Transcript" requires taxpayers to pass an eAuthentication process.[27] Those who cannot pass the authentication must request transcripts through the "Get Transcript" mail option, which will take five to ten days,[28] or submit a Form 4506-T, *Request for Transcript of Tax Return*, which, depending on the type of transcript, can take more than ten business days.[29]

There are times when a taxpayer needs a transcript immediately, such as when he or she refinances a home to pay for a medical procedure and needs a transcript to allow the bank to process a loan. The online tool will assist these taxpayers as long as they can pass the authentication process and have access to a computer and printer. This tool will not work for taxpayers who:

- Are filing for the first time;
- Are victims of identity theft; or
- Cannot remember the answers to the eAuthentication questions.

If these taxpayers need transcripts immediately, they must either travel to a TAC[30] or call a toll-free line and potentially wait 24 minutes for help.

Taxpayers are filing more returns, and asking the IRS fewer questions, but not because the system has suddenly become simpler.

While some users may have difficulty obtaining a transcript, the Get Transcript tool is a step in the right direction, allowing many taxpayers immediate access to account information. The number of TAS cases where the taxpayer was seeking a transcript may indicate the effectiveness of this tool, having decreased over 23 percent from 1,206 in FY 2013 through April to 922 through April 2014.[31]

Advocating to Improve Future Taxpayer Services

In a recent study, the Government Accountability Office (GAO) acknowledged a lack of resources might require the IRS to consider difficult tradeoffs, such as eliminating or

26 Get Transcript allows taxpayer to view or print various types of transcripts (Return, Account, Record of Account, Wage and Income Statement, and Verification of Non-Filing).

27 IRM 21.2.1.61 (Mar. 11, 2014).

28 IRM 21.2.3.5.9.2 (Mar. 28, 2014).

29 Requests for return transcripts, account transcripts, records of account, verification of nonfiling, and Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcripts are generally processed within ten business days.

30 IRM 21.3.4.2(2) (Jan. 23, 2014).

31 Data obtained from TAMIS (May. 1, 2013; May. 1, 2014).

reducing some services in 2014.[32] While TAS recognizes the need for difficult choices, with a tax system as complex as ours, answering only "basic" tax-law questions poses an enormous risk to the integrity of the system. Taxpayers are filing more returns, and asking the IRS fewer questions, but not because the system has suddenly become simpler. Taxpayers are likely looking for answers from return software providers and paid return preparers, many of whom are "unregulated." In FY 2015, TAS will:

- Analyze use of the Interactive Tax Assistant on irs.gov to determine if taxpayers are actually using the electronic alternative suggested by the IRS when it turns away taxpayers calling with tax law questions.

C. Taxpayers Still Cannot Rely Upon Online Tools for Accurate Information on Refunds.

Traditionally, the most common question the IRS receives is when people can expect to see their refunds. In 2014, the IRS announced it would direct all refund inquiries during the first 21 days after a taxpayer files electronically to the *Where's My Refund?* tool, available in English and Spanish through the IRS2Go phone application, IRS.gov, and the automated telephone service. Customer service representatives can only research the status of a refund if 21 days or more have elapsed since the return was filed electronically (or more than six weeks since the taxpayer mailed a paper return) or if *Where's My Refund?* directs them to contact the IRS.[33] While the IRS intended this policy to reduce filing season call volumes, unclear messages on *Where's My Refund?* may generate more calls.

One problem occurred on the first day of the filing season, when the IRS processed over 59,000 returns without first putting them through a series of filters designed to prevent refund fraud.[34] While the IRS acted immediately to stop refunds from going out until it could re-process the returns, taxpayers had already been notified that the IRS had accepted their returns and could view a date on *Where's My Refund?* to expect receipt of their refunds (generally, February 6, 2014). Because the returns had to be re-processed, some of those refunds were delayed from one to three weeks. Taxpayers returning to *Where's My Refund?* to find out why their refunds did not arrive found a new message stating their refunds had not been released and displaying an error code. When taxpayers called the IRS to find out about their refunds, IRS assistors could not provide them with a specific date, nor could they explain why the refunds had not been released. Since 21 days had not elapsed since the returns were accepted for filing (January 31), taxpayers were told to wait two more weeks, and that they would receive letters if the IRS needed more information from them to process their returns.

32 GAO, GAO-14-133, *2013 Tax Filing Season: IRS Needs to Do More to Address the Growing Imbalance between the Demand for services and Resources* (Dec. 2013).

33 *Some IRS Assistance and Taxpayer Services Shift to Automated Resources*, http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources.

34 SERP Alert 14A0100, *Issue with Some Refund Returns Processed on Friday, January 31* (Feb. 21, 2014).

Taxpayers were understandably confused and frustrated to be told when to expect their refunds only to find later that the IRS could not provide a new date. Many taxpayers used social media and software provider message boards to express their frustration and seek answers.[35] Some who tried to reach an IRS employee outside of the general toll-free assistance line found their way to phone numbers within the IRS. After receiving numerous calls and voice mail messages from taxpayers inquiring about their refunds, one IRS office provided another internal IRS number (which happened to be a phone line answered by the Washington, D.C. Taxpayer Advocate office) in the outgoing voicemail message. Within minutes of this number being posted on the Internet and social media, the TAS office began receiving up to 60 calls per hour from taxpayers seeking information about their refunds and other tax issues because they were not satisfied with the information given by toll-free assistors.

This is just one example of how decreased services can lead to increased IRS workload, especially when an online tool fails to operate as intended. In February, when those 59,000 returns were being re-processed, TAS receipts involving returned or stopped refunds rose by 24 percent over February 2013.[36]

D. TAS Receipts Suggest the IRS Needs to Enhance Efforts to Detect and Prevent Refund Fraud.

The IRS uses several methods or "filters" to detect and stop refund fraud and identity theft. However, if these filters are not effectively designed or modified, they can ensnare legitimate claims filed by taxpayers who are not attempting to defraud the system. When the filters flag a return, the IRS first attempts to "clear" it by using internal systems or contacting third parties. If the IRS cannot verify information reported on the return, it sends a letter asking the taxpayer to document information on the return. Either way, the refund is delayed, which may place the taxpayer in a position of economic hardship.

In the 2014 filing season, TAS cases involving pre-refund wage verification holds increased by nearly 43 percent to become TAS's second most common taxpayer issue by volume (exceeded only by identity theft).[37] Not since 2005, when the Questionable Refund Program was worked by the Criminal Investigation Division, have TAS receipts involving stopped refunds been so high.[38] The growth in refund crimes has created challenges in tax administration that continued budget shortfalls will continue to exacerbate.[39]

35 Erb, Kelly Phillips, *The Refund Process and that Pesky 1121 Code*, Forbes, Feb. 12, 2014. http://www.forbes.com/sites/kellyphillipserb/2014/02/12/the-irs-the-refund-process-and-that-pesky-1121-code/.

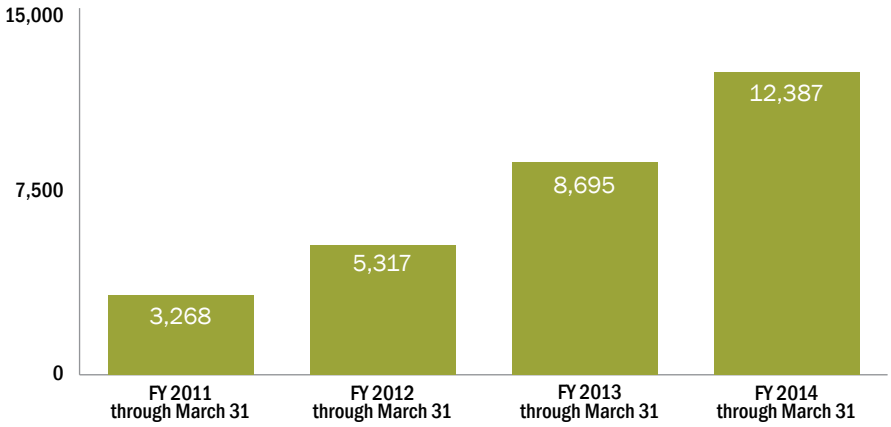
36 TAS received 371 stopped refund cases in February 2014 compared to 298 during 2013.

37 Data obtained from TAMIS. TAS received 8,695 Pre-Refund Wage Verification Hold cases through March 31 of FY 2013 and 12,387 cases through March 31 of FY 2014.

38 National Taxpayer Advocate 2005 Annual Report to Congress 31 (Most Serious Problem: *Criminal Investigation Refund Freezes*).

39 National Taxpayer Advocate 2013 Annual Report to Congress 25 (Most Serious Problem *IRS BUDGET: The IRS Desperately Needs More Funding to Serve Taxpayers and Increase Voluntary Compliance*).

FIGURE III. 7, TAS WAGE VERIFICATION REFUND HOLD RECEIPTS[40]



TAS's rate of providing relief to taxpayers on these stopped refund cases is 77 percent, with another four percent of cases receiving relief directly from the IRS.[41] The fact that TAS obtains relief for so many taxpayers clearly indicates that their original returns were legitimate.

Over 60 percent of TAS wage verification cases came from taxpayers who were facing economic burden, and needed their refunds to get relief. The other 40 percent involved taxpayers whose returns:

- Were not cleared by the IRS within the promised time;
- Experienced delays of more than 30 days from normal processing; or
- Experienced some other systemic or procedural failure.[42]

Even with the priority handling that TAS cases receive, the average cycle time for these cases is 73 days, which is a long time for a taxpayer to wait for a refund.

For the IRS to improve performance in fraud detection, it needs resources to not only research and design the complex filters and programming that will spot fraudulent returns, but to manually review and validate those returns. Additional staffing for this program is critical both for the IRS to protect revenue and to be prepared for the increased workload resulting from such programs. Taxpayers count on the government to issue refunds expeditiously. If the IRS detects a problem with a return, it needs to effectively communicate with the taxpayer and have the human resources to resolve issues that technology and programming cannot.

40 Data obtained from TAMIS (Apr. 1, 2011, Apr. 1, 2012, Apr. 1, 2013, Apr. 1, 2014).

41 *Id.* TAS closed 7,633 cases out of 9,860 with relief, and another 412 cases closed after the taxpayer received relief directly from the IRS.

42 Data obtained from TAMIS. Through March 31 of FY 2014, TAS accepted 7,445 Pre-Refund Wage Verification Hold cases under economic burden criteria (criteria codes 1-4) and 4,941 cases under systemic burden criteria (criteria codes 5-7).

IRS Systems Designed to Screen Returns before Issuing Refunds Are at Capacity, Jeopardizing Revenue Protection Efforts.

The Electronic Fraud Detection System (EFDS) is the IRS's primary frontline system for detecting fraudulent returns. Although it assisted the IRS in successfully preventing the release of nearly $16 billion in allegedly fraudulent refunds in calendar year 2013, the Treasury Inspector General for Tax Administration (TIGTA) estimated the IRS may have paid $5.2 billion in potentially fraudulent tax refunds on 1.5 million tax returns in tax year 2010.[43] In 2009, the IRS began developing the Return Review Program (RRP) to replace EFDS, and in 2012 declared EFDS "too risky to maintain, upgrade, or operate beyond 2014."[44] In February 2014, the IRS declared a strategic pause in developing the RRP, indefinitely delaying retirement of the "risky" EFDS.

RRP was intended to automate a variety of manual tasks, allowing employees to pursue other activities. For example, a case referred to the Examination function involves inputting data to a spreadsheet, which is then transferred to headquarters personnel who open and assign the case. TAS has identified multiple instances where the case was lost in transit, severely burdening the taxpayer and significantly delaying resolution.[45]

Not deploying the RRP as intended could impose significant harm and cost on both the IRS and the public. An unexpected failure of EFDS would force the IRS to decide whether to stop issuing refunds until the system could be repaired, or issue billions of dollars in potentially fraudulent refunds without screening. In addition, as EFDS becomes harder to update and maintain, it could erroneously stop an increasing number of valid refunds. The lack of automation to handle administrative adjustments and actions is straining the IRS's limited resources as fraud and identity theft grow and staffing declines.

In FY 2015, TAS will continue to advocate for improve processes, screening tools, and programming for the 2015 filing season to limit the impact on compliant taxpayers by:

- Monitoring the percentage of returns erroneously stopped by the fraud filters;
- Advocating for changes in filters that are performing less than acceptably; and
- Issuing Taxpayer Assistance Orders when the IRS fails to timely offer relief in response to TAS case advocacy for compliant taxpayers.

43 *State of the IRS, Hearing Before the H. Comm. on Appropriations and Subcomm. on Financial Services and General Government*, 113th Cong. (Feb. 26, 2014) (written testimony of John A. Koskinen, Commissioner Internal Revenue Service); TIGTA, *There Are Billions of Dollars in Undetected Tax Refund Fraud Resulting From Identity Theft*, Reference Number 2012-42-080, found at http://www.treasury.gov/tigta/auditreports/2012reports/201242080fr.html (Jul. 19, 2012).

44 Privacy Impact Assessment (PIA) 250, at http://www.irs.gov/pub/irs-utl/RRP_TS_pia.pdf (Oct. 2, 2012).

45 Systemic Advocacy Management System (SAMS) submissions 29456 (Feb. 20, 2014), 25833 (Oct. 11, 2012), and 21320 (Jun. 14, 2011).

IV. Efforts to Improve TAS Advocacy and Service to Taxpayers

TAS continually looks for ways to improve our advocacy on behalf of taxpayers. These efforts can involve the process taxpayers go through when they first contact TAS, our approach to systemic problems, and the knowledge and skills our employees must master to be effective advocates. This section describes initiatives that we believe will enhance TAS's ability to serve taxpayers and resolve their problems.

A. TAS is Establishing a Centralized Intake Function to Identify Taxpayer Concerns Sooner and More Accurately

One way for taxpayers to request assistance from TAS is by calling the National Taxpayer Advocate's (NTA) toll-free line.[1] Due to high call demand, Wage and Investment (W&I) division assistors staff the line, screening calls, resolving issues with limited scope, or referring the taxpayers to other IRS lines.[2] W&I assistors, however, are trained to handle calls as quickly as possible.[3] If the taxpayer's issue(s) are appropriate for TAS intervention, the W&I assistor creates a TAS case by entering information into the Taxpayer Advocate Management Information System (TAMIS) and assigning the case to the appropriate TAS office.[4] An Intake Advocate in the receiving office screens and edits the information in TAMIS for final assignment to a TAS Case Advocate who works the case.[5] However, after all of these actions, the taxpayer has yet to speak to a TAS employee.

To accelerate TAS's initial contact with taxpayer, thereby ensuring more complete and accurate case information, TAS and W&I launched a six-month Proof of Concept (POC) test with a centralized case intake process. Under the POC, W&I assistors in Baltimore and Richmond began transferring NTA toll-free calls to TAS in real time. The W&I assistors provide the taxpayer with a Personal Identification Number (PIN) after authenticating the taxpayer to the tax account(s) involved, update the account with notes regarding the taxpayer's issue(s), and then transfer the call to the TAS intake line.[6] A TAS Intake Advocate in a centralized site reviews the W&I assistor's notes, verifies the PIN, and establishes the case in TAMIS for the appropriate office, reducing the steps required for disclosure authentication and burdensome repetition for the taxpayer.

Unlike the current system, under the POC the taxpayer speaks directly with a TAS employee in the earliest stage of case building and with no limit to the length of the call, resulting in a more thorough initial contact. The intake advocate can take time to secure critical

1 The NTA toll-free telephone number (1-877-777-4778) is the primary number provided to taxpayers who need to contact TAS.

2 Current NTA toll-free sites include the Baltimore, Richmond, Dallas, Puerto Rico, and Atlanta Campus call sites.

3 In Fiscal Year (FY) 2013, W&I staff answered 352,718 of 636,737 calls, and initiated 66,111 TAS cases.

4 TAMIS is the database exclusively dedicated to recording, control, and processing of TAS cases.

5 There are 75 local TAS offices, including at least one in every state, the District of Columbia, and Puerto Rico, and at each IRS campus.

6 In 2004, TAS established the 877-ASK-TAS1 (1-877-275-8271) toll-free number, staffed by intake advocates at three sites. The new initiative expands the case intake line to Cincinnati, Fresno, Memphis, Ogden, Dallas and Puerto Rico.

information up front, educate taxpayers about TAS, and inform them what to expect, what they should do in preparation for contact from a case advocate (*e.g.*, what documentation to have available), and when the next contact will come. This new process ultimately results in better service and faster resolution.

The POC is part of a long-term TAS strategy to speak with the taxpayers at the earliest opportunity and educate them on IRS processes, resolve issues early when possible, and provide case advocates with better-developed cases. As staffing and hiring authority permit, TAS will expand the POC to additional W&I call sites and measure its effectiveness, with an overall goal of establishing a fully centralized case intake operation.

Focus for Fiscal Year 2015

In FY 2015, TAS will:

- Expand the POC to all W&I assistors staffing the NTA toll-free line;[7]
- Expand the POC to include calls in Spanish;[8]
- Extend hours of operation to meet demand;
- Develop self-help tools for taxpayers to resolve their own issues when appropriate (*e.g.,* streamlined and guaranteed installment agreements, Automated Underreporter issues, missing or misapplied payments, math error notices), without the need to assign a case to a CA, with no negative impact on customer satisfaction; and
- Measure POC effectiveness from the taxpayer's perspective, between cases where a TAS employee was involved on initial contact and those initiated by W&I assistors.

B. TAS Shifts to a Team Approach to Provide More Comprehensive Advocacy on Systemic Issues

TAS is striving to combine the knowledge and skills of employees in different TAS units to provide a broader view of issues and advocate more effectively. These partnerships will integrate advocacy on individual case issues and ongoing efforts to address larger, systemic problems.

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At present, all Local Taxpayer Advocates (LTAs) are assigned "advocacy portfolios" that address areas of tax administration for which they are solely responsible. However, LTAs do not generally participate in the IRS headquarters-level meetings where tax administration strategy, policy, and risk areas are discussed. To address tax issues in a more comprehensive manner, this year the National Taxpayer Advocate is replacing the issue portfolios with a team approach that will include TAS Systemic Advocacy employees and others. The 70 portfolios

7 The POC started with ten W&I customer service representatives, increased to 20 in January 2014, and to 47 in April. W&I now has approximately 594 Customer Service Representatives (CSRs) trained and available to staff the NTA toll-free line.

8 Currently, the POC transfers only English calls. The Puerto Rico and Dallas W&I call sites handle Spanish calls to the NTA toll-free line.

will be consolidated into eight Advocacy Issue Teams co-led by representatives from Case Advocacy and Systemic Advocacy, and including attorney advisors and subject matter experts. The teams will brief the National Taxpayer Advocate quarterly and raise urgent topics to her as needed. TAS will create the teams in the last quarter of fiscal year 2014.

The following table lists the new teams, describes their missions, and illustrates their specific areas of focus.

TABLE IV.1, TAS ADVOCACY ISSUE TEAMS

Issue	Description	Core Emphasis
Affordable Care Act (ACA)	This topic relates solely to the tax implications and implementation of ACA.	Health Care I (Individual) Health Care II (Business) Health Care III (Outreach & Training)
Collection	This topic covers all centralized and field collection issues from policy to enforcement.	ACS - Automated Collection System Appeals Collection Alternatives Enforcement Actions Non-Filers Penalties
Examination	This topic covers all centralized and field examination issues from policy to enforcement.	Correspondence Examination Audit Reconsideration Appeals Credits Employment Tax Policy Math Error IRDM - Information Reporting and Document-Matching Penalties
Processing	This topic covers the processing of tax returns, documents ,and payments.	Amended Returns ITIN - Individual Taxpayer Identification Number Penalties Pipeline Processing
Revenue Protection	This topic covers refund fraud and fraud victim assistance.	IDT - Identity Theft IPSU IDT - Identity Protection Specialized Unit IVO - Integrity Verification Office TPP - Taxpayer Protection Program RRP - Revenue Review Program
Specialties	This topic covers current areas of focus or unique tax issues. The issues under this topic will contract and expand, as needed, to meet current demands.	Domestic Issues International/Territory Return Preparer Fraud Taxpayer Rights
Tax Exempt and Governmental Entities (TE/GE)	This topic would normally be handled under the "Specialties" team; however, due to Congressional attention in 2013, TAS has established a separate team providing increased oversight.	Governmental Entities Tax Exempt Organizations
Taxpayer Support and Education	This topic covers IRS service to taxpayers, practitioners, and other customers (*e.g.*, Electronic Return Originators, banks, mortgage lenders, etc.)	Electronic Communication Representation Special Treatment Taxpayer Services

C. TAS Training Initiatives Improve Advocacy and Taxpayer Service

Many of the issues TAS works to resolve are technical in nature and require our employees to possess skills in multiple disciplines of tax administration, including accounts management, examination, and collection. The challenging task of educating employees in these areas has been made more difficult over the past several years by IRS budget constraints and directives that limit face-to-face technical training.[9] TAS has two primary training functions:

- Training new hires, and
- Maintaining and upgrading the skills of all employees.

New Case Advocate and Intake Advocate Learning

Like many IRS organizations, TAS faces the challenge of training incoming employees to do their jobs. An important difference is that our employees must not only be taught objective skills in tax law and procedure but also the more subjective skills of how to advocate effectively on behalf of a taxpayer.

Our employees must not only be taught objective skills in tax law and procedure but also the more subjective skills of how to advocate effectively on behalf of a taxpayer.

Over the past year, TAS has taken significant steps to improve the education that new Case Advocates and Intake Advocates receive. TAS reorganized its new Case Advocate training to correspond to the three "buckets" of work in their inventories: Accounts, Examination, and Collection. Additionally, TAS created introductory modules (*Introduction to Advocating in Accounts*, *Introduction to Advocating in Examination,* and *Introduction to Advocating in Collection*) that begin the dialogue with new employees on what TAS expects in these areas.

Technical Groups Keep Case Advocate Training Current

To manage the large body of Case Advocate learning material, TAS established three Technical Groups — Accounts, Examination, and Collection — to ensure the material covers the latest approaches to advocacy on different taxpayer issues. In FY 2014, TAS began creating a fourth group – the International Technical group — to better manage training and guidance on international issues. The groups contain TAS executives, managers, Case Advocates, Intake Advocates, analysts, and support staff and operate in a non-hierarchal collegial style.

In FY 2015, these technical training groups will be incorporated into the newly-formed Advocacy Issue Teams (discussed previously). By incorporating training sub-teams into the ongoing Advocacy Issue teams, TAS will be able to identify training needs as new issues

9 Memorandum from the Office of Management and Budget, *Eliminating Excess Conference Spending and Promoting Efficiency in Government* (September 21, 2011); Memorandum from the Office of Management and Budget, *Promoting Efficient Spending to Support Agency Operations* (May 11, 2012); and Treasury Directive 12-70 (February 24, 2014), limited to $19,999 the amount a head of office such as the National Taxpayer Advocate could approve.

arise. This coordination between issue identification, analysis, and training will provide a cross-functional approach to training and prevent duplication of efforts within TAS. The training groups will update TAS educational material to account for new cases from compliance activities under the Affordable Care Act,[10] the Foreign Account Tax Compliance Act,[11] and the Report of Foreign Bank and Financial Accounts Act.[12] Technical Groups will expand their focus to improving advocacy through analytical tools (such as an analysis of which TAS issue codes yield the lowest customer satisfaction and relief rates), and case reviews.

Continuous Learning Helps Employees Maintain Knowledge and Upgrade Skills

For several years, TAS brought all of its employees together annually for a week of technical tax law and procedure training. Due to limits on training-related travel, TAS has shifted primarily to a virtual learning environment. Also, rather than provide training at one time during the year, TAS has adopted a Continuous Learning system that delivers courses on key issues whenever those issues start to appear in inventories, enabling us to meet critical learning needs in a budget-conscious manner. Continuous Learning is built around our eight basic occupational areas,[13] and blends online interactive training with training developed by the National Taxpayer Advocate and her staff, presented in local offices with group discussions among employees.

Our training in FY 2014 covered a broad array of technical issues, including:

- Affordable Care Act (ACA) – We created three online video courses covering the basic provisions of the law, topics related to individuals, and topics related to employers.[14] The courses were designed to both provide training and offer reference material for future use. The Wage and Investment division requested access to this TAS training, and it is now available to all IRS employees.
- Implementation of *United States v. Windsor*[15] – We were proactive in providing guidance to our employees through an online video course that clarified Defense of Marriage Act (DOMA) issues identified by the National Taxpayer Advocate in her 2013 Annual Report to Congress.[16] TAS experts discussed the legal history of same-sex

10 See Patient Protection and Affordable Care Act of 2009, Pub. L No. 111-148, 124 Stat. 199 (Mar.23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111 -152, 124 Stat. 1029 (Mar. 30, 2010).

11 The provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) became law in March 2010.

12 If a taxpayer has a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, exceeding certain thresholds, the Bank Secrecy Act may require reporting the account yearly to the Internal Revenue Service by filing electronically a Financial Crimes Enforcement Network (FinCEN) Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR).

13 The eight TAS occupations are Intake Advocate, Case Advocate, Manager, Analyst, Support Staff, Campus Technical Advisor, Revenue Officer Technical Advisor, and Revenue Agent Technical Advisor.

14 The courses are *The Affordable Care Act and Advocating for Taxpayers - Introduction*, *The Affordable Care Act and Advocating for Taxpayers - Individual Topics*, and *The Affordable Care Act and Advocating for Taxpayers – Business Topics*.

15 *See U.S. v. Windsor, 133 S. Ct. 2675.*

16 See National Taxpayer Advocate 2013 Annual Report to Congress 256–263 (Most Serious Problem: *Defense of Marriage Act: IRS, Domestic Partners, and Same-Sex Couples Need Additional Guidance*).

marriage, IRS guidance on tax treatment, processing, and other issues when amending filing status.[17] We emphasized potential advocacy issues and the need to identify and immediately elevate any systemic issues regarding the repeal of DOMA.

- Exempt Organizations (EO) – Case Advocates received training on exempt organizations in two installments.[18] The first focused on a review of technical issues, including why an organization would seek exempt status, and the difference between 501(c)(3) and 501(c)(4) organizations. The second installment featured the National Taxpayer Advocate and focused on advocacy opportunities for the organizations requesting exempt status.
- Working Congressional Cases – TAS recently began working some Congressional cases in campus as well as local (geographically-based) offices. Training for these offices discussed the Congressional Affairs Program (which focuses on building relationships between Congressional offices and TAS offices), and basic information about how to work with Congressional staff. We supplemented this training with courses on Congressional letter writing and a class on "How to Write for Results."
- Issue Code Training – We offered a series of workshops for intake advocates (who handle the initial contact with a taxpayer) so that they can take full and complete actions(s) to resolve all issues – possibly without assigning the case to a case advocate. The National Taxpayer Advocate recommended this approach in her 2013 Annual Report.[19] These sessions teach employees how to conduct an initial interview with a taxpayer to determine if the case fits TAS case acceptance criteria, and if so, to begin building a case. We delivered this training just prior to spikes in case receipts on different issues to help employees in their research, case building, and advocacy.
- Integrated Automation Technology (IAT) Training – We delivered a series of courses on the use of IAT tools to improve efficiency.[20] In keeping with the just-in-time training approach, we delivered the first session during the 2014 filing season. We expect this training to reduce case cycle time and improve advocacy efforts.

The Continuous Learning approach also helps other TAS employees, such as Technical Advisors, LTAs, and Area Directors to maintain and enhance their skills. This training allows TAS leaders, for example, to speak at conferences and outreach events to discuss critical tax administration topics and practical solutions.

17 See Rev. Rul. 2013-17, IRB 2013-38.

18 Exempt Status Under IRC Section 501(c)(3) and 501(c)(4): Basic Principles, and Exempt Status Under IRC Section 501(c)(3) and 501(c)(4): Advocating for Taxpayers.

19 See National Taxpayer Advocate Annual Report to Congress 422.

20 Integrated Automation Technologies (IAT) is an organization under IRS Business Modernization Operations (BMO). IAT provides tools to IRS employees that simplify research, reduce keystrokes, and increase the accuracy of regular work processes. IAT is working with TAS Business Systems Planning (BSP) to provide these automated tools for TAS employees.

Focus for Fiscal Year 2015

For FY 2015, TAS Continuous Learning will include:

- Basic and advanced international law courses for all employees in Case Advocacy and Systemic Advocacy;
- Advanced training on Affordable Care Act issues that are likely to surface in case advocate inventories, such as collection matters involving the Premium Tax Credit;[21]
- Different courses on how Case Advocates can use financial statements to better advocate for taxpayers in collection cases; and
- Other tax administration issues, including Earned Income Tax Credit, penalties, and Taxpayer Bill of Rights (TBOR) that we expect to affect our inventories.

D. TASIS Training Will Be a Key Focus in FY 2015

The new TAS Integrated System (TASIS) will revolutionize the way TAS employees do their jobs.[22] This system redesign culminates a decade of strategic planning that will automate work processes, eliminate manual and redundant steps, and enable our employees to spend more time on their core mission of advocacy. The National Taxpayer Advocate identified the training required to implement this initiative in her Fiscal Year 2014 Objectives Report to Congress.[23]

Educating employees about this new system is a key objective for fiscal year 2015. Users will receive timely and comprehensive training that enables them to transition to TASIS with no disruption to the assistance and advocacy they provide to and for our customers. Training will include pre-classroom activities, communications, and classroom instruction designed to increase employees' knowledge of TASIS, and will let employees know what they can expect in the first TASIS release.

Pre-classroom activities will include online demonstrations, videos, and communications that highlight how TASIS will support TAS's work and advocacy more effectively and efficiently than existing systems. TAS leaders and TASIS experts will deliver key messages before and during system deployment.

TAS will deliver customized classroom training to all TAS employees as well as IRS employees who will use TASIS, based on their work responsibilities and assigned roles in the system. The training will teach employees how to access and maneuver within this state-of-the-art application and will include hands-on practice. Training will integrate changes to work processes and procedures that use TASIS's enhanced functionality to enhance advocacy and

21 TAS is projecting a certain amount of cases from taxpayer reconciliation of the Premium Tax Credit under IRC § 36B.

22 See *IRS Funding Gap Creates Severe Risk to the Delivery of the Taxpayer Advocate Service Integrated System (TASIS), supra.*

23 See National Taxpayer Advocate Fiscal Year 2014 Objectives Report to Congress 112-113.

efficiency. After training, TAS will offer additional support to employees through the availability of online resources and individual assistance from TASIS subject matter experts.

Focus for Fiscal Year 2015

In FY 2015, TAS will:

- Continue to identify employee training needs for TASIS;
- Communicate information about TASIS to let employees know what they can expect;
- Delivery early and ongoing activities designed to familiarize employees with TASIS;
- Develop training specific to employees' occupation;
- Deliver "just in time" training prior to TASIS deployment; and
- Educate employees to use TASIS to better advocate for taxpayers.

V. TAS Research Initiatives

The National Taxpayer Advocate is a strong proponent for the role of theoretical, cognitive, and applied research in effective tax administration. The Office of the Taxpayer Advocate is conducting and also collaborating with the IRS on a number of research initiatives. A primary focus of these efforts is to determine how best to minimize taxpayer burden, while also supporting the IRS's efforts to increase voluntary compliance.

The following is a discussion of the research initiatives that TAS is conducting or participating in for the remainder of fiscal year (FY) 2014 and during FY 2015.

A. Impact of Audits on Taxpayer Compliance

TAS Research is working together with a TAS senior attorney advisor on a multi-year study exploring the factors that motivate taxpayer compliance behavior. Broadly speaking, these factors include not only the expected likelihood and cost of getting caught cheating (called "economic deterrence"), but also compliance norms, trust in the government and the tax administration process, the complexity and convenience of complying, and the influence of preparers.

During the first two study phases, TAS analyzed the results of a telephone survey conducted by a vendor of a representative national sample of taxpayers with sole proprietor income (*i.e.,* Schedule C, *Profit or Loss from Business (Sole Proprietorship)*).[1] The principal objective was to identify the major factors that drive taxpayer compliance behavior. There were a number of significant study findings, including (among others) that trust in government, the tax laws, and the IRS are associated with the level of taxpayer compliance. Surprisingly, however, TAS found no significant evidence that economic deterrence motivates sole proprietor compliance decisions.[2]

In the third study phase, TAS will further explore whether economic deterrence impacts sole proprietor tax compliance. Specifically, we will evaluate the impact of audits on the subsequent reporting compliance of taxpayers. TAS will gauge the taxpayers' level of compliance by using the IRS's Discriminant Index Function (DIF), a mathematical technique used to score the audit potential of a tax return.[3] We will use a test and control group. The test group will be comprised of sole proprietor taxpayers with high DIF scores[4] who were audited in the first study year. The control group will be the population of sole proprietor

1 The vendor also administered the survey to a sample of high and low compliance communities. Inclusion of the community sample enabled TAS to better evaluate whether taxpayers' affiliations within their communities appear to influence compliance behavior.

2 *See* National Taxpayer Advocate 2013 Annual Report to Congress Vol. 2 at 33 (*Small Business Compliance: Further Analysis of Influential Factors*). *See also* National Taxpayer Advocate 2012 Annual Report to Congress Vol. 2 at 1 (*Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

3 IRM 4.1.3.2 (Oct. 24, 2006). DIF uses information obtained and periodically updated from the National Research Program (NRP) to create these mathematical formulas. Returns with high DIF scores generally have a higher probability of being adjusted on audit than other returns of the same type.

4 We will classify taxpayers with DIF scores in the top 20 percent as high DIF score taxpayers.

taxpayers with high DIF scores who were not audited in the first year of the study. We will track the test groups' DIF scores for the five years following the audit and compare them to the control groups' DIF scores during the same period.

We will also explore whether certain factors influenced subsequent DIF scores, including:

- The type of audit, *i.e.*, correspondence, field audit or office audit;
- The amount of the audit assessment; and
- A subsequent audit of the test group taxpayers, *i.e.,* those audited in year one.

We anticipate completing this research by the end of December 2014.

B. Allocating Funding for Taxpayer Services Among Competing Alternatives

The National Taxpayer Advocate is concerned that the ongoing cuts to the IRS's budget in FY 2010 through FY 2013 have significantly eroded the quality of taxpayer service. In the long run, this erosion increases taxpayer burden, undermines taxpayers' faith in the tax system, and ultimately reduces voluntary compliance.[5]

In response to the National Taxpayer Advocate's concerns, the Wage & Investment (W&I) Division and TAS are collaborating on an initiative, the Service Priorities Project, that will enable the IRS to identify a proper balance between automated and personal services. The project team is developing a ranking methodology for IRS taxpayer services that takes taxpayers' needs and preferences into account. The methodology will value each of the major taxpayer services offered by the IRS from both the government's and the taxpayer's perspective. Research showed that the included services, *i.e.,* those we are evaluating, represent the vast majority of individual taxpayer service needs (see Figure V. 1 below). The IRS will be able to use this ranking methodology to make resource allocation decisions based on highest valued services in the face of budget or staffing constraints.

5 *See Progress on the Implementation of the Taxpayer Assistance Blueprint: Five-Year Progress Report: FY 2008–FY 2012* 45-47 (Apr. 22, 2013).

FIGURE V.1, SERVICE INTERACTIONS BY ISSUE, TAX YEAR (TY) 2007-2011[6]

Issue	TY 2007	TY 2008	TY 2009	TY 2011
Refund information	14%	24%	21%	30%
Get form or publication	23%	26%	26%	19%
Notice[1]	11%	14%	13%	12%
Tax law question while preparing a return[2]	6%	8%	9%	10%
Return preparation assistance	10%	10%	8%	9%
Payment information	5%	6%	5%	5%
Obtain prior year tax return	6%	6%	5%	4%
Obtain Tax ID number	2%	3%	2%	2%
Tax law information after filing return	n/a	n/a	3%	3%
Make a payment	n/a	n/a	4%	6%
Other[3]	23%	3%	4%	0%

[1] This service covers IRS assistance to taxpayers who are responding to IRS notices.
[2] TY 2007 and 2008, includes before and after filing the return.
[3] In TY 2007, includes questions about the Economic Stimulus Package.

The methodology measures "value" using separate sets of criteria for taxpayers and the IRS. This is necessary because taxpayers and the IRS have different priorities. The IRS is concerned with conserving scarce resources, especially in a tight budget environment. Taxpayers need services that will enable them to understand their tax obligations and resolve tax issues without imposing undue burden. Frequently, these needs are best met by personal services that are more costly to the IRS than automated services, such as Internet-based services.

TAS Research will continue to work with W&I to complete development of the methodology and a preliminary ranking of the covered services by the end of FY 2015. The team will also develop recommendations to ensure that the data supporting the methodology is periodically updated.

6 *Progress on the Implementation of The Taxpayer Assistance Blueprint: Five-Year Progress Report: FY 2008 - FY 2012* 6 (Apr. 23, 2012), Information for tax year 2010 is missing because the information source, the Taxpayer Experience Survey, was not administered for tax year 2010.

7 This service covers IRS assistance to taxpayers who are responding to IRS notices.

8 Tax Year 2007 and 2008, includes before and after filing the return.

9 In Tax Year 2007, includes questions about the Economic Stimulus Package.

C. Impact of TAS Services on Taxpayer Compliance

As mentioned above, in recent years cuts to the IRS budget have significantly eroded the quality of taxpayer service. Moreover, the IRS's ability to assist taxpayers has suffered further declines in FY 2014:

- For the first four months of FY 2014, the level of service (LOS) on the phones was 62.5 percent, down from 73.7 percent during the first four months of FY 2013. Among taxpayers who got through, hold time rose from 12.8 minutes to 20.3 minutes.[10]
- In an effort to answer more calls, the IRS will not answer any questions that are "more detailed" than "basic" during the filing season.[11] In addition, it will not answer any tax-law questions after mid-April, although millions of taxpayers file extensions and prepare their returns later in the year.
- Also, to conserve resources, the IRS announced that it will no longer prepare any tax returns at its walk-in sites, even for low income, elderly, or disabled taxpayers.[12]

The National Taxpayer Advocate believes that quality taxpayer service is a fundamental taxpayer right, and that funding for IRS services should be set at a level that ensures that the IRS will be able to provide quality service to the nation's taxpayers.[13] However, the measures stakeholders routinely apply to the IRS do not acknowledge the importance of service delivery. Invariably, the focus is on reducing the tax gap through enforcement efforts, or improving efficiency as measured by return on investment (ROI). Because measuring the impact of service on compliance (*i.e.,* the ROI of IRS services) is difficult, the IRS currently cannot provide detailed ROI calculations to support taxpayer service funding requests.

In recent years, TAS Research has studied whether taxpayer service, among other factors, impacts taxpayer compliance behavior.[14] In FY 2015, TAS will conduct additional research to explore the impact of service on compliance.

TAS Research will develop a representative sample of taxpayers who sought help from TAS for collection and examination related issues in FY 2009. We will measure their subsequent filing, payment, and reporting compliance during the next five years, and will compare the resulting compliance rates to those for a control group. TAS will construct the control group from a random sample of taxpayers who have the same compliance issues

10 IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* and *Product Line Detail* reports (week ending Feb. 1, 2014). IRS data for the first four months of the fiscal year (October through January) generally does not include the tax-return filing season, which this year started on January 31.

11 IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013), *at* http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources.

12 *Id.*

13 *See Internal Revenue Oversight, Hearing Before the Subcommittee on Financial Services and General Government, H. Comm. on Appropriations*, 113th Cong. (Feb. 26, 2014) (statement of Nina E. Olson, National Taxpayer Advocate). *See also*, *Progress on the Implementation of the Taxpayer Assistance Blueprint: Five-Year Progress Report: FY 2008–FY 2012* 45-47 (Apr. 22, 2013).

14 *See* National Taxpayer Advocate 2013 Annual Report to Congress Vol. 2 at 33 (*Small Business Compliance: Further Analysis of Influential Factors*). *See also* National Taxpayer Advocate 2012 Annual Report to Congress Vol. 2 at 1 (*Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

and who did not use TAS services. We will use the comparison of the two groups' compliance rates to estimate the value of quality services to future taxpayer compliance. Our target to complete this research is the end of June 2015.

D. Analysis of the IRS EITC Audit Strategy

Overall, EITC noncompliance is a relatively small portion of the tax gap.[15] EITC overclaims account for six percent of the gross individual income tax noncompliance while business income underreported by individuals accounts for 51.9 percent.[16] Nevertheless, EITC post-claim compliance costs are high and cannot be ignored.

It is important to understand the sources of error for total (gross) EITC overclaims in order to develop targeted strategies to reduce the overclaim rate. The most recent IRS National Research Program (NRP) EITC results are useful in this regard, because they provide a statistically representative sample from which to draw observations of taxpayer behavior and better understand the sources of EITC noncompliance.[17] Specifically, the IRS Tax Year 2006 – 2008 NRP Compliance Study data show the impact on compliance of the complex eligibility criteria and the characteristics of the EITC beneficiary population. The IRS should use these findings to drive its EITC education, compliance, and enforcement initiatives.[18]

15 The tax gap is defined as the amount of tax liability faced by taxpayers that is not paid on time. The tax gap can be divided into three components: non-filing, underreporting and underpayment. *See* IRS, IR-2012-4, *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged from Previous Study* (Jan. 6, 2012).

16 IRS, IR-2012-4, *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged from Previous Study* (Jan. 6, 2012). The IRS estimates $235 billion in individual income tax underreporting for tax year (TY) 2006 with $122 billion of this amount attributable to business income underreported by individuals as sole proprietors on Schedule C (Profit or Loss from Business), as farmers on Schedule F (Profit or Loss from Farming), or as income from 1120S corporations, partnerships, rent, royalty, etc. on Schedule E *(Supplemental Income and Loss).* The IRS estimates about $14.1 billion in EITC overclaims from the NRP from TYs 2006-2008. We determined the EITC overclaim amount by multiplying the overclaim rate by the amount of EITC claims (0.285 lower bound EITC overclaim rate multiplied by $49.3 billion). IRS, RAS, *Compliance Estimates and Sources of Errors for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Feb. 12, 2014) (unpublished).

17 The IRS created the National Research Program (NRP) in 2000 to "develop and monitor strategic measures of taxpayer compliance." National Research Program, *at* http://www.irs.gov/uac/National-Research-Program-(NRP) (last visited on Feb. 19, 2014). NRP is a comprehensive effort by the IRS to measure payment, filing, and reporting compliance for different types of taxes and various sets of taxpayers and to deliver the data to the Business Operation Divisions to meet a wide range of needs including support for the development of strategic plans and improvements in workload identification. Internal Revenue Manual (IRM) 4.22.1.3 (Apr. 25, 2008).

18 The NRP Compliance Study estimated the total (gross) dollar overclaim percentage at 28.5 percent or $14.1 billion (Lower Bound Estimate or LBE). IRS, RAS, Compliance Estimates and Sources of Errors for the Earned Income Tax Credit Claimed on 2006-2008 Returns 7 (Feb. 12, 2014) (unpublished). Lower-bound estimates assume audit non-participants have similar compliance behavior to audit participants with similar characteristics (*i.e.*, in same sampling strata). Upper-bound estimates assume audit non-participants are noncompliant (*i.e.,* exam conclusion is correct). IRS, RAS, Compliance Estimates and Sources of Errors for the Earned Income Tax Credit Claimed on 2006-2008 Returns 4 (Feb. 12, 2014) (unpublished). TAS research studies suggest the Lower Bound Estimate more accurately reflects the EITC dollar overclaim rate. A 2004 Taxpayer Advocate Service study of a representative sample of the EITC Audit Reconsideration population found that 43 percent of taxpayers who in the original audit did not respond to IRS contacts, or whose response was received after the IRS deadline and thus was not considered in the audit, had favorable outcomes from the audit reconsideration process (meaning they received more EITC from the reconsideration than from the initial audit itself). This percentage is about the same as the favorable outcome rate for *all* taxpayers in the audit reconsideration sample. Moreover, the non- and late-responders received about 96 percent of the total EITC claimed on the original return. "*This suggests that taxpayers who fail to respond to the audit, or who have a late response, may in fact be eligible for the EITC.*" (Emphasis in original.) *See* National Taxpayer Advocate 2004 Annual Report to Congress, Vol. 2, at 29 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*). Accordingly, we use the LBE rate throughout this discussion.

Perhaps the most significant finding is that qualifying child errors were the most costly type of error,[19] accounting for between 40 and 50 percent of total overclaim dollars. Among "knowable" qualifying child errors,[20] 76 percent were attributable to residency test errors, compared to 20 percent that were attributable to relationship test errors.

Despite the prevalence of qualifying child residency errors, TAS review of the results of a recent study of a representative sample of taxpayers undergoing EITC audits suggests that the IRS is generally selecting returns based on residency only when relationship issues are also present.[21] The goal of this research is to evaluate whether IRS audit coverage effectively addresses the most significant areas of noncompliance. To conduct the analysis, TAS Research will review and compare IRS audit selection criteria to the NRP results that show the relative magnitudes of the most significant overclaim error types. We anticipate completing this research by the end of December 2014.

E. Impact of Outreach and Education on Tax Compliance

As discussed above in "Impact of Audits on Taxpayer Compliance," TAS is engaged in a multi-year study exploring the impact of a variety of factors on taxpayer compliance behavior. In the second phase of the study, TAS employed factor analysis and logistic regression to analyze the results of a national survey of taxpayers with sole proprietor income (*i.e.*, Schedule C, Profit or Loss from Business (Sole Proprietorship)).[22] TAS found that compliance norms and trust in government were the principal factors that appear to influence taxpayer compliance behavior.

In the current study, TAS will explore whether outreach and education can favorably influence compliance norms and trust in the IRS, resulting in improved taxpayer compliance.[23] In particular, the study will focus on whether taxpayer awareness and perception of their taxpayer rights can influence their trust in the IRS and compliance behavior. TAS

19 The four other most costly error types were:
- Self-employment income misreporting (13-20%);
- Filing status errors (9-16%);
- Income misreporting of investment income and AGI (excluding earned income) (5-7%); and
- Wage income misreporting (2-5%).

20 The NRP Compliance Study distinguishes between "known errors" and "unknown errors." It estimates that 30 percent of total possible overclaim returns and 41 percent of total possible overclaim dollars stem from unknown errors (*i.e.*, cases where compliance and errors are unknown mostly because of audit non-participation).

21 TAS Research study conducted in collaboration with the Small Business / Self-Employed (SB/SE) and Wage and Investment (W&I) Operating Divisions. To conduct the study, IRS Information Technology (IT) programmed IRS computers to select a representative sample of 900 cases from the W&I and SB/SE EITC correspondence examination inventory and directed the cases to the Atlanta and Philadelphia campuses during the 2011 filing season. The apparent prevalence of relationship as a basis for audit selection was not an objective of this study and is not reported as a study finding. Rather, it was an informal observation based on our review of the sample cases.

22 In the first study phase, a vendor, Russell Research, conducted a telephone survey of a nationally representative sample of sole proprietors in 2012. *See* National Taxpayer Advocate 2013 Annual Report to Congress Vol. 2 at 33 (*Small Business Compliance: Further Analysis of Influential Factors*). *See also* National Taxpayer Advocate 2012 Annual Report to Congress Vol. 2 at 1 (*Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

23 The phase 2 study found that all three components of trust in government studied, *i.e.*, trust in the federal government, the tax laws and the IRS appear to influence compliance behavior. We are focusing solely on trust in the IRS, since we believe that IRS can take actions to directly influence this component.

believes this issue to be of high importance, since the National Taxpayer Advocate has long urged the IRS to publish a taxpayer bill of rights, and the IRS has recently acted on that recommendation.[1]

TAS will contract with a vendor to design the study, analyze the results, and produce a final report evaluating the results in detail and discussing their implications for tax administration. We anticipate that the study will take two years to complete. In FY 2015, the contractor will complete the study design. In FY 2016, TAS will conduct the study and the contractor will prepare the final report.

F. Low Income Taxpayer Clinic (LITC) User Needs Survey

During the first half of FY 2014, TAS Research worked with a vendor to develop a telephone survey of the population of potential LITC users. The vendor is currently administering this survey to taxpayers. The goal of the survey is to identify the needs of the LITC user population. The survey focuses on their needs with respect to resolution of tax controversies and education covering their rights and responsibilities as U.S. taxpayers.

Survey respondents were drawn from the national population of taxpayers with incomes at or below 250 percent of the federal poverty level. The sample includes 1,000 randomly selected respondents. The sample also includes 200 Spanish speaking respondents who are being interviewed in a separate survey. The vendor is conducting the survey via telephone using a sampling frame that is representative of the population of both land line and cell phone users. TAS anticipates that this research will be completed by the end of December 2014.

1 See IRS News Release, IR-2014-72, IRS Adopts "Taxpayer Bill of Rights"; 10 Provisions to Be Highlighted on IRS.gov, in Publication 1 (June 10,2014), available at http://www.irs.gov/uac/Newsroom/IRS-Adopts-Taxpayer-Bill-of-Rights;-10-Provisions-to-be-Highlighted-on-IRSgov,-in-Publication-1.

VI. Integrated TAS Technology

A TAS IS STRIVING TO BRING ITS SYSTEMS INTO THE 21ST CENTURY

An adequately funded, staffed, and skilled IRS Information Technology (IT) function underpins all IRS and TAS activities. IT resources are the common denominator for providing core IRS functions including taxpayer service, prompt issuance of refunds, selection and assignment of compliance work, and protecting taxpayers and the public from refund fraud and identity theft. If the IT workforce is not appropriately skilled and staffed, the IRS will not be able to bring itself into the 21st century much less meet its everyday work demands. Cost overruns will occur if the IRS does not have the skilled staff to undertake the necessary strategic planning or provide adequate project and contract oversight.

For fiscal years (FY) 2014 and 2015, the IRS is focusing its IT resources on three main areas: implementation of the Affordable Care Act (ACA); implementation of the Foreign Account Tax Compliance Act (FATCA); and implementation of the 2015 filing season, including the delivery of various legislative provisions and extenders. All other requests for IT resources are subordinate to these three "heavy lifts." While the National Taxpayer Advocate understands the importance of each of these areas to tax administration, at current funding and staffing levels the IRS will not be able to deliver on these programs and also improve or correct core processes and systems. The negative impact to taxpayers of not funding everyday improvements to IRS taxpayer service, revenue protection, and compliance activities is significant.

Because the IT workforce is stretched so thin, it slows the already glacial pace of the IRS's move into a 21st century technology environment. The IRS's inability to provide taxpayers with online access to their accounts and to digitally communicate with taxpayers places the IRS far behind other international tax administrations and the financial services sector. The slowdown or shutdown of IT support also compounds the impact of taxpayer service funding reductions, by driving taxpayers to make numerous telephonic or correspondence contacts with the IRS just to get information about their accounts. Moreover, it forces the IRS to continue using archaic compliance methods like correspondence examinations, when a "virtual" face-to-face audit would bring about better and more accurate results in terms of taxpayer response, issue resolution, and taxpayer education.

The Taxpayer Advocate Service has keenly felt this IT shortfall, when work on its once-in-a-generation revision of its case management system stopped short on March 31, 2014, due to a lack of available funds. The work stoppage was based on the IRS's need to prioritize its IT projects and direct all available resource to the three key priorities — ACA, FATCA, and the 2015 filing season.

Over a decade ago, TAS began a major redesign effort of its case management and case assignment system, which soon expanded to include all of TAS's activities, including systemic

advocacy and research. This effort will culminate in the release of the Taxpayer Advocate Service Integrated System — TASIS.

As part of a strategic plan to develop an integrated system that allowed for seamless movement and access to cases, projects, research, and archives, over the last decade TAS instituted time-reporting, case complexity factors, and developed a data-driven formula for case assignment. We wanted an easy-to-use method for our case advocacy employees to identify and elevate systemic issues that they encounter in the cases, and we wanted to have a sophisticated method of searching our rich repository of information so that projects and data are easily identified and retrieved. Thus we created a library of key terms (metadata) that is applied to both cases and projects.

In recommending an integrated design, TAS emphasized electronic document management, *i.e.,* storage within the system for case files, communications, and research findings and the reduction of paper files.[1] This capability is needed because paper records pose efficiency and reliability problems, including time-consuming file retrieval, opportunity for loss, and limited ability to share information between offices.

We developed and staffed an Intake Advocate (IA) position, to ensure that TAS cases would be as fully developed as possible at the first contact with the taxpayer for assignment to the appropriate case advocate and eliminating the delays associated with reassigning cases. We developed procedures for identifying instances where, with a little guidance from the IA, the taxpayer could actually resolve the problem him or herself. With the IA position in place, the new TAS system would be designed to facilitate the initial interview and related case-building, including automatically retrieving relevant information from other IRS systems.

We knew we wanted to communicate digitally with taxpayers — both receiving and sending information and documents, and sending automated reminders to taxpayers or IRS employees as needed to keep cases on track toward resolution. Taxpayers would be able to submit electronic requests for TAS assistance, and they could check on the status of their cases online without having to call their case advocate for an update. Finally, we wanted to move into a paperless environment. All significant materials would be converted to digital files, promoting ease of access and sharing, and eliminating costs of document storage, shipping, archiving, and retrieval. All of these features were designed to minimize the time spent on duplicative keystrokes and data entry, and manual retrieval or requests for information from other functions, so that TAS employees' precious time could be spent on direct communication with and advocating for taxpayers rather than clerical tasks.

1 Reliance on paper files and documents requires storage and handling of 50 to 60 documents for each TAS case, or approximately 12.5 million documents each year. This includes hard copies as well as records kept on employees' local hard drives. TAS incurs repeated copying and shipping costs for transfers, work reviews, and collaboration. The use of virtual documents will almost eliminate costs associated with paper document-handling and storage, allow immediate access for collaboration, and improve TAS's ability to reference the products or conduct research.

In summary, TASIS is a sophisticated case, project, and work assignment system that has already been identified by the IRS's Chief Technology Officer as a potential foundation for an Enterprise Case Management System for the IRS. The IRS currently has about 167 case management systems used by different IRS units. This diversity of systems is one reason it is so difficult for IRS employees and taxpayers to find out precisely what the IRS is doing when an issue crosses different IRS functional units. There is no "integrated" or "enterprise-wide" system. Thus, TASIS could be a key component in the IRS's Business Modernization Strategy.

TASIS was approved by the IRS in 2007. In FY 2011 and 2012, TAS collaborated with the IRS's IT organization to successfully document over 4,400 system requirements for TASIS (*i.e.,* statements that explain the desired functionality of the system). The requirements reflect the future state of how TAS will operate with the creation of TASIS. TAS arrived at these requirements by asking each of TAS's 2,000 employees to describe what they needed from the system that they interact with for at least eight hours each work day. TAS accumulated those "wish lists" and incorporated them into the business requirements for TASIS. Thus, TASIS is a system that has been designed, in large part, by the needs of the users and the end beneficiaries — the taxpayers.[2]

IT then analyzed the most efficient way to build the foundation of TASIS to ensure the integrated system will meet TAS's needs. IT's analysis resulted in the recommendation to use a commercial off the shelf (COTS) product, rather than building the application from scratch or using another existing platform. The recommendation was based on the finding that the COTS product would cost less and take less time than these other options.[3] The IRS estimated that using the COTS product would cost $10 million to develop TASIS, as compared with $50 million for modifying IRS's Account Management System (AMS) to include the same functionality as MicroPact's Entellitrak. In March 2014 IT reported in its FY 2014 2nd Quarter Investment Report to the Ominbus Appropriation Committee that the total estimated Development, Enhancement and Modernization (DME) costs to develop TASIS are now estimated to be $19.5 million. This is almost double the original cost estimate to develop the COTS project, largely because IT did not sufficiently understand the sophistication of the system's requirements, and did not adequately map the custom requirements to the COTS product.

In FY 2013, the first version of TASIS was developed. In early FY 2014, TAS and IT began testing the application using high-level TAS business scenarios. This round of testing began in December 2013 and was expected to conclude in mid-April 2014. Meanwhile

2 TAS established 21 teams to include over 170 TAS Subject Matter Experts (SMEs) who actively participated in all aspects of the TASIS build cycles. As noted, in the infancy of TASIS, all TAS employees had the opportunity to submit ideas for consideration. TASIS project leaders assessed all such ideas and where feasible made them part of the requirements. TAS also held routine meetings over the past four years to gain executive strategic input on improving daily operations and program effectiveness, so we can develop the system to the satisfaction of all functions within TAS.

3 Entellitrak is a data tracking and management platform that appears to have the capability to extend its out-of-the-box functionality to incorporate and meet all of TAS's requested requirements. Entellitrak can be configured continuously throughout the design, development, and maintenance phases by adjusting model workflows and business processes without additional programming.

TAS notified the National Treasury Employees Union (NTEU) about the roll-out of TASIS, then scheduled for December 2014, and conducted briefings and discussions on impact and implementation.

All of this activity came to a screeching halt on March 31, 2014, when the National Taxpayer Advocate was informed that the IRS had pulled all funding for TASIS testing and deployment activities. Contractors were released or moved off of the project; IT personnel were reassigned. The National Taxpayer Advocate was not consulted about this decision.

Moreover, it appears that IRS leadership did not have an adequate understanding of the scope of the project, the amount spent on the program, the amount necessary to complete FY 2014 activity, and the amount of progress made on the project (*i.e.,* on track for deployment and engagement with NTEU). Nor did leadership consider that the IRS must now incur substantial cost to shore up TAS's obsolete case management system, which is scheduled to be retired in April 2015.

Since the onset of the work stoppage, the National Taxpayer Advocate and her staff have negotiated a continuation of one aspect of work, which will ensure that all defects that have been identified through testing to-date are described in a pristine set of technical requirements, and that there is an accurate schedule of testing and deployment activities if development resumes on October 1, 2015. At this time, we have been given a tentative deployment date of November, 2015, fully 21 months after the initial estimate, and 11 months after the deployment date in place before the work stoppage. This tentative deployment date is contingent upon full project resumption on October 1, 2014

We do know that once funds are secured, the first release will include approximately 40 percent of requested system requirements, focusing on Case Advocacy and including an intake process, partial automation of workload distribution, and support of virtual case resolution and storage.

Specifically, the first release will contain the following:

- Intake Advocates will be able to conduct a comprehensive interview with the taxpayer. They will have the tools to perform research, document the contact, and efficiently build the case during these initial interviews.
- Once the case is built, TASIS will quickly match the taxpayer with a TAS office based on where the taxpayer lives. A manager will then manually assign the case based on availability, skill, and workload of the Case Advocate, all of which TASIS will provide. The full automation of workload routing and case assignment will be delivered in later releases.
- The system will have the ability to store electronic documents, *i.e.*, storage within the system for case files, communications, and research findings.
- The system will support electronic collaboration between TAS employees and IRS operating divisions.

B. TASIS Will Incorporate Modern Technological Advances That Will Provide Significant Benefits to Taxpayers, Employees, and Partners in Tax Administration.

TAS's current systems, which TASIS was designed to replace, have not kept pace with rapid innovations in technology and the surge of online interaction capabilities for TAS employees and their customers. This lack of modernization leaves TAS employees with strict limitations on electronic avenues in which to communicate and collaborate with other IRS employees and taxpayers. Current TAS and IRS systems were designed and developed in a stand-alone fashion, sharing little if any information electronically. TASIS will link all TAS applications within a single integrated system. This is the most significant technical innovation in the 30-year history of TAS and its predecessor, the Problem Resolution Program.

TASIS will automate work processes and research activities, eliminate manual and redundant steps, and allow TAS employees to spend more time on their core mission of advocating for taxpayers. TASIS will allow employees to obtain automated information from IRS systems, sparing hours of researching, updating, and monitoring taxpayer accounts and records. This will free Case Advocates and Intake Advocates to focus on direct interaction with taxpayers and resolution of taxpayer issues, increasing employee engagement while satisfying customers.

TASIS will support interaction between TAS employees and external customers via email, text, and fax. TAS will ensure these interactions operate within guidelines that place the highest priority on the security of taxpayer data.

TASIS will both improve and provide new avenues for the process of seeking assistance from TAS. Taxpayers will still have the current options of contacting TAS by phone, correspondence, and walk-in, with the added choice of seeking help via the Internet for the growing number who prefer to conduct business electronically. This option will allow for an initial interaction through a series of prompts that will help taxpayers identify issues, find self-help when appropriate, access IRS contact information, and request TAS assistance.

TASIS will support electronic collaboration between TAS employees and IRS operating divisions. The system will include a secure area for the operating divisions to electronically receive and respond to Operations Assistance Requests (OARs) from TAS. This will reduce the need to mail or fax such requests and provide an automated history of case interactions.

C. TASIS Will Improve and Streamline the Acceptance and Assignment of Work.

Taxpayers who seek help by phone or online will communicate directly with a TAS Intake Advocate, as opposed to the current paper referral and subsequent callback. The Intake Advocate will conduct a comprehensive interview with the taxpayer to:

- Identify underlying issues;
- Share options for resolution;
- Describe what to expect from TAS;
- Build the case; and
- Sometimes resolve the issue while talking to the taxpayer.

TASIS will provide Intake Advocates with tools to conduct research, document the contact, and efficiently build the case during these interviews. After this initial process, TASIS will quickly match the taxpayer with a Case Advocate based on where the taxpayer lives (predominantly matching taxpayers with advocates in their home states), and the availability, skill, and workload of the employee. The raw number of cases in the advocate's current inventory will no longer determine assignments. Instead, new assignments will consider complexity, the time and steps needed to resolve similar issues, the skills and abilities of case advocates (including the employee's need for training, development, or experience), and the case advocate's availability (including scheduled training or annual or sick leave). TASIS will replace the existing manual assignment process that often involves interoffice transfers of cases and causes delays. TASIS will also allow us to systemically and immediately reroute cases to other offices in the event of a national disaster or other local work stoppage, ensuring ongoing taxpayer assistance.

D. TASIS Will Improve Online Document Collaboration and Storage.

In recommending an integrated design, systems analysts emphasized electronic document management, *i.e.,* storage within the system for case files, communications, and research findings and the reduction of paper files. This capability is needed because paper records pose efficiency and reliability problems, including time-consuming file retrieval, opportunity for loss, and limited ability to share information between offices.

Reliance on paper files and documents requires storage and handling of 50 to 60 documents for each TAS case, or approximately 12.5 million documents each year. This includes hard copies as well as records kept on employees' local hard drives. TAS incurs repeated copying and shipping costs for transfers, work reviews, and collaboration. The use of virtual documents will almost eliminate paper document-handling and storage, allow immediate access for collaboration, and improve TAS's ability to reference the products or conduct research.

Moving toward a paperless environment, TASIS will offer document collaboration tools to gather and track edits, reviews, and approvals from remotely located users resulting in increased productivity. It will also manage supporting documentation and reference materials associated with documents and offer access to earlier reports and research. Finally, TASIS will provide tools to map project delivery documents so participants and oversight users can see upcoming deadlines, assignments, and progress on the delivery of a finished product. Document collaboration and a centralized document repository will make content searchable and improve its usefulness.

E. TASIS Will Enhance TAS Case Management (Intake and Case) Procedures.

To prepare for the rollout of TASIS, TAS must review and revise approximately 40 Internal Revenue Manual (IRM) sections. Some may only need minor changes, but most require extensive edits and additions. TAS case processing IRMs contain procedures for the following phases of casework:

- Receiving and adding cases to TAMIS;
- Assigning cases;
- Transferring cases;
- Taking initial actions and making initial contacts with taxpayers and representatives;
- Making subsequent contacts with taxpayers;
- Communicating case information and progress to taxpayers;
- Documenting case actions on TAMIS;
- Referring cases for advice from technical advisors *e.g.*, attorney advisors, management, or in some cases the NTA.
- Obtaining case direction from the Internal Technical Advisors (ITAP) team;
- Submitting Operations Assistance Requests (OARs) to other IRS units, with written expectations for following up on those requests and elevating disagreements over recommended actions;
- Issuing Taxpayer Assistance Orders (TAOs) to the IRS, and the TAO appeal process; and
- Closing cases, including requirements for the content of closing contacts with taxpayers, and documents to be kept in the case file.

TASIS will impact all of these procedures. While some policies and expectations will remain the same, enhanced capabilities under TASIS will eliminate or simplify certain manual tasks or actions and will require new policies and procedures. Additionally, TASIS will enable IRS operating divisions to record responses to OARs and TAOs, eliminating the need for TAS employees to manually enter information from OAR paperwork and TAO responses into the system. Guidance regarding the transmission and elevation of OARs and TAOs must be modified to reflect how TAS and the IRS will record interactions. IRS access to TASIS for purposes of responding to OARs and TAOs creates the need for TAS to not only renegotiate our Service Level Agreements (SLAs) with the operating divisions, but to train employees who will have access to TASIS.[4]

4 TAS establishes Service Level Agreements with each IRS operating division and function to outline the procedures and responsibilities for processing TAS casework when the authority to complete case transactions rests outside of TAS.

With about 40 IRM sections affected, the IRM review process will take months because each section will undergo a rigorous review that includes solicitation of reactions and suggestions from TAS employees, TAS leadership, and other stakeholders (including the operating divisions.) Training for TASIS, therefore, must include training on IRM changes.

F. TAS and IT Partners Continue Toward Deployment of Release 1 Despite Funding Cessation.

In October 2012, many efforts began to materialize for the successful production of Release 1. The first substantive step was MicroPact being awarded the contract to use Entellitrak as the foundation for TASIS development.

Release One was constructed through several build-cycles, in which MicroPact hosted virtual meetings to interview TAS SMEs to clarify and confirm they have a clear understanding of a pre-determined set of system requirements. Simultaneously, MicroPact configured or built TASIS using those clarified requirements. Meanwhile, a Lockheed Martin contractor worked with the SMEs to create test cases, documented scenarios to walk through specific business processes from beginning to end. TAS employees then accessed TASIS and walked through each build-cycle to ensure the system met the requirements. The project then moved on to the next cycle until all were complete.

Once the build-cycles were complete, testing began. In December 2013, TAS and IT started testing the application by using a pre-determined set of business scenarios. The testing was planned for two weeks but was delayed due to the large number of defects identified, and the need for re-testing once MicroPact corrected the problems.

In January 2014, TAS TASIS team leads and Program Management Office (PMO) personnel participated in a Customer Technical Review (CTR) led by MicroPact. This was an opportunity to see the application first-hand, walk through high-level business scenarios, validate the product meets the requirements, pose questions, and provide input. In February 2014, a similar review was conducted with TAS executives, Senior Managers, and core TAS PMO personnel. This Executive Technical Review (ETR) was also led by MicroPact and was the first opportunity for this group to see the application end to end. TAS analyzed the findings from CTR and ETR and concluded all the findings can be tied to unmet requirements. MicroPact has agreed to correct all findings prior to the deployment of Release 1.

On March 31, 2014, the TASIS project experienced a funding pause for development and support activities. The National Taxpayer Advocate and the IRS Chief Technology Officer (CTO) immediately began discussions about how to continue progress on TASIS during this period. Those discussions resulted in TAS initiating a $1.8 million transfer to IT, but due to Chief Financial Officer rules, TAS could only send over $1.5 million, to align and clarify TAS original business requirements in alignment with the Entellitrak software solution. These funds and resources allowed the creation of a cross-organizational Requirements Tiger Team that is supporting activities through the end of the fiscal year.

These efforts will validate the schedule and the budget estimates to support the FY 2015 budget request. In addition, TAS will collaborate with IT to continue to prepare for the new system and detail the plans for the business transition. These efforts will assist in prioritization of development activities and continue the preparations for training and testing on the current design. This initiative will set priorities supporting the full project resumption in October 2014.

Business Transition

TAS has a business transition strategy that addresses the migration of critical in-process case work; training that leverages the new tool for increased advocacy; accommodation of downstream business transitions; and collaboration with Operating Divisions. The TAS PMO oversees these activities to ensure a seamless transition to TASIS and to guarantee all business processes are considered and protected during the transition.

Data Migration

To serve taxpayers in critical need of assistance, TAS partnered with IT in defining detailed mapping to guarantee that the transfer of taxpayer case data in the retiring TAMIS system will convert accurately to TASIS. Data migration parameters include but are not limited to:

- The move of all data from TAMIS to TASIS.
- Ownership of the case remaining static to protect the established relationships between the taxpayer and assigned Case Advocate.
- A full history of actions taken while the cases were in TAMIS so the Case Advocate has a clear case history in TASIS.

TAS Will Deliver Extensive User Training

To implement a smooth and successful transition to TASIS, users will receive timely and comprehensive training that enables them to move to the new system quickly, with no negative impact on their advocacy services with their customers and taxpayers. The scope of training encompasses TAS employees as well as IRS users.

TAS has an extensive training plan to address employees' training needs based on their work responsibilities and their assigned roles in TASIS. Training will include pre-classroom activities and communications and classroom instruction designed to:

- Raise employee awareness and manage expectations by letting employees know what they can expect in Release 1 and future releases;
- Increase employees' level of comfort with the conversion to TASIS;
- Create an understanding of how TASIS will better support TAS's advocacy and enable us to work more effectively and efficiently; and
- Ensure continuation of TAS's advocacy efforts with and for taxpayers by enabling users to move seamlessly into the TASIS environment.

While much of the training content will center on system features and functionality, it will also include changes to work processes and procedures that make use of TASIS' enhanced functionality. The overall training plan will introduce these case processing changes to employees before they receive formal classroom instruction.

Other pre-classroom training activities will include on line demonstrations, videos, and communications highlighting TASIS features that will improve employees' quality of work life and enhance TAS advocacy. TAS executives, senior managers, and TASIS experts will deliver key messages up to, and through, system deployment.

Classroom training will teach TAS and IRS employees how to access and maneuver within TASIS. This provides a venue for users to learn firsthand the benefit of having a state of the art application at their fingertips that will enhance their advocacy efforts. Classes will be delivered virtually and face-to-face where feasible. Students will also receive job aids, student user guides, and hands-on practice to acclimate them to the new application.

Downstream Business Transitions

Many of the downstream business transitions include positive changes in case management and maintenance. For example, the labor-intensive process of including closing paper information will become electronic. Laborious efforts of maintaining paper case files, filing, interfiling, and associating will no longer be required; nor will the space those cases files occupied. Because of this access to electronic case files, TAS will be able to provide quicker and more accurate updates to the taxpayer. The following are just a few of the downstream business improvements:

- Interface with other IRS systems, eliminating key entry. As just one example, Powers of Attorney previously had to be manually entered into TAMIS even though they existed on the IRS's Centralized Authorization File. TASIS will pull the data automatically.
- Increased, timely cooperation with other business units.
- Recordation of non-TAS work previously handled outside TAMIS, *e.g.,* telephone calls to a local TAS office regarding SSA issues, mailing address, requests for state information, and many others. (A bonus here is the ability to understand this work and take steps to handle it efficiently.)
- Reduced taxpayer burden since documents will be scanned and retained, providing ease of access and eliminating duplication.
- New abilities to quickly take the best actions to resolve a taxpayer problem and to identify new approaches.

G. Future Release Schedule and Delivery

IT, TAS, and MicroPact began initial discussions in the second quarter of FY 2013 to determine how the remaining 60 percent of system requirements (beyond the 40 percent in Release 1) will be distributed and delivered throughout future releases. All agreed that since TAS already provided a prioritized list of processes, that the next step is for IT and MP to analyze the most efficient manner in which to segment the remaining requirements and provide alternatives where appropriate for TAS consideration.

TAS is greatly concerned that although initial discussions began in early 2013, IT and MicroPact have not shared any information concerning their analysis since, and have asked to suspend those talks. The recent funding cessation complicates these issues further. Future releases rely upon the IT and MicroPact analysis and recommendations; without them, the project cannot move forward.

Future releases will enable taxpayers and their representatives to submit issues and request TAS assistance via the Internet. For TAS to fully realize the benefits of its modernized intake and case management processes, the second release must include full implementation of TAS's case assignment and inventory system. Future releases also will include other components of TAS's advocacy, allowing employees to identify and refer systemic issues within an open case. TAS is currently exploring how much of this latter work can be done with other products, including Sharepoint (discussed below), which can be integrated into TASIS on an ongoing basis.

H. Project Risks

TASIS is a complex system and because it is user-driven, it presents certain challenges, not the least of which is marrying the two cultures of TAS and IT. All critical activities, and their known dependencies, are tracked and monitored for timely completion via a Risk Review Board (RRB) which is comprised of and chaired by TAS and IT senior management. The board documents and monitors risks and mitigation strategies are at the earliest stages to maximize the most efficient resolution. Known risks include, but are not limited to:

- The cessation of project funding on March 31, 2014.
- IT created a master project plan to outline critical activities that must be met by pre-determined dates for TASIS to deploy. That initial plan projected deployment in the second quarter of FY 2014. However, it did not include all critical activities and dependencies, nor did it consider realistic timeframes to complete those activities. This resulted in the deployment date slipping several times, as well as the creation of several new versions of the plan. The most recent version lists a deployment date of December 19, 2014, although it is glaringly obvious that this date will also change due to the lapse of funding. In the minute chance that we secure funding in the very near future and the December deployment date is still on the table, deploying a new system on the Friday before one of the most popular leave periods for employees is not advantageous. That date also falls just a few short weeks before the beginning of the next filing season. More importantly, TAS does not have much confidence in the plan as it still does not include realistic timeframes. For example, Functional Unit Testing that was scheduled to span two weeks actually took 18 weeks. If similar discrepancies in testing timeframes materialize, we will have to adjust the deployment date again. Any more slippage will impact W&I support of the NTA toll-free line and require training both TAS and W&I employees during filing season. If IT does not update the master project plan to include realistic timeframes for each activity, the deployment date risks additional delays with direct impact on TAS and W&I.
- We discovered a large number of defects during testing and high-level reviews. Though MicroPact has agreed to fix all of them prior to deployment of Release 1, as of early April 2014, less than 40 percent have been fixed thus far. Failure to resolve all of them could cause significant harm to taxpayers and undermine the usefulness of TASIS.
- If we continue to find this many defects in future testing, such as System Acceptance and User Acceptance Testing, we may need to extend their timeframes to allow MicroPact to fix the problems.
- Conversations continue at the highest levels of IT to ensure the project is fully funded for things planned for Release 1. Future releases also are not planned or funded, which creates an additional risk to delivering the full scope of the project.

Fostering Online Collaboration and Business Process Enhancements via SharePoint 2010

TASIS will integrate with Microsoft SharePoint 2010 (SP 2010), a web-based application used on the IRS intranet for content management and document collaboration. In 2009, TAS identified SP 2010 as a tool to:

- Address critical needs in document storage and management;
- Streamline collaboration and approval processes;
- Connect and empower project teams;
- Reduce and control costs; and
- Respond rapidly to business needs.

The IRS began implementing SP 2010 in late 2011. TAS has since decided to integrate SP 2010 with TASIS. On a daily basis, TAS employees search past advocacy documents, job aids, Annual Reports, and other materials for specific information. Existing search tools have been ineffective, which often forced the employee to attempt an extremely inefficient manual search. Now, however, TAS can maximize the capabilities of SP 2010 with predefined key terms called metadata to locate specific information. When a user adds a document in SP 2010, the system asks him or her to select specific terms to classify the data. This allows the search feature to return all matching content, eliminating the need for a secondary search.

With the integration of SP 2010 in TASIS, TAS is positioned to take full advantage of the new features and benefits and abilities of seamless online collaboration. By virtue of an extensive knowledge of the software, TAS has already established many new capabilities such as workflows that automate key business processes and user-defined key words to find documents faster and more efficiently. This technological leadership has allowed TAS to join with the IRS's IT organization and chart the best course of action for sharing knowledge, and establishing information management policies and governance, across the IRS.

TAS decided SP 2010 could meet critical business needs not being addressed in the early releases of TASIS (discussed above) while simultaneously reducing the future burden on IT. TAS has already implemented several automated workflows that eliminate anywhere from a few to many manual steps from the processes they replaced. These workflows allow users to focus on substantive advocacy, while the system keeps up with the actual process.

In addition to the gains in efficiency, the automation reduces or eliminates human error, increasing the quality of the output. Many current processes support the development of the Annual Report to Congress and the Objectives Report to Congress, semi-automate document reviews and comments, and enhance approval and tracking of IRS-wide collaborative efforts. All of the business processes targeted for replacement rely heavily on document collaboration. Some of these efforts, and the steps automated by SP 2010, are listed below:

- Annual and Objectives Report to Congress workflows:
  - Topic solicitation and approval
  - Generation, collaboration, review, and approval of topic synopsis, narratives, and executive summary
  - Research and Information Requesting routing and approval
- Internal Management Document (IMD) workflow changes to IRM sections, policy statements, forms, etc.
  - Automated receipt
  - Collaborative review
  - Consolidated feedback
- Collaborative efforts to identify and track recommendations by cross-functional teams and the IRS Executive Steering Committee.
- Creation and implementation of SP 2010 reporting metrics
- Elevated issues
- Workflow requests
- Continuous Learning requests

TAS continues to define, refine, and implement additional automated workflows to further lesson the burden on TAS's employees.

One of the biggest challenges facing TAS, W&I, SB/SE, LB&I and most of the other BODs is that IT does not consider SP 2010 a mission-critical application. As a result, the SharePoint Project Office is consistently underfunded and often lacks the necessary resources or technical expertise to maintain the SP 2010 environment.

To mitigate the risk associated with the non-mission critical level of support and funding, TAS and other BODs are investigating the possibility of migrating to the Department of Treasury's SP 2010 environment. This environment is stable, with well-defined processes, more capacity, and many times the number of supporting staff than the IRS.

TAS will continue to leverage the document collaboration and business process automation capabilities of SP 2010 to meet current and future business requirements whenever possible.

Welcome Screen

TASIS will include a SharePoint portal, the Welcome Screen, as an entry point to provide employees direct access to numerous sources of information in a single view. This Welcome Screen will show users a monthly calendar allowing them to see planned tasks and better organize and plan their work. For more urgent actions, a task box will provide

a consolidated view of activities that are due or coming due in the next few days. The Welcome Screen will also serve as a communications portal, allowing a single view for the delivery of important messages such as: alerts about office closures and system outages, regular communications (*e.g.,* the weekly e-newsletters for employees and managers), as well as announcements and guidance from the National Taxpayer Advocate. TAS will be able to target these communications to specific segments of employees and require them to read important messages. Lastly, the Welcome Screen will provide direct access to the many systems TAS uses for advocacy and other daily operations. This consolidated, user-centric approach is critical to enabling our staff to provide more efficient and timely advocacy for taxpayers.

VII Appendices

Appendix I: Evolution of the Office of Taxpayer Advocate

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).[1] In TBOR 1, Congress added IRC § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) when taxpayers were suffering or about to suffer significant hardships because of the way the Internal Revenue laws were being administered.[2] Further, this section directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an annual report to Congress about the quality of taxpayer services provided by the IRS. This report was to be delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.[3]

In 1996, Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.[4] The Joint Committee on Taxation set forth the following reasons for change:

> To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.[5]

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate, but also described its functions:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealings with the IRS;

1 TAMRA, Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

2 *Id.*

3 *Id.* at 3737.

4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453 (July 30, 1996).

5 *Id.*

- To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
- To identify potential legislative changes which may be appropriate to mitigate such problems.[6]

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program (PRP), the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2, Congress believed it sufficient to require that "all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc."[7]

TBOR 2 also replaced the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two annual reports to Congress issued directly and independently by the Taxpayer Advocate.[8] The first report is to contain the objectives of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due no later than June 30 of each calendar year. The second report is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a TAO, describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the Most Serious Problems (MSPs) which taxpayers have in dealing with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional PROs participate in the selection and evaluation of local PROs, and include other such information as the Taxpayer Advocate may deem advisable. The stated objective of these reports is "for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury."[9]

Finally, TBOR 2 amended IRC § 7811, extending the scope of a TAO, by providing the Taxpayer Advocate with broader authority "to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws."[10] For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute

6 Pub. L. No. 104-168, § 101(d)(2)(A), 110 Stat. 1452, 1453 (July 30, 1996).

7 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 21 (Dec. 18, 1996).

8 Pub. L. No. 104-168, § 101(d)(2)(B), 110 Stat. 1452, 1454 (July 30, 1996).

9 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 21 (Dec. 18, 1996).

10 *Id.*

also provided that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the Taxpayer Advocate with his or her reasons for such action.[11]

In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the "voice of the taxpayer." In its discussion of the Office of the Taxpayer Advocate, the Commission noted:

> Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the national Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.[12]

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the National Taxpayer Advocate (service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).[13]

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state, and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate.[14] As indicated in IRC § 7803(c)(4)(B), each LTA must have a phone, fax, electronic communication, and mailing address separate from those of the IRS. The LTA must advise taxpayers at their first meeting of the fact that "the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate."[15] Congress also granted the LTAs discretion to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.[16]

The definition of "significant hardship" in IRC § 7811 was expanded in 1998 to include four specific circumstances:

1. An immediate threat of adverse action;

11 Pub. L. No. 104-168, § 102, 110 Stat. 1452, 1456 (July 30, 1996).

12 Report of the National Commission on Restructuring the Internal Revenue Service: *A Vision for a New IRS* 48 (June 25, 1997).

13 Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699 (July 22, 1998).

14 *Id*. at 701.

15 IRC § 7803(c)(4)(A)(iii).

16 IRC § 7803(c)(4)(A)(iv).

2. A delay of more than 30 days in resolving taxpayer account problems;
3. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
4. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.[17]

The Committee Reports make clear that this list is a non-exclusive list of what constitutes significant hardship.[18]

Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, the regulation contained a definition of "significant hardship" which did not take into account the expansion of the definition that occurred in 1998. In April 2011, the IRS published final regulations under IRC § 7811 so that the regulations now contain a definition of significant hardship consistent with existing law and practice.[19]

17 IRC § 7811(a)(2).

18 *See, e.g.*, H.R. Conf. Rep. No. 105-599, at 215 (1998).

19 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 FR 18,059 (Apr. 1, 2011).

Appendix II: Taxpayer Advocate Service Case Acceptance Criteria

As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.[1] TAS case acceptance criteria fall into four main categories:

Economic Burden

Economic burden cases are those involving a financial difficulty to the taxpayer: an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.

Criteria 1: The taxpayer is experiencing economic harm or is about to suffer economic harm.

Criteria 2: The taxpayer is facing an immediate threat of adverse action.

Criteria 3: The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).

Criteria 4: The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.

Systemic Burden

Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue.

Criteria 5: The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.

Criteria 6: The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.

Criteria 7: A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.

Best Interest of the Taxpayer

TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.[2]

Criteria 8: The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer's rights.

1 Internal Revenue Code (IRC) § 7803(c)(2)(A)(i).

2 TAS temporarily changed its case acceptance criteria to stop accepting certain systemic burden issues. *See* TAS Interim Guidance Memorandum (IGM) TAS-13-0913-009, *Reissuance of Interim Guidance on Changes to Case-Acceptance Criteria*, (Sept. 27, 2013) *available at:* http://www.irs.gov/file_source/pub/foia/ig/spder/TAS-13-0913-009_DNTA_Sig[1].pdf.

Public Policy

Acceptance of cases into TAS under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.

Criteria 9: The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

Appendix III: IRS and TAS Collaborative Efforts

Affordable Care Act (ACA)

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Affordable Care Act Collections	· Selection and collection of individual outstanding debts, which include repayment of Premium Tax Credit or Individual Responsibility Penalties. · Selection and collection of employer outstanding debts. · Assessable payments or information return penalties.
Affordable Care Act Information Return Receipt & Processing	· Revision of tax products and creation of new products. · Inbound (Intake) information reporting from issuers, employers, & exchanges.
Affordable Care Act Notices & Correspondence	· Revision of notices & correspondence. · Creation of new notice & correspondence products.
Affordable Care Act Compliance for Businesses	· IRC § 4980H Employer Shared Responsibility Provisions. · Assessable payment calculation and reconciliation. · Validation of employer responses to correspondence · Identification of applicable large employers. · Monitor steady-state ACA appeals & disputes- Data matching operations.
Affordable Care Act Compliance for Individuals	· Credit eligibility verification and reconciliation. · Identification of individuals with coverage and/or exemptions. · Pre-refund compliance - Premium Tax Credit. · Assessment of Individual Responsibility Payment. · Validation of taxpayer responses to penalty assertion. · Monitor steady-state ACA appeals & disputes- Data matching operations.
Affordable Care Act Customer Service Operations	· Inbound scope and contact handling. · Confirm demand assumptions and assistance strategy per channel (web, field assistance, call center). · Taxpayer access to ACA tax-related information.
Affordable Care Act Outreach	Move management responsibility for outreach delivery of the ACA Marketplace provisions to the operating divisions from the ACA Program Management Office beginning in summer of FY 2014.
Affordable Care Act Tax Return Processing	· Revision of tax products & creation of new products. · Credit eligibility verification and reconciliation at filing. · Identification of individuals with coverage and/or exemptions. · ACA payment processing & accounting.

Collections

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Collection Statute Expiration Date (CSED) Workgroup	· Identify and review all accounts with the CSED extended 15 years beyond assessment. · Determine if the waiver is proper. · Report findings and propose resolutions (as appropriate). · Resolve accounts.
Enterprise-Wide Employment Tax Program	The team: · Emphasizes a collaborative and strategic approach for establishing priorities, goals, and measures for improving employment tax compliance. · Includes members from all IRS functions.
Non-Filer Sub-Team [Executive Committee]	This is a TAS working group that supports the Executive Steering Committee on Non-Filers.

Examination

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Amended Return [1040X] Project Team	The team reviews the Amended Return 1040X process for gaps in revenue protection and to mitigate or close those gaps.
Correspondence Examination Assessment Project (CEAP)	· Improve the taxpayer experience in Correspondence Exam. · Continue to analyze data, develop recommendations, and regularly brief the Commissioner.
Employment Tax: Third-Party Payers	TAS is collaborating with SB/SE Collection Policy and SB/SE Employment Tax Policy to address the effects of misappropriation of employment taxes by third-party payers. The goals are: · Improve IRS work processes to allow early interventions and notice to taxpayers about outstanding liabilities. · Issue guidance on case resolution, collection alternatives, and relief available to victims of third-party payer failures.

Taxpayer Support and Education

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Appeals/TAS Advisory Board	The Board meets quarterly to discuss any Service Level Agreement (SLA) issues as well as any other Appeals-related processing concerns.
Congressional Affairs Program (CAP) Council	The team is led by Legislative Affairs and includes Governmental Liaisons. The council: · Works issues specific to the Congressional Affairs Program. · Issues the *Congressional Update* newsletter.
Education and Outreach Leadership Group	The team provides opportunities for exchanging information, ideas, and points of view between IRS functions.
e-FOIA Internal Management Document / Servicewide Electronic Research Program (IMD/SERP) Process	Servicewide Policy, Directors, Electronic Research (SPDER) and TAS collaborate to encourage IRM authors to apply e-FOIA requirements properly.
Internal Management Documents Council	This oversight group: · Collaborates on and implements strategies related to all IMD activities. · Supports the IRS goal of ensuring the IRM is the official source of all procedures, policy, directives, delegations, and guidelines.
Intranet Working Group (IWG)	Discusses issues related to intranet development and deployment.
IRS Nationwide Tax Forums	This is a servicewide collaborative effort to plan and execute the yearly tax forums. TAS: · Works extensively with National Public Liaison to present hot topic seminars for practitioners. · Requested and received funding to bring the Case Resolution Program back for the 2014 tax forums.
IRS Style Guide Team	To develop, maintain, and update the style guide used by communicators in servicewide messages or products.
Plain Writing Working Group	The Plain Writing Act requires all "covered documents" to be written in "clear Government communication that the public can understand and use." The Plain Writing Working Group: · Functions under leadership of Plain Writing Editorial Board. · Randomly samples and reviews "covered documents" that are not otherwise being reviewed for compliance with federal plain language guidelines.
Professional Development Board (PDB)	The PDB works to: · Develop, implement, and continuously improve a comprehensive professional development program for communications professionals. · This program includes multi-level and specialized skills training, rotational assignments, career management and development, and other activities that enable participants to meet the communications needs of the IRS.
TAS/SPDER MOU Sub-Group	The group explores the inclusion of formal clearance procedures in the IRM for letters, notices, forms, and publications. TAS continues to address the IRS's formal clearance process for many types of IMDs such as forms, pubs, letters, and notices.
Transcripts – Transcript Delivery System (TDS) and Records of Accounts (ROAs)	The team is reviewing the entire transcript system to determine what is available for all transcript types. · Due to multiple complaints from both IMF and BMF taxpayers, the IRS needs to find out what parts of the system work correctly, which areas do not, and what can be done to fix the problems. · Identity theft victims need accurate transcripts for use for issues such as financial aid for college and mortgage documentation.
Twitter Editorial Board	The team's goal is to move the IRS forward on Twitter, helping build a servicewide content strategy and guidelines.

Processing

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Form 944, *Employer's Annual Tax Return*	· Reduce burden and simplify employment tax reporting, filing and payment requirements for certain taxpayers. · Reduce administrative cost to the IRS.

Revenue Protection

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Business Master File (BMF) Identity Theft (IDT)	· Studies BMF identity theft. · Reviews cases to develop a consistent treatment.
Identity Theft- Return Review Program Transition State Two Milestone Three Requirements / Rules / BPM Validation Sub Team	This subteam of the Return Review Program Team is looking at requirements for transitioning from the Electronic Fraud Detection System to the next state by determining the capabilities of the new system.
Identity Theft Victim Assistance Technical Working Group (TWG)	· Gathers identity theft case data. · Analyzes the burden on affected taxpayers to recommend improvements to the process. · Focuses on areas where procedures are inconsistent or nonexistent.
Return Integrity & Correspondence Services (RICS) Referral Team	· This team was established to address fraud schemes when there is no established or agreed-upon treatment. · This collaboration offers TAS, W&I and other business units an opportunity to work together to resolve problems affecting the IRS and taxpayers alike.
Return Review Program-Customer Requirement Board (CRB) – Executive Steering Committee	· Modernize the IRS's ability to protect revenue from fraud and other forms of noncompliance at the front end, before the IRS releases a refund. · Provide input into the direction of the project, as well as training, education, configuration control, and other issues.

Specialties

TAS/IRS Collaborative Team	TAS/IRS Team Objectives
Defense of Marriage Act (DOMA) Implementation of Supreme Court Decision	Task group to identify the scope and changes needed to tax applications and IRS procedures, forms, etc., resulting from the Supreme Court overturning section 3 of DOMA.
Enterprise Risk Management Program	TAS has two liaisons on a joint Enterprise Risk Management Team (ERM) and sub-liaisons representing each major TAS office. In support of the IRS Enterprise Risk Management Program, TAS will develop a process that allows us to: · Formally identify and manage risks. · Reduce operational surprises. · Seize opportunities. · Support a risk-aware culture. · Support identification and management of cross-enterprise risks.
International Taxpayer Issues	The International Individual Taxpayer Assistance team (IITA) has the following objectives: 1) Identify international taxpayer groups with similar characteristics. 2) Identify needs of these groups. 3) Identify existing channels for assistance for these groups. 4) Identify service gaps for these groups. 5) Identify risk factors for service gaps. 6) Prioritize taxpayer groups and service gaps based upon risk factors. 7) Develop solutions and sort them in a priority order based on importance and resources; and 8) Involve LB&I and IRS Office of Chief Counsel experts on tax treaties and international law issues.

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Appendix IV: List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinic (LITC) employees and volunteers represent low income taxpayers before the Internal Revenue Service and assist taxpayers in audits, appeals, and collection disputes. LITCs can also help taxpayers respond to IRS notices and correct account problems.

If you are a low income taxpayer who needs assistance in resolving a tax dispute with the IRS and you cannot afford representation, or if you speak English as a second language and need help understanding your taxpayer rights and responsibilities, you may qualify for help from an LITC that provides free or low-cost assistance. Eligible taxpayers must generally have incomes that do not exceed 250 percent of the Federal poverty guidelines published annually by the Department of Health and Human Services.[1] Income ceilings for 2014 are shown below:

VII.1 LITC Income Ceiling (250% of Poverty Guidelines)

Size of Family	48 Contiguous States, Puerto Rico, and DC.	Alaska	Hawaii
1	$29,175	$36,450	$33,550
2	$39,325	$49,150	$45,225
3	$49,475	$61,850	$56,900
4	$59,625	$74,550	$68,575
5	$69,775	$87,250	$80,250
6	$79,925	$99,950	$91,925
7	$90,075	$112,650	$103,600
8	$100,225	$125,350	$115,275
For each additional person, add	$10,150	$12,700	$11,675

Although LITCs receive partial funding from the IRS, LITCs, their employees and their volunteers are completely independent of the federal government. Clinics receiving federal funding for the 2014 calendar year are listed below. These clinics are operated by nonprofit organizations or academic institutions.

Low income taxpayers also may be able to receive assistance through a referral system operated by a state bar association, a state or local society of accountants or enrolled agents, or another nonprofit tax professional organization.

This publication is not a recommendation by the IRS that you retain a Low Income Taxpayer Clinic or other similar organization to represent you before the IRS. Contact information for clinics may change, so please check for the most recent information at http://www.irs.gov/Advocate/Low-Income-Taxpayer-Clinics/Low-Income-Taxpayer-Clinic-Map.

1 The Federal Poverty Guidelines: http://aspe.hhs.gov/poverty/14poverty.cfm.

VII.2, Low Income Taxpayer Clinic List

Type of Clinic: C = Controversy Clinic; E = ESL Clinic; and B = Both Controversy and ESL Clinic

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center	800-478-3474 907-562-0335	B	Yupik, Cupik, Aleut, Inupiaq, Tlingit/Haida, Athabaskan
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-329-0504	C	Spanish
AR	Little Rock	UALR Bowen School of Law LITC	501-324-9441	B	Spanish
	Springdale	Low Income Taxpayer Clinic at Legal Aid of Arkansas	800-967-9224 479-442-0600	B	Spanish, Marshallese
AZ	Chinle	DNA People's Legal Services LITC	928-674-5242	B	Navajo
	Phoenix	Community Legal Services LITC	800-852-9075 602-258-3434	B	Spanish
	Tucson	Taxpayer Clinic of Southern Arizona	520-622-2801	B	Spanish, Other languages through interpreter services
CA	Fresno	Central California Legal Services LITC	800-675-8001 559-570-1200	B	Spanish, Hmong, Other languages through interpreter services
	Los Angeles	AIDS Project Los Angeles LITC	213-201-1600	C	Spanish, American Sign Language
	Northridge	The Bookstein Tax Clinic	818-677-3600	B	Spanish
	Orange	Chapman University Tax Law Clinic	714-628-2535	C	Spanish, Vietnamese, Mandarin
	San Diego	Legal Aid Society of San Diego LITC	877-534-2524 619-471-2746	C	Spanish
	San Diego	University of San Diego LITC	619-260-7470	B	Spanish
	San Francisco	Asian Pacific Islanders LITC	415-567-6255	B	Chinese, Mandarin, Korean, Vietnamese, Tagalog, Japanese, Hindi, Chiu Chow, Thai, Burmese, Russian, Spanish
	San Francisco	Bar Association of San Francisco, Justice and Diversity Center	415-782-8978	C	Spanish
	San Francisco	Chinese Newcomers Service Center	415-421-2111	B	Chinese, Cantonese, Mandarin, Toishen
	San Jose	Santa Clara University School of Law LITC	408-288-7030	C	Spanish, Vietnamese, Chinese, Other languages through interpreter services
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2951	B	Spanish, Other languages through interpreter services
	Santa Ana	Legal Aid Society of Orange County LITC	800-834-5001 714-571-5200	B	All languages through interpreter services
CO	Denver	University of Denver Graduate Tax Program LITC	303-871-6331	C	Spanish
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	C	Spanish
	Hartford	UConn Law School Tax Clinic	860-570-5165	C	Spanish, French, Polish, Chinese (Mandarin), Russian, Other languages through interpreter services
DC	Washington	CARECEN ESL Outreach Low Income Taxpayer Clinic	202-382-9799	E	Spanish
	Washington	The Janet R. Spragens Federal Tax Clinic	202-274-4144	C	All languages through interpreter services
	Washington	University of the District of Columbia David A. Clarke School of Law LITC	202-274-7300	C	All languages identified in DC Language Access Act
DE	Wilmington	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-654-5024	B	Spanish, Hindi

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
FL	Jacksonville	Three Rivers Legal Services LITC.	866-256-8091 904-394-7450	C	Spanish, Bosnian
	Miami	Legal Services of Greater Miami Community Tax Clinic	877-715-7464 305-576-0080	B	Spanish, Haitian Creole
	Miami	Sant La LITC	305-573-4871	E	French, Haitian Creole
	Orlando	Community Legal Services of Mid-Florida LITC	866-886-1799 407-841-7777	B	Spanish, Creole, Vietnamese, Other languages through interpreter services
	Plant City	Bay Area Legal Services LITC	800-625-2257 813-232-1343	B	Spanish, Creole, Other languages through interpreter services
	Plantation	Legal Aid Service of Broward and Collier Counties	954-765-8950 239-775-4555	B	Spanish, Creole
	St. Petersburg	Gulfcoast Legal Services LITC	800-230-5920 727-821-0726	B	Spanish, French, German, Italian, Swahili, Other languages through interpreter services
	Tallahassee	Legal Services of North Florida LITC	850-385-9007	B	Spanish, Other languages through interpreter services
	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	B	Spanish, Haitian Creole
GA	Atlanta	The Philip C. Cook Low-Income Taxpayer Clinic	404-413-9230	C	Spanish
HI	Honolulu	Legal Aid Society of Hawaii LITC	808-536-4302	B	Chinese, Japanese, Korean, Filipino, Chuukese, Other languages through interpreter services.
IA	Des Moines	Drake University Low Income Taxpayer Clinic	515-271-3851	B	Spanish
	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-2151	B	All languages through interpreter services
ID	Boise	University of Idaho College of Law LITC	877-200-4455 208-885-6541	C	None
	Twin Falls	La Posada Tax Clinic	208-735-1189	B	Spanish
IL	Chicago	Center for Economic Progress Tax Clinic	888-827-8511 312-252-0241	B	Spanish, Polish, Chinese
	Chicago	Loyola University Chicago School of Law Federal Income Tax Clinic	312-915-7176	C	None
	Elgin	Administer Justice LITC	877-778-6006 847-844-1100	B	Spanish, Other languages through interpreter services
	Wheaton	Prairie State Legal Services LITC	855-829-7757	C	Spanish, Other languages through interpreter services
	Wheaton	Prairie State Legal Services LITC	855-829-7757	C	All languages through interpreter services
IN	Bloomington	Indiana Legal Services LITC	800-822-4774 812-339-7668	C	All languages through interpreter services
	Indianapolis	Neighborhood Christian Legal Clinic	888-243-8808 317-429-4131	B	Spanish, Chinese, French, Russian, Arabic, Burmese, Karen, Hakha Chin
	Valparaiso	Valparaiso University Law Clinic	888-729-1064 219-465-7903	C	Spanish, Chinese, Russian, Polish, Korean
KY	Erlanger	Northern Kentucky University LITC	859-572-5781	B	Spanish
	Louisville	Low Income Taxpayer Clinic at the Legal Aid Society, Inc.	800-292-1862 502-584-1254	C	All languages through interpreter services
	Richmond	Low Income Tax Clinic at AppalReD Legal Aid	800-477-1394 859-624-1394	C	All languages through interpreter services
LA	Baton Rouge	Southern University Law Center LITC	225-771-3333	C	None
	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	C	Spanish, Vietnamese

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-371-1234	B	All languages through interpreter services
	Springfield	Springfield Partners LITC	413-263-6500	B	Spanish, Vietnamese
	Waltham	Bentley University LITC	800-273-9494 781-891-2083	B	Spanish, Portuguese, Russian, Chinese, Haitian Creole
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-547-6537	C	All languages through interpreter services
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	C	Spanish
ME	Bangor	Pine Tree Legal Assistance LITC.	207-942-8241	B	All languages through interpreter services
MI	Ann Arbor	University of Michigan LITC	734-936-3535	B	Spanish, Arabic, Korean
	Detroit	Accounting Aid Society LITC	866-673-0873 313-556-1920	B	Spanish, Arabic
	East Lansing	Alvin L. Storrs Low-Income Taxpayer Clinic	517-336-8088	B	All languages through interpreter services
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-716-2384 612-334-5970	B	Spanish, Somali, Hmong, Russian, Arabic, Oromo, Amharic, Other languages through interpreter services
	Minneapolis	University of Minnesota LITC	612-625-5515	B	Somali, Spanish, Hmong
MO	Kansas City	Legal Aid of Western Missouri LITC	800-990-2907 816-474-6750	C	Spanish, Other languages through interpreter services
	Kansas City	UMKC - Kansas City Tax Clinic	816-235-6201	C	Spanish, Other languages through interpreter services
	Springfield	Missouri State LITC	417-836-3007	B	Spanish, Chinese, Korean, Other languages through interpreter services
	St. Louis	Washington University School of Law LITC	314-935-7238	C	Spanish
MS	Oxford	Mississippi Taxpayer Assistance Project	888-808-8049	C	All languages through interpreter services
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	C	All languages through interpreter services
NC	Charlotte	Western North Carolina LITC	800-247-1931 704-376-1600	B	Spanish, Other languages through interpreter services
	Durham	North Carolina Central University School of Law LITC	919-530-7166	C	Spanish
	Durham	Reinvestment Partners ESL Outreach Program	919-667-1000	E	Spanish, Arabic
NE	Omaha	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	B	Spanish, Other languages through interpreter services
NH	Concord	Legal Advice and Referral Center LITC	800-639-5290 603-224-3333	E	Spanish, Other languages through interpreter services
	Concord	New Hampshire Pro Bono Low-Income Taxpayer Project	603-228-6028	C	All languages through interpreter services
NJ	Camden	South Jersey Legal Services LITC	800-496-4578 856-964-2010	C	Spanish, Other languages through interpreter services
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	B	Spanish, French Creole, Portuguese, Korean, Hindi, Arabic, French, Italian, Other languages through interpreter services
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	B	Spanish, Korean, Hindi, Urdu, Hebrew, Other languages through interpreter services
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	C	Spanish

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
NM	Albuquerque	University of New Mexico School of Law Business and Tax Clinic	505-277-5265	C	Spanish
NV	Las Vegas	Nevada Legal Services LITC	855-657-5489 702-386-0404	B	Spanish, Korean
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	C	All languages through interpreter services
	Bronx	Legal Services NYC-Bronx LITC	718-928-3700	C	Spanish, Other languages through interpreter services
	Brooklyn	Bedford-Stuyvesant Community Legal Services	718-636-1155	C	Spanish, Other languages through interpreter services
	Brooklyn	Brooklyn Low Income Taxpayer Clinic	718-237-5528	B	Spanish, Russian, Haitian Creole, American Sign Language, Other languages through interpreter services
	Buffalo	Erie County Bar Association LITC	800-229-6198 716-847-0662	C	Spanish
	Jamaica	Queens Legal Services LITC	347-592-2200	B	Spanish, Chinese, Korean, Other languages through interpreter services
	New York	Fordham Law School Tax Litigation Clinic	212-636-7353	C	Spanish
	New York	The Legal Aid Society LITC	212-426-3013	C	Spanish, Mandarin Chinese
	Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	C	Spanish, Other languages through interpreter services
OH	Akron	Community Legal Aid Service LITC	800-998-9454	B	Spanish, Other languages through interpreter services
	Cleveland	Friendship Foundation LITC	216-961-6005	E	Vietnamese, Kampuchean (Cambodian), Laotian, Spanish, Arabic, Korean, Chinese
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777 216-687-1900	B	Arabic, French, Mandarin, Russian, Spanish, Swahili, Vietnamese, Other languages through interpreter services
	Columbus	The Low Income Taxpayer Clinic of The Legal Aid Society of Columbus	877-224-8374 614-224-8374	C	Spanish, Somali, Russian, American Sign Language, Other languages through interpreter services
	Columbus	Southeastern Ohio Legal Services LITC	800-859-5888 614-221-7201	C	All languages through interpreter services
	Piketon	Community Action Committee of Pike County LITC	866-820-1185 740-289-2371	C	All languages through interpreter services
	Toledo	Advocates for Basic Legal Equality LITC	800-837-0814 419-255-0814	B	Spanish, Other languages through interpreter services
	Toledo	Legal Aid of Western Ohio LITC	800-837-0814 419-724-0030	C	Spanish, Other languages through interpreter services
OK	Oklahoma City	The LITC at Oklahoma Indian Legal Services	800-658-1497 405-943-6457	B	All languages through interpreter services
OR	Gresham	Catholic Charities El Programa Hispano LITC	503-489-6845	B	All languages through interpreter services
	Portland	Legal Aid Services of Oregon LITC	888-610-8764 503-224-4086	B	Spanish, Mixteco Bajo, Mandarin, Japanese, Other languages through interpreter services
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	C	All languages through interpreter services

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
PA	Lancaster	Central Pennsylvania Federal Tax Clinic	800-732-0018 717-299-7388 X3911	B	Spanish
	Philadelphia	PLA's Pennsylvania Farmworker Project LITC	888-541-1544 215-981-3800	E	Spanish
	Philadelphia	Villanova Federal Tax Clinic	888-829-2546 888-655-4419(s) 610-519-4123	C	Spanish, Other languages through interpreter services
	Pittsburgh	Jewish Family & Children's Service LITC for ESL Taxpayers	412-422-7200	E	Spanish, French, Portuguese, Burmese, Chinese, Korean, Turkish, Hindi, Vietnamese, Hebrew, Arabic, German
	Pittsburgh	University of Pittsburgh School of Law Taxpayer Clinic	412-648-1300	C	Spanish, French, Other languages through interpreter services
RI	Providence	Rhode Island Legal Services LITC	800-662-5034 401-274-2652	B	Spanish, Other languages through interpreter services
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	B	All languages through interpreter services
TN	Memphis	Memphis Area Legal Services LITC	901-523-8822	B	Spanish
	Oak Ridge	Legal Aid Society of Middle Tennessee and the Cumberlands' Tennessee Taxpayer Project	866-481-3669 865-483-8454 X240	B	Spanish, Other languages through interpreter services
TX	Bryan	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	B	Spanish, Vietnamese, Other languages through interpreter services
	Ft. Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	B	Spanish
	Houston	Houston Volunteer Lawyers LITC	713-228-0732	B	Spanish, Mandarin, Vietnamese, Other languages through interpreter services
	Lubbock	Texas Tech University School of Law LITC	800-420-8037 806-742-4312	C	Spanish
	San Antonio	St. Mary's University of San Antonio LITC	800-267-4848 210-431-5704	B	Spanish, Other languages through interpreter services
	San Antonio	Texas Taxpayer Assistance Project	888-988-9996	B	Spanish
UT	Provo	LITC - Centro Hispano	801-655-0258	B	Spanish, American Sign Language, Tagalog, Arabic
	Salt Lake City	University of Utah LITC	888-361-5482 801-236-8053	B	Spanish
VA	Arlington	ECDC Enterprise Development Group LITC	703-685-0510	E	Spanish, Bhutani, Amharic, Vietnamese, Farsi, Arabic
	Lexington	Washington & Lee University School of Law Tax Clinic	540-458-8918	C	All languages through interpreter services
	Richmond	The Community Tax Law Project	800-295-0110 804-358-5855	B	Spanish, Other languages through interpreter services
VT	Burlington	Vermont Low Income Taxpayer Project	800-747-5022 802-863-5620	C	All languages through interpreter services
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158 206-685-6805	B	Spanish, Russian, Chinese, Korean
	Spokane	Gonzaga University School of Law Federal Tax Clinic	800-793-1722 509-313-5791	C	All languages through interpreter services

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
WI	Milwaukee	Legal Action of Wisconsin LITC	855-502-2468 414-274-3400	C	Spanish
	Milwaukee	Legal Aid Society of Milwaukee, Inc.	888-562-8135 414-727-5326	C	Spanish
	Wausau	Wisconsin Judicare Northwoods Tax Project	800-472-1638 715-842-1681	B	Spanish, Hmong
WV	Charleston	Legal Aid of West Virginia, Inc.	866-255-4370 304-343-4481	C	Spanish
WY	Cheyenne	Wyoming Low Income Taxpayer Clinic	866-432-9955	C	Spanish, French
	Jackson	Teton County Low Income Taxpayer Clinic	307-734-0333	E	Spanish

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Appendix V: FY 2015 Taxpayer Advocate Service Operational Priorities

To meet its statutory mission as provided in Internal Revenue Code (IRC) § 7803(c), the Taxpayer Advocate Service (TAS) developed three strategic goals and two strategic foundations to guide its leadership. The strategic goals are:

- Resolve Taxpayer Problems Accurately and Timely;
- Protect Taxpayer Rights and Reduce Taxpayer Burden; and
- Become a Known Taxpayer Advocacy Organization.

The two strategic foundations are:

- Enhance TAS Infrastructure to Improve Taxpayer Interaction; and
- Sustain and Support a Fully-Engaged and Diverse Workforce.

In support of these goals and foundations, TAS identified fifteen (15) operational priorities, short-term actions that aid the organization in achieving its mission.[1]

Resolve Taxpayer Problems Accurately and Timely

IRC § 7803(c)(2)(A)(i)
In general, it shall be the function of the Office of Taxpayer Advocate to-
(i) assist taxpayers in resolving problems with the Internal Revenue Service.

IRC § 7803(c)(2)(C)(ii)
The National Taxpayer Advocate shall –
(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates.

- **Operational Priority 2015-1** – In collaboration with the IRS, implement revised Operations Assistance Request (OAR) procedures in keeping with the Phase II OAR Study.
- **Operational Priority 2015-2** – Define and develop alternative approaches to systemic burden casework acceptance and assignment to allow the IRS the opportunity to resolve issues first, so long as taxpayers are not harmed by the process; or to allow taxpayers to resolve the issues themselves through information provided by TAS Intake Advocates if the issue lends itself to that approach.
- **Operational Priority 2015-3** – Implement a multi-modal Case Advocacy Customer Comment System to allow for more robust and timely customer responses and the sharing of best practices.

1 The TAS mission: As an independent organization within the IRS, we help taxpayers resolve problems with the IRS and recommend changes that will prevent the problems.

- **Operational Priority 2015-4** – Provide new or updated advocacy tools and guidance to address emerging issues.
- **Operational Priority 2015-5** – Develop, implement, and communicate TAS engagement activities, including new ways to communicate with the taxpayer (such as secure messaging and virtual services) and establish what customers can expect from TAS and what TAS expects from its customers when addressing tax issues with the IRS.

Protect Taxpayer Rights and Reduce Burden

IRC § 7803(c)(2)(A)
In general, it shall be the function of the Office of Taxpayer Advocate to—

...
(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and
(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

- **Operational Priority 2015-6** – Proactively identify issues that may negatively impact taxpayer rights or burden; then, using a tiered research approach, develop alternative advocacy approaches to address the external and internal impact of these issues (*e.g.*, research studies, advocacy projects, updated processing guidelines, Advocacy Issue Teams, etc.).
- **Operational Priority 2015-7** – Increase emphasis on taxpayer rights and taxpayers' understanding of those rights.

Become a Known Taxpayer Advocacy Organization

IRC § 7803(c)(2)(C):
The National Taxpayer Advocate shall –

...;
(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates;
(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office.

- **Operational Priority 2015-8** – Develop new tools and use new technology to conduct outreach, education, and research with the goal of expanding awareness of TAS services, with special emphasis on emerging issues and TAS's underserved population.

Enhance TAS Infrastructure to Improve Taxpayer Interaction

IRC § 7803(c)(4)(B)
Maintenance of independent communications. Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

IRC § 7803(c)(4)
In general. Each local taxpayer advocate –
(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

- **Operational Priority 2015-9** – Support IRS Information Technology (IT) and outside vendors in the development, testing and deployment of the Taxpayer Advocate Service Integrated System (TASIS), an efficient and integrated information technology system.
- **Operational Priority 2015-10** – Collaborate with the IRS to develop tools to help TAS employees advocate for taxpayers.
- **Operational Priority 2015-11** – Establish TAS protocol and archival procedures for TAS projects, task forces, and studies, including the establishment of a naming convention hierarchy for an organizational keyword database.

Sustain and Support a Fully-Engaged and Diverse Workforce.

IRC § 7803(c)(2)(C)--
The National Taxpayer Advocate shall –
(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates;...;
(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

- **Operational Priority 2015-12** – Establish a succession plan for TAS that leverages diversity and meets the HR component of TAS's workload demands.
- **Operational Priority 2015-13** – Develop and test a multi-year strategic training plan that allows the organization to forecast training needs and provides an opportunity for employees to reach their full potential.
- **Operational Priority 2015-14** – Implement solutions identified in employee surveys and group meetings that improve the quality of employee work life.
- **Operational Priority 2015-15** – Define, develop, and test organizational measures or diagnostics for Systemic Advocacy, Case Advocacy, and the Taxpayer Advocacy Panel (TAP).

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Appendix VI: TAS Performance Measures and Indicators

RESOLVE TAXPAYER PROBLEMS ACCURATELY AND TIMELY

Measure	Description	FY 2014 Target	FY 2014 Actual Mar Cum
Overall Quality of Closed Cases[1]	Percent of sampled closed cases meeting timeliness, accuracy, technical, and communication measures.	91%	90.3%
Case Accuracy	Percent of sampled cases where the taxpayer's problems are resolved completely and correctly throughout all stages of the case, including action planning, TAS involvement, resolution of all issues, addressing of related issues, proper coding, and case factor identification.	88%	86.3%
Technical Requirements	Percent of sampled closed cases where all actions taken by TAS and the IRS are worked in accordance with the tax code, IRM, and technical and procedural requirements.	90.5%	89.1%
Recourse or Appeal Rights	Percent of sampled closed cases where either recourse, appeal rights, or both (if applicable) was explained if TAS did not provide requested relief.	99%	98.3%
Timeliness of Actions	Percent of sampled closed cases with timely actions on initial actions, initial contacts, TAO consideration, documentation, and case closure.	93%	91.8%
Communication	Percent of sampled closed cases where TAS effectively communicates information, requests information, provides appropriate apology, explanation, education, and complete (accurate) correspondence.	94%	94.2%
Error-Free Cases	Percent of sampled closed cases with no errors on any of the quality attributes that comprise the TAS case quality index.	Indicator	12.7%
OAR Reject Rate	Percent of rejected requests for action to be taken by the IRS.	3.0%	2.9%
Customers Satisfied[2]	Percent of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	90%	87%
Customers Dissatisfied	Percent of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	8%	11%
Solved Taxpayer Problem	Percent of taxpayers who indicate the Taxpayer Advocate employee did their best to solve their problems.	91%	88%
Relief Granted[3]	Percent of closed cases in which full or partial relief was provided.	Indicator	78.3%
Number of TAOs Issued	The number of Taxpayer Assistance Orders (TAOs) issued by TAS.	Indicator	236
Median – Closed Case Cycle Time[4]	Median time taken to close TAS cases.	Indicator	69 days
Mean – Closed Case Cycle Time	Mean time taken to close TAS cases.	Indicator	95.8 days
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all hours reported to the Case Advocacy organization except Field Systemic Advocacy).	152.0	114.6
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	349.0	331.7

1 Results for Quality (weighted) and Error-free (unweighted) cases are through February 2014; March results not available at time of this report.

2 Results for Customer Satisfaction are through December 2013; March 2014 results were not available at time of this report.

3 TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing, and requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. *See* IRM 13.1.21.1.2.1.2 (Mar. 31, 2011). The codes reflect full relief, partial relief, or assistance provided.

4 This indicator does not include the number of days of reopened cases.

PROTECT TAXPAYER RIGHTS AND REDUCE BURDEN

Measure	Description	FY 2014 Target	FY 2014 Actual Mar Cum
Accuracy of Closed Advocacy Projects	Percent of correct actions overall in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	95%	100%
Timeliness of Actions on Advocacy Projects	Percent of all projects with timely actions in accordance with IRM guidance, including contacting the submitter within three business days from assignment, issuing an action plan within 30 calendar days, and working the project with no unnecessary delays or periods of inactivity.	80%	71.4%
Quality of Communication on Advocacy Projects	Percent of projects where substantive updates were provided to the submitter on the initial contact and subsequent contacts, appropriate coordination, and communication took place with internal and external stakeholders, written communications follow established guidelines, and outreach and education actions taken when appropriate.	95%	100%
Overall Quality of Closed Immediate Interventions[5]	Percent of correct actions overall in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	88%	NA
Systemic Advocacy Management System (SAMS) Review Process Median Days	The median days to complete the SAMS issue review process.	40	35
Internal SAMS Customer Satisfaction Survey (CSS)[6]	Percent of satisfaction of IRS and TAS employees who submit issues to SAMS during the calendar year.	73%	66%
Internal Management Document (IMD) Recommendations Made to IRS	A count of the IMD recommendations made to the IRS. Policy issues influenced due to TAS's IMD review and feedback.	Indicator	453
IMD Recommendations Accepted by IRS	The percent of TAS's IMD recommendations accepted for implementation by the IRS. Policy issues influenced due to TAS's IMD review and feedback.	Indicator	64%
Advocacy Efforts Resulting in a Recommendation	The percentage of advocacy efforts that result in a recommendation. Advocacy efforts include projects, task forces, and collaborative teams [excludes IMD].	Indicator	50%[7]
Advocacy Effort Recommendations Accepted by IRS	The percentage of TAS advocacy effort recommendations accepted by the IRS.	Indicator	100%[8]

5 NA is shown to indicate there are zero immediate intervention issues to review.

6 SA CSS results based on responses of Somewhat Agree or Strongly Agree with Q8. "Overall, I am satisfied with the SAMS process for elevating issues."

7 Figure based on six closed advocacy projects and two task forces.

8 Four advocacy projects resulted in a total of eight recommendations, all of which were accepted.

SUSTAIN AND SUPPORT A FULLY-ENGAGED AND DIVERSE WORKFORCE

Measure	Description	FY 2014 Target	FY 2014 Actual Mar Cum
Employee Satisfaction[9]	Percent of employees who are satisfied or very satisfied with their jobs.	80%	74%
Employee Participation[10]	Percent of employees who take the employee satisfaction questionnaire.	80%	43%
Continuing Professional Education (CPE) Evaluation[11]	Percent of employees who are satisfied or very satisfied with learning and training provided by TAS.	82%	80.0%

9 The annual IRS Workgroup Questionnaire measures both participation and satisfaction. Results are for 2013. The NTEU did not support the employee satisfaction survey 2011 - 2013, affecting participation.

10 Annual IRS Workgroup Questionnaire.

11 Due to budgetary constraints, TAS has conducted its CPE activities by virtual rather than face-to-face methods each year since FY 2012. The CPE satisfaction rate is from 2013 and was determined by aggregating the evaluations for all three levels of the 2012-2013 TAS Virtual Symposium. TAS is discussing a revision for the CPE Evaluation to determine if there is a more applicable measure for virtual and Continuous Learning efforts.

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Appendix VII: Glossary of Acronyms

Acronym	Definition
	- A -
ABA	American Bar Association
ACA	Affordable Care Act
ACE	Automated Correspondence Exam
ACS	Automated Collection System
ACTC	Advanced Child Tax Credit
ADA	Anti-Deficiency Act
ALE	Applicable Large Employer
AM	Accounts Management
AMTAP	Accounts Management Taxpayer Assurance Program
ARC	Annual Report to Congress
ASED	Assessment Statute Expiration Date
	- B -
BMF	Business Master File
BMO	Business Modernization Operations
BOD	Business Operating Division
BPMS	Business Performance Measurement System
BSP	Business Systems Planning
	- C -
CA	Case Advocate
CAP	Congressional Affairs Program
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CE	Continuing Education
CEAP	Correspondence Examination Assessment Project
CFO	Chief Financial Officer
CI	Criminal Investigation
CIS	Collection Information Statement
CIS	Correspondence Imaging System
CMS	Centers for Medicare and Medicaid Services
CNC	Currently Not Collectible
COTS	Commercial Off the Shelf
CPA	Certified Public Accountant
CPE	Continuing Professional Education
CRB	Customer Requirement Board
CSCO	Compliance Services Collection Operations
CSED	Collection Statute Expiration Date

Acronym	Definition
CTO	Chief Technology Officer
CTR	Customer Technical Review
- D -	
DCI	Data Collection Instrument
DDB	Dependent Data Base
DDIA	Direct Deposit Installment Agreement
DIF	Discriminant Index Function
DLN	Document Locator Number
DOJ	Department of Justice
DOMA	Defense of Marriage Act
- E -	
EDCA	Executive Director Case Advocacy
EEOC	Equal Opportunity Employment Commission
EFDS	Electronic Fraud Detection System
EGTRRA	Economic Growth and Tax Relief Reconciliation Act
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
EO	Exempt Organizations
EO-EIC	Exempt Organizations Emerging Issues Committee
EP/EO	Exempt Plan/Exempt Organization
ERM	Enterprise Risk Management
ETR	Executive Technical Review
- F-	
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FCR	Federal Case Registry
FDIC	Federal Deposit Insurance Corporation
FEC	Federal Election Commission
FINCEN	Federal Crimes Enforcement Network
FOIA	Freedom of Information Act
FPLP	Federal Payment Levy Program
FTE	Full-Time Equivalent
FY	Fiscal Year
- G -	
GAO	Government Accountability Office
GDP	Gross Domestic Product
GOTV	Get Out the Vote
- H -	

Acronym	Definition
HCTC	Health Coverage Tax Credit
HHS	Department of Health and Human Services
- I -	
IA	Installment Agreement
IA	Intake Advocate
IAT	Integrated Automated Technology
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IDT	Identity Theft
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IP PIN	Identity Protection Personal Identification Number
IPSU	Identity Protection Specialized Unit
IPU	Internal Procedural Updates
IRC	Internal Revenue Code
IRDM	Information Reporting and Document
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ISRP	Individually Shared Responsibility Payment
IT	Information Technology
ITAP	Internal Technical Advisor Program
ITIN	Individual Taxpayer Identification Number
IWG	Intranet Working Group
IVO	Integrity & Verification Operations (formerly Accounts Management Taxpayer Assurance Program (AMTAP))
- J -	
JCT	Joint Committee on Taxation
JRC	June Report to Congress
- L -	
LB&I	Large Business & International
LIF	Low Income Filter
LITC	Low Income Taxpayer Clinic
LOS	Level of Service
LTA	Local Taxpayer Advocate
- M -	
MeF	Modernized e-File
MOU	Memorandum of Understanding
MSP	Most Serious Problem

Acronym	Definition
	- N -
N/A	Not Applicable
NFTL	Notice of Federal Tax Lien
NRP	National Research Program
NTA	National Taxpayer Advocate
NTEU	National Treasury Employees Union
	- O -
OAR	Operations Assistance Request
OD	Operating Division
OIC	Offer in Compromise
OMB	Office of Management and Budget
OOC	Out of Cycle
OPR	Office of Professional Responsibility
OTC	Office of Taxpayer Correspondence
OUO	Official Use Only
	- P -
PARC	Political Activity Referral Committee
PCIC	Primary Case Issue Code
PDB	Professional Development Board
PDIA	Payroll Deduction Installment Agreement
PIN	Personal Identification Number
PMO	Project Management Office
POA	Power of Attorney
POC	Proof of Concept
PPIA	Partial Payment Installment Agreement
PRO	Problem Resolution Officer
PRP	Problem Resolution Program
PTC	Premium Tax Credit
PTIN	Preparer Tax Identification Number
Pub. L. No.	Public Law Number
	- Q -
QC	Qualifying Child
Qtr	Quarter
	- R -
Rev. Proc.	Revenue Procedure
RICS	Return Integrity and Correspondence Services
RO	Revenue Officer
ROI	Return on Investment

Acronym	Definition
ROO	Review of Operations
RRA 98	IRS Restructuring and Reform Act of 1998
RRB	Risk Review Board
RRP	Return Review Program
RSED	Refund Statute Expiration Date
	- S -
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System
SBHCTC	Small Business Health Care Tax Credit Estimator
SB/SE	Small Business/Self-Employed Division
SEP	Simplified Employee Pension
SERP	Servicewide Electronic Research Program
SLA	Service Level Agreement
SME	Subject Matter Expert
SNOD	Statutory Notice of Deficiency
SP	SharePoint
SPDER	Servicewide Policy, Directives, and Electronic Research
SPOC	Single Point of Contact
SSA	Social Security Administration
SSN	Social Security Number
Stat.	Statute
	- T -
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TANF	Temporary Assistance to Needy Families
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR	Taxpayer Bill of Rights
TCE	Tax Counseling for the Elderly
TDS	Transcript Delivery System
TEDS	Tax Exempt Determination System
TE/GE	Tax Exempt and Government Entities Division
TF & P	Tax Forms and Publications
TIGTA	Treasury Inspector General for Tax Administration

Acronym	Definition
TPP	Taxpayer Protection Program
Treas. Reg.	Treasury Regulation
TY	Tax Year
TWG	Technical Working Group
- U -	
UBTI	Unrelated Business Taxable Income
U.S.	United States
USTC	United States Tax Court
- V -	
VITA	Volunteer Income Tax Assistance
- W -	
W&I	Wage & Investment

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