



Volume 1

NATIONAL TAXPAYER ADVOCATE

# Objectives Report to Congress

Fiscal Year 2020

[www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020)

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**VOLUME THREE: MAKING THE EITC WORK FOR TAXPAYERS AND THE GOVERNMENT: IMPROVING ADMINISTRATION AND PROTECTING TAXPAYER RIGHTS (RELEASE DATE: JULY 2019)**

## INTRODUCTION: The National Taxpayer Advocate's Remarks on the Role of Trust and Taxpayer Advocate Service in Fostering Tax Compliance

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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.<sup>1</sup> 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.<sup>2</sup> 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 (the Objectives Report).

### This Year's Report Consists of Several Components

Volume 1, which I present to you today, includes an analysis of the 2019 Filing Season, an assessment of the impact of the recent government shutdown on the Taxpayer Advocate Service (TAS), 12 Areas of Focus, and a discussion of TAS advocacy initiatives, casework, and research studies. Volume 2, *IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2018 Annual Report to Congress*, and Volume 3, *Making the EITC Work for Taxpayers and the Government: Improving Administration and Protecting Taxpayer Rights*, will be published next month.

Volume 2 will contain the IRS's general responses to each of the administrative recommendations we identified in our 2018 Annual Report to Congress. Volume 3 will contain a comprehensive assessment of the Earned Income Tax Credit (EITC) and will make recommendations designed to increase the participation rate of eligible taxpayers and reduce overclaims by ineligible taxpayers. During the spring, Professor Leslie Book of the Villanova School of Law, a leading EITC expert, served as a "professor in residence" with TAS, and Margot Crandall-Hollick, an EITC expert with the Congressional Research Service, worked with TAS on a detail. Together with TAS's EITC experts, including former Low Income Taxpayer Clinic attorneys and researchers, they conducted a broad review of existing EITC research and drafted a comprehensive set of recommendations to assist Congress and the IRS in improving the program.

The last and most creative component of this year's Objectives Report, *The Taxpayer Roadmap 2019: An Illustration of the Modern United States Tax System*, also will be released in July. This roadmap—which actually will be in the form of a subway map—builds upon the seven discrete roadmaps we published in the 2018 Annual Report to Congress.<sup>3</sup> This new roadmap—available in hard copy (32" by 32") and in digital format—shows, at a high level, the taxpayer's "journey" through the tax system—from getting answers to tax law questions and preparing a return, through return processing, audit, appeals, litigation, and collection.

Anyone looking at this map will understand that we have an incredibly complex tax system that is almost impossible for the average taxpayer to navigate. I personally have spent dozens of hours designing and preparing this map, as have many members of my staff. For every step shown on the map, there are tens of steps and interactions that are impossible to represent in a single document. Thus, TAS is

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1 Internal Revenue Code (IRC) § 7803(c)(2)(B).

2 IRC § 7803(c)(2)(B)(iii).

3 National Taxpayer Advocate 2018 Annual Report to Congress 10-16.

working to develop a digital roadmap into which a taxpayer or practitioner will be able to input the document number of any IRS letter or notice and receive a plain English summary of that letter or notice. From there, they can click through to the actual roadmap and see where they are. They can also learn more about that step in the tax process and the surrounding steps through pop-ups and links into additional TAS and IRS content, including links to TAS's Taxpayer Bill of Rights content.

This digital roadmap will be the culmination of many years of work and research by TAS into human cognition and learning, notice clarity, and taxpayer empowerment.<sup>4</sup> It is my firm belief that taxpayers must have knowledge about their rights within a system as complex as the IRS. If only taxpayers who are represented by tax professionals have access to that knowledge, then we do not have a fair and just tax system. Thus, the digital roadmap will be a powerful tool to improve access to justice.

### This Will Be My Last Report to Congress

Since March 1, 2001, I have had the privilege and honor of serving as the nation's National Taxpayer Advocate. I am enormously grateful for the opportunity I have had to advocate on behalf of our nation's taxpayers. I have witnessed the dedication of IRS employees in administering a mind-numbingly complex Internal Revenue Code. Amazingly, despite the challenges of complying with our multi-million-word tax code, more than 150 million individual taxpayers and more than ten million business entities do their civic duty every year by filing income tax returns with the IRS. That is an extraordinary achievement, and one we should not take for granted.

But even as the system works for most taxpayers most of the time, it doesn't work for millions of others. Since 2001, TAS has received more than four million cases from taxpayers who experienced significant hardship as a result of the way the IRS is administering the Internal Revenue laws. I am enormously proud of and grateful for the heroic efforts of TAS employees who, day in and day out, work to help taxpayers who are frustrated, frightened, and at wit's end. It is no easy task to find solutions to problems TAS is statutorily charged with addressing, but our employees have done so with determination, empathy, and creativity.

Because this is my last Report to Congress, in the remainder of this Introduction I will discuss subjects that I believe warrant the closest scrutiny and congressional oversight. These include the following concerns:

- Taxpayer service levels are currently very poor, and the IRS does not appear to have a taxpayer-centric strategy or a budget commitment to improve them.
- Research shows that forcing customers into self-service applications for anxiety-inducing transactions erodes trust and increases customer dissatisfaction.
- To increase taxpayer trust and improve compliance, taxpayer service should be designed around a "Taxpayer Anxiety Index."
- If you don't have taxpayer trust, you have to control (*i.e.*, more audits, more enforced collection).

4 See, e.g., Area of Focus: *TAS Plans to Design Sample Notices to Better Protect Taxpayer Rights and Reduce Taxpayer Burden*, *infra*. See also 2018 National Taxpayer Advocate Annual Report to Congress 170-222 (Introduction to Notices: *Notices Are Necessary to Inform Taxpayers of Their Rights and Obligations, Yet Many IRS Notices Fail to Adequately Inform Taxpayers, Leading to the Loss of Taxpayer Rights*); 2018 National Taxpayer Advocate Annual Report to Congress vol. 2 193-210 (*Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution"*) and Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*).

- Appropriate use of an “Economic Hardship Indicator” would reduce anxiety, minimize taxpayer harm, reduce rework, and get to the right answer.
- There is no more important entity for achieving trust in the tax system than the Taxpayer Advocate Service.

I will also report on the status of my “short-list” of items for resolution with respect to TAS and the IRS before my retirement.

### **Taxpayer Service Levels Are Currently Very Poor, and the IRS Does Not Appear to Have a Taxpayer-Centric Strategy or a Budget Commitment to Improve Them**

As I have highlighted in my 37 Reports to Congress and more than 60 congressional hearings, the bifurcation of service and enforcement in tax administration is an artificial distinction. It sounds plausible on its surface, but it leads to misguided strategies and produces poor results. Taxpayer service must be embedded in *every* aspect of IRS activity, including compliance contacts.

Yet today, IRS taxpayer service is woefully inadequate. During the recent filing season, IRS telephone assistors answered just 25 percent of taxpayer calls enterprise-wide and hold times averaged 13 minutes.<sup>5</sup> For taxpayers calling on the balance due line, telephone assistors answered just 24 percent of calls and hold times averaged 49 minutes.<sup>6</sup> The IRS’s performance on the balance due line is particularly concerning because this is the line taxpayers call to make payment arrangements when they can’t pay their tax liabilities in full. IRS audit notices are often unclear, leading some taxpayers to “agree” to assessments by default—even where they don’t owe the tax. And the IRS doesn’t screen for ability to pay before it takes collection actions, thereby causing or worsening financial hardships for financially vulnerable taxpayers. Advocating for taxpayers affected by problems like these, both individually and collectively, has been and will continue to be the work of TAS.

The President’s Management Agenda for 2018 emphasized the importance of high-quality customer service. It said: “Federal customers ... deserve a customer experience that compares to—or exceeds—that of leading private sector organizations,” and it cites data from the American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal CX Index™ as key benchmarks.<sup>7</sup> Notably, those indices find the IRS performs poorly relative to other federal agencies.

The ACSI report for 2018 ranks the Treasury Department tied for 10th out of 12 Federal Departments and says that, “most [IRS] programs score ... well below both the economy-wide national ACSI average and the federal government average.”<sup>8</sup> For its part, the 2019 Forrester report *ranked the IRS 13th out of 15 federal agencies and characterized the IRS’s score as “very poor.”*<sup>9</sup>

Yet despite the IRS’s remarkably poor customer service performance as measured by the benchmarks cited in the President’s Management Agenda, the Administration’s budget proposal for FY 2020 would build up tax law enforcement at the expense of taxpayer service. Specifically, it proposed to increase

5 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (week ending April 20, 2019).

6 IRS, JOC, *Snapshot Reports: Product Line Detail: Installment Agreement/Balance Due Line* (week ending April 20, 2019).

7 President’s Management Agenda 7, 28, [https://www.performance.gov/PMA/Presidents\\_Management\\_Agenda.pdf](https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf).

8 American Customer Satisfaction Index, *ACSI Federal Government Report 2018*, 3-4 (2019).

9 Forrester Research, Inc., *The US Federal Customer Experience Index, 2019*, 15-16 (June 11, 2019).

funding for the IRS's Enforcement account by 5.0 percent while cutting funding for the IRS's Taxpayer Services account by 6.6 percent.<sup>10</sup> This approach is tantamount to robbing Peter to pay Paul.

There is no doubt that budget constraints have limited the IRS's taxpayer service capacity, but the IRS should not blame Congress for a lack of taxpayer services funding when it is itself proposing to shift funding away from taxpayer services. What's more, budget constraints can't be used as an all-purpose excuse for mediocrity. The Taxpayer First Act directs the IRS to develop a comprehensive customer service strategy within one year.<sup>11</sup> The IRS should use that requirement as an opportunity to think creatively about better ways to truly put "taxpayers first." At present, there is an enormous gap between the "very poor" customer service the agency provides and the "world-class" customer service to which it aspires. The IRS must think long and hard about ways to bridge that gap—and TAS and the next National Taxpayer Advocate should be intimately involved in this effort.

In fact, nowhere in the most recent IRS Strategic Plan do the words "world-class" customer or taxpayer service appear. Most of the IRS's recent customer service focus, beginning with the Orwellian-named "Future State" initiative, has been on digital services and self-help, largely because the IRS views such approaches as less costly—for the IRS. But this approach flies in the face of a significant body of data that indicates that customers, including customers of financial institutions that the IRS likes to say it must emulate, clearly prefer human, personal interaction for many transactions.

A recent survey conducted by Forrester regarding the preferences of "online adults" for customer service from financial institutions is instructive and should provide a guide to the IRS in delivering taxpayer service. Forrester found:

- 69 percent preferred personal contact (by phone or in-person) for opening a new financial account;
- 72 percent preferred digital self-service tools for checking the status of a payment;
- 69 percent preferred personal contact for disputing a transaction; and
- 75 percent preferred personal contact for getting financial advice.<sup>12</sup>

When these "online adults" were asked how important it was that their financial service provider offered specific customer service options:

- 79 percent said it was important to offer in-person assistance at an office or branch;
- 85 percent said it was important to offer over the phone assistance with an actual person;
- 44 percent said it was important to have an over the phone automated service;
- 30 percent said it was important to have video chat with a person on a computer or tablet; and
- 29 percent said it was important to have video chat with a person on a smartphone.<sup>13</sup>

10 Department of the Treasury, *FY 2020 Budget in Brief* 69 (March 2019), <https://home.treasury.gov/system/files/266/FY2020BIB.pdf> (including proposed \$200 million program integrity cap adjustment for the Enforcement account).

11 At this writing, the House and Senate have passed the Taxpayer First Act, H.R. 3151, 116th Cong. (2019), and the President is expected to sign it into law shortly.

12 Forrester Analytics, *Consumer Technographics® Financial Services Topic Insights 3 Survey, 2018*, 1.

13 *Id.* at 1-2.

Interestingly, 63 percent of online adults said it was important to have email communications with their financial service providers, something the IRS still cannot provide.<sup>14</sup> Moreover, the answers to these questions are surprisingly consistent across age groups. Some at the IRS have seemed to believe that as Baby Boomers (my generation) age out of the taxpayer base, it can do away with in-person taxpayer service. Not so. Regardless of internet skills, surveys show that some transactions require person-to-person contact.

The IRS cannot, and should not, ignore this data. And yet, in its most recent Strategic Plan, the IRS has announced, as a *principal measure* of success in delivering taxpayer service, the “Enterprise Self-Assistance Participation Rate.” According to the IRS, “[t]his measures the percent of instances where a taxpayer uses one of the IRS’s self-assistance service channels (*i.e.*, automated calls, web services) versus needing support from an IRS employee (*i.e.*, face-to-face, over the phone, via paper correspondence).”<sup>15</sup>

The implication of this measure is unmistakable: The IRS is striving to push taxpayers to self-service channels to save money—research showing customer preferences for personal contact in many financial transactions be damned. As I discuss in the next section, this foolhardy approach has significant consequences for taxpayer rights and trust in the IRS and creates downstream consequences for compliance.

### Research Shows That Forcing Customers Into Self-Service Applications for Anxiety-Inducing Transactions Erodes Trust and Increases Customer Dissatisfaction

As noted above, the IRS often declares it must deliver the same quality of services as other financial institutions. Well, as the discussion above shows, the IRS isn’t even meeting this objective. But it also bears pointing out that the IRS is *not* just another financial institution. In fact, it isn’t a financial institution at all. It is the Accounts Receivable Department of the United States Government, which last year collected some \$3.5 trillion in revenue.<sup>16</sup> It is also a large government benefits administrator, handing out nearly \$64 billion in anti-poverty payments (*i.e.*, the EITC).<sup>17</sup> It has awesome collection powers, able to seize and levy on assets and income without first obtaining a judgment from a court of law. It can assess taxes summarily, and it can recommend that passports be denied or revoked. These are powers that financial institutions can only dream about.

These IRS powers understandably create a great deal of anxiety for its customer base, *i.e.*, taxpayers. My own 44 years of experience representing and advocating for taxpayers before the IRS—in the private sector and as National Taxpayer Advocate—have convinced me that how taxpayers perceive and feel about the tax agency is directly connected to their willingness to comply with the tax laws. If a taxpayer’s anxiety increases through her interactions with the IRS, common sense tells us a conversation is an appropriate intervention. Pushing an anxious taxpayer to digital or self-service interaction is likely to be counterproductive and costly (both for the agency and the taxpayer).

14 Forrester Analytics, *Consumer Technographics® Financial Services Topic Insights 3 Survey, 2018, 2.*

15 IRS, *Strategic Plan 2018-2022*, Publication 3744 (rev. 4-2018), 12.

16 IRS, *2018 Data Book*, table 1 (May 2019). The 2018 Data Book covers the period from October 1, 2017 through September 30, 2018 (fiscal year (FY) 2018).

17 IRS, Compliance Data Warehouse, Individual Master File (IMF) for Earned Income Tax Credit (EITC) payments posted in FY 2018 (June 2019).



A recent study published in the *Harvard Business Review* bears this out. The researchers conducted two lab experiments and one field experiment in the financial services sector.<sup>18</sup> The researchers chose the financial services industry because “it is riddled with uncertainty and complex decision-making known to provoke anxiety and distress for its customers.”<sup>19</sup> (The parallels with taxation are obvious.)

The researchers found that “anxious customers interacting through self-service technology feel dissatisfied with their decisions even when their decisions appear aligned with their goals. Their dissatisfaction reduced their trust in the service provider.”<sup>20</sup> Of particular importance, the researchers found that “when people had the ability to connect with another person ... the deleterious effects of anxiety were offset.”<sup>21</sup> This result occurred even when the participant actually didn’t take advantage of the opportunity to talk with someone. “Just knowing we *can* chat with another person—even if we don’t choose to do so—seems to make a big difference.”<sup>22</sup>

### To Increase Taxpayer Trust and Improve Compliance, Taxpayer Service Should Be Designed Around a “Taxpayer Anxiety Index”

Applying these findings to the IRS, with its awesome investigation, audit, and collection powers, it is clear that every interaction with the agency has the potential to be anxiety-inducing. This observation has led me to develop what I call the *Taxpayer Anxiety Index* as a methodology for analyzing how the IRS should structure its interactions with the taxpayer. Simply put, *as the anxiety-inducing capacity of a given interaction increases, so should the taxpayer’s access to person-to-person interaction.*

If we apply the Taxpayer Anxiety Index (or TAI, since the IRS loves acronyms) to any one of the high-level roadmaps we created for the 2018 Annual Report to Congress,<sup>23</sup> we can easily identify where the taxpayer’s anxiety increases and human intervention is warranted. For example, in our Return Processing Roadmap, if a taxpayer’s refund return gets bogged down in identity theft processes or in the pre-refund wage verification program, these delays cause anxiety. Where the taxpayer’s refund gets stopped for *multiple* delays, anxiety skyrockets. Whereas in the beginning of the process the taxpayer is likely willing to check on the status of her refund via the IRS-to-go mobile app or the automated phone line, as the taxpayer progresses through the delays, her anxiety increases and her desire to speak to a live human being about her refund becomes greater. Here is where pushing taxpayers to digital applications only exacerbates the taxpayer anxiety. The taxpayer wants *answers*, and instead gets a runaround. All this decreases trust in the agency.<sup>24</sup>

18 Michelle A. Shell and Ryan W. Buell, *Why Anxious Customers Prefer Human Customer Service* (April 15, 2019), <https://hbr.org/2019/04/why-anxious-customers-prefer-human-customer-service>.

19 *Id.* at 2.

20 *Id.*

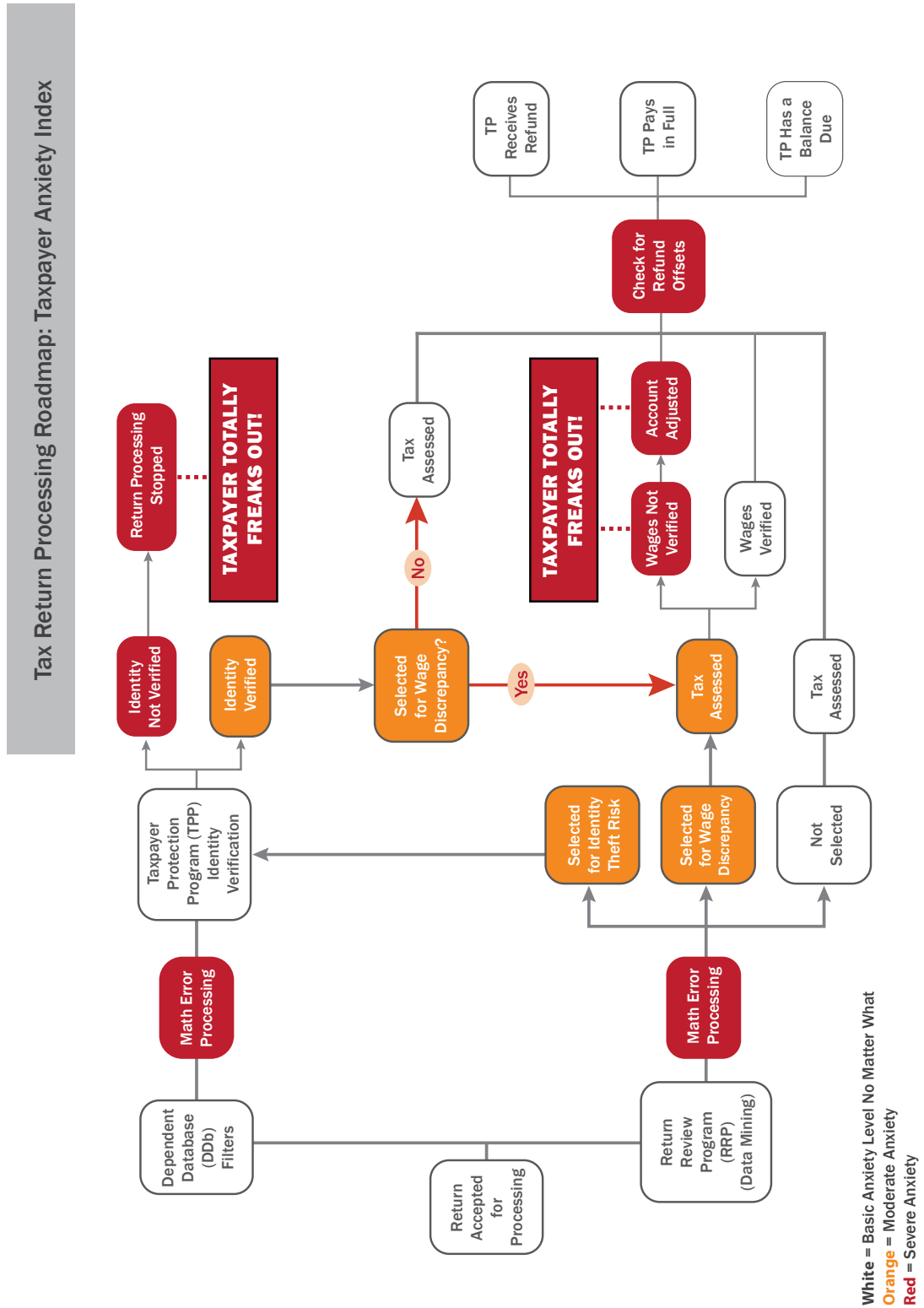
21 *Id.* at 3.

22 *Id.* at 4. This finding may explain why, in a recent TAS study of letters sent to EITC claimants who appeared to erroneously claim the EITC in a prior year, TAS saw significant compliance improvement in the next tax year by offering a toll-free Extra Help phone line to 967 taxpayers who appeared not to meet the EITC residency requirement. Although only 35 people called the line, offering the Extra Help Line averted erroneous EITC claims more effectively than not sending a letter, sending a letter without the additional phone number, or auditing the taxpayer. National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 24-25.

23 National Taxpayer Advocate 2018 Annual Report to Congress 10-16 (The Taxpayers Journey: *Roadmaps of the Taxpayers Path Through the Tax System*), <https://taxpayeradvocate.irs.gov/reports/2018-annual-report-to-congress/report-graphics>.

24 Notably, the 2018 Forrester Federal Customer Service Experience Index found that IRS ranked dead last among federal agencies in trust, with just 20 percent of customers saying they trust the IRS. Rick Parrish and Margaret Rodriguez, Forrester, *The US Federal Customer Experience Index, 2018: How US Federal Government Agencies Drive Mission Performance with the Quality of Their Experience* 11 (May 31, 2018).

FIGURE 1.1



In the tax system, unlike the financial services sector, the taxpayer doesn't have the option to express his dissatisfaction by taking his business elsewhere. There is no other federal tax agency. But the taxpayer does have the option to become noncompliant—*i.e.*, to cheat on his taxes in ways the IRS is unlikely to discover. Thus, listening to our taxpayers and meeting their service preferences is good tax administration and good for long-term tax compliance. Without it, you increase distrust, increase noncompliance, and ultimately increase tax administration costs for the agency.

### **“If You Don't Have Trust, You Have to Control.”<sup>25</sup>**

If trust by your taxpayer base is undermined, the tax agency will have to turn to more coercive measures to achieve taxpayer compliance. Now, taxpayer trust is a two-sided thing. On the one hand, taxpayers certainly want to know that other taxpayers are paying their taxes, too. On the other hand, taxpayers want to know that if they, or other taxpayers, commit a foot-fault, or experience a dire financial downturn, or take a long time recovering from a medical problem or natural disaster, or simply make a mistake because the tax laws are so confusing, the agency will not come down on them like a sledgehammer.

The twin goals of enforcing the tax laws evenhandedly and enforcing them with due regard for exigent circumstances are central to building and maintaining taxpayer trust. Yes, taxpayers want to know the IRS is going after people who are parking income and assets offshore and evading tax. That instills trust because taxpayers who *are* paying their taxes won't feel like chumps for complying with the law. But if the offshore initiative is designed so *all* international taxpayers are treated like tax evaders—as was the case in 2009 through, oh, pretty much today—well, that shows the agency as a coercive bully that does not distinguish between the *specific facts and circumstances* of taxpayers (which, in turn, violates the taxpayer's *right to a fair and just tax system*).<sup>26</sup> This, in turn, erodes trust as even domestic taxpayers will think, “Gee, if the agency treats those taxpayers that way, how will it treat me if I make a mistake?”

### **A Trust-Based, Taxpayer-Focused Tax System Is the Most Effective and Cost-Efficient Approach to Tax Administration**

The IRS, which is admittedly resource-challenged, certainly needs more field audit and collection employees. But it also needs more field outreach and education and taxpayer service employees in the community, learning about the challenges taxpayers face and integrating that learning into whatever compliance initiatives the IRS undertakes. These are the specific resources that generate trust and understanding—a human presence—which in turn fosters respect for the system and engenders voluntary compliance.

This is where my impatience with the constant IRS refrain that “we can't do that because we don't have enough resources” kicks in. It is true that there is *no* solution to the abysmal telephone assistance levels except more human beings. But it is equally true that there are many instances where the IRS's 1950s-era approaches and processes create rework for itself and significant taxpayer burden (which erodes trust). In short, the IRS needs to be much more curious about human behavior and much more creative in the ways it encourages voluntary compliance and addresses noncompliance.

25 Professor Erich Kirchler, conversation with the National Taxpayer Advocate (May 28, 2019).

26 IRC § 7803(a)(3). IRS, Publication 1, *Taxpayer Bill of Rights* (Sept. 2017), states that the *right to a fair and just tax system* means, in part, “[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.

### The Economic Hardship Indicator: An Opportunity to Reduce Anxiety, Minimize Taxpayer Harm, Reduce Rework, and Get to the Right Answer

One excellent example of a way to reduce taxpayer burden and minimize IRS wasted resources downstream is my proposal for the creation and use of an Economic Hardship indicator.<sup>27</sup> In various research studies over the years, TAS has empirically demonstrated that the IRS routinely places taxpayers into installment agreements (IAs) when an analysis of their financial situation shows that by paying the IRS they cannot pay their basic living expenses.<sup>28</sup> An inability to pay for one's basic living expenses is defined in Treasury regulations as "economic hardship." The Internal Revenue Code requires the IRS (1) to release any levy where a taxpayer is experiencing economic hardship<sup>29</sup> and (2) to develop "allowable living expenses" (ALEs) to ensure the agency is collecting from taxpayers who have the ability to pay.<sup>30</sup> These provisions are clear indications that Congress understood that taxpayers' fortunes fluctuate, and forcing taxpayers to forego food and shelter is not a recipe for fostering trust and compliance—nor is it the right thing for the government to do to its citizens.

The IRS has a ton of data about taxpayers' financial situation. It uses that data to select returns for audit and for collection. And yet the IRS refuses to use that data to proactively screen for economic hardship. As a result, in fiscal year (FY) 2018:

- The IRS agreed to nearly 2.9 million IAs. Over 72 percent (2,079,743) of these agreements were streamlined IAs, not requiring financial analysis or the use of ALE standards.<sup>31</sup> About 40 percent of taxpayers who entered into streamlined IAs with the IRS's Automated Collection System (ACS) in FY 2018 had incomes at or below their ALEs.<sup>32</sup>
- The overall default rate for streamlined IAs in FY 2018 was 19 percent,<sup>33</sup> which breaks down to a default rate of 39 percent for taxpayers whose incomes did not exceed their ALEs, versus six percent for taxpayers with higher incomes.<sup>34</sup> In other words, taxpayers with incomes below their ALEs were nearly seven times as likely to default.

27 See also Area of Focus: TAS Will Continue to Advocate for the IRS to Proactively Identify, Educate, and Assist Taxpayers at Risk of Economic Hardship Throughout the Collection Process, *infra*.

28 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 286 (Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*); National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 1 (Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*); and National Taxpayer Advocate 2008 Annual Report to Congress vol. 2 48 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients From the Federal Payment Levy Program*).

29 IRC § 6343(a)(1)(D).

30 IRC § 7122(d). If the allowable living expense (ALE) standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Jun. 18, 2019). See also IRS, *Collection Activity Report (CAR), IA [Installment Agreement] Default Report, FY 2018*.

31 IRM 5.14.5.1, *Overview* (May 23, 2014). Streamlined Criteria have two tiers, up to \$25,000, and \$25,001–\$50,000. In-Business Trust Fund Express installment agreements (IAs) can be secured without securing financial information on business accounts up to \$25,000. For more information on streamlined IAs in particular, see IRM 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015). The number of streamlined IAs reported above includes guaranteed IAs available to taxpayers under IRC § 6159(c), which also do not require financial analysis. IRS, CAR 5000-6 (Oct. 1, 2018); only IMF IAs.

32 IRC § 7122(d). If the ALE standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Jun. 18, 2019). See also IRS, *CAR, IA Default Report, FY 2018*.

33 IRS, *CAR, IA Default Report, FY 2018*.

34 *Id.* for the default rate information for streamlined IAs, and TAS Research analysis of the Automated Collection System and IA accounts, FY 2018, for the breakout in default rates between taxpayers whose incomes exceeded their ALEs and taxpayers whose incomes did not.

- 40 percent of taxpayers who entered into IAs while their debts were assigned to private collection agencies (PCAs) had incomes at or below their ALEs.<sup>35</sup>
- 37 percent of taxpayers who entered into IAs while their debts were assigned to PCAs defaulted, a frequency that rises to 44 percent when defaulted IAs that PCAs do not report to the IRS as required are taken into account.

Now, TAS has developed an algorithm that could be applied to taxpayers with outstanding tax liabilities to identify those *at risk of economic hardship*. While not determinative, the IRS could use it as a factor in prioritizing and categorizing collection cases. The indicator could also be used to trigger a “pop up” screen when a taxpayer with the indicator on his or her account calls the IRS—whether the 1040 line, the “balance due” line, the ACS line, or even field collection employees. The pop-up screen would provide the most recent data we have on the taxpayer that was used in the economic hardship algorithm and would include the questions that employees should ask to determine whether there is a real economic hardship present. The pop-up screen would be a tool to assist in determining the next step: Is the taxpayer *really* at risk of economic hardship? If not, the employee would remove the indicator and address the normal collection alternatives. But if the answer is yes, the IRS should not be pushing the taxpayer into a streamlined IA, as doing so would likely create or exacerbate an economic hardship and increase the likelihood the taxpayer will later default. Instead, we should place the taxpayer into currently not collectible status or encourage him to file an offer in compromise to resolve the debt once and for all.

TAS is also proposing that before the IRS levies against a taxpayer whom the IRS’s screen indicates may be at risk of economic hardship, the IRS should send the taxpayer a letter explaining that collection alternatives are available for taxpayers who cannot pay their liabilities and describing the steps a taxpayer must take to qualify for a collection alternative. At present, the IRS collection system favors knowledgeable taxpayers who understand how to request collection alternatives and, at least in relative terms, discriminates against taxpayers who don’t have that knowledge. That is not the way a fair tax system should work, and it needs to change. A clear letter would go a long way toward leveling the playing field by providing the same information to all affected taxpayers.

The IRS has expressed concern that such a letter might substantially increase the number of telephone calls it receives, generating a workload it can’t handle. I find this argument unpersuasive for two reasons. First, my proposal is to send letters *only* to taxpayers whom the IRS’s screen shows may be at economic risk and *only* before the IRS issues a levy. As it is, a high percentage of taxpayers against whom the IRS levies call the IRS to try to resolve their debts, so it’s not clear sending pre-levy letters to this sub-population would increase taxpayer calls substantially, if at all. Mostly, it would just shift the timing of calls from the post-levy stage to a pre-levy stage.

Second, if the IRS serves a levy and the taxpayer demonstrates economic hardship, the IRS is required by law to release the levy and doing so consumes resources. If the taxpayer works with the IRS at a pre-levy stage, the IRS would not have to devote resources to levy releases. Thus, pre-levy letters describing collection alternatives would place taxpayers without knowledge of collection alternatives in the same position as knowledgeable taxpayers—which is reason enough to send the letters—and they may

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35 This figure reflects allowance of vehicle ownership and operating expenses in calculating ALEs. If vehicle ownership expenses are not allowed, 33 percent of taxpayers who entered into IAs while their debts were assigned to Private Collection Agencies (PCAs) had incomes at or below their ALEs. For a further discussion of ALEs, see 2018 National Taxpayer Advocate Annual Report to Congress vol. 2 39-52, (Research Study: *A Study of the IRS’s Use of the Allowable Living Expense Standards*).

ultimately save the IRS resources as well. Any other approach, frankly, results in the IRS collecting from people it should not be collecting from, under the law or under its own rules and procedures.<sup>36</sup>

### There Is No More Important Entity for Achieving Trust in the Tax System Than the Taxpayer Advocate Service

In any complex system, mistakes inevitably are made, and there needs to be a problem resolution function that can correct the mistakes before harm occurs. Within the U.S. tax system, this is the role of the Taxpayer Advocate Service—a function created by Congress as a safety net for taxpayers. Being an advocate for taxpayers within the IRS is not an easy job, but it is vital for instilling and retaining trust in the system. Indeed, TAS is central to the *right to a fair and just tax system*, which includes taxpayers’ “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.”<sup>37</sup>

I cannot speak highly enough of TAS employees. Every single day and every single hour of their working lives, they are working with taxpayers or representatives who have high levels of anxiety. Just look at the statutory definition of “significant hardship,” the criterion for eligibility for TAS assistance, which includes:

- An *immediate threat of adverse action*;
- A *delay of more than 30 days* in resolving taxpayer account problems;
- The incurring by the taxpayer of *significant costs* (including fees for professional representation) if relief is not granted; or
- *Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.*<sup>38</sup> [Emphasis added.]

People come to TAS because they are in financial distress, because the system has failed them, or because their rights have been violated in some way. The anxiety that these taxpayers or representatives feel is often downloaded onto TAS employees. And then, to resolve the taxpayer’s problem, TAS employees must turn to IRS employees for assistance and attempt to persuade them as to the right result for the taxpayer. Here, TAS employees often face IRS employees who view them suspiciously, or who just want to push the issue under the rug, or most often, are themselves just too overwhelmed with work. That TAS employees handle these situations day in and day out with grace, dignity, and patience is a daily miracle.

When I first entered the IRS as National Taxpayer Advocate, TAS had about 2,100 employees. Even as recently as FY 2010, TAS had about the same number of employees, of which 1,310 were case advocate employees involved in working 298,933 case receipts.<sup>39</sup> By FY 2018, TAS had only 1,611 employees, of which 908 employees were on rolls working 249,313 case receipts and intakes. Thus, between FY

36 I note that Congress has adopted my recommendation of an Economic Hardship filter with respect to taxpayers eligible to be sent to Private Debt Collectors under IRC § 6306. The Taxpayer First Act provides that the IRS shall exclude from Private Debt Collection taxpayers whose Adjusted Gross Income is below 200 percent of the Federal Poverty Guidelines. See Taxpayer First Act of 2019, H.R. 1957, 115th Cong. (2019). See also Area of Focus: *TAS Will Continue to Advocate for Vulnerable Taxpayers Whose Cases Are Assigned to Private Debt Collection Agencies (PCAs) and for a Reduction of Inactive PCA Inventory*, *infra*, and 2018 National Taxpayer Advocate Annual Report to Congress 277-294.

37 IRS, Publication 1, *Your Rights as a Taxpayer* (Sept. 2017).

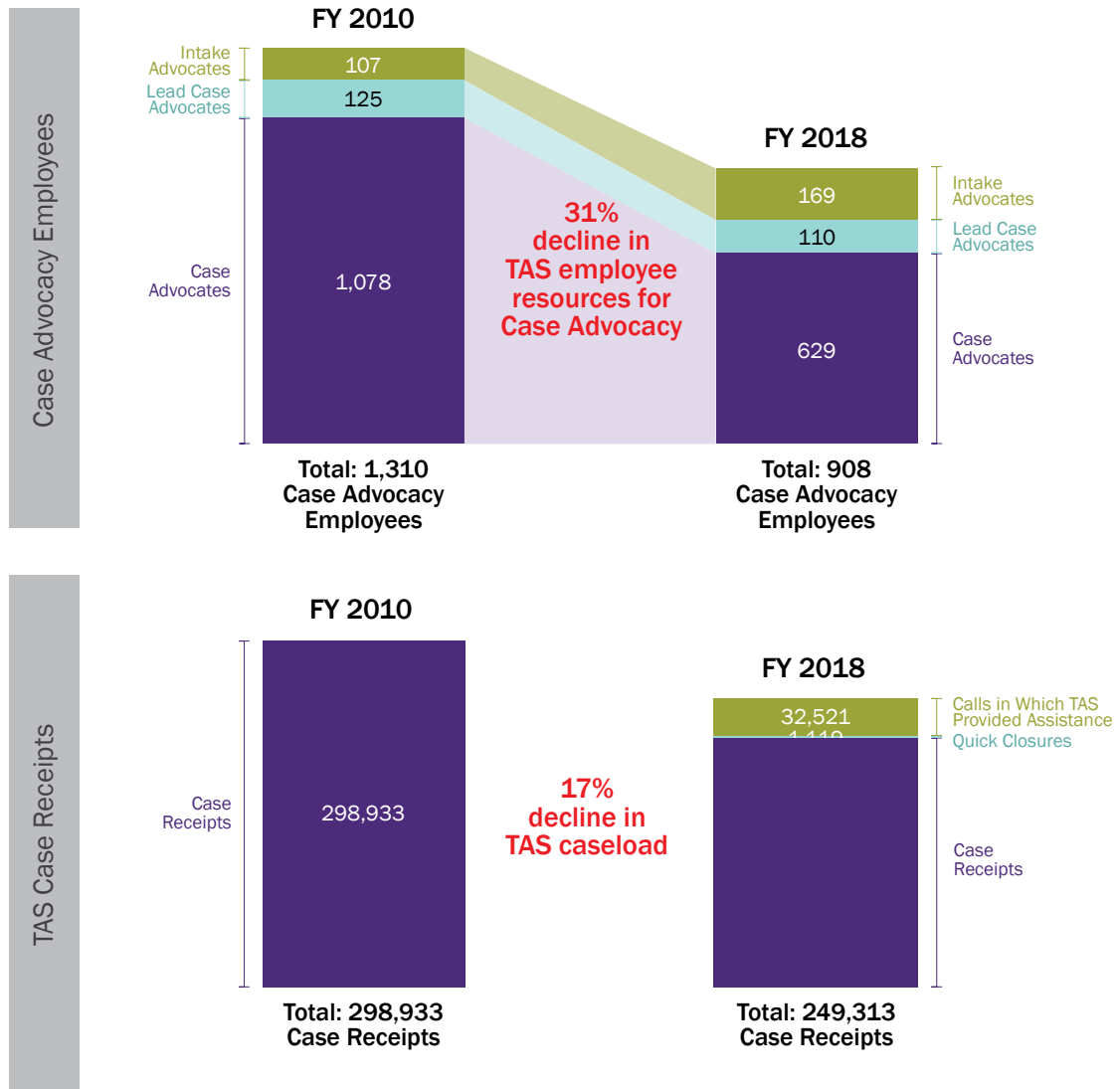
38 IRC § 7811(a)(2)(A)-(D).

39 As of September 30, 2010, there were 1,078 case advocates, 125 lead case advocates, and 107 intake advocates.

2010 and FY 2018, TAS employee resources for case advocacy decreased by 31 percent, while our caseload only decreased by 17 percent. Meanwhile our enacted appropriation remained constant, at \$205,954,000 in FY 2010 and \$206,000,000 in FY 2018.

**FIGURE 1.2**

**TAS Case Advocacy, FY 2010 vs. FY 2018**



For a while, our case receipts decreased as the IRS adopted some of our recommendations for improving its processing of identity theft cases. But for the last two years, as we discuss in the Area of Focus: *Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service* and the section on Efforts to Improve Taxpayer Advocacy, we are struggling with an onslaught of cases dealing with refund freezes. Although these cases are not particularly complex, they are high-anxiety for the taxpayer. Moreover, the volume is overwhelming TAS and preventing us from addressing other cases that are desperately needing our attention for resolution.

While we are working with the IRS functions to get to the root cause of what is driving these cases to us, going forward, whether it is another surge of identity theft, or continuing refund freezes, or problems associated with implementing a new provision of law or a new system, we have to assume that the new “normal” is a glut of cases coming into TAS during the filing season and the early summer. Thus, for the first time in TAS’s history, we are considering hiring seasonal workers to help us with this casework, so our permanent case advocates can address the urgent cases that generally make up our workload.

But one thing is certain: Between the IRS’s increased focus on audit and collection—our traditional sources of significant hardship cases—and the growth of filing season cases, TAS will need small but steady increases in funding to address our workload. While we are profoundly grateful for Congress’s support of our appropriations over the years, it would be nice to see the IRS and the Administration recognize the importance of TAS as a safety net and propose funding increases for TAS, even as it seeks additional funding for audit and collection initiatives. Because, again, TAS is the most significant component for building trust in the IRS. We are worth the investment.

### My Short List: What Is Left Undone

On March 1, 2019, when I announced my upcoming retirement, I identified a “short list” of items I wanted to accomplish before I left, so the next National Taxpayer Advocate would not have to worry about them. I wrote as follows:

I have a very short list of critical items I need to accomplish with respect to TAS before I retire—including publishing new IRM chapters on Taxpayer Assistance Orders and Taxpayer Advocate Directives, finalizing the regulation governing the operations of Low Income Taxpayer Clinics, and obtaining the authority to hire attorney advisors. I have a slightly longer list of “must do” items for the IRS that Commissioner Rettig asked me to create—including automation of an economic hardship risk indicator, developing mandatory employee training on the Taxpayer Bill of Rights, developing guidance and training on identification and issuance of Program Manager Technical Advice (PMTA) memoranda, and designing rights-based Notices of Deficiency, Collection Due Process Hearing notices, and Math Error notices.<sup>40</sup>

These items have been extensively covered in my past Annual Reports to Congress and were often the subject of Taxpayer Assistance Orders or Taxpayer Advocate Directives. Regrettably, as of the date of this writing, I have no firm commitment from the IRS or Treasury on *any* of these items. While negotiations are ongoing on these items, I cannot report today that I have achieved my goal. However, hope springs eternal, and there is still more than a month left until my retirement. I intend to work

<sup>40</sup> See Nina E. Olson, *A Personal Message from the National Taxpayer Advocate*, NTA Blog, (Mar. 1, 2019), <https://taxpayeradvocate.irs.gov/news/nta-personal-message>.



full-tilt to reach agreement with the IRS and Treasury on the items on my short list. I will report on the status of the short list items immediately before my retirement.

### Conclusion

Over the last 18 years as National Taxpayer Advocate, I have witnessed amazing events that will take me years to reflect on and sort out. I've been appointed by or served under four Presidents, seven Treasury Secretaries, and five Commissioners of both parties. Through all this time, I have tried to adhere to two goals: (i) to hold the IRS accountable to the United States' taxpayers by being their voice inside the IRS and (ii) to ensure that taxpayer rights are protected—individually and systemically. This is not an easy job. There were many days when I did not want to speak up—when it would have been so easy to just let something slide by. But that is not the job Congress designed, and to let things slide, to me, would violate the profound responsibility that has been entrusted to me as the National Taxpayer Advocate.

I leave knowing that despite its challenges, the Taxpayer Advocate Service is a strong and thriving organization full of passionate, creative, and dedicated people. I leave the next National Taxpayer Advocate the greatest gift I can—the employees of TAS. It is to them that I, and everyone else, owe our most profound gratitude.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
20 June 2019

## Review of the 2019 Filing Season

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### INTRODUCTION

Despite a 35-day partial government shutdown that ended on January 25, 2019, the IRS began to process tax returns just three days after the government reopened. On that first day, the IRS processed more than 1.9 million e-filed returns during its peak hour—setting a new record with a rate of 536 submissions per second.<sup>1</sup>

During Filing Season (FS) 2019, the IRS successfully processed most returns, with most taxpayers receiving a timely refund. For many taxpayers who needed help from the IRS, however, the experience was challenging. The IRS benchmark telephone measure shows the agency answered 67 percent of calls to its Account Management lines, down from 80 percent in FS 2018.<sup>2</sup> Some compliance-related phone lines experienced much lower levels of service (LOS).

The IRS served fewer taxpayers who sought help at Taxpayer Assistance Centers (TACs) and continued its policy of answering only a limited scope of tax law questions on its toll-free telephone lines and in TACs.<sup>3</sup>

### Filing Season Performance

The 2019 filing season began on January 28. The filing deadline to submit 2018 tax returns was Monday, April 15, 2019, for most taxpayers.<sup>4</sup>

For the majority of taxpayers, the IRS consistently does an excellent job of processing their returns. The IRS's FS 2019 statistics indicate that 126.3 million individual returns were filed electronically, out of 137.2 million (92 percent).<sup>5</sup> Figure 2.1 presents an overview of returns processing and refunds during FS 2017, FS 2018, and FS 2019.

1 *Review of the FY2020 Budget Request for the U.S. Department of Treasury: Hearing Before the S. Subcomm. on Financial Services and General Government of the S. Comm. on Appropriations, 116th Cong. (2019)*, (written testimony of Charles P. Rettig, Commissioner of Internal Revenue).

2 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending Apr. 20, 2019).

3 Due to the appropriations lapse, Taxpayer Assistance Centers (TACs) began accepting appointments on Wednesday, January 30, 2019. As of the report dated April 19, 2019, the TACs had 799,000 face-to-face contacts for 2019 (down 23.8 percent from the prior year). There were 87,000 walk-ins (no scheduled appointment), up 44.9 percent from the 2018 filing season, when there were 60,000 walk-ins. IRS, *2019 Weekly Individual Filing Season Report Cumulative Statistics* (Apr. 20, 2018; Apr. 19, 2019).

4 However, because of the Patriots' Day holiday on April 15, 2019, in Maine and Massachusetts and the Emancipation Day holiday on April 16, 2019, in the District of Columbia, taxpayers who lived in Maine or Massachusetts had until April 17, 2019, to file their tax returns.

5 IRS, *Filing Season Statistics for Week Ending April 19, 2019*, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019> (last visited June 7, 2019).

**FIGURE 2.1, Filing Season Statistics Comparing Weeks Ending April 21, 2017; April 20, 2018; and April 19, 2019<sup>6</sup>**

		2017	2018	2019	% Change 2018–2019
Individual Income Tax Returns	Total Receipts	135,638,000	136,919,000	137,233,000	0.2%
	Total Processed	128,847,000	130,477,000	130,775,000	0.2%
e-Filing Receipts	Total e-Filing	122,164,000	124,515,000	126,264,000	1.4%
	Tax Professionals	70,401,000	70,983,000	70,476,000	-0.7%
	Self-Prepared	51,763,000	53,532,000	55,788,000	4.2%
Total Refunds	Number	97,104,000	95,434,000	95,737,000	0.3%
	Amount	\$268.3 bil	\$265.3 bil	\$260.9 bil	-1.7%
	Average Refund	\$2,763	\$2,780	\$2,725	-2.0%
Direct Deposit Refunds	Number	81,646,000	80,491,000	83,249,900	3.4%
	Amount	\$239.4 bil	\$236.9 bil	\$238.4 bil	0.6%
	Average Refund	\$2,932	\$2,943	\$2,863	-2.7%

From January 1 through April 20, 2019, the IRS received 40.8 million telephone calls overall,<sup>7</sup> of which 34.4 million were directed to its Accounts Management telephone lines.<sup>8</sup> The IRS achieved a 67 percent LOS in FS 2019,<sup>9</sup> down from the 80 percent level in FS 2018.<sup>10</sup> As discussed in more detail below, the way the IRS calculates this performance measure can be misleading. Only 23 percent (approximately eight million of the 34.4 million callers) of callers actually got through to an Accounts Management assistor. Among taxpayers who got through to Accounts Management telephone assistors, hold times increased from 5.1 minutes in FS 2018 to 9.0 minutes in FS 2019.<sup>11</sup>

Telephone service was considerably worse on IRS telephone lines outside the Accounts Management category, particularly on the compliance lines. Taxpayers calling the IRS's consolidated Automated Collection System telephone lines had a much lower LOS (33 percent), and callers who managed to get through on those lines waited on hold for an average of 41 minutes.

The IRS provides face-to-face assistance to taxpayers in the 50 states, the District of Columbia, and Puerto Rico at 358 TACs.<sup>12</sup> This filing season, post-shutdown through March 31, Field Assistance provided face-to-face assistance to nearly 600,000 taxpayers, a decrease of 7.1 percent compared to the

6 IRS, *Filing Season Statistics for Week Ending April 19, 2019*, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019> (last visited June 7, 2019); *Filing Season Statistics for Week Ending April 20, 2018*, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018> (last visited June 7, 2019); *Filing Season Statistics for Week Ending April 21, 2017*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017> (last visited June 7, 2019).

7 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending Apr. 20, 2019).

8 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Accounts Management (AM)* (week ending Apr. 20, 2019).

9 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 20, 2019).

10 *Id.*

11 *Id.*

12 The number of TACs was noted in the Commissioner's written testimony. See *The 2019 Tax Filing Season and the 21st Century IRS: Hearing Before the S. Comm. on Finance*, 116th Cong. (2019) (written statement of Charles P. Rettig, Commissioner, Internal Revenue).

same time last year.<sup>13</sup> Nearly 63,000 taxpayers were assisted at TACs without an appointment because of openings in the day's calendar or as staffing permitted.<sup>14</sup> While the IRS has given TAC managers the discretion to make exceptions to the advance scheduling requirement in response to complaints from TAS and others, the general rule requiring advance appointments remains. We continue to hear from practitioners that walk-in taxpayers (and even practitioners trying to make payments on behalf of their clients) are often turned away.

Both on the phones and in the TACs, the IRS has continued a policy adopted in 2014 that sharply limits the authority of IRS employees to answer tax law questions. During filing season, telephone assistants answer only "basic" questions and are generally prohibited from answering any tax law questions outside the filing season, other than those related to the recently enacted tax reform law for the remainder of 2019 or specifically related to an account issue about which the taxpayer is calling.<sup>15</sup> In the National Taxpayer Advocate's 2018 Annual Report to Congress, we discussed the inadequacy of the responses to tax law questions (which had been deemed to be in-scope and were supposed to be answered year-round).<sup>16</sup>

Also, during FS 2019, the IRS delayed issuing hundreds of thousands of refunds associated with legitimate tax returns because the returns were flagged as potentially fraudulent. As discussed below and later in this report, the IRS uses 193 "filters"<sup>17</sup> to identify potentially fraudulent returns, and these filters produced false detection rates of about 82 percent for non-identity theft (IDT) refund fraud for calendar year (CY) 2018,<sup>18</sup> and about 63 percent for IDT refund fraud for January 31, 2019 through May 15, 2019.<sup>19</sup>

In the narrative that follows, we will address the taxpayer experience during FS 2019 under the following major themes:

- The challenge of processing tax returns and delivering refunds shortly after the longest government shutdown in history;
- The impact of implementing the provisions of the Tax Cuts and Jobs Act of 2017<sup>20</sup> as directed by Congress;
- The transition to a new Form 1040;
- The impact of implementing provisions of the Protecting Americans From Tax Hikes Act of 2015 (PATH Act);

13 IRS Wage and Investment (W&I) Division, *Business Performance Review* 15 (Apr. 30, 2019).

14 *Id.*

15 For a more detailed discussion on telephone and TAC service, see National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*), and 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

16 See National Taxpayer Advocate 2018 Annual Report to Congress 19 (Most Serious Problem: *Tax Law Questions: The IRS's Failure to Answer the Right Tax Law Questions at the Right Time Harms Taxpayers, Erodes Taxpayer Rights, and Undermines Confidence in the IRS*).

17 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2019-44-030, *Interim Results of the 2019 Filing Season* 13 (Apr. 2, 2019).

18 IRS, *Identity Theft (IDT) & Integrity and Verification Operations (IVO) Selections FS18 End of Year Summary* (Jan. 31, 2019). Note that Fraud Detection Rates (FDRs) for filing season (FS) 2019 are not yet available for non-IDT refund fraud, as third party documentation is still coming into the IRS. Usually early FDRs are not available until sometime in July at the earliest.

19 IRS, *IDT and IVO Modeling Analysis Performance Report* (May 22, 2019).

20 Pub. L. No. 115-97, 131 Stat. 2054.

- Interactions with the IRS through phones, correspondence, face-to-face meetings, and online access; and
- Special topics, including refund fraud, the Affordable Care Act (ACA), and services for U.S. taxpayers living abroad.

### Impact of the 35-Day Government Shutdown

Taxpayers were adversely affected during the 35-day partial government shutdown that began on December 22, 2018—the longest government shutdown in U.S. history. During this shutdown, taxpayers had limited means to obtain customer service assistance from the IRS via phone, in person, or by mail:

- The IRS was unable to staff its phone lines to assist callers from December 22, 2018, until January 21, 2019—just four days before the shutdown ended. During this time, it is estimated that there were 3.8 million attempts to call the IRS.<sup>21</sup>
- The IRS canceled 16,530 scheduled appointments at TACs.<sup>22</sup>
- The IRS estimates that it received more than five million pieces of taxpayer correspondence during the shutdown.<sup>23</sup>

A backlog of paper tax returns and taxpayer correspondence developed as the IRS had to furlough much of its customer service staff. Each year, the IRS usually uses part of December and January to shift customer service representatives (CSRs) from answering telephones to working correspondence. This shift is designed to reduce correspondence inventory prior to the CSRs having to focus primarily on answering calls during the filing season. This shift did not occur in December 2018 and January 2019 because the shutdown covered this timeframe, which compounded the correspondence backlog.

Due to the extended government shutdown, delays occurred in the hiring and training of customer service personnel. The shutdown resulted in a five-week delay in training for 2,502 of the 2,903 new CSRs hired to answer tax account calls and resolve tax account issues.<sup>24</sup> The IRS was able to complete training for only 436 of the new hires prior to the President's Day peak period,<sup>25</sup> leaving 2,066 new CSRs who were unable to answer taxpayer calls. This contributed to a 57 percent LOS as of February 22, 2019, compared to a 78 percent LOS reported at the same period in the prior year.<sup>26</sup>

### Impact of the Tax Cuts and Jobs Act

In December 2017, Congress passed the Tax Cuts and Jobs Act of 2017, the largest overhaul of the Internal Revenue Code since 1986. Some of the more notable changes affecting individual taxpayers in the 2019 filing season are provisions that eliminated the personal exemption, increased the Child Tax Credit, increased the standard deductions, and introduced a Qualified Business Income deduction.

21 TIGTA, Ref. No. 2019-44-030, *Interim Results of the 2019 Filing Season 4* (Apr. 2, 2019).

22 *Id.*

23 *Id.*

24 *Id.*

25 The IRS refers to the week of President's Day as a peak period for taxpayer contact with the IRS. For calendar year 2019, the period covers February 18 to February 22.

26 TIGTA, Ref. No. 2019-44-030, *Interim Results of the 2019 Filing Season 4* (Apr. 2, 2019).

Because most provisions of the law did not take effect until January 1, 2018, the 2019 filing season was the first time most taxpayers felt the law's main impact. Implementation of the Tax Cuts and Jobs Act's provisions required the IRS to:<sup>27</sup>

- Create 48 new tax products and revise 494 existing tax products;
- Perform computer programming changes and updates that impacted 128 information technology systems; and
- Develop and issue guidance documents, including regulations, revenue rulings, revenue procedures, and notices.<sup>28</sup>

The Tax Cuts and Jobs Act included provisions that made significant changes to income tax rates, income tax deductions and credits, and income tax withholding. In order to minimize potential burden on employees and employers, the IRS updated its online withholding calculator to work with the revised tax tables.<sup>29</sup> This online tool is intended to provide taxpayers with the ability to estimate their tax liability and withholding under the Tax Cuts and Jobs Act. The calculator also provides taxpayers with a suggestion to the number of withholding allowances they should claim for the remainder of the tax year. However, there has been some criticism of the withholding calculator, including assertions that the online calculator required too much information to be input by taxpayers.<sup>30</sup>

As a result of the changes to the tax withholding tables, the IRS recognized that some taxpayers may not have checked their withholding and may unexpectedly owe more tax than anticipated when they file their 2018 tax returns, despite the availability of an online withholding calculator. Many, including the Government Accountability Office (GAO), predicted that a significant portion of the population would underwithhold taxes for tax year (TY) 2018. In July 2018, the GAO published a report estimating that 21 percent of wage-earning taxpayers would be under-withheld.<sup>31</sup>

In response to these concerns, the IRS announced on January 16, 2019, that “for any taxpayer who paid at least 85 percent of their total tax liability during the year through federal income tax withholding, quarterly estimated tax payments or a combination of the two,” it would waive the estimated tax penalty for many taxpayers whose 2018 federal income tax withholding and estimated tax payments fell short of their total tax liability for the year.<sup>32</sup>

As Congress and others continued to express concerns,<sup>33</sup> on March 22, 2019, IRS announced it would further expand the estimated tax penalty waiver by lowering the paid-in threshold further, from 85

27 TIGTA, Ref. No. 2019-44-030, *Interim Results of the 2019 Filing Season 3* (Apr. 2, 2019).

28 The IRS has posted 25 Treasury Regulations, five Treasury Decisions, 25 Revenue Procedures, five Revenue Rulings, and 51 Notices on its Tax Reform Guidance page. See <https://www.irs.gov/newsroom/tax-reform-guidance> (last visited June 6, 2019).

29 See [www.irs.gov/payments/tax-withholding](http://www.irs.gov/payments/tax-withholding) (last visited May 10, 2019).

30 See Nina E. Olson, NTA Blog, *As the IRS Redesigns Form W-4, Employee's Withholding Allowance Certificate, Stakeholders Raise Important Questions* (Nov. 29, 2018).

31 Government Accountability Office (GAO), GAO-18-548, *Federal Tax Withholding: Treasury and IRS Should Document the Roles and Responsibilities for Updating Annual Withholding Tables 13* (July 31, 2018).

32 IRS, IR-2019-03, *IRS Waives Penalty for Many Whose Tax Withholding and Estimated Tax Payments Fell Short in 2018* (Jan. 16, 2019).

33 During the March 7, 2019, hearing before the House Committee on Ways and Means Subcommittee on Oversight, several members of Congress expressed concern that the IRS would impose a penalty on taxpayers who unwittingly underpay their taxes the first year the new tax law takes effect. In contrast, Congress waived the estimated tax penalty the first year after the last major tax reform (in 1986), recognizing the difficulty in accurately projecting one's tax liability under the new tax law.

percent to 80 percent.<sup>34</sup> While this lower threshold is appreciated, it treats similarly-situated taxpayers differently, which violates taxpayers' *right to a fair and just tax system*.<sup>35</sup> Compare two taxpayers who both paid 80 percent of their 2018 tax liability when they filed their return. Taxpayer A files on February 1 and would need to calculate and pay the estimated tax penalty. In contrast, Taxpayer B files on April 1 and applies for the waiver of the estimated tax penalty. Taxpayers who had already paid the estimated tax penalty based on higher minimum payment percentage (85 percent or 90 percent) are instructed to file Form 843, *Claim for Refund and Request for Abatement*, to recover the overpaid funds.<sup>36</sup> This places additional burden on those taxpayers who filed before March 22, 2019—especially since Form 843 cannot be filed electronically.

In practice, only a small percentage of eligible taxpayers actually requested the waiver of the estimated tax penalty. According to an April 2019 report published by the Treasury Inspector General for Tax Administration (TIGTA), only six percent of taxpayers eligible for this relief actually received a waiver of the estimated tax penalty, implying that the procedures were too burdensome or not communicated effectively (or both).<sup>37</sup>

While the IRS should be applauded for providing penalty relief to under-withheld taxpayers by lowering the payment threshold, the additional burden the IRS has placed on these taxpayers by requiring them to apply for this relief is unnecessary. TAS recommended that the IRS systemically waive the estimated tax penalty for taxpayers who qualify, which would reduce taxpayer burden and be in line with the IRS's stated commitment to customer service. The IRS responded that it would not be able to systemically waive the estimated tax penalty, in part due to the need for extensive programming/testing of its systems.<sup>38</sup> TAS will continue to advocate for the IRS to proactively abate any estimated tax penalty assessed on taxpayers who meet the 80 percent payment threshold, without any action required by the taxpayer.

Another impact, and perhaps an unintended consequence, of the Tax Cuts and Jobs Act is that there were noticeably more tax returns filed by taxpayers who owed tax at the time they filed their 2018 tax return. There were 23.4 million "balance due" returns filed in the 2019 filing season, compared to 22.2 million balance due returns filed the prior year—a nearly six percent increase, compared to a 1.4 percent increase overall in tax returns filed.<sup>39</sup> The "Installment Agreement/Balance Due" toll-free line experienced a 13 percent uptick in call volume.<sup>40</sup>

The IRS did not establish a dedicated toll-free line for tax reform questions. Instead, taxpayers with questions about the Tax Cuts and Jobs Act provisions were directed to the Tax Law phone line. There were 531,000 calls made to this Tax Law line in FS 2019, down 19 percent from the 659,000 calls made

34 IRS, IR-2019-55, *IRS Expands Penalty Waiver for Those Whose Tax Withholding and Estimated Tax Payments Fell Short in 2018; Key Threshold Lowered to 80 Percent* (Mar. 22, 2019).

35 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayerrights](http://www.TaxpayerAdvocate.irs.gov/taxpayerrights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

36 IRS Notice 2019-25, § 3.

37 TIGTA, Ref. No. 2019-44-030, *Interim Results of the 2019 Filing Season 7* (Apr. 2, 2019).

38 See TAS White Paper on Information Gathering Project 40766, *IRS Proactive Abatement of Estimated Tax Penalties for 2018 Tax Year* (May 6, 2019).

39 IRS, *Daily E-File At-a-Glance* (Apr. 23, 2019; Apr. 24, 2019).

40 IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 20, 2019).

in FS 2018. The LOS for this line was 81 percent, and the wait time for those that got through was under five minutes—a vast improvement from the 8.9 minute wait time in FS 2018.<sup>41</sup>

### Overhaul of Form 1040

Along with the numerous challenges to implement provisions of the Tax Cuts and Jobs Act, the IRS was directed to overhaul its Form 1040 series, effective for the 2018 tax year. It conducted a major redesign of the iconic Form 1040, breaking it up into a half-page front and back main form and six separate schedules. The IRS also eliminated Forms 1040A and 1040-EZ for TYs 2018 and beyond.

For taxpayers with simple returns, the shorter form should provide simplification. But for the majority of taxpayers who will have to complete additional schedules, the new form is likely to create more complexity. Some taxpayers who previously completed only the Form 1040 will now have to complete one form and up to six schedules to report the same information.

TAS estimates that approximately 47 million taxpayers (32 percent) will be able to meet their filing requirements by using the main form alone.<sup>42</sup> As shown in Figure 2.2, the remaining 68 percent of taxpayers—nearly 102 million—will have to complete at least one additional schedule, with 38 percent having to complete two or more.<sup>43</sup>

**FIGURE 2.2, Breakdown of Taxpayers Required to File TY 2018 Form 1040 Schedules Based on TY 2017 Filing Data (In Millions)<sup>44</sup>**

Number of Schedules Required to Be Filed	Volume	Percent
Zero	47.3	31.8%
One	46.3	31.1%
Two	30.8	20.7%
Three	17.2	11.6%
Four	5.4	3.6%
Five	1.7	1.1%
Six	-	0.0%
<b>Total</b>	<b>148.7</b>	<b>100.0%</b>

Rather than being forced to use the new Form 1040 and applicable schedules, taxpayers should be given the choice of whether to file the traditional Form 1040 or the simplified version. Particularly since the Form 1040A and the Form 1040-EZ have been eliminated, the IRS can publish both forms to meet taxpayer needs.

41 IRS, JOC, *Snapshot Reports: Product Line Detail* (week ending Apr. 20, 2019). The Installment Agreement/Balance Due line was grouped with Accounts Management until 2017, when it was moved to the Consolidated ACS lines. This move allowed the IRS to show a higher level of service (LOS) on its Accounts Management lines, while the LOS on the Consolidated ACS lines decreased drastically.

42 TAS research estimates that 68 percent of taxpayers will need to file one or more schedules of the 2018 Form 1040 based on tax year (TY) 2017 tax return filing data. IRS Compliance Data Warehouse (CDW), *Individual Returns Transactions File (IRTF), TY 2017* (Feb. 2019). For example, using the new Form 1040, a taxpayer with unemployment compensation, student loan interest deduction, and child and dependent care expenses will now have to file Schedules 1 and 3, whereas with the 2017 1040, they only needed to file the main form, which was two pages.

43 IRS CDW, *IRTF, TY 2017* (Feb. 2019).

44 *Id.*



Perhaps due to a combination of the complexity of the tax reform changes and having to deal with a redesigned Form 1040, many taxpayers sought extensions of time to file their 2018 tax returns. Over 11.5 million taxpayers requested extensions in the 2019 filing season, up eight percent from the prior filing season. Two million taxpayers had a balance due at the time of the extension, up 13 percent from the 2018 filing season.<sup>45</sup>

### Impact of the Protecting Americans From Tax Hikes Act

The PATH Act, enacted by Congress in December 2015, included several provisions that directly impact taxpayers, employers, and IRS processes. These provisions:

- Advanced the due date to January 31 for employers to report wage information on Forms W-2 to the Social Security Administration (SSA) and for payors of non-employee compensation to report that income on Forms 1099-MISC to the IRS;<sup>46</sup> and
- Directed the IRS to hold the refunds of taxpayers claiming either the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC) until February 15.<sup>47</sup>

We will address the continuing impact of each of these provisions below.

#### *Earlier Deadline for Information Reporting Documents*

The PATH Act accelerated the due dates to January 31 for certain information reporting documents, such as Form W-2, *Wage and Tax Statement*, and Form 1099-MISC, *Miscellaneous Income*, reporting non-employee compensation. Prior to 2017, the due date for these information reporting forms was the last day of February (or March, if filed electronically).

Employers file Forms W-2 with the SSA, which sends the W-2 data to the IRS. Prior to the PATH Act, the IRS received W-2 data after the filing season when it had already issued most refunds. Moving up the W-2 filing deadline should provide the IRS more time to verify the legitimacy of tax returns claiming refunds by comparing the return data against the data reported on Forms W-2 filed by employers before paying out refunds.

More Forms W-2 were submitted to the IRS earlier in the filing season this year compared with the 2018 filing season.<sup>48</sup> The IRS received 219 million Forms W-2 as of February 4 this filing season, compared with 101 million for the same period last filing season—an increase of about 117 percent.<sup>49</sup> The early submissions of Forms W-2 allowed the non-IDT refund fraud program to perform pre-work on selected returns, so the IRS could begin issuing certain refunds after February 15.<sup>50</sup>

45 IRS, *Daily E-File At-a-Glance* (Apr. 23, 2019; Apr. 24, 2018).

46 Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113 § 201 (codified at IRC § 6071).

47 PATH Act, § 201(b) (codified at IRC § 6402(m)).

48 Some of this increase in the number of Forms W-2 filed early in the filing season may be attributable to entities having more experience meeting the accelerated deadlines. The IRS now allows just one 30-day extension of time to file Form W-2 with the Social Security Administration, before penalties will accrue (in prior years, multiple extensions were allowed).

49 IRS, *IDT and IVO Modeling Analysis - MAIN Performance Report*, slide 10 (Feb. 6, 2019).

50 See Pub. L. No. 114-113, Division Q, Title IV, § 201, 129 Stat. 2242, 3076 (2015), which prevents the IRS from issuing certain refunds before February 15th each year. The increase in timely received Form W-2 data, in conjunction with two other changes, likely resulted in more returns being released earlier in the process this year compared to last year. One change is the newly adopted systemic release feature which allows returns to be released back into normal processing systemically rather than waiting for an IRS employee to manually release the refund. The other is the availability of third-party documentation daily rather than weekly.

### *Delay in the Release of Refunds on Returns Claiming the Earned Income Tax Credit (EITC) and Additional Child Tax Credit*

The EITC was enacted as a work incentive in the Tax Reduction Act of 1975 and has become one of the government's largest means-tested anti-poverty programs. One concern about the EITC program is that it has a relatively high improper payment rate.<sup>51</sup>

In an effort to reduce the improper payment rate, Congress included a directive in the PATH Act that requires the IRS to delay payment of any refund that includes the EITC or the refundable ACTC until February 15 of each filing year.<sup>52</sup> Combined with the requirement that employers accelerate the issuance of Forms W-2 and that other payors accelerate the issuance of Forms 1099-MISC with non-employee compensation, the refund hold until February 15 is intended to reduce the improper payment rate by permitting time for income data matching before paying out EITC and ACTC claims. Taxpayers claiming these benefits can submit their returns prior to February 15, but the IRS holds the refunds associated with those returns until that date.<sup>53</sup> Figure 2.3 shows the impact of the PATH provisions on taxpayers claiming the EITC.

**FIGURE 2.3, Comparison of Refund Issuance Dates on Returns Receiving EITC, Filing Seasons 2016–2019<sup>54</sup>**

Week Ending (2019)	2016 Cumulative	2017 Cumulative	2018 Cumulative	2019 Cumulative	Percentage Difference 2016–2109
Jan. 24, 2019	855,083				
Jan. 31, 2019	7,424,783				
Feb. 7, 2019	11,104,413				
Feb. 14, 2019	13,627,831	11,260,446	10,645,675		
Feb. 21, 2019	15,533,821	13,367,603	12,727,288	12,061,038	-22.4%
Feb. 28, 2019	16,995,981	15,265,718	14,507,455	13,799,013	-18.8%

continued on next page

- 51 An improper payment is defined as “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” and “any payment to an ineligible recipient.” Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111–204, § 2(e) (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107-300 (2002) by striking § 2(f) and adding (f)(2). The IRS estimates that for FY 2018, 25.06 percent (\$18.4 billion) of the total earned income tax credit (EITC) program payments were improper. Department of Treasury, *Agency Financial Report, Fiscal Year 2018* 42; TIGTA, Ref. No. 2019-40-039, *Some Refundable Credits Are Still Not Classified and Reported Correctly as a High Risk for Improper Payment by the Internal Revenue Service* 4 (May 13, 2019). Note that the IRS updated its calculations and methodology for FY 2018 based on guidance from the Office of Management and Budget (adding back overclaims recovered through post-refund activities to the total amount). For a fuller discussion of the EITC, see National Taxpayer Advocate Fiscal Year 2020 Objectives Report vol. 3, [www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020), available July 2019.
- 52 Unlike traditional anti-poverty and welfare programs, the EITC was designed to have an easy “application” process by allowing an individual to claim the benefit on his or her tax return. This approach virtually eliminates the significant costs associated with up-front eligibility verification in traditional social welfare programs but results in a high improper payment rate.
- 53 For a related discussion on the EITC and efforts to improve compliance, see Area of Focus: *TAS Is Analyzing Its Cases to Identify Ways to Strengthen Earned Income Tax Credit (EITC) Advocacy and to Improve IRS EITC Audits*, *infra*.
- 54 IRS CDW, *IRTF and Individual Master File (IMF)*, TY 2016 returns filed in 2017, TY 2017 returns filed in 2018, and TY 2018 returns filed in 2019 (June 2018 for TY 2016 and TY 2017; June 2019 for TY 2018). For TY 2018, there were 60 tax returns processed prior to Feb. 15, 2019. The reason these refunds were processed earlier than the IRS processing guidelines could not be determined so these counts were included in the Feb. 21, 2019 cumulative total. Because of when Feb. 15, 2019 occurred, refunds were released a week later in 2019.

Week Ending (2019)	2016 Cumulative	2017 Cumulative	2018 Cumulative	2019 Cumulative	Percentage Difference 2016–2109
Mar. 7, 2019	18,166,010	16,691,389	15,948,693	15,204,661	-16.3%
Mar. 14, 2019	19,134,737	17,814,073	17,104,596	16,355,006	-14.5%
Mar. 21, 2019	19,971,655	18,775,735	18,065,972	17,337,208	-13.2%
Mar. 28, 2019	20,713,482	19,635,955	18,906,548	18,173,080	-12.3%
Apr. 4, 2019	21,468,224	20,459,066	19,653,263	18,953,625	-11.7%
Apr. 11, 2019	22,323,775	21,351,318	20,487,404	19,796,811	-11.3%
Apr. 18, 2019	23,494,074	22,534,564	21,568,297	21,138,965	-10.0%

In FS 2019 (through April 24), the IRS selected 1,045,051 non-IDT EITC and ACTC returns because it had been unable to verify third-party information needed for matching.<sup>55</sup> However, it has released 764,680 refunds—through systemic matching or due to a compliance initiative.<sup>56</sup>

## TAXPAYER INTERACTIONS WITH THE IRS

### Telephones

Each year, the IRS reports out on the Accounts Management CSR LOS as its benchmark measure of taxpayer access to telephone assistance. The IRS received 40.8 million telephone calls during the 2019 filing season<sup>57</sup> and reported a LOS of 67 percent on its Accounts Management telephone lines.<sup>58</sup> This level marks a significant decline from the IRS's performance during FS 2018, when the IRS reported an 80 percent LOS.<sup>59</sup>

However, the way the IRS calculates and presents filing season data is complex and confusing and does not necessarily reflect the overall experience of taxpayers seeking telephone assistance. When the IRS reports a benchmark LOS, one might assume it reflects the percentage of its calls that IRS telephone assistants answer. That is not the case. The benchmark measure is a very narrow one and does not reflect the taxpayer experience in two respects. First, the benchmark measure reflects only calls that are directed to the IRS's Accounts Management telephone lines. Of those, 34.4 million of the 40.8 million total calls (84 percent) the IRS received came in on or were routed to the Accounts Management lines.<sup>60</sup> The benchmark measure does not tell us anything about how the remaining 6.4 million calls outside of Accounts Management (such as the compliance phone lines) were handled.<sup>61</sup>

Second, the denominator in the IRS's LOS computation is derived from calls routed to telephone assistants, rather than from *all* calls to that phone line. Callers to the Accounts Management lines are

55 IRS, *IDT & IVO Performance Report 9* (May 1, 2019).

56 *Id.*

57 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 20, 2019).

58 *Id.* The IRS reports the Accounts Management Customer Service Representative LOS as its benchmark measure of telephone performance.

59 *Id.*

60 *Id.*

61 The National Taxpayer Advocate raised these concerns in a March 7, 2019 committee hearing. *The Tax Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 116th Cong. 6-11 (2019) (statement of Nina E. Olson, National Taxpayer Advocate).

greeted by a phone tree, and based on their responses, callers are directed either to an employee for live assistance or to an automated system. Depending on which buttons a caller pushes, the IRS decides whether to direct the caller to its automated offerings. In other words, automation is not a deliberate caller-selected option. Only 40 percent of the 20.2 million calls answered by the Accounts Management lines (about 8.1 million) were routed to assistors and are included in the LOS computation, while the remaining taxpayer calls were routed to automation or reflected taxpayer hang-ups (typically because taxpayers do not want to work through the phone tree or wait on hold).<sup>62</sup> As a result, while the IRS is reporting a benchmark level of service of 67 percent, *IRS employees answered only 23 percent of the calls received on the Accounts Management lines and 25 percent of calls received on all lines.*<sup>63</sup>

### *Breakout of IRS Telephone Lines*

To understand the IRS's telephone statistics, a few concepts are important:

- The IRS tracks the total number of calls it receives, which is known as the “Enterprise Total.” The Accounts Management telephone lines are the largest subset of the Enterprise Total, accounting for 84 percent of all calls during the filing season. The IRS generally directs calls to the Accounts Management lines for account inquiries and answers to tax law questions, among other things.<sup>64</sup> The remaining 16 percent of calls reflect a combination of calls to the Consolidated Automated Collection System lines, which include most of the IRS's compliance service operations and certain other low-volume telephone lines.<sup>65</sup>
- Calls generally are directed either to telephone assistors or an automated response. Whether a call is routed to a telephone assistor or to automation generally depends on the telephone number the taxpayer calls and how the caller responds to the automated prompts he or she encounters.

Figure 2.4 shows the IRS's performance during the 2019 filing season for the Accounts Management total, many of the filing season-related phone lines that are components of the Accounts Management total, a few lines of special interest, and the Enterprise total. There was a 16.4 percent decrease in calls answered by an assistor, from 10.4 million calls in FS 2018 to 8.1 million in FS 2019 on the Accounts Management line. Most phone lines showed a decline in service, marked by a lower LOS and longer times on hold (“Average Speed of Answer”).<sup>66</sup> Generally, longer wait times indicate a greater likelihood that a taxpayer will hang up and attempt a repeat call.

62 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 20, 2019).

63 *Id.*

64 For the Jan. 1–Apr. 20, 2019, period the IRS received 40.8 million calls Enterprise-wide, and of that total, 34.4 million calls were directed to the Accounts Management telephone lines (84 percent). IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 20, 2019).

65 Internal Revenue Manual (IRM) 21.1.1.3, *Customer Service Representative (CSR) Duties* (Oct. 1, 2018).

66 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 20, 2019) (source of AM and Enterprise Total data); IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 20, 2019) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, *FY 2019 Weekly TPP Snapshot Report* (Apr. 20, 2019) (source of TPP line data). Data from Jan. 1–Apr. 20, 2019. Dialed attempts, sometimes called Net Attempts, is the number of callers intended for a given product line. Dialed attempts exclude callers who dialed the number, but should have dialed another number, and includes callers who dialed another number but should have dialed this number. IRS, *FY 17 Snapshot & ELS Reporting Guidelines*, Version 2017.02 (Mar. 3, 2017).

**FIGURE 2.4, 2019 Filing Season Statistics for Toll-Free Telephone Lines**<sup>67</sup>

Telephone Line	2018					2019					Percent Change			
	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	ASA Percentage Change	LOS Percentage Change
Accounts Management (AM) (Sum of 32 Lines)	35,668,223	10,422,742	5.1	80.0%	34,382,805	8,059,818	9.0	66.9%					76.8%	-16.4%
Refund Hotline 800-829-1954	12,713,310	1,155,577	3.9	83.0%	11,806,636	63,090	5.2	76.6%					32.9%	-7.7%
Individual Income Tax Services 800-829-1040	7,894,684	2,434,719	3.5	79.1%	7,316,757	1,903,012	8.8	66.5%					150.5%	-15.9%
Transcript 800-908-9946	1,568,196	206,723	7.1	75.2%	1,094,351	46,975	7.6	81.0%					7.3%	7.7%
Wage & Investment IMF Customer Response 800-829-0922	1,797,884	820,456	3.5	82.0%	1,399,034	495,207	8.2	66.2%					134.8%	-19.2%
Refund Call Back 800-829-0582	1,482,996	538,468	4.3	80.7%	3,132,815	871,323	10.2	56.4%					137.6%	-30.1%
Business & Specialty Tax Services 800-829-4933	1,587,233	787,089	8.5	77.3%	1,702,836	567,682	16.5	62.1%					94.1%	-19.6%
WI ID Theft 800-908-4490	906,515	507,904	3.5	83.3%	696,315	273,006	8.2	68.9%					134.3%	-17.3%
Self-Employed IMF Customer Response 800-829-8374	876,086	388,652	3.8	80.4%	679,649	234,012	8.8	64.2%					132.5%	-20.2%
ACA Hotline 800-919-0452	817,981	547,746	8.1	81.1%	628,441	400,358	6.2	81.8%					-23.9%	0.8%
Tax Law 866-883-0217	659,111	467,691	8.9	79.1%	531,024	388,533	4.7	80.6%					-47.0%	1.8%
PPS 866-860-4259	886,265	692,443	3.3	90.7%	853,189	533,069	6.8	83.3%					107.1%	-8.2%
BMF Customer Response 800-829-0115	691,943	500,688	8.5	83.7%	543,671	312,123	16.3	69.8%					91.8%	-16.6%
International 8775 855-790-8775	215,713	148,192	3.0	81.9%	259,822	153,921	3.2	78.6%					6.7%	-4.1%
Tax Exempt and Government Entities (TE/GE) 877-829-5500	205,323	123,777	8.4	72.7%	169,378	118,297	3.6	88.6%					-56.9%	21.8%
Individual Taxpayer Identification Number 800-908-9982	203,591	137,935	6.0	79.1%	240,224	126,599	12.0	63.8%					100.0%	-19.3%
NTA 877-777-4778	308,477	167,734	3.7	75.2%	442,949	155,283	13.3	47.0%					260.4%	-37.5%
VITA Location 800-906-9887	48,890	35,115	2.2	82.5%	42,259	30,365	1.7	82.2%					-22.7%	-0.4%
TAC Appointment 844-545-5640	2,232,666	1,438,502	5.7	76.0%	1,847,085	1,019,131	7.2	67.0%					26.9%	-11.9%
Installment Agreement/Balance Due	1,941,044	947,294	28.7	49.0%	2,201,579	527,112	49.5	24.1%					72.3%	-50.8%
Taxpayer Protection Program 800-830-5084	1,753,421	1,051,828	12.5	70.1%	1,335,279	686,154	13.3	60.4%					6.4%	-13.8%
Forms Order Line 800-829-3676 (800-TAX-FORM)	994,055	506,605	7.4	69.0%	1,081,288	402,073	11.2	49.9%					51.6%	-27.7%
Amended Return Hotline 866-464-2050	447,167	325,396	4.1	88.6%	890,753	334,135	10.1	62.1%					145.5%	-29.9%
Enterprise Total (Includes AM, Compliance, EPSS, Forms Order Line, ASK TAS, Enrolled Agent and IDTVA)	42,512,830	13,521,301	8.7	72.9%	40,796,555	10,082,963	13.2	58.5%					51.9%	-19.7%

67 IRS, JOC, Snapshot Reports: Enterprise Snapshot (Apr. 20, 2019) (source of AM and Enterprise Total data); IRS, JOC, Snapshot Reports: Product Line Detail (Apr. 20, 2019) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, FY 2019 Weekly TPP Snapshot Report (Apr. 20, 2019) (source of TPP line data). Data from Jan. 1–Apr. 20, 2019. Figure 2.4 does not list all Accounts Management telephone lines.

### Telephone Service Observations

As noted above, favorable top-line numbers mask significant weaknesses in IRS telephone service. Consider the following:

- **The LOS was not uniformly high across all IRS telephone lines.** During FS 2019, the IRS received 6.4 million calls to telephone lines not included in the Accounts Management umbrella, such as those directed to the compliance functions. These calls accounted for 16 percent of the total calls the IRS received this filing season. One particular compliance line—the “Installment Agreement/Balance Due” line, which taxpayers generally call if they cannot pay their tax liabilities in full and are seeking to arrange a payment plan—had extremely poor service in FS 2019. The IRS received over 2.2 million calls on this line and had a LOS of 24 percent for FS 2019, meaning that more than three out of four taxpayers who attempted to call this line did not receive assistance at the time of the call. Taxpayers who spoke to an assistor waited an average of 49 minutes on hold.<sup>68</sup>
- **Although we believe most taxpayers calling the IRS want to speak to an employee, 60 percent of Accounts Management calls were answered by automation.**<sup>69</sup> Callers generally have no choice regarding how and where their calls are routed—the IRS programs call-transfers based on the caller’s response to pre-recorded telephone prompt options. The IRS call tree generally does not present the taxpayer with an option to speak to a live assistor. *Thus, the LOS data reflects where taxpayers have been directed by the IRS, not necessarily where and how taxpayers need or would like to be assisted.*
- **Despite a reported LOS of 67 percent, IRS telephone assistors answered only about 23 percent of the calls the IRS received on its Accounts Management lines.** When the IRS reports its benchmark LOS was 67 percent, a casual observer may conclude that telephone assistors answered 67 percent of the calls the IRS received. In fact, *telephone assistors answered only 8.1 million calls out of 34.4 million calls received on the Accounts Management lines, or 23 percent.* We are not suggesting that the IRS only served 23 percent of callers; we recognize that some are adequately served through automation and some quickly hang up for personal reasons (*e.g.*, a call-waiting notification is received just after the start of the call). But when telephone assistors answer only 23 percent of taxpayer calls during a period when the IRS reports a “Level of Service” of 67 percent, the need for more transparent performance measures is apparent.
- **Measures like LOS do not provide qualitative information about the assistance a taxpayer receives on a telephone call.** Achieving a high LOS does not mean much if the IRS is unable to answer taxpayers’ questions over the phone or guide them to an appropriate solution to resolve their issues. To more thoroughly evaluate the IRS’s telephone service and its service on other communication channels, the IRS should incorporate additional measures aimed at assessing taxpayer satisfaction. According to researchers, the “single biggest driver of customer satisfaction” is First Contact Resolution.<sup>70</sup> *Almost 40 percent of taxpayers calling the IRS felt one call did not fully resolve their problems.*<sup>71</sup> These results show taxpayers are not getting the full assistance they need

68 IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 20, 2019).

69 Of the 20.2 million Accounts Management calls the IRS took during the filing season, 12.1 million were directed to automation. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 20, 2019).

70 Jeff Rumburg & Eric Zbikowski, MetricNet, *The Five Most Important KPI’s (Key Performance Indicators) for the Call Center 5* (Feb. 20, 2013), [https://ccng.com/uploads/five\\_most\\_important\\_kpis\\_for\\_the\\_call\\_center\\_metricnet.pdf](https://ccng.com/uploads/five_most_important_kpis_for_the_call_center_metricnet.pdf).

71 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 62, 85 (Research Study: *A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

over the phone, jeopardizing their *rights to quality service and to be informed*, while potentially undermining voluntary compliance.<sup>72</sup>

### Correspondence

There is a pool of Accounts Management employees that the IRS shifts between answering the phones and responding to taxpayer correspondence.<sup>73</sup> As a result, the IRS faces a difficult choice in deciding which service to prioritize. If it assigns more employees to answer taxpayer telephone calls, it will fall further behind in processing taxpayer responses to proposed adjustment notices. If it assigns more employees to process taxpayer responses to proposed adjustment notices, it will answer fewer telephone calls. On average, the IRS has received approximately nine million letters annually responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).<sup>74</sup> The failure to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer.

Figure 2.5 shows examples of key Accounts Management correspondence inventory levels at the conclusion of recent filing seasons. The “IMF Correspondence” category includes all taxpayer correspondence from individual taxpayers that is not handled by another function within the IRS; the “Amended Return/Duplicate Filing” category includes correspondence in which taxpayers are seeking to file amended returns;<sup>75</sup> and the “Injured Spouse” category includes Forms 8379, *Injured Spouse Allocation*, received from taxpayers.<sup>76</sup> The Injured Spouse correspondence inventory and percentage of overaged Injured Spouse inventory (more than 45 days old) has shown a significant increase from 2018 to 2019. TAS case receipts for Amended Returns from Wage and Investment (W&I) increased by 12 percent, and Injured Spouse from W&I cases increased by 23 percent, from April 2018 to April 2019.<sup>77</sup>

72 For further discussion on IRS phone service, see National Taxpayer Advocate FY 2019 Objectives Report to Congress 41-46 (Area of Focus: *The IRS’s Failure to Create an Omnichannel Service Environment Restricts Taxpayers’ Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*). See also National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

73 IRM 21.1.1.3, *Customer Service Representative (CSR) Duties* (Oct. 1, 2018).

74 Over the past decade, annual taxpayer correspondence in response to proposed adjustments has ranged from a low of 7.1 million letters to a high of 11.7 million letters and has averaged approximately nine million per year. See IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2009 through FY 2018).

75 Amended returns are not accepted through e-file and thus must be filed on paper.

76 A taxpayer who participated in the filing of a joint return may request that his or her share of the credit balance be refunded where it otherwise would be applied to a past-due obligation of the other spouse.

77 Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (May 1, 2018; May 1, 2019).

**FIGURE 2.5, Selected Individual Master File (IMF) Correspondence Inventory Levels, April 2017, 2018, and 2019<sup>78</sup>**

	Week Ending 4/22/17	Week Ending 4/21/18	Week Ending 4/20/19	% Change 2018–2019
IMF Correspondence	192,522	153,440	126,204	-17.8%
Overage	29.9%	35.0%	30.9%	-11.7%
Amended Return/Duplicate Filing	273,567	356,988	175,842	-50.7%
Overage	15.9%	23.1%	41.0%	77.5%
Injured Spouse	93,136	95,127	130,443	37.1%
Overage	15.0%	20.4%	22.5%	10.3%

### Face-to-Face Service at Taxpayer Assistance Centers

This filing season, the IRS continued its policy of requiring taxpayers to schedule an appointment to receive assistance at any of its TACs.<sup>79</sup> Thus, the TACs, previously known as “walk-in” sites, have been completely transformed to become “appointment only” sites.<sup>80</sup> To schedule an appointment, a taxpayer must call the TAC Appointment line (844-545-5640).<sup>81</sup> The telephone assistor determines the taxpayer’s need and, if possible, directs taxpayers to resources where they may find answers to their questions.<sup>82</sup> The telephone assistor schedules an appointment for the taxpayer if the assistor determines the need meets the criteria for visiting a TAC—not simply because the taxpayer requests or prefers an appointment.<sup>83</sup> During this filing season, TAS received complaints from taxpayers regarding problems with receiving service from a TAC—sometimes even when the taxpayer had an appointment.

The IRS asserts that it is serving more taxpayers under the appointment-only approach since Accounts Management employees who staff the TAC Appointment line can assist many taxpayers by either answering their questions or directing them to a self-help option. For example, an assistor may save a trip to an IRS office for taxpayers looking for forms or publications by telling them how to download from IRS.gov or giving a centralized number to call to request mailed copies. The IRS says its staff is thereby freed up to assist taxpayers who truly require face-to-face assistance. In addition to the push toward using online self-help options, taxpayers visiting TACs are greeted with a sign on the door that appointments are

78 IRS, JOC, *Customer Account Services, Accounts Management Paper Inventory Reports: National Inventory Age Report* (weeks ending Apr. 22, 2017; Apr. 21, 2018; and Apr. 20, 2019). The Injured Spouse figures reflect taxpayers affected by offsets from the Debtor Master File or from the Financial Management Service and covers debts related to child support, student loans, etc.

79 IRS News Release IR 2019-67, *IRS.gov: Best place to get last-minute tax tips and resources* (Apr. 9, 2019), <https://www.irs.gov/newsroom/irsgov-best-place-to-get-last-minute-tax-tips-and-resources> (last visited June 7, 2019).

80 For a more detailed discussion, see National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

81 The TAC Appointment Line achieved a 67.0 percent LOS during the 2019 filing season, with an average wait time of 7.2 minutes. IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 20, 2019).

82 IRM 21.1.1.3, *Customer Service Representative (CSR) Duties* (Oct. 1, 2018).

83 IRM 21.1.1.3(13), *Customer Service Representative (CSR) Duties* (Oct. 1, 2018) (noting the phone assistor will first try to provide direct assistance, and second, provide information on alternative service options). Even if offered an appointment, the taxpayer may decline if the available dates and times do not work. In those instances, the taxpayer may be left with having to choose a “second best” option.



required, with an exception only for limited services such as making a “limited payment,” picking up a tax form, or dropping off a current year tax return.<sup>84</sup>

The appointment-only approach can negatively impact taxpayers who need assistance urgently and cannot wait to obtain an appointment.<sup>85</sup> TAS is pleased that the IRS’s current guidance to employees includes managerial discretion to assist taxpayers without appointments if the taxpayer has a hardship or can be assisted without affecting other scheduled appointments.<sup>86</sup> However, serving taxpayers without appointments remains an exception—and one that is granted on a case-by-case basis. As noted previously, only about 63,000 taxpayers received assistance at TACs without an appointment in the 2019 filing season (through March).<sup>87</sup>

We continue to be concerned about the limitations on walk-in service for taxpayers. In fact, IRS data captures certain interactions with taxpayers but does not capture the full taxpayer experience. For instance, in the example above where a CSR instructs the taxpayer to download forms or publications, there is no way to know if the taxpayer ultimately located and downloaded the publication needed. An “appointments preferred” approach would be reasonable, but the “appointments required” approach the IRS has adopted (notwithstanding permitted managerial discretion) sends the wrong message to taxpayers. If a taxpayer takes the time to travel to an IRS assistance site, the IRS should do everything it can to assist that taxpayer. If the TAC has too many taxpayers to assist at the time, the IRS should utilize the process it used for decades, namely, have Revenue Agents or Revenue Officers and other qualified employees on call to assist during these overload times.

If the current trend continues, taxpayers soon may not have the option for in-person assistance from an IRS employee. Because of its new “appointment only” policy, the number of taxpayers visiting a TAC declined from about 5.6 million in FY 2015 to 2.9 million in FY 2018.<sup>88</sup> Moreover, the IRS has reduced the number of TACs from 401 to 358 since 2011.<sup>89</sup>

The Consolidated Appropriations Act of 2018 included several directives for the IRS to follow before deciding to close any more TACs, including:

- Report to the committees on appropriations of the Senate and House of Representatives within 120 days of enactment of the Act on the steps being taken to prevent any TAC closures and the status of any proposed alternatives to fully staffed TACs;

84 See National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *Taxpayer Assistance Centers (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*). The IRS updated Publication 5202, *Appointment Only Poster for Field Assistance Taxpayer Assistance Centers (English-Spanish Version)* in February 2017. The prior August 2015 version contained no exceptions, stating only the following: “To provide the best possible service, taxpayer assistance is by appointment only.”

85 IRS W&I Division, *Business Performance Review 15* (Apr. 30, 2019). The IRS will, in some circumstances, “double book” an appointment if the taxpayer has an urgent need. However, this will happen only when the taxpayer is able to explain the need, and the phone assistor is able to recognize the urgency. There are exception criteria for taxpayers who show up at a TAC without an appointment. Likewise, the taxpayer will need to explain the need, and a TAC employee needs to recognize the taxpayer should receive service.

86 IRM 21.3.4.2.4.2, *TAC Appointment Exception Procedures* (Oct. 1, 2018).

87 IRS W&I, *Business Performance Review 12* (May 10, 2018).

88 *Id.* 15 (Apr. 30, 2019).

89 See GAO, GAO-12-176, *Processing Gains, but Taxpayer Assistance Could Be Enhanced by More Self-Service Tools* (Dec. 2011); *Review of the FY 2020 Budget Request for the U.S. Department of Treasury: Hearing Before the S. Subcomm. on Financial Services and General Government of the S. Comm. on Appropriations, 116th Cong.* (2019), (written testimony of Charles P. Rettig, Commissioner of Internal Revenue).

- Conduct a study on the impact of closing a TAC and the adverse effects it has on taxpayers' ability to interact with the IRS; and
- Hold a public forum in the impacted community at least six months prior to a planned TAC closure and notify the committees on appropriations of the Senate and House of Representatives.<sup>90</sup>

A recent TIGTA report noted that the IRS closed 12 TACs in 2018 but did so without adhering to these congressional directives in at least four of those closures.<sup>91</sup> Specifically, the IRS did not timely provide a report to congressional committees on the steps being taken to prevent TAC closures. Furthermore, the IRS did not conduct a study on the taxpayer impact of closing four TACs that the IRS closed after Congress passed the Consolidated Appropriations Act of 2018, nor did the IRS hold a public forum in the four affected communities at least six months prior to closing the TACs.

### Availability of Tax Forms and Publications

While a majority of taxpayers continue to file electronically, about 11 million taxpayers mail in paper tax returns.<sup>92</sup> Many of these taxpayers, along with a number of other taxpayers, rely on printed versions of forms and publications.

Gone are the days where taxpayers could grab the Form 1040 variant they needed, along with instructions and common publications, at their local public library or post office. The IRS directs those who need a printed version of tax forms (including the newly redesigned Form 1040) to IRS.gov, where taxpayers may download and print forms, instructions, and publications. However, not all Americans find this option convenient. A 2016 TAS survey found that more than 41 million U.S. taxpayers lack broadband access at home, including 14 million taxpayers with no internet access at home at all.<sup>93</sup> For such taxpayers, they will need to call 800-829-3676 (from 7 a.m. to 7 p.m. Mondays through Fridays) to order forms and publications by mail.

To see how easy it was to obtain printed copies of Form 1040, TAS asked a few employees to request the new “postcard” sized Form 1040 by mail. What they received was the simplified form printed on 8.5” x 11” paper, along with six schedules that they did not request.

### Online and Self-Service Tools

Online tools have become a more significant part of the filing season experience over time.<sup>94</sup> Broadly speaking, there are two categories of online tools: general access tools and taxpayer account tools.

90 Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348.

91 See TIGTA, Ref. No. 2019-40-029, *The Internal Revenue Service Did Not Follow Congressional Directives Before Closing Taxpayer Assistance Centers; a Data-Driven Model Should Be Used to Optimize Locations* (May 8, 2019).

92 The IRS received 137.2 million returns in the 2019 filing season. Approximately 126.2 million of these (92 percent) were e-filed. IRS, *Filing Season Statistics for Week Ending April 19, 2019*, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019> (last visited June 7, 2019).

93 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 63 (*A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*) (TAS based the analysis in this report on 3,735 survey responses obtained as of February 2017).

94 For further discussion of online accounts, see *Efforts to Improve Taxpayer Advocacy: TAS Explores Innovative Ways to Communicate with Taxpayers*, *infra*.

General access tools allow taxpayers to obtain general information that is not case-specific. A few examples of what a taxpayer might accomplish on the IRS website (IRS.gov) include:

- Downloading tax forms, instructions, and publications;<sup>95</sup>
- Locating the TAC nearest to where the taxpayer lives;<sup>96</sup> and
- Using the Interactive Tax Assistant to find answers to general tax law questions such as who may be claimed as a dependent or whether a taxpayer may deduct medical expenses.<sup>97</sup>

Taxpayer account tools generally require that the taxpayer pass an authentication test before getting any information or accessing features. Examples of account tools include:

- *Get Transcript*, where the taxpayer can view tax account information;<sup>98</sup>
- *Direct Pay*, where the taxpayer can make payments to the IRS;<sup>99</sup> and
- *View Your Tax Account Information*, where the taxpayer may view payment histories and remaining balance due for certain tax years.<sup>100</sup>

A general access tool can meet relatively simple needs, such as obtaining and printing tax forms or instructions—if the taxpayer has the ability to access the website. As noted above, 14 million individual taxpayers do not have internet access in their homes, and more than 41 million do not have broadband.<sup>101</sup> Even if a taxpayer does have internet access to obtain forms and instructions, he or she is left to determine on his or her own the answer to a question. Interactive tools are helpful, but locating the correct answer is dependent on the series of filtering questions matching the taxpayer's circumstances. Because the IRS will not answer tax law questions after the filing season that are unrelated to tax reform, these tools are the only option available to taxpayers for much of the year.

Taxpayers wishing to access account tools face a different challenge. Generally, these tools require that the taxpayer pass “multi-factor authentication.” This security measure is intended to ensure the person requesting access is the true taxpayer and not an imposter. For example, to access an account transcript online for the first time, the taxpayer will need:

- His or her Social Security number (SSN), date of birth, filing status, and mailing address from the latest tax return;
- An email account;
- An account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan; and
- A mobile phone with the taxpayer's name on the account (*i.e.*, not pay-as-you-go minutes).

95 IRS, *Forms, Instructions & Publications*, <https://www.irs.gov/forms-pubs> (last visited June 12, 2019).

96 IRS, *Contact Your Local IRS Office*, <https://www.irs.gov/help-resources/contact-your-local-irs-office> (last visited June 12, 2019).

97 IRS, *Interactive Tax Assistant (ITA)*, <https://www.irs.gov/uac/interactive-tax-assistant-ita-1> (last visited June 12, 2019).

98 IRS, *Welcome to Get Transcript*, <https://www.irs.gov/individuals/get-transcript> (last visited June 12, 2019).

99 IRS, *Direct Pay With Bank Account*, <https://www.irs.gov/payments/direct-pay> (last visited May 10, 2019).

100 IRS, *View Your Tax Account Information*, <https://www.irs.gov/uac/view-your-tax-account> (last visited May 10, 2019).

101 See National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 62, 63 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

After the user enters some initial information to validate his or her identity, the IRS will send a one-time use security code via text message to the taxpayer's cell phone.<sup>102</sup> Currently, only about one in five taxpayers pass authentication the first time he or she attempts access.<sup>103</sup>

Not all taxpayer account tools require multi-factor authentication. For example, *Where's My Refund* allows the taxpayer to check when the IRS is likely to issue his or her tax refund.<sup>104</sup> The only information the user needs to provide is the SSN (or Individual Taxpayer Identification Number), filing status, and expected refund amount. As the IRS tries to transition taxpayers from using personal service to using online service, it is incumbent on the agency to develop ways to measure the effectiveness of online services at meeting taxpayer needs. To date, adequate measures do not exist. Moreover, ability to access remains a barrier to widespread and expanded usage.<sup>105</sup>

## SPECIAL TOPICS

### Refund Fraud

For the 2019 filing season, the IRS has made a number of improvements to its refund fraud program. After a troubling 2018 filing season, in which the IRS refund fraud program was plagued with processing times that averaged about 40 days, false positive rates of 63 percent for IDT refund fraud filters, and 81 percent for non-IDT refund fraud filters, the IRS made a number of changes to the refund fraud program for the 2019 filing season.<sup>106</sup> These changes have resulted in a better experience for taxpayers.

Specifically:

- During the filing season, the IRS is systemically checking for the posting of third-party information daily instead of weekly;
- When the return is being selected due to a mismatch between the information on the return and the third-party information, the IRS will conduct additional analysis. If the third-party information would have no impact on the amount of the refund, the refund will be released immediately; and
- When a return carries with it both an IDT and non-IDT refund fraud concern, IRS systems will have the capability to systemically verify income and withholding information upon successful authentication of the taxpayer's identity, thereby compressing the processing time.

102 The taxpayer has the option of requesting that the activation code be mailed to the address of record. IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited May 10, 2019). However, waiting 10 days for mail delivery of the activation code hinders the taxpayer's ability to immediately resolve the issue.

103 IRS, JOC, *Monthly Account Dashboard* (month ending April 2019). The New Profile Registration Rate was 19 percent for FY 2019 and is defined as the rate at which sessions completed "First Time User" authentication.

104 IRS, *Where's My Refund? - It's Quick, Easy and Secure*, <https://www.irs.gov/refunds> (last visited May 10, 2019). The same functionality is also on the IRS mobile app IRS2GO. IRS, *IRS2Go Mobile App*, <https://www.irs.gov/uac/irs2goapp>.

105 For further discussion of online accounts and alternative approaches, see *Efforts to Improve Taxpayer Advocacy: TAS Explores Innovative Ways to Communicate with Taxpayers*, *infra*.

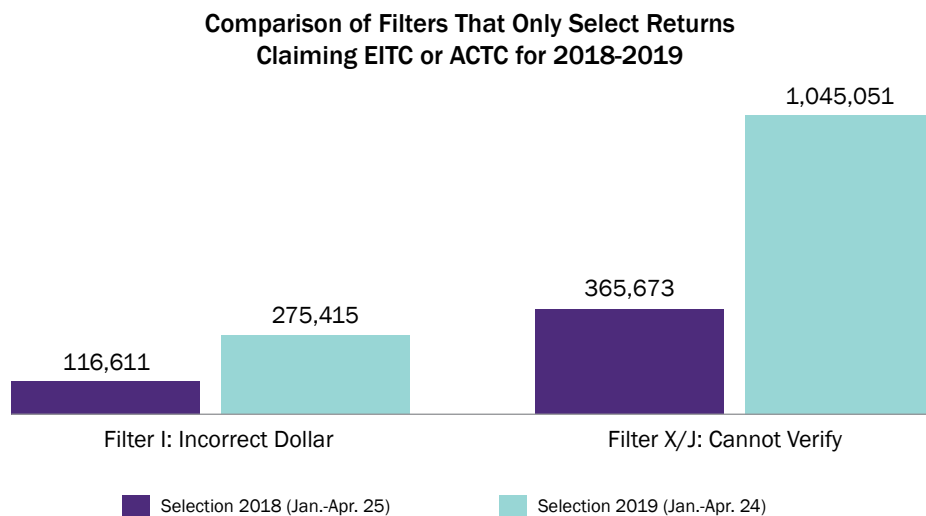
106 The false positive rate reported was for January 1 to October 3, 2018. A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period. See IRS, *IDT and IVO Performance Report*, 19, 32 (Oct. 10, 2018).

These changes have resulted in two significant differences in the program, when compared to prior filing seasons:

1. The filters have been able to select many more returns for further analysis than they have in the past; and
2. Many more returns were identified for release earlier on in the filing season, as this is the first year that the program had the ability to release returns systemically.

As shown in Figure 2.6, the two non-IDT refund fraud filters that exclusively select returns where EITC or ACTC have been claimed more than doubled their selection of returns compared to last year.<sup>107</sup>

**FIGURE 2.6**<sup>108</sup>

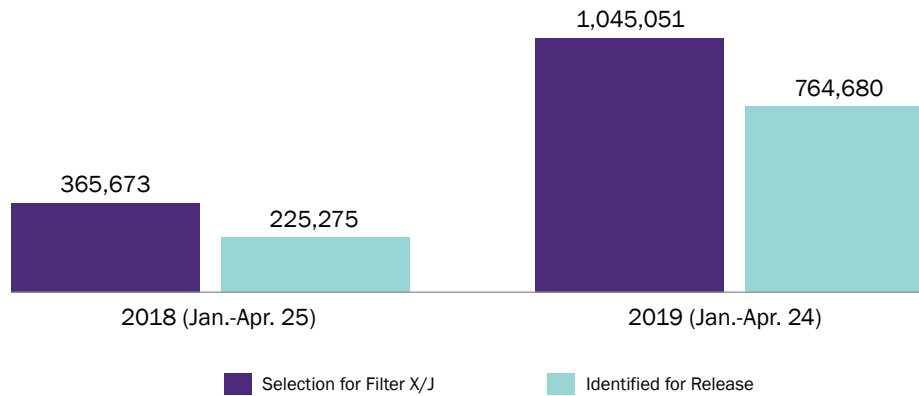


One possible explanation for this increase is the adoption of new systemic verification and reprocessing features for Filter X, which allows the IRS to increase its workload for this particular area of questionable refund claims.

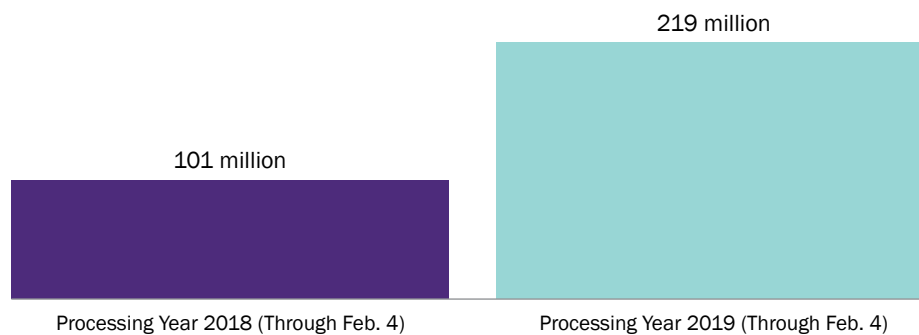
According to customized data provided to us by the IRS, through April 24, while Filter X selected 1,045,051 returns, nearly three-quarters of those returns were identified for release as shown in Figure 2.7. Comparing these results with the same filter selections and release rates for the same period during 2018, Figure 2.7 indicates the IRS is doing a much better job at systemically identifying more returns for release earlier in the process. Also, from a percentage basis, the IRS is doing better than in 2018—it released 73.2 percent of refunds that it had stopped this year, compared to only 61.7 percent over the same period in 2018.

<sup>107</sup> Filter X selects returns where EITC or additional child tax credit (ACTC) is claimed on the return, and there is no third-party information available to verify the income or withholding on the return. Filter I selects returns where EITC or ACTC have been claimed, and there is a discrepancy of income between the return and the W-2 information. Filter J was renamed Filter X in FY 2019.

<sup>108</sup> IRS, *IDT and IVO Performance Report 8* (May 1, 2019); *IDT and IVO Performance Report 16* (May 2, 2018).

**FIGURE 2.7**<sup>109</sup>**Comparison of Filter X Selections and Returns Identified for Release in 2019 to Selections Identified for Release for the Same Period During 2018**

This dramatic increase in the number of selected returns that were identified for release was due in part to Filter X's ability to systemically identify returns for release, and to the significant increase in the number of Forms W-2 the IRS received early on in the filing season. Specifically, the IRS had over a hundred million more Forms W-2 available compared to last year, as shown in Figure 2.8.

**FIGURE 2.8**<sup>110</sup>**Information Return Master File Form W-2 Availability Through February 4**

Despite the high number of returns identified for release, there are still 249,105 returns selected by Filter X in suspension as of April 24, 2019, waiting for third-party documentation to verify the information on the return.<sup>111</sup> This is in addition to another 305,016 returns that were selected by other non-IDT

109 IRS, *IDT and IVO Performance Report 9* (May 1, 2019); *IDT and IVO Performance Report 17* (May 2, 2018).

110 IRS, *IDT and IVO Performance Report 10* (Feb. 6, 2019).

111 IRS, *IDT and IVO Performance Report 9* (May 1, 2019).

refund fraud filters that are also still pending outcome.<sup>112</sup> In regards to the 249,015 returns, one possible explanation for their suspension could be the SSA's transmission of paper Forms W-2 to the IRS. The IRS has received about 58 percent fewer W-2 paper receipts as of April 26, 2019, when compared to the same time period for 2018.<sup>113</sup> Returns that are not resolved by June 15, 2019, will have to be worked through a manual process, which will delay the issuance of legitimate refunds.<sup>114</sup>

TAS case receipts increased by about 3,000 for FS 2019 between January 1 and April 30, compared to FS 2018 for the same time period, even without counting cases involving prior year returns from the total TAS refund fraud case receipts.<sup>115</sup> Although TAS case receipts have increased for FS 2019, when compared to FS 2018, the rate at which they increased was far less than the rate by which selections increased for non-IDT returns where EITC or ACTC and the income could not be verified. Specifically, between January 1 and April 24, 2019, there was a 186 percent increase in the selection of non-IDT returns where EITC or ACTC has been claimed, and the income on the returns cannot be validated, when compared to the same time period for 2018.<sup>116</sup> Alternatively, TAS's case receipts for issues regarding these returns increased 12 percent for January 1 through April 25, 2019, when compared to the same time period for 2018.<sup>117</sup>

Although more analysis is needed, initial indications suggest that the increase in TAS case receipts is largely driven by the significant increase in non-IDT case selection. Further, it appears that Filter X's systemic release of returns early in the filing season resulted in a number of returns being processed quickly without TAS assistance. In fact, by the time a number of cases arrived in TAS, the release of the refund was already being processed. To address this quick release process, on April 2, 2019, TAS issued interim guidance that implemented a three-week moratorium on accepting Filter X cases in TAS. This allowed for the return to work through the process, and in many cases resulted in release without TAS assistance.<sup>118</sup> Taxpayers were instructed they could come to TAS for assistance if they did not get their refund after the three-week period.<sup>119</sup>

In the next several months, more data should become available on the outcome of the IRS's 2019 filing season refund fraud efforts, such as false positive rates, processing times, and the amount of revenue protected.

112 These 305,016 returns are in the process of being verified, which means the IRS has reached out to the taxpayer's employers to confirm and verify the W-2 information that has been provided to it. IRS, *IDT and IVO Performance Report 3* (May 1, 2019).

113 The IRS received 2.6 million paper Forms W-2 compared to almost 6.2 million in 2018 for the same time period. Generalized Mainline Framework (Jan. 2 through Apr. 26, 2019).

114 Once third-party documentation is fully loaded onto Information Return Processing (IRP), returns that do not yet have a match with third-party information will be worked manually.

115 Data obtained from TAMIS (May 1, 2018; May 1, 2019).

116 IRS, *IDT and IVO Performance Report 9* (May 1, 2019); *IDT and IVO Performance Report 17* (May 2, 2018).

117 Data obtained from TAMIS (Jan. 1, 2018 to Apr. 25, 2018 and separately for Jan. 1, 2019 to Apr. 24, 2019 for TAS pre-refund wage verification holds).

118 IRS, Interim Guidance Memorandum (IGM) TAS-13-0419-0004, *Interim Guidance on Exclusion from TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold – Filter X*, (Apr. 2, 2019).

119 TAS reviewed pre-refund wage verification hold case receipts and found that 35 percent of the cases reviewed were resolved or would have been resolved shortly without TAS intervention. See *Efforts to Improve Taxpayer Advocacy*, *infra*.

## AFFORDABLE CARE ACT

### In a Taxpayer-Friendly Move, the IRS Will Not Accept Tax Returns Silent on Health Care Coverage

The Patient Protection and Affordable Care Act of 2009 (ACA)<sup>120</sup> requires individuals to obtain qualifying minimum essential coverage (MEC), receive an exemption from the coverage requirement, or pay an individual shared responsibility payment (ISRP). For TY 2018, taxpayers must continue to report coverage, qualify for an exemption, or pay the ISRP (but this requirement is repealed by the Tax Cuts and Jobs Act for TY 2019 and beyond). Tax returns that didn't report a full-year MEC, attach an exemption (Form 8965, *Health Coverage Exemptions*), or pay an ISRP, are referred to as "silent returns."

For TY 2018, the IRS reiterated that it would not consider a return complete and accurate if the taxpayer does not report full-year coverage, claim a coverage exemption, or report a shared responsibility payment on the tax return.<sup>121</sup> The National Taxpayer Advocate supports this decision, because taxpayers who e-file now find out immediately that they have omitted this information, rather than receiving an IRS letter weeks down the road while their refunds are frozen.

### General ACA Tax Return Data

Eligible individual taxpayers claimed the premium tax credit (PTC) for TY 2018 returns filed during the 2019 filing season. Figure 2.9 provides information regarding the extent to which individual taxpayers claimed the PTC on their TY 2018 returns.

**FIGURE 2.9, Comparison of the Premium Tax Credit on Forms 8962 for TY 2017 and TY 2018 (Filed Jan. 1 Through Apr. 26, 2018 and Jan. 1 Through Apr. 25, 2019)**<sup>122</sup>

	TY 2017	TY 2018	Percent Change from TY 2017 to TY 2018
Forms 8962	4.9 million	4.8 million	-2%
Total PTC Claimed	\$22.1 billion	\$29.8 billion	35%
Average PTC	\$4,558	\$6,349	39%
Returns Reporting APTC	4.7 million (96% of returns with Forms 8962)	4.7 million (98% of returns with Forms 8962)	0%
Total APTC Reported	\$24.4 billion	\$32.8 billion	26%
Forms 8962 Submitted With Prepared Returns (Paid or Volunteer)	3.1 million (63% of returns with Forms 8962)	3.1 million (65% of returns with Forms 8962)	0%

120 Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

121 IRS, *Individual Shared Responsibility Provision*, <https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision> (last visited May 19, 2019).

122 IRS CDW, *IRTF, TY 2017 and 2018* (June 2018; June 2019). This preliminary data is based on TY 2017 returns that posted as of April 26, 2018; and TY 2018 returns that posted as of April 25, 2019 and is subject to change as the IRS reviews the data, processes additional TY 2018 returns, and conducts compliance activities.



Individual taxpayers who did not have MEC or qualify for an exemption were required to make an ISRP on their TY 2018 returns. Figure 2.10 provides data on the reporting of ISRPs on TY 2018 returns.

**FIGURE 2.10, Comparison of Individual Shared Responsibility Payments for TY 2017 and TY 2018 (Filed Jan. 1 Through April 26, 2018 and Jan. 1 Through April 25, 2019)**<sup>123</sup>

	TY 2017	TY 2018	Percent Change from TY 2017 to TY 2018
Returns With ISRP	3.6 million	2.9 million	-19%
Average ISRP	\$766	\$1,110	45%
Prepared Returns Reporting ISRP (Paid or Volunteer)	2.3 million (64%)	1.8 million (62%)	-22%
Returns Filed With Forms 8965, <i>Health Coverage Exemptions</i>	10.4 million	6.9 million	-34%
Returns Filed With Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part II)	3.6 million	2.3 million	-36%
Returns Filed With Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part III)	8.0 million	5.9 million	-26%
Prepared Returns Filed With Forms 8965	5.4 million (52%)	2.5 million (36%)	-54%

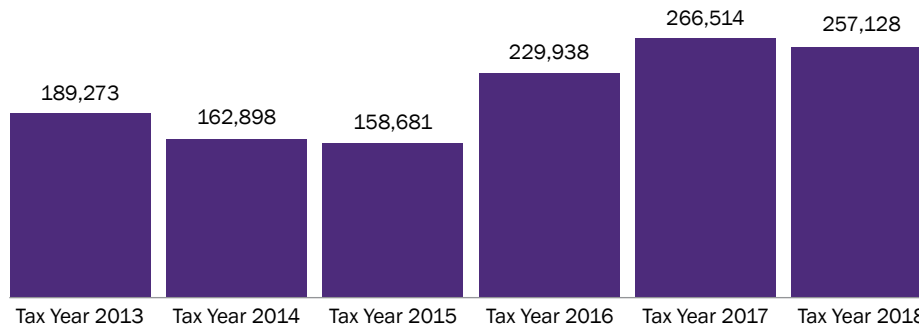
## SERVICE OPTIONS FOR U.S. TAXPAYERS LIVING ABROAD

TAS remains concerned about service options for taxpayers located overseas.<sup>124</sup> Approximately nine million U.S. citizens live abroad.<sup>125</sup> There are also many international U.S. taxpayers who are neither residents nor citizens of the United States, as evidenced by the increase in individual tax returns filed by nonresident aliens during the filing season from TYs 2013 through 2018.

<sup>123</sup> IRS CDW, *IRTF, TY 2017 and 2018* (June 2018; June 2019). This preliminary data is based on TY 2017 returns that posted as of April 26, 2018; and TY 2018 returns that posted as of April 25, 2019 and is subject to change as the IRS reviews the data, processes additional TY 2018 returns, and conducts compliance activities.

<sup>124</sup> For past reporting on these concerns, see National Taxpayer Advocate FY 2017 Objectives Report to Congress 78-79. See also National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

<sup>125</sup> See U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (Mar. 2018), [https://web.archive.org/web/20160616233331/https://travel.state.gov/content/dam/travel/CA\\_By\\_the\\_Numbers.pdf](https://web.archive.org/web/20160616233331/https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf). U.S. Department of State, Bureau of Consular Affairs, *Who We Are and What We Do: Consular Affairs by the Numbers* (Jan. 2013), [https://travel.state.gov/content/dam/ca\\_fact\\_sheettravel/CA%20Fact%20Sheet%202014.pdf](https://travel.state.gov/content/dam/ca_fact_sheettravel/CA%20Fact%20Sheet%202014.pdf).

**Figure 2.11**<sup>126</sup>**Forms 1040-NR, U.S. Nonresident Alien Income Tax Return,  
Filed During the Filing Season (January Through April) for Tax Years 2013-2018**

Taxpayers living abroad generally cannot call U.S. toll-free telephone lines, yet in 2015, the IRS terminated the Electronic Tax Law Assistance program through which taxpayers could submit tax law questions to the IRS on its website and receive a response via email. In recent years, the IRS closed its overseas tax attaché offices, which eliminated the last face-to-face option for taxpayers.<sup>127</sup>

## CONCLUSION

The IRS faced significant challenges in the 2019 filing season, including a 35-day partial government shutdown, and the need to implement numerous tax reform changes as well as designing a new Form 1040. Nevertheless, it delivered a generally successful filing season for most taxpayers. The IRS reported a 67 percent LOS as its benchmark measure of telephone performance, but that performance measure is misleading. Only 23 percent of callers actually spoke to a live assistor. The IRS answered fewer calls on its compliance telephone lines (33 percent LOS), and those who got through waited an average of 41 minutes. Moreover, the IRS served fewer taxpayers in its TACs and continued its policy of answering only a limited scope of tax law questions on the phone and in-person. Lastly, the IRS's refund fraud filters continued to operate with high false positive rates, which significantly delayed refunds for hundreds of thousands of taxpayers who had filed legitimate returns, harming some taxpayers and creating additional work for the IRS.

<sup>126</sup> IRS CDW, *IRTF Form 1040-NR, U.S. Nonresident Alien Income Tax Return for TY 2013 filed through Apr. 24, 2014; TY 2014 filed through Apr. 30, 2015; TY 2015 filed through Apr. 28, 2016; TY 2016 returns filed through Apr. 27, 2017; TY 2017 filed through Apr. 26, 2018; and TY 2018 filed through Apr. 25, 2019* (June 2018; June 2019).

<sup>127</sup> For a detailed discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

## Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service

The 35-day partial government shutdown (Shutdown) that began December 22, 2018, impacted every organization in the IRS, including the Taxpayer Advocate Service (TAS). Initial estimates from the National Taxpayer Advocate indicate it could take approximately one year to fully recover from the Shutdown, potentially longer.<sup>1</sup> During the Shutdown, only a handful of TAS employees were excepted to work, and that work was limited to checking the mail and processing checks.<sup>2</sup> The discussion below does not address the IRS Office of Chief Counsel's interpretation of the Anti-Deficiency Act as it applies to TAS, but instead focusses on the Shutdown's impact on TAS and the taxpayers it serves.<sup>3</sup>

As part of the recovery process, TAS identified risks that resulted from the Shutdown and impacted taxpayers, TAS, and the IRS and its employees.

Other examples of identified risks include:

- Increased TAS receipts due to IRS processing delays;
- Taxpayers unable to avail themselves of their rights due to the government being closed;
- Taxpayers' economic hardships that were exacerbated due to not being able to reach the IRS or TAS during the Shutdown;
- Decrease in employee satisfaction after the Shutdown impacting advocacy efforts and customer satisfaction; and
- Lack of outreach on critical issues such as Tax Reform.

This discussion highlights some of the most significant effects of the Shutdown on TAS and its taxpayers. TAS has taken steps to mitigate the impact where possible but in some situations, mitigation was not possible. TAS will also use this information to inform its actions should a future shutdown occur.

### TAS Issued Interim Guidance to Employees to Help Identify and Assist Taxpayers Most in Need of Assistance After Returning From the Shutdown

Immediately upon returning from the Shutdown, the National Taxpayer Advocate issued interim guidance to all TAS employees.<sup>4</sup> The interim guidance memorandum (IGM) helped TAS employees assist taxpayers whose hardships were exacerbated because they were unable to reach the IRS or TAS during the Shutdown. Specifically, the IGM provided guidance on:

- Identifying existing TAS taxpayers adversely impacted by the Shutdown;

1 Jeff Stein, *IRS Will Need At Least A Year To Recover From Government Shutdown, Watchdog Tells Congress*, WASH. POST, Jan. 26, 2019.

2 For a discussion about the Anti-Deficiency Act and TAS's ability to be excepted during a lapse under the safety of life and protection of property exception, see National Taxpayer Advocate 2018 Annual Report to Congress (*Preface*). See also National Taxpayer Advocate 2019 Purple Book 80-81; National Taxpayer Advocate 2017 Purple Book 75; National Taxpayer Advocate Fiscal Year (FY) 2015 Objectives Report to Congress 79-91; National Taxpayer Advocate 2014 Annual Report to Congress 275-310; National Taxpayer Advocate FY 2012 Objectives Report to Congress 1-2; National Taxpayer Advocate 2011 Annual Report to Congress 475-476.

3 See The Anti-Deficiency Act (Revised Statutes 3679), <https://www.gao.gov/legal/appropriations-law-decisions/resources>. This act prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services, as codified in 31 U.S.C. §§ 1341(a), 1342, or 1517(a).

4 See Interim Guidance Memorandum (IGM) TAS-13-0219-0001, *Interim Guidance on Advocating for Taxpayers Adversely Impacted by the Government Shutdown* (Feb. 6, 2019).

- Routing of TAS cases received during the Shutdown;
- Handling cases requiring expedited handling;
- Prioritizing caseloads and advocating for taxpayers experiencing imminent hardship;
- Prioritizing caseloads and advocating for taxpayers not experiencing imminent hardship; and
- Identifying and elevating systemic issues for resolution.

The IGM directed TAS employees to identify those taxpayers whose issues were the most urgent and time-sensitive and notify management to ensure the taxpayers receive expeditious service. While TAS always placed the highest priority on those taxpayers experiencing hardship, in this instance we had to differentiate the different types of hardship. Local Taxpayer Advocates (LTAs) worked with their employees to use their discretion to identify those taxpayers with the most urgent needs so those cases could be addressed first.

TAS employees went through their existing inventories while also sorting through the new cases that came to us during the Shutdown or immediately after reopening. During the weeks immediately after reopening, TAS identified 165 “EMERGENCY” cases (64 new cases needing immediate action and 101 existing TAS cases) where taxpayers experienced significant economic or irreparable harm during the Shutdown.<sup>5</sup>

It is vitally important for TAS to capture the impact of the Shutdown on taxpayers so we can include this information in our many discussions with Congress and the IRS as part of our advocacy and collaborative improvement efforts. TAS received 41,193 cases through the end of January 2019, compared with 37,761 cases for the same period in fiscal year (FY) 2018.<sup>6</sup> Despite being shut down for 35 days, TAS still experienced an almost ten percent increase in cases.

To understand the reason for this increase and capture the full impact of the Shutdown, TAS established the special tracking code “FURLO.” The code automatically populated on the Taxpayer Advocate Management Information System for all existing TAS cases when the Shutdown occurred and TAS new cases received through February 11, 2019. TAS identified 43,153 “FURLO” cases.<sup>7</sup> Through May 31, TAS has issued 296 Taxpayer Assistance Orders (TAOs) on FURLO cases. The IRS complied with 169 TAOs, TAS rescinded 31, and 96 TAOs are still in process.<sup>8</sup>

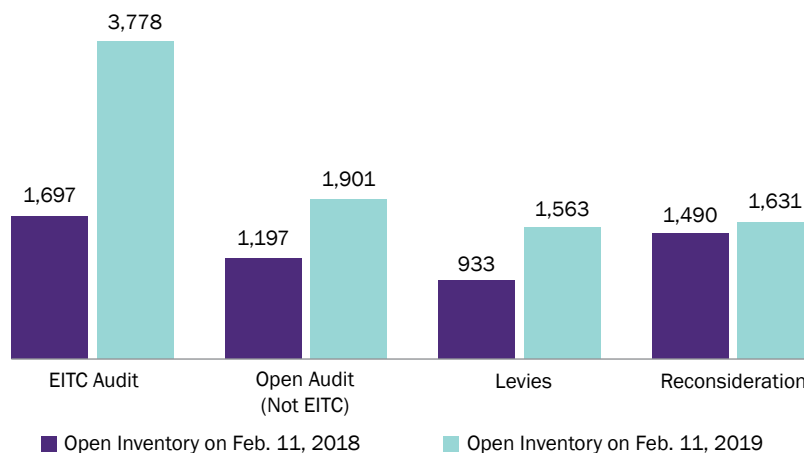
We continue to analyze these cases to determine the effect the Shutdown had on TAS’s ability to serve its customers. TAS has identified certain types of cases that made up a higher number of the FURLO cases than normally found in TAS workloads. Figure 3.1 compares Earned Income Tax Credit (EITC), Open Audit (Not EITC), Audit Reconsideration, and Levy Issue cases in open inventory on February 11, 2019 to those issues in open inventory on the same date in 2018.

5 Data obtained from Taxpayer Advocate Service Management Information System (TAMIS) (Feb. 16, 2019). TAS employees reviewed their open inventory as of Jan. 28, 2019, and cases received immediately following the 35-day partial government shutdown (Shutdown) (through Feb. 15, 2019) to identify those taxpayers whose issues were the most urgent and time-sensitive.

6 Data obtained from TAMIS (Feb. 1, 2018; Feb. 1, 2019).

7 Data obtained from TAMIS (Feb. 19, 2019).

8 Data obtained from TAMIS (June 1, 2019). TAS-13-0219-0001 (Feb. 6, 2019) established the systemic advocacy code “FURLO.” The code automatically populated on TAMIS for all open TAS cases when the Shutdown occurred and TAS new cases received through February 11, 2019.

**FIGURE 3.1<sup>9</sup>****Comparison of Open Inventory EITC Audit, Open Audit (Not EITC), Levies, and Reconsideration Issues, February 11 (2018 and 2019)**

Immediately after returning from the Shutdown, TAS also worked with the Small Business/Self-Employed (SB/SE) Collection Division to develop procedures to address TAS Operations Assistance Requests (OARs) in cases where taxpayers were suffering or about to suffer a severe hardship because of the Shutdown. These cases were instances where the taxpayer's hardship was created by the Shutdown or where the Shutdown exacerbated an existing hardship. TAS and SB/SE prioritized and addressed the most urgent OARs related to lien release/withdrawals, levy releases, and return of levy proceeds. From February 1 through March 15, 2019, TAS elevated 60 OARs to SB/SE Collection using the Shutdown procedures. Of those elevated, SB/SE Collection resolved 57 OARs, taking an average of 17 days compared to an average of 20 days to complete the same OARs using normal processing during February 2019.<sup>10</sup>

### Shutdown Severely Restrained TAS's Ability to Timely Hire and Train Employees in Preparation for Filing Season

The Shutdown also negatively impacted hiring plans in TAS. Prior to the Shutdown, TAS had planned to hire and begin training 110 case advocates and expand our intake advocate hiring in advance of the 2019 filing season. The intent was for these new employees to receive basic training necessary to assist with taxpayers calls and cases during the filing season. At the time the Shutdown began, TAS had hired and brought on board 11 case advocates and 27 intake advocates. While TAS met the hiring goal for one of those employee positions, the continuing resolutions resulted in neither group of new hires receiving training prior to the start of the Shutdown. This lack of training prevented them from assisting with taxpayer cases or calls when the IRS reopened. The delay in hiring and training, coupled with the increase in cases required TAS to dedicate high levels of funding to overtime for existing employees to work case inventories and answer incoming telephone calls. TAS's ability to serve taxpayers during the filing season was directly impacted.

<sup>9</sup> Data obtained from TAMIS (June 6, 2019).

<sup>10</sup> Data obtained from TAMIS (Mar. 1, 2019; Mar. 25, 2019). Small Business/Self-Employed (SB/SE) Collection and TAS ended the Shutdown Operations Assistance Request (OAR) procedures on March 15, 2019. However, TAS only issued two of the 60 OARs in March.

TAS resumed hiring once the Shutdown was over. The Centralized Case Intake (CCI) function received funds in FY 2019 to expand its operations and hire additional intake advocates. As of May 11, TAS has started to catch up with the hiring backlog, onboarding 92 case advocates and 40 intake advocates including those approved for the CCI expansion. TAS is working to train the new hires in advance of the 2020 filing season.<sup>11</sup> TAS has identified the need to hire four new CCI teams for FY 2019 and began the hiring process as scheduled.<sup>12</sup>

### Shutdown Delayed Expansion of Centralized Case Intake Operations

The TAS Intake function serves as the first contact for most taxpayers coming to TAS for assistance. When a taxpayer contacts TAS, Intake Analysts conduct in-depth interviews with taxpayers to determine the correct disposition of their issue(s). They take actions where possible to resolve the issue upfront, create cases after validating the need for case advocate assistance, as well as offer taxpayers information and assistance with self-help options.

TAS also has Intake Advocates in the CCI function. Taxpayers who call the IRS National Taxpayer Advocate Toll-Free line—which is staffed by IRS employees—are transferred to the TAS CCI unit if the IRS assistors have been unable to assist the taxpayer, and they have determined that the taxpayer issue meets TAS criteria. CCI assistors perform the same function as Intake Advocates in local TAS offices and conduct in-depth interviews with taxpayers and assist in resolving their issue or creating a case; however, the assistors' work is focused on answering those calls transferred from the National Taxpayer Advocate Toll-Free line. The CCI expansion of its operations in FY 2019, to assume the direct transfer of taxpayers to TAS from additional IRS toll-free telephone lines, intends to allow taxpayers access to TAS at the earliest possible time.<sup>13</sup>

As previously discussed, during the Shutdown and continuing resolutions prior to the Shutdown, training classes for newly hired staff were cancelled, and the processing of competitive packages was stopped. CCI was unable to hire, train, and coach the number of employees needed to expand, delaying its ability to meet current demands and take on additional toll-free lines. At the same time, attrition has decreased the number of fully trained CCI personnel. The result is a significant impact on TAS's ability to help taxpayers in need of TAS assistance.

### Shutdown Negatively Impacted TAS Employee Morale in Advance of the Filing Season

TAS employees, like many other federal employees, worried about paying their bills, and some took on another job just to make ends meet during the prolonged Shutdown. Even after returning to work, employees were anxious about receiving back pay and getting caught up on their work just as filing season was starting.

To mitigate any impact to employee morale and satisfaction, upon their return to duty, TAS Leadership worked with LTAs to help them express understanding and compassion to managers and employees. TAS Leadership used the opportunity to encourage all employees to use their increased understanding of what hardship entails to be more compassionate and understanding when working with taxpayers, which was also in line with the Empathy in Action Initiative TAS has implemented over the last several years.<sup>14</sup>

11 For additional discussion of the impact of the government shutdown on TAS's hiring efforts, see *Efforts to Improve Taxpayer Advocacy: TAS Continues Its Efforts to Resolve Hiring Backlogs Despite Human Capital Office Delays*, *infra*.

12 See *Efforts to Improve Taxpayer Advocacy: TAS Continues Centralized Intake Expansion*, *infra*.

13 *Id.*

14 See National Taxpayer Advocate 2017 Annual Report to Congress 477 (*TAS Case Advocacy: Empathy in Action*).

### Shutdown Negatively Impacted TAS's Ability to Advocate for Taxpayer Rights in IRS Guidance and Assess Potential Systemic Issues

The review and assessment of potential IRS issues or actions is an essential function of TAS's Office of Systemic Advocacy.<sup>15</sup> During the Shutdown, taxpayers' rights were exposed to the risk of implementation of Internal Revenue Manual or other policy or procedural guidance changes without TAS input or perspective. Potential systemic issues submitted by the public through the Systemic Advocacy Management System were not evaluated and acted upon during the Shutdown.<sup>16</sup>

### Shutdown Delayed Funding of Low Income Taxpayer Clinics

The Low Income Taxpayer Clinic (LITC) program is a matching grant program that provides federal funds to organizations so they in turn can provide LITC services to taxpayers who are low income or who speak English as a second language (ESL). LITCs ensure the fairness and integrity of the tax system for low income and ESL taxpayers by:

- Providing *pro bono* representation on their behalf in tax disputes with the IRS;
- Educating them about their rights and responsibilities as taxpayers; and
- Identifying and advocating for issues that impact these taxpayers.

The Shutdown resulted in the LITC Program Office disbursing funds in mid-February instead of early January, thus putting clinicians at risk for layoffs or leading to the possible delay of the start of new clinic operations. It also led to the delay in opening the solicitation of supplemental funding applications for states without an LITC, which will likely limit start-up activities by new grantees due to later announcement, processing, and disbursement of funds.

During the Shutdown, clinics were unable to effectively work cases; appeals hearings and U.S. Tax Court cases were delayed; students' work on cases was delayed due to no student authorizations being issued and the delay in the issuance of Centralized Authorization File numbers for use in filing power of attorney forms with the IRS; and new staff on the payroll could not take on new work.

When asked about the effect of the Shutdown on the LITCs, clinicians focused on the harm to the taxpayers. The most common issue was the continuation of automated collections and levies without the ability to get relief. Other harm to taxpayers noted by clinicians included the continued accrual of interest on unresolved tax years, anticipated delays in 2018 refunds due to the IRS's inability to resolve prior-year audits, and lost opportunities to help the most vulnerable taxpayers, particularly those who experience mental illness or homelessness. The inability of clinicians to investigate or take other action likely closed the window of opportunity to work with those clients.

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15 Systemic Advocacy (SA) reviews Systemic Advocacy Management System (SAMS) submissions for potential project work, task forces, or other efforts to resolve systemic issues, works with other TAS functional units regarding Internal Management Document or Single Point of Contact issues, and works with the Operating Divisions to find the best solutions to administrative or procedural issues that impact taxpayers.

16 SA opened an Investigation Gathering Project, 40449, *Issues Attributable to the Government Shutdown*, to identify any SAMS issues related to the Shutdown.

**Area of Focus #1**     **TAS Is Developing an Electronic Roadmap Tool to Assist Taxpayers As They Navigate Through the Complex Tax System**

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### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*

### DISCUSSION

The National Taxpayer Advocate’s 2018 Annual Report to Congress included a series of “roadmaps” of various stages of tax return preparation, processing, and disputes with the IRS. In the context of the Annual Report, the roadmaps served as visuals for the Most Serious Problems section of the report that covered issues faced by taxpayers as they embark and continue on their journey through tax administration. The original conception of the roadmaps, however, was for them to serve as the underlying architecture for a digital interactive tool to help taxpayers and representatives as they navigate through the frustratingly complex processes and procedures of the U.S. tax system. The seven final roadmaps published in the 2018 annual report covered the following phases of the taxpayer’s journey:

1. Tax Return Preparation,
2. Tax Return Processing,
3. Notices,
4. Exam,
5. Appeals,
6. Collection, and
7. Litigation.

Despite all the complex processes and procedures illustrated in the existing seven roadmaps, they are still very high-level. While developing the roadmaps, we certainly faced challenges in our attempt to take insanely complicated procedures and depict them in a readable and easy-to-follow path. We were forced to oversimplify certain areas due to the two-dimensional limitations of the paper end product. We were also afraid that showing the actual complexity would cause readers to become completely lost in the cluttered details. Therefore, for every step shown on the roadmaps published in the 2018 Annual Report, there are multiple sub-steps and detours that we did not represent.

We also found it challenging to graphically depict the connections between the different stages of the taxpayer’s journey. After publication of the Annual Report, we continued to work to visually represent the taxpayer’s journey at a high level—in the format of a metro or subway map. We are pleased to publish this map in digital and hard copy in connection with this June report. The large “roadmap”—suitable for framing by anyone so inclined—lays out, at a very high level, the stages of the taxpayer’s journey and the connections and overlaps and repetitions between those stages.

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1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).



This roadmap is not simple, even at the very high level we've chosen for it. The roadmap makes clear the complexity of IRS tax administration and the burden on the taxpayer who has to navigate it.<sup>2</sup> Few IRS employees actually understand the interrelatedness of actions they take on employees (and taxpayers) in other units. Thus, although the roadmap is from a high-level perspective, it is a powerful teaching tool.

During the remainder of fiscal year (FY) 2019 and into FY 2020, we will develop a digital version of our roadmap. The benefit of a digital roadmap is that we can have a very simple starting point that requires no tax administration knowledge or expertise, and yet we can also go as deeply into the complexity of the tax system as the taxpayer wishes. As the entry point, the taxpayer or representative can input the number of the letter or notice received. For each notice, the digital tool will have a pop-up window providing the following basic information:

- **What does this letter or notice mean?** The tool will provide a description of what the letter or notice means and its legal significance. The taxpayer will be able to click on an embedded link that will pull up a generic version of the notice; the taxpayer can hover over different components of that generic version to see pop-up boxes that explain the specific components of the notice (*e.g.*, specific dates of great importance to timeframes for action).
- **Where am I in the tax system?** The tool will visually show the taxpayer where exactly he or she is located in the tax administration process in order to receive that particular letter or notice. We currently envision a pop-up window showing his or her exact location on the overall roadmap (a consolidation of all of the roadmaps); from there, the taxpayer can click to see his or her location on the roadmap of the specific phase of the journey (such as exam or collection).
- **How did I get there?** The tool should provide a general explanation of the process or procedures that preceded the current location, and the taxpayer can also click on the roadmap to see detailed maps of past stages of the journey.
- **What are my next steps?** This vital information will explain the taxpayer's current options. That is, the tool will explain what the taxpayer needs to do next to address the matter raised in the letter or notice, and the consequences of action and inaction. Embedded links will direct the taxpayer to appropriate sites on IRS.gov or even external sites (*e.g.*, the United States Tax Court's website for a video about the Tax Court and a fillable PDF of a Tax Court petition).
- **What are my rights as a taxpayer?** The taxpayer will learn what rights the taxpayer has and how action or inaction will impact these rights. The taxpayer can follow links to the TAS Taxpayer Bill of Rights web pages.<sup>3</sup>
- **Where can I get additional help?** This section will provide information on how to seek assistance from a Low Income Taxpayer Clinic (LITC) or TAS. It will also provide links to IRS and TAS guidance related to the matter.

Thus, by addressing six key questions every taxpayer will have in response to an IRS letter or notice, the initial pop-up box will provide an entry way into the complex tax system. The taxpayer will be able to determine where he or she is, why this notice is so important and what rights it provides or affects, what he or she must do next, and where he or she can get additional help. Through embedded links

2 In working on the roadmap, our graphics contractor consistently sought to simplify the roadmap. We had to explain, against all graphic design and communication principles, that we needed to represent the actual complexity of the system, not simplify it!

3 TAS, TBOR, [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights).

the taxpayer can obtain greater detail about all of these steps, or the taxpayer can just seek help from LITCs or TAS. The digital roadmap tool thus empowers the taxpayer with knowledge and helps build understanding of the tax system and the taxpayer's place in it.

## CONCLUSION

During FY 2020, we plan to build on the foundation of the 2018 Annual Report's basic roadmap diagrams. Given the reception we have received regarding the existing roadmaps, we hope to provide taxpayers, their representatives, and even other IRS employees a truly valuable tool. The final digital product will educate taxpayers about their rights and help them navigate through the extremely complex processes and procedures of tax administration.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Identify any gaps in the seven roadmaps published in the 2018 Annual Report to Congress;
- Identify the notices associated with each step of the seven roadmaps;
- Develop the content for each notice, step, and sub-step of the roadmap; and
- Design, develop, test, and launch the first iteration of the digital roadmap tool on the TAS website. The first iteration will cover information on the most important IRS notices that provide significant legal rights and protections to taxpayers: the notice of deficiency, math error notices, and notice of levy and right to a collection due process hearing.

Area of  
Focus #2

## TAS Will Urge the IRS to Reconsider Its Position on the Application of the Religious Freedom Restoration Act to the Social Security Requirement Under IRC § 24(h)(7), Which Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

Beginning in about the 1950s, members of certain religious groups, most notably the Amish, found their religious beliefs at odds with certain legal requirements. To ensure that an individual's freedom to exercise his or her religion is not infringed upon, the courts, Congress, and administrative agencies have fashioned certain exceptions to the legal requirements to accommodate the free exercise of religion.<sup>2</sup> These exceptions were created largely to address concerns raised by the Amish community.

Although there are sects within the community that differ in their interpretation of religious doctrines, the Amish community generally shares a number of fundamental religious beliefs that shape their interactions with the modern world,<sup>3</sup> such as a strong belief in community and humility.<sup>4</sup> The Old Order Amish have a long and deep adherence to their religious tenets, which focus on their "devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life."<sup>5</sup> Further, their religious beliefs prohibit them from accepting government benefits because they believe that God and the community

- 1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).
- 2 See *Wisconsin v. Yoder*, 406 U.S. 205 (1972); IRC §§ 1402(g) and 3127; Internal Revenue Manual (IRM) 21.6.3.4.1.3, *Child and Dependent Care Credit* (Oct. 1, 2018). For taxpayers indicating a religious (e.g., Amish/Mennonite) or conscience-based objection to obtaining a taxpayer identification number (TIN), refer to IRM 21.6.1.6.1, *Determining the Exemption Deduction* (Oct. 1, 2018).
- 3 Christopher Petrovich, *More Than Forty Amish Affiliations? Charting the Fault Lines*, JOURNAL OF AMISH AND PLAIN ANABAPTIST STUDIES, Issue 1, 120-142 (2017).
- 4 *The Amish and Photography*, <https://www.pbs.org/wgbh/americanexperience/features/amish-photography/> ("The Amish believe any physical representation of themselves (whether a photograph, a painting, or film) promotes individualism and vanity, taking away from the values of community and humility by which they govern their lives.").
- 5 *Wisconsin v. Yoder*, 406 U.S. 210 (1972).

should care for those in need. One consequence of observing these core beliefs is that most individuals in the Amish community refrain from accepting Social Security benefits and in some cases from obtaining a Social Security number (SSN), at least until later in life.<sup>6</sup>

To accommodate this deeply held belief, Congress passed Internal Revenue Code (IRC) §§ 1402(g) and 3127, which relieve qualifying religious individuals from complying with the old-age, survivors, and disability insurance obligation.<sup>7</sup> As the legal landscape continues to evolve, the Amish continue to encounter tension between their religious tenets—most notably their abstinence from participating in the Social Security system, including applying for SSNs—and their ability to navigate the tax system.<sup>8</sup>

Most recently, the Tax Cuts and Jobs Act of 2017 (TCJA) imposed a requirement that taxpayers must include an SSN for every qualifying child for whom they claim the Child Tax Credit (CTC).<sup>9</sup> This Area of Focus analyzes the impact of this SSN requirement and the IRS's implementation of the provision of that requirement. As we will clearly show, the IRS has put in place procedures to implement this requirement that impermissibly offer an exception to the SSN requirement to an unprotected class (parents of a child who is born and dies in the same year or in the consecutive year) while denying such an exception to a protected class (Amish parents that do not have an SSN for their children pursuant to their religious beliefs).

### **Taxpayers Are Now Required to Include a Social Security Number for Every Qualifying Child for Whom They Claim the Child Tax Credit, Thereby Conflicting With the Religious Beliefs of Some Individuals**

The TCJA amended IRC § 24 by requiring a taxpayer who is claiming a CTC for a qualifying child to provide the child's SSN on the return.<sup>10</sup> Prior to this amendment, IRC § 24 only required that a taxpayer identification number (TIN) be provided, and the IRS developed a procedure that allowed Amish taxpayers to claim the CTC without placing an identifying number on the dependent line of the return.<sup>11</sup> The stated purpose for the TCJA amendment was to prevent taxpayers who are not eligible

6 Peter J. Ferrara, *Social Security and Taxes*, in *THE AMISH AND THE STATE* 125, 129 (Donald B. Kraybill ed., John Hopkins Press 2d ed. 2003).

7 IRC § 3101 requires a 6.2 percent tax on an employee's wages to fund old-age, survivors, and disability insurance.

8 Although the issues raised in this discussion may affect other religious groups, this piece will primarily focus on issues facing and affecting the Amish, as it is this community that has historically found themselves in conflict with the tenets of their religion and obligations imposed on them by law.

9 Tax Cuts and Jobs Act (TCJA), Pub. L. No. 115-97, § 11022(a), 131 Stat. 2054, 2073-2074 (2017).

10 IRC § 24(h)(7). The IRS accepted an Individual Taxpayer Identification Number (ITIN), Social Security Number (SSN), or Adoption Taxpayer Identification Number (ATIN).

11 See IRM 21.6.3.4.1.3, *Child and Dependent Care Credit* (Oct. 1, 2017). For taxpayers indicating a religious (e.g., Amish/Mennonite) or conscience-based objection to obtaining a TIN, refer to IRM 21.6.1.6.1, *Determining the Exemption Deduction* (Oct. 1, 2017). Currently, when an individual believes they should be exempt from paying employment taxes on grounds of their religious beliefs, they will file Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*, with the Social Security Administration (SSA). The form must include evidence of membership in and adherence to the tenets and teachings of the religion and a waiver of all benefits and payments under the Social Security Act. The Commissioner of Social Security must also find the following: the sect's beliefs are required; the members have practiced them for a substantial period; and the sect has been in existence since December 31, 1950. Once the Form is approved by SSA, it will then be sent to the IRS for its approval. Generally, a Form that is approved by SSA will also be approved by IRS. Historically, when claiming the dependency exemption for a dependent who does not have an SSN, an Amish taxpayer will write "Amish Form 4029" in the dependency line.

to obtain a work-eligible SSN from improperly or fraudulently claiming the CTC or the American Opportunity Tax Credit (AOTC).<sup>12</sup>

In 2018, the National Taxpayer Advocate asked IRS senior leadership to address the impact of the CTC SSN requirement on the Amish community, specifically requesting it implement an administrative workaround for taxpayers with religious objections to an SSN, as the IRS has done in the past. At the end of 2018, the National Taxpayer Advocate was advised the IRS had created a process that would allow Amish taxpayers to claim the CTC.<sup>13</sup>

On February 6, 2019, notwithstanding the IRS's December communication, the IRS issued guidance to its employees instructing the *suspension* of amended returns where the taxpayer:

- Claims the CTC, Additional Child Tax Credit, or the Credit for Other Dependent;
- Does not provide an SSN(s) for the dependent(s); and
- Identifies as Amish or Mennonite, has a Form 4029/4029 exemption, or has a religious or conscience-based objection.<sup>14</sup>

The IRS Wage & Investment Division (W&I) also informed TAS that the IRS would be suspending both amended and original tax year 2018 returns that meet the above criteria and would not correspond with the taxpayer during the time the return was in suspense status. On March 7, 2019, the National Taxpayer Advocate alerted Congress to this issue when she testified before the House Ways and Means Subcommittee on Oversight.<sup>15</sup>

On March 29, 2019, the IRS Office of Chief Counsel (Chief Counsel) issued program manager technical advice (PMTA) to an IRS executive responsible for implementing this new provision concluding "... the [IRS] need not provide administrative relief for these taxpayers."<sup>16</sup> The IRS has

12 H.R. REP. NO. 115-409, at 141-142 (2017). Individuals must list their SSN on a tax return, and individuals who must file a return but do not have an SSN must apply for an ITIN from the IRS. Individuals who are eligible to obtain an SSN are not eligible to receive an ITIN. IRC § 6109. Receiving an ITIN does not authorize an individual to work in the United States or receive Social Security benefits. To obtain the Child Tax Credit (CTC) in 2018, the taxpayer must list on the return as the child's identifying number an SSN that is valid for employment in the United States. See H.R. REP. NO. 115-466, at 230-233 (2017). The requirement to have a work-eligible SSN to claim the CTC is similar to the requirement to have a work-eligible SSN to obtain the Earned Income Tax Credit (EITC), which was added to the IRC under the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 115-97, 110 Stat. 2105 (1996). The House Report states that the requirement to provide an SSN to claim the EITC was to ensure that only individuals who were authorized to work in the United States should be able to claim the credit. H.R. REP. NO. 104-651, at 1457 (1996).

13 Email communication from Deputy Chief Counsel to National Taxpayer Advocate (Dec. 18, 2018). The IRS plans to largely continue its practice of allowing taxpayers with a religious exemption who have an approved Form 4029 on file, and did not provide an SSN for their dependents, to claim the CTC. Taxpayers who object to providing the dependent's SSN for religious reasons will receive a slightly modified Letter 3050C to confirm the taxpayer's U.S. citizenship. IRM 21.6.1.6.1(8) (Oct. 1, 2018) requires the IRS to issue letter 3050C requesting specific documentation "in paragraph 1" of that letter. The letter requests that the taxpayer submit the child's birth certificate or green card, hospital medical records documenting the birth of the child or other public record documenting the birth of the child, school records, childcare records, a letter from a government benefits provider, cancelled child support checks, or medical records or statement from a health care provider verifying the child's address.

14 SERP Alert 19A0070 (Feb. 6, 2019).

15 *The Tax Filing Season: Hearing Before the H. Subcomm. on Government Oversight of the H. Comm. on Ways and Means*, 116th Cong. 22-27 (2019) (testimony of Nina E. Olson, National Taxpayer Advocate).

16 Program Manager Technical Advice (PMTA), *Administration of the Child Tax Credit for Objectors to Social Security Numbers*, POSTS-117474-18, PMTA 2019-2 (Mar. 29, 2019) (concluding, among other things that "[i]n implementing [IRC] section 24(h)(7), the [IRS] has compelling governmental interests to ensure uniform and orderly tax administration and to prevent improper CTC claims. For the [IRS], the least restrictive, and the only, means to further those compelling interests is to require a qualifying child's eligible SSN.").

since revised its guidance to reflect this advice<sup>17</sup> and is disallowing the CTC where the qualifying children do not have SSNs. Under the TCJA, the maximum CTC for 2018 was \$2,000 per child. Without an SSN, the taxpayer can only receive a partial \$500 credit allowed for a dependent, a significant reduction of 75 percent.<sup>18</sup>

The National Taxpayer Advocate profoundly disagrees with Chief Counsel’s conclusion that the IRS does not need to administratively accommodate taxpayers with religious or conscience-based objections to obtaining SSNs and believes the legal advice’s analysis inaccurately interprets the IRS’s obligation to comply with the Religious Freedom Restoration Act of 1993 (RFRA).<sup>19</sup> The discussion below describes the evolution of free exercise claims, how such claims are analyzed when applying RFRA, *and relevant United States Supreme Court decisions.*

### *The Evolution of Free Exercise of Religion Claims*

Beginning in the 1960s, the U.S. Supreme Court decided several landmark free exercise of religion cases, several of which directly involved the Amish. The first landmark case on this issue was *Sherbert v. Verner*.<sup>20</sup> In *Sherbert*, a member of the Seventh-day Adventist Church, which forbids working on Saturday in observance of the sabbath, was fired after refusing to work on Saturdays.<sup>21</sup> Ms. Sherbert could not find any other work that did not require her to work on Saturday.<sup>22</sup> She applied for unemployment compensation, but her claim was denied because the state’s law provided that a claimant is ineligible for unemployment if he or she has failed, without good cause, to accept other available work offered.<sup>23</sup>

The Court held that denial of Ms. Sherbert’s unemployment claim represented a substantial burden upon her free exercise of religion.<sup>24</sup> Justice Brennan, who wrote the majority opinion, stated, “to condition the availability of benefits upon this appellant’s willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties.”<sup>25</sup> The Court next considered whether the state had a compelling interest to justify the substantial infringement on Ms. Sherbert’s First Amendment right and determined the state did not.<sup>26</sup> Further, this opinion established what is known as the *Sherbert* Test, which requires the demonstration of a compelling interest and a narrow tailoring of a law that substantially burdens an individual’s free exercise of religion.

Now is not the first time the Amish community and its deeply held religious beliefs have been at odds with a legal requirement. In the landmark Supreme Court decision *Wisconsin v. Yoder*,<sup>27</sup> the Amish challenged a Wisconsin compulsory school attendance law requiring children to attend school up until the age of 16 on the basis that this requirement infringed upon their First Amendment right to the free

17 IRM 3.12.3.26.17.6,(2) *TIN Requirements (EC 287)* (Apr. 15, 2019).

18 IRC § 24(h)(2), (4), and (7).

19 PMTA, *Administration of the Child Tax Credit for Objectors to Social Security Numbers*, POSTS-117474-18, PMTA 2019-2 (Mar. 29, 2019); Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (1993), codified at 42 U.S.C. §§ 2000bb et seq; *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

20 *Sherbert v. Verner*, 374 U.S. 398 (1963).

21 *Id.* at 399 (1963).

22 *Id.*

23 *Id.* at 400 (1963).

24 *Id.* at 403 (1963).

25 *Id.* at 406 (1963).

26 *Id.* at 406-409 (1963).

27 *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

exercise of religion. (Amish children do not attend school beyond eighth grade so they can learn the ways of the Amish faith.) The U.S. Supreme Court held that Wisconsin’s compulsory school attendance law was unconstitutional when applied to the Amish, because it imposed a substantial burden on the free exercise of religion and was unnecessary to serve a compelling governmental interest.<sup>28</sup>

In 1982, the Supreme Court stepped back from its compelling interest analysis in *Yoder* and adopted a narrower test for free exercise of religion cases. In *United States v. Lee*, an Amish farmer who employed other Amish filed a refund suit claiming a refund of employment taxes paid, arguing that payment of Social Security taxes violated his First Amendment free exercise rights because the Amish oppose contributing to and benefiting from a national social security system.<sup>29</sup> The U.S. Supreme Court determined that requiring Amish employers to pay Social Security taxes was an infringement on their free exercise of religion, but further held that limiting religious liberty is permissible if the state shows doing so is essential to “accomplish an overriding governmental interest,” (*i.e.*, the payment of tax).<sup>30</sup> Having found that it would be difficult for the government to accommodate the comprehensive social security system with myriad exceptions flowing from a variety of religious beliefs and that the tax law was neutral in its general application, the Court held that this burden to the Amish religion was not unconstitutional.<sup>31</sup>

The holding in *Yoder* was further eroded by the U.S. Supreme Court in *Employment Division, Department of Human Resources of Oregon v. Smith*.<sup>32</sup> There, the Court held that the “right of free exercise does not relieve [an] individual of [the] obligation to comply with [a] valid or neutral law of general applicability on [the] ground that [the] law proscribes, or requires, conduct that is contrary to his religious practice.”<sup>33</sup> In so doing, it effectively overruled the compelling governmental interest standard of scrutiny applied in *Sherbert* and *Yoder*.<sup>34</sup>

Congress responded to this ruling by enacting the Religious Freedom Restoration Act in 1993. The stated purpose of the RFRA was as follows:

1. To restore the compelling interest test as set forth in *Sherbert*<sup>35</sup> and *Yoder*<sup>36</sup> and to guarantee its application in all cases where free exercise of religion is substantially burdened; and
2. To provide a claim or defense to persons whose religious exercise is substantially burdened by government.<sup>37</sup>

The compelling interest test set forth in the RFRA provides:

- (a) In General. Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

28 *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

29 *U.S. v. Lee*, 455 U.S. 252, 257 (1982).

30 *Id.* at 257-258 (1982).

31 *Id.* at 259-260, 263 (1982).

32 494 U.S. 872 (1990).

33 *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990).

34 *Sherbert v. Verner*, 374 U.S. 398 (1963). Mary L. Topliff, Annotation, Validity, Construction, and Application of Religious Freedom Restoration Act (42 U.S.C.A. §§ 2000bb et seq.), 135 A.L.R. Fed. 121 (1996).

35 *Sherbert v. Verner*, 374 U.S. 398 (1963).

36 *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

37 42 U.S.C. 2000bb-(b)(1), (2). Pub. L. 103-141, § 2, 107 Stat. 1488 (1993).

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.<sup>38</sup>

One of the most recent and significant cases where the standards set out in RFRA were applied to a federal law and a regulation was in *Burwell v. Hobby Lobby Stores, Inc.*<sup>39</sup> The Court adopted a three-step analysis to determine how RFRA applies:

- Step 1: Whether the complainant was covered under RFRA;
- Step 2: Whether the government action or mandate “substantially burdens” the “exercise of religion” as defined under the Act; and
- Step 3: Whether the government action or mandate is *both* (1) in furtherance of a compelling governmental interest *and* (2) the least restrictive means of furthering that compelling governmental interest.

*Hobby Lobby* presented an opportunity for the Court to weigh a free exercise claim against the Patient Protection and Affordable Care Act's requirement that businesses' health insurance include coverage for contraception. Three closely held corporations and their owners asserted that such a requirement violated their religious beliefs.<sup>40</sup> The least-restrictive-means standard is exceptionally demanding, said the Court, and it was not satisfied that the government met that standard in this case.<sup>41</sup> The relevant inquiry is whether an agency is able to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion.<sup>42</sup> The Court held that the Secretary of Health and Human Services had previously adopted other means by which the regulation could be complied with while not substantially burdening a person's free exercise of religion.<sup>43</sup> Additionally, the Court determined that failing to provide this alternative means of compliance would force the companies' owners to either violate their deeply held religious beliefs or honor those beliefs and ultimately pay a financial penalty of millions of dollars, thereby substantially burdening their free exercise of religion.<sup>44</sup>

### *Applying the Religious Freedom Restoration Act to the Requirement That a Social Security Number Be Included on the Return for Each Dependent Where the Child Tax Credit Is Being Claimed*

The holding in *Hobby Lobby* illustrates that the Supreme Court expects agencies to conduct an RFRA analysis when developing administrative policies and procedures. Thus, when implementing IRC § 24(h)(7)—or any statute—the IRS is obliged to consider whether implementation would run afoul of RFRA.

38 42 U.S.C. § 2000bb-1(a) and (b).

39 *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

40 The three closely held companies are Hobby Lobby Stores, Inc., Mardel, and Conestoga Wood Specialties Corporation (the owners of Conestoga Wood Specialties were members of the Mennonite faith).

41 *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014).

42 *Id.*

43 *Id.* at 730-731 (2014).

44 *Id.* at 682 (2014).



When applying RFRA and the holding in *Hobby Lobby*, the IRS must consider whether there is a compelling governmental interest and, if so, how to achieve that compelling governmental interest in a manner that imposes the least restrictive burden on an individual's free exercise of religion. In Chief Counsel's advice, it rightly concludes that the IRS has a compelling governmental interest to ensure uniform and orderly tax administration and to prevent improper CTC claims.

In support of its conclusion that the IRS "need not provide administrative relief for these taxpayers," Chief Counsel quotes *Hernandez v. Commissioner*, which in turn quoted *United States v. Lee*, as follows: "The tax system could not function if denominations were allowed to challenge the tax system on the ground that it operated in a manner that violates their religious belief."<sup>45</sup>

Both the *Hernandez* and *Lee* cases cited by Chief Counsel were decided *before* the enactment of the RFRA, which explicitly reinstated the *Sherbert* compelling governmental interest test when analyzing how a federal law restricts an individual's free exercise of religion. As noted above, in *Sherbert*, the Court held the state's denial of unemployment compensation to a Seventh-day Adventist who was fired for refusing to work on Saturday, her Sabbath, was a violation of the Free Exercise Clause of the Constitution.<sup>46</sup> While acknowledging that the Free Exercise Clause "is not totally free from legislative restriction,"<sup>47</sup> the Court reasoned:

Here, not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.<sup>48</sup>

The Court next considered "whether some compelling state interest enforced in the eligibility of the South Carolina [unemployment insurance] statute justifies the substantial infringement of appellant's First Amendment right."<sup>49</sup> The Court concluded there was none and noted:

Significantly, South Carolina expressly saves the Sunday worshipper from having to make the kind of choice which we here hold infringes the Sabbatarian's religious liberty. When, in times of "national emergency," the textile plants are authorized by the State Commissioner of Labor to operate on Sunday, "no employee shall be required to work on Sunday ... who is conscientiously opposed to Sunday work, and if any employee should refuse to work on Sunday on account of conscientious ... objections, he or she shall not jeopardize his or her seniority by such refusal or be discriminated against in any other manner." S.C. Code, § 644. No question of the disqualification of a Sunday worshipper for benefits is likely to arise, since we cannot suppose that an employer will discharge him in violation of this statute. The unconstitutionality of the disqualification of the Sabbatarian is thus compounded by

45 *United States v. Lee*, 455 U.S. 252 at 260 (1982); *Hernandez v. Comm'r*, 490 U.S. 680, 699-700(1989).

46 *Sherbert v. Verner*, 374 U.S. 398 (1963).

47 *Id.* at 403 quoting *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961).

48 *Sherbert v. Verner*, 374 U.S. 398, 404 (1963).

49 *Id.*

the religious discrimination which South Carolina's general statutory scheme necessarily effects.<sup>50</sup>

With respect to the Amish and the SSN requirement when claiming the CTC, Chief Counsel advice states, "... the least restrictive, and the only, means to further those compelling interests is to require a qualifying child's eligible SSN,"<sup>51</sup> relying on the language of IRC § 24(h)(7) as justification for its narrow interpretation of the least restrictive means analysis. And yet here, as in *Sherbert*, the government is applying this statutory requirement disparately between groups of taxpayers. Specifically, despite the statutory requirement that qualifying children have SSNs for taxpayers to claim and receive the CTC and Earned Income Credit (EITC), the IRS has put in place procedures that allow parents of children who were born and died in the same or consecutive tax years to claim these credits *even if they do not have an SSN for the child*. Internal Revenue Manual (IRM) 3.12.3.26.17.6, which was updated April 15, 2019, *after* the issuance of the Chief Counsel memo, states:

Allow the Child Tax Credit when the child's SSN is missing, and the child was **born** and **died** in the same or consecutive tax period if the taxpayers provide documentary support in the form of a copy of the birth certificate, death certificate, or hospital record ...

Moreover, the IRS has provided guidance regarding these procedures to taxpayers in general, in the form of an FAQ on its website:

My child was born and only lived 40 minutes. Can this child be my qualifying child for the earned income credit and the child tax credit?

Answer

Yes, if you meet the requirements, you may claim:

1. The Earned Income Credit
2. The Dependency Exemption and/or Child Tax Credit

Specifically, in regards to claiming the Child Tax Credit, the FAQ states the following:

The child tax credit requires that you provide a valid SSN for your qualifying child. If you meet all of the other requirements to claim this credit and your child was born and died in 2018 and didn't have an SSN, instead of an SSN, you may enter "DIED" on column 2 of the Form 1040 and attach a copy of the child's birth certificate or a hospital record showing a live birth.<sup>52</sup>

Thus, despite the IRS's position that it is *required* to deny CTC claims where a child does not have an SSN for religious reasons, it has miraculously found a way—and established a procedure—to permit CTC claims where a child does not have an SSN because the child was born and died in the same or consecutive years. As sympathetic as this second group of taxpayers is, it is not a protected class under the Constitution, and the RFRA does not apply to these taxpayers' circumstances. Thus, the IRS's own established procedures and public announcements demonstrate that its implementation of

50 *Sherbert v. Verner*, 374 U.S. 398, 406 (1963).

51 PMTA, *Administration of the Child Tax Credit for Objectors to Social Security Numbers*, POSTS-117474-18, PMTA 2019-2 (Mar. 29, 2019).

52 IRS, *Frequently Asked Questions, Qualifying Child Rules 1*, <https://www.irs.gov/faqs/earned-income-tax-credit/qualifying-child-rules/qualifying-child-rules-1> (last visited June 4, 2019).

IRC § 24(h)(7) is not consistent with a “valid or neutral law of general applicability.” To the contrary, the IRS has carved out an exception to the law for an *unprotected class*, even as it says it is required to apply the law with no exceptions with respect to a protected class. Thus, Chief Counsel’s decision seemingly stands legal reasoning on its head.

In response to our question about the justification for the discriminatory procedures described above, an official from Chief Counsel noted that the Social Security Administration will not issue an SSN to a deceased person, pointing out that the parent of a child who was born and died in the same year is unable to obtain an SSN for the deceased child, whereas religious objectors make a choice not to obtain an SSN, albeit in observance of their religious obligations.<sup>53</sup>

The Social Security Administration’s refusal to issue SSNs to deceased individuals in certain circumstances is irrelevant in the face of the plain statutory requirement invoked by Chief Counsel to deny religious objectors the CTC.<sup>54</sup> *Sherbert*, as incorporated into RFRA, requires the law to be neutral and generally applicable; if an exemption is offered to one, then it must be offered to everyone.

The procedures for claiming children born and deceased in the same year or consecutive years also exposes the fallacy of Chief Counsel’s claim that:

In light of the unambiguous language of section 24(h)(7), the least restrictive, and indeed the only, means to further those compelling interests is to require a qualifying child’s eligible SSN for CTC. The Service has no ‘viable alternative’ to implement this clear congressional mandate to require an eligible SSN for a qualifying child.<sup>55</sup>

This conclusion is manifestly inaccurate, as the IRS has, in fact, found a “viable alternative” where children are born and die in the same or consecutive tax years.

Moreover, since about the mid-1980s there has been, and still is, a procedure whereby the IRS processes returns from religious and conscientious objectors claiming dependent exemptions without SSNs.<sup>56</sup> This procedure requires the taxpayer to file with his or her return a Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*, that has been approved by the Social Security Administration. Up until the IRS issued its new guidance disallowing CTC claims where Amish or Mennonite taxpayers’ children did not have SSNs, the IRS required the taxpayer to provide detailed information and documentation demonstrating the existence, age, relationship, and residence of the child before the IRS processes the return.<sup>57</sup> This documentation is far in excess of what is required of parents of children who were born and deceased in the same or consecutive years. Thus, the

53 Email dated May 31, 2019, on file with TAS.

54 See Program Operations Manual System (POMS), RM 10225.080, *Policy on Social Security Number (SSN) Applications on Behalf of Deceased Persons, A. Assigning an SSN after death* (Mar. 10, 2017). The statement says the following for the situation of parents who request an SSN for a deceased child when an SSN was not requested through the normal procedures: “FOs (Field Officers) should not assign an SSN merely to process a claim for benefits to a denial or to obtain an SSN for a deceased child so that the parent(s) may claim the child as an exemption. For information on claiming exemptions, please visit IRS.gov.”

55 PMTA, *Administration of the Child Tax Credit for Objectors to Social Security Numbers*, POSTS-117474-18, PMTA 2019-2 (Mar. 29, 2019).

56 These procedures still apply to late-filed returns for which the dependent exemption under IRC § 151 is still available.

57 This documentation was enumerated in letter 3050C included a birth certificate, hospital medical record documenting the child’s birth, or other public record documenting the child’s birth, and school records on official letterhead, statement from a childcare provider either on company letterhead or notarized, statement from a government agency providing benefits to the child or verifying that the child is disabled, cancelled checks or statements verifying child support paid, or medical records or a written statement from the health care provider.

government cannot argue that its compelling government purpose—to combat improper or fraudulent claims of CTC—is a justification for substantially burdening the religious beliefs of Amish taxpayers when it is clearly applying a less restrictive means to another (non-religious) group of taxpayers.

## CONCLUSION

Since the nation's founding, the First Amendment of the U.S. Constitution has guaranteed the free exercise of religion. This enumerated right has continually been protected by the United States Supreme Court, Congress, and governmental agencies. Congress has reinforced this foundation by enacting the RFRA. Recent Chief Counsel advice on the CTC issue impermissibly and substantially burdens the free exercise of religion under RFRA by exempting one group from the application of IRC § 24(h)(7) while refusing to exempt taxpayers who have a religious objection to obtaining SSNs. Moreover, the IRS has created and is implementing a less restrictive means to achieve its compelling governmental purpose for the former group but has declined to implement it with respect to religious objectors. These are clear violations of the RFRA and may even be a violation of the Free Exercise Clause. The IRS must either deny the CTC and EITC to parents whose children were born and deceased in the same or consecutive years—something the National Taxpayer Advocate is *not recommending*—or it must apply the exemption afforded to this group of taxpayers to the Amish and similar taxpayers as well.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Advocate for the IRS to reconsider its position on requiring SSNs for qualifying children of Amish and similar taxpayers who have religious objections when claiming the CTC; and
- Develop a legislative recommendation to amend IRC § 24(h)(7) to allow taxpayers to claim the CTC for qualifying children without SSNs when there is an approved Form 4029 on file.

**Area of Focus #3**      **TAS Will Continue to Advocate for the IRS to Proactively Identify, Educate, and Assist Taxpayers at Risk of Economic Hardship Throughout the Collection Process**

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

Congress has repeatedly directed the IRS to protect taxpayers who are experiencing economic hardship from any additional economic harm due to tax collection.<sup>2</sup> The National Taxpayer Advocate remains concerned that the IRS does not *proactively* identify taxpayers at risk of economic hardship at the beginning of the collection process, despite having the ability to do so.<sup>3</sup> Furthermore, the IRS routinely applies collection treatments that do not require any financial analysis, including placing taxpayers into streamlined Installment Agreements (IAs).<sup>4</sup> Because the IRS typically does not place a marker on the accounts of taxpayers who seem at particular risk for economic hardship, and because taxpayers are often unaware the IRS must halt collection action if it causes economic hardship, vulnerable taxpayers may face potentially harmful collection action, such as an IRS levy or a lien filing, or enter into a streamlined IA they cannot afford and may later default on.<sup>5</sup>

- 1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).
- 2 See, e.g., IRC § 6343(a)(1)(D) (requiring the IRS to release a levy if the IRS determines that “such levy is creating an economic hardship due to the financial condition of the taxpayer”); IRC §§ 6320(c), 6330(c)(2)(A)(ii) (permitting a taxpayer, in a collection due process hearing, to raise the inability to pay due to hardship as a “challenge to the appropriateness of collection action”); IRC § 7122(d) (requiring the IRS to develop allowable living expense (ALE) guidelines to determine when an offer in compromise (OIC) is adequate and should be accepted to resolve a dispute).
- 3 Taxpayers who meet the definition of economic hardship are those “unable to pay his or her reasonable basic living expenses.” See IRC § 6343; Treas. Reg. § 301.6343-1; Internal Revenue Manual (IRM) 5.8.11.2.1, *Economic Hardship* (Aug. 5, 2015).
- 4 IRC § 6159; IRM 5.14.1.1.1, *Streamlined Installment Agreements (IAs)* (Dec. 23, 2015). In theory, a streamlined IA may help taxpayers by avoiding the burden of providing financial information. However, by avoiding the financial analysis this tool actually harms taxpayers who would otherwise not be able to afford an IA and would be better off with a different collection alternative.
- 5 The IRS has internal data available to provide an initial indicator of whether a taxpayer may be at risk of economic hardship, but uses this information in very limited circumstances. For instance, the Low Income Indicator (LII) is used to determine whether taxpayers entering into an IA are eligible for a reduced or waived user fee. An income-based LII is placed on accounts that are at or below 250 percent of the federal poverty level depending on household size and state of residence. The LII is placed on the IRS’s Individual Master File (IMF) system, and is determined by reviewing the taxpayer’s income and exemptions on the taxpayer’s most recent tax return and comparing them with the poverty level charts created by the Department of Health and Human Services (HHS). IRM 5.14.1.2, *Installment Agreements and Taxpayer Rights* (July 16, 2018); see also IRS response to TAS information request (Sept. 14, 2018) (on file with TAS).

The IRS does not flag cases for potential economic hardship even when Inventory Delivery System (IDS) scoring shows the cases are not likely to produce payments, including the shelved cases that the IRS sets aside.<sup>6</sup>

In fiscal year (FY) 2018, the IRS agreed to nearly 2.9 million installment agreements. Over 72 percent (2,079,743) of these agreements were streamlined IAs, not requiring financial analysis or the use of Allowable Living Expense (ALE) standards.<sup>7</sup> Over the past six years, nearly 4.3 million IAs have been arranged for cases assigned to the IRS's Automated Collection System (ACS) and about 84 percent of those IAs were streamlined.<sup>8</sup> Furthermore, as we reported in the 2018 Annual Report to Congress, about 40 percent of taxpayers who entered into a streamlined IA in ACS in FY 2018 had incomes at or below their ALEs.<sup>9</sup> While the overall default rate for ACS streamlined IAs in FY 2018 was 19 percent,<sup>10</sup> the default rate for streamlined IAs of taxpayers whose income did not exceed their ALEs, was 39 percent.<sup>11</sup> These taxpayers agreed to pay their tax debts while, even by the IRS's own standards, they could not pay for their basic living expenses. These taxpayers may default on their IAs or continue to make payments but be unable to meet what the IRS has determined are basic living expenses.<sup>12</sup> Furthermore, 40 percent of taxpayers who entered into IAs while their debts were assigned to private collection agencies (PCAs) had incomes at or below their ALEs.<sup>13</sup> Thirty-seven percent of taxpayers who entered into IAs while their debts were assigned to PCAs defaulted, a frequency that rises to 44 percent when the defaulted IAs that PCAs do not report to the IRS as required are taken into account.

The IRS does not consider ALE guidelines in deciding which collection cases to work, although research by TAS shows that in a sample comprising a large segment of ACS casework being transferred to the

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- 6 The IRS uses the Inventory Delivery System (IDS) to evaluate a collection case and determine where it should be worked using decision analytics and risk-based collection criteria. IRM 5.1.20, *Collection Inventory* (Nov. 2, 2016).
- 7 IRM 5.14.5.1, *Overview* (May 23, 2014). Streamlined Criteria have two tiers, up to \$25,000, and \$25,001–\$50,000. In-Business Trust Fund Express IAs can be secured without securing financial information on business accounts up to \$25,000. For more information on streamlined IAs in particular, see IRM 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015). The number of streamlined IAs reported above includes guaranteed IAs available to taxpayers under IRC § 6159(c), which also do not require financial analysis. IRS, *Collection Activity Report (CAR) NO-5000-6* (Oct. 1, 2018).
- 8 There are instances where IAs may be arranged by other Collection units than the Automated Collection System (ACS). In Fiscal Year (FY) 2018, streamlined IAs made up about 72 percent of total IAs. IRS, *CAR NO-5000-6* (Oct. 1, 2018).
- 9 IRC § 7122(d). If the allowable living expense (ALE) standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Jun. 18, 2019). See also IRS, *CAR, IA Default Report, FY 2018*.
- 10 IRS, *CAR, IA Default Report, FY 2018*.
- 11 IRS, *CAR, IA Default Report, FY 2018*, for the default rate information for streamlined IAs, and TAS Research analysis of the ACS and IA accounts, FY 2018, for results on percentage of streamlined IAs whose income did not exceed their ALEs who defaulted.
- 12 For more information, see National Taxpayer Advocate 2018 Annual Report to Congress 255-265 (Most Serious Problem: *IRS's Automated Collection System (ACS): ACS Lacks A Taxpayer-Centered Approach, Resulting in A Challenging Taxpayer Experience and Generating Less Than Optimal Collection Outcomes for the IRS*).
- 13 This figure reflects allowance of vehicle ownership and operating expenses in calculating ALEs. If vehicle ownership expenses are not allowed, 33 percent of taxpayers who entered into IAs while their debts were assigned to private collection agencies (PCAs) had incomes at or below their ALEs. For a further discussion of ALEs, see 2018 National Taxpayer Advocate Annual Report to Congress vol. 2 39-52 (Research Study: *A Study of the IRS's Use of the Allowable Living Expense Standards*).

Collection queue, about 93 percent of payments received by the IRS came from taxpayers with income exceeding their calculated ALEs or who have assets that can be detected through systemic means.<sup>14</sup>

TAS's research shows that an algorithm using internal data about a taxpayer's income and assets, and comparing that information to ALEs, can be a reliable way to predict taxpayers at risk of economic hardship. TAS evaluated a sample of 278 cases in which a taxpayer's account was closed by ACS or the Field with an IA in FY 2018, all cases in which the IRS obtained financial information from the taxpayer which showed ability to pay, and analyzed whether filtering those cases based on systemic information about a taxpayer's income and ALEs would arrive at the same result.<sup>15</sup> Only 14 cases, or five percent of the sample group, showed no ability to pay by the algorithm—meaning that TAS's algorithm arrived at the same result as the IRS employee in 95 percent of the cases. In five of the 14 cases where TAS's algorithm indicated the taxpayer had no ability to pay, the IRS employee initiated a back-up currently not collectible (CNC) determination in case the IA defaulted.

In addition to inflicting financial harm on the affected taxpayers, the IRS wastes resources by pursuing these cases because it has to reverse collection actions in some cases and it has to deal with defaulted installment agreements in others. Pursuing these taxpayers also contravenes the intent of Congress, which is to avoid creating or exacerbating a financial hardship.<sup>16</sup>

The IRS's failure to proactively identify and flag taxpayers at risk of economic hardship throughout the collection process, and in turn, to consider the facts and circumstances that might affect the taxpayers' ability to pay, and respond to them appropriately, violates taxpayers' *right to be informed, right to quality service, right to a fair and just tax system, right to pay no more than the correct amount of tax, and right to finality*.<sup>17</sup>

The National Taxpayer Advocate has repeatedly expressed her concerns about the IRS's failure to protect taxpayers who experience economic hardship or who cannot pay their basic living expenses

14 See National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 157-192 (Research Study: *Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens (NFTL) and Alternative IRS Letters on Individual Tax Debt Resolution"*). The National Taxpayer Advocate persuaded the IRS to conduct a study to determine if the NFTL or one of three alternative collection letters were more effective in reducing the balances owed by taxpayers. The IRS selected a random sample of about 13,000 taxpayers within ACS who generally owed between \$10,000 and \$25,000 whose liabilities were being transferred to the collection queue. TAS Research's analysis of these cases showed that taxpayers with income exceeding their calculated ALEs or who have systemically detected assets account for about 93 percent of the payments made over two years regardless of the treatment type.

15 See National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*). TAS excluded two cases from the sample because we could not find additional information on the two cases because of an error in the data collection instrument. TAS Research estimated the income for taxpayers in these cases using the Total Positive Income (TPI) reported on the taxpayer's FY 2017 tax return. To evaluate taxpayers that may not have filed a prior-year return, TAS also considered information from third party Information Reporting Program (IRP) documents, including Forms 1099-INT (interest), 1099-DIV (dividends), 1099-R (retirement income), 1099-B (stocks and bonds), 1099-MISC, SSA-1099, and W-2. To incorporate assets, TAS Research looked at Form 1098 (mortgage interest), and real estate tax or mortgage interest paid on Schedule A. TAS calculated the ALEs for each case by using the National Standards (with household size determined based on the number of exemptions claimed on the return), Local Standards (determined by the zip code on the return), Vehicle Ownership Expense, and Out of Pocket Healthcare Expenses (determined by the taxpayer's age). If the taxpayer did not file a return in a previous year, TAS allocated the lower amount.

16 See IRC § 6343(a)(1)(D). Amendments to IRC § 6343 in 1988 set out conditions under which the IRS is *required* to release a levy, including when "the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer." See Omnibus Taxpayer Bill of Rights, Pub. L. No. 100-647, § 6236(f), 102 Stat. 3342, 3740 (1988), also known as Taxpayer Bill of Rights 1 (TBOR 1), enacting IRC § 6343(a)(1)(D).

17 There are several provisions of the IRC that protect taxpayers experiencing economic hardship from IRS collection actions. See, e.g., IRC § 6343(a)(1)(D); IRC §§ 6320(c), 6330(c)(2)(A)(ii); IRC § 7122(d).

from harmful collection action.<sup>18</sup> In January 2011, on the recommendation of the National Taxpayer Advocate, the IRS first began applying a low income filter (LIF) to the Federal Payment Levy Program (FPLP) to flag and screen out taxpayers whose incomes were below 250 percent of the federal poverty level (FPL).<sup>19</sup> The purpose of this filter was to protect low income taxpayers from economic hardship arising from levies on their Social Security old age or disability benefits, or Railroad Retirement Board benefits. The filter was implemented after TAS research showed that the FPLP often levied on taxpayers who were experiencing economic hardship.<sup>20</sup>

The National Taxpayer Advocate continues to be concerned, and in discussions with senior IRS leadership, has issued a two-part recommendation to the IRS. The first recommendation is a first step: to adopt an algorithm to identify taxpayers who may face economic hardship. Then, going beyond that step, the second part of the recommendation is to expand the use of the algorithm. The National Taxpayer Advocate offers suggestions on how the algorithm could potentially be used once adopted.

### TAS Will Continue to Urge the IRS to Adopt an Algorithm Similar to the TAS Algorithm

Recently, TAS developed an automated algorithm that can identify taxpayers who are at risk of economic hardship by flagging those with incomes below their ALEs, with a high degree of accuracy.<sup>21</sup> The TAS algorithm uses information that the IRS already has and could enable the IRS to automatically flag taxpayers at risk of economic harm.<sup>22</sup>

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- 18 See, e.g., Nina E. Olson, NTA BLOG, *The IRS Is Not Doing Enough to Protect Taxpayers Facing Economic Hardship* <https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship?category=TaxNews> (May 24, 2019); *Tax Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. (Mar. 7, 2019) (statement of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*); National Taxpayer Advocate 2019 Purple Book 50-51 (*Direct the IRS to Study the Feasibility of Using an Automated Formula to Identify Taxpayers at Risk of Economic Hardship*); National Taxpayer Advocate 2016 Annual Report to Congress 192-202 (Most Serious Problem: *Allowable Living Expense (ALE) Standard: The IRS's Development and Use of ALEs Does Not Adequately Ensure Taxpayers Can Maintain a Basic Standard of Living for the Health and Welfare of Their Households While Complying With Their Tax Obligations*); 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*).
- 19 See 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*). See also National Taxpayer Advocate 2008 Annual Report to Congress vol. 2 46-72 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).
- 20 National Taxpayer Advocate 2008 Annual Report to Congress vol. 2 46-72 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).
- 21 See National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).
- 22 For a detailed explanation of the TAS algorithm, see National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 39-52 (Research Study: *A Study of the IRS's Use of the Allowable Living Expense Standards*). The IRS has expressed concern regarding the ALE determination methodology and how to address income when no income tax return is found. However, the results of TAS's research highlight the need for the IRS to study the feasibility of using internal data further and in which situations the algorithm could be beneficial. In some instances where no income tax return is found, the IRS should consider other data about taxpayers such as third-party reporting information.



The National Taxpayer Advocate has recommended the IRS utilize the data it already has access to and adopt a formula similar to the TAS algorithm.<sup>23</sup> The IRS has repeatedly declined to adopt our recommendations.<sup>24</sup>

Most recently, the IRS responded to our recommendations in the National Taxpayer Advocate's 2018 Annual Report to Congress by saying: "The IRS cannot reliably determine economic hardship based solely on information available in IRS and third-party databases, which is often incomplete."<sup>25</sup> It is true the IRS cannot conclusively reach a determination about whether a taxpayer faces economic hardship based on its internal data alone. But that is not what we are recommending. Rather, we are recommending that the IRS systemically place a marker on the accounts of all taxpayers whom its filter identifies as having incomes below their ALEs and no detectable assets. The marker would signal that a taxpayer is *at risk* of economic hardship and therefore that additional information should be requested. Specifically, the marker would alert IRS assistors speaking with taxpayers over the phone that they should verify the taxpayer's ability to pay before placing them in streamlined IAs. The IRS could program their systems so that when an assistor keys in the Social Security number of a taxpayer with an economic hardship risk indicator, a screen is generated with the income information, projected family size, and appropriate ALEs. Then the assistor could engage with the taxpayer and request certain high-level information to verify the accuracy of its internal information. Under this approach, the IRS would be using data to proactively protect financially struggling taxpayers from further financial harm. Similarly, the indicator could be used as a warning to taxpayers who are attempting to enter into streamlined IAs online about other collection alternatives if they are able to substantiate financial hardship.

The IRS further states in its response that "[a]ny attempt to proactively identify taxpayers likely to be in economic hardship based on an incomplete set of facts would lead to flawed results."<sup>26</sup> We disagree and believe this further misses the point of the recommendation. We believe an indicator would serve as a starting point to engage taxpayers and verify the financial status of taxpayers who may face economic hardship. The indicator would not constitute a final determination of the taxpayers' financial status or ability to pay.

Many anxious or intimidated taxpayers seeking to resolve their liabilities as quickly as possible are unaware the IRS is required to halt collection actions if they are in economic hardship. As a result, they often agree to make tax payments they cannot afford. When a taxpayer calls the IRS stating that he or she cannot pay the tax due, the IRS collection employee generally can verify some or all of the financial information provided by the taxpayer. However, IRS guidance in Internal Revenue Manual (IRM) 5.14.1.2 instructs Collection employees to first seek to obtain full payment and, only if that is not possible, to offer a streamlined IA under IRM 5.14.5.2.<sup>27</sup>

23 For these specific recommendations, see TAS Recommendations #15-1 to #15-5 in the National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

24 See, e.g., IRS responses to the National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*), incorporated in National Taxpayer Advocate Fiscal Year 2020 Objectives Report vol. 2, [www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020), available July 2019.

25 *Id.*

26 *Id.*

27 See IRM 5.14.1.2, *Installment Agreements and Taxpayer Rights* (July 16, 2018); see also 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015).

In a time of limited resources, focusing on more productive cases rather than IAs likely to default or to produce no payment could help the IRS avoid unnecessary rework, including time and resources to obtain an updated financial statement, to reroute the case, or even to make a Notice of Federal Tax Lien determination on additional periods. At a minimum, the IRS should carefully study how the automated use of internal data can better protect financially vulnerable taxpayers from economic harm and improve the efficiency of collection, and it should conduct a pilot to test the use of an algorithm, similar to what TAS has developed.

### **TAS Will Urge the IRS to Use the Algorithm to Prioritize Cases and Filter Out Taxpayers Facing Economic Harm**

As explained above, our recommendation is a two-part recommendation. After adoption of the algorithm identifying taxpayers who may face economic hardship, the second part of the recommendation focuses on potential uses for the algorithm.

With this algorithm, the IRS could take many proactive actions to prioritize cases, including filtering out taxpayers facing economic hardship from automated collection treatments. There are a lot of potential uses for this indicator. For example, the IRS could use this indicator to identify and educate these taxpayers by sending them notices about collection alternatives and creating account markers that telephone assistors could see when responding to taxpayers' calls, and that taxpayers could see when seeking to enter into online IAs to call their attention to the possibility they may qualify for collection alternatives.

Since the IRS generally has internal data about a taxpayer's income and assets from the prior year tax return and receives third-party information, the IRS can plug the data into an algorithm and apply the results to the accounts of all taxpayers who owe back taxes. By doing so, it can flag the accounts of all taxpayers whom the screen identifies as having incomes below their ALEs and no detectable assets. This indicator could be used to notify taxpayers who are attempting to enter into streamlined IAs online that they may qualify for alternative collection options like currently not collectible-hardship status or an offer in compromise (OIC).

The IRS could use the algorithm to apply a marker during case scoring and route the case to the appropriate group that would properly assist and engage those taxpayers who are at risk of economic hardship. For example, flagging potential economic hardship cases during IDS scoring and before routing the cases to be worked would allow the IRS to better use resources in later stages of the collection process and prevent economic harm to taxpayers who are at risk of economic hardship. In fact, the IRS could program its systems so that when an assistor keys in the Social Security number of a taxpayer with an economic hardship risk indicator, a screen is generated with the income information, projected family size, and appropriate ALEs. This way, the assistor can simply run through some high-level information to verify its accuracy. This indicator would prompt the IRS employee to ask questions to assess the taxpayer's ability to pay and identify more appropriate collection alternatives.

The use of this algorithm could also assist the IRS in screening out these taxpayers from automated collection treatments such as the Federal Payment Levy Program, referral to PCAs, and passport certification, unless the IRS makes a direct personal contact with the taxpayer and determines the taxpayer does not qualify.<sup>28</sup> Finally, the algorithm could be used for the IRS's systemic follow-up review

<sup>28</sup> See Taxpayer First Act of 2019, H.R. 3151, 115th Cong. (2019) (enacted). The Taxpayer First Act of 2019 screens out from Private Debt Collection taxpayers whose AGI is 200 percent of the FPL, which is close to our recommendation regarding ALEs and 250 percent of the FPL.

of currently not collectible-hardship cases to determine whether the taxpayer's financial situation has changed or remained the same.<sup>29</sup>

While we are mindful of the IRS's concern for resources, the IRS has never quantified the amount of employee time expended upon undoing the downstream effects of unnecessary and unwarranted collection actions. We believe there would be significant resource savings for the IRS if the IRS used this indicator to prioritize the cases that were most likely to have collection potential and applied its resources to that population. After creating this indicator, if the IRS wanted to attempt some collection against taxpayers with this indicator, then it should first attempt to engage the taxpayers and verify their financial information. Otherwise, the IRS should not place these taxpayers into the Federal Payment Levy Program, the PDC program, or even impose automated levies, because such actions would repeat the very pattern we have empirically shown over and over to occur, as referenced above, that 40 percent of the taxpayers assigned to the PDC program, who make payments under certain installment agreements have income below their ALEs. Therefore, when the IRS makes attempts to engage these taxpayers via telephone or through tailored mailings to verify their financial information, the IRS will save resources later by not having to undo a lot of IAs due to defaults.

#### *TAS Will Pursue Helping the IRS Create Educational Economic Hardship Notices*

The IRS could further use the algorithm to educate taxpayers who are at risk of economic hardship by sending them notices that explain their rights, options, and obligations.<sup>30</sup> These notices may also direct affected taxpayers to a dedicated phone line.

#### *TAS Will Continue to Research This Issue*

In previous responses to our recommendation that the IRS proactively use data to exclude taxpayers experiencing economic hardship, the IRS has said it is too difficult to create an algorithm because the relevant data is stored in different systems. In order to address the IRS's objections, the TAS Research function analyzed the financial circumstances of taxpayers assigned to ACS over the last five years. TAS Research then applied three multiples of federal poverty levels to that same population base to determine whether a percentage of federal poverty level (computed on adjusted gross income (AGI)) would be a reasonable proxy for ALE.<sup>31</sup> Approximately ten percent of this population could not be analyzed because taxpayers had not filed recent tax returns and therefore we could not determine their AGI.

29 IRM 5.16.1.6, *Mandatory Follow-Up* (Dec. 8, 2014) (describing the two-year review process for currently not collectible (CNC) cases).

30 TAS's research shows that targeted contact with taxpayers can help them understand their obligations and avoid future mistakes. See National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 193-210 (Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*); see also IRS, *Behavioral Insights Toolkit* 13, 27 (2017).

31 We used adjusted gross income (AGI) to be consistent with the language in the Taxpayer First Act. See Taxpayer First Act of 2019, H.R. 3151, 115th Cong. (2019) (enacted).

**FIGURE 4.3.1, Comparison of Ability to Pay by Indicated Percent of Federal Poverty Level (Computed on Adjusted Gross Income) to Ability to Pay as Determined by an Analysis of Total Positive Income to ALE (FYs 2013–2018)**<sup>32</sup>

100% of Federal Poverty												
	2013		2014		2015		2016		2017		2018	
	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay
ALE Classification, Cannot Pay	30.46%	69.54%	27.46%	72.54%	28.23%	71.77%	28.67%	71.33%	26.35%	73.65%	27.53%	72.47%
ALE Classification, Can Pay	0.06%	99.94%	0.07%	99.93%	0.07%	99.93%	0.07%	99.93%	0.06%	99.94%	0.06%	99.94%

200% of Federal Poverty												
	2013		2014		2015		2016		2017		2018	
	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay
ALE Classification, Cannot Pay	72.58%	27.42%	69.18%	30.82%	69.93%	30.07%	71.70%	28.30%	68.09%	31.91%	68.69%	31.31%
ALE Classification, Can Pay	2.21%	97.79%	95.04%	4.96%	1.92%	98.08%	1.75%	98.24%	0.16%	99.84%	1.31%	98.69%

250% of Federal Poverty												
	2013		2014		2015		2016		2017		2018	
	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay
ALE Classification, Cannot Pay	86.26%	13.74%	84.19%	15.81%	85.25%	14.75%	87.20%	12.80%	84.83%	15.17%	85.02%	14.98%
ALE Classification, Can Pay	4.92%	95.08%	4.70%	95.30%	5.14%	94.86%	3.91%	96.09%	3.47%	96.53%	3.06%	96.94%

<sup>32</sup> Figure 4.3.1 is sourced from the Individual Accounts Receivable Dollar Inventory, the Individual Returns Transaction File and the IMF as of Cycle 13, 2019. The data was extracted in May 2019. Single = 1 vehicle allowance; married filing jointly = 2 vehicle allowances.

Figure 4.3.1 shows during FY 2018, 85 percent of taxpayers who fell under the 250 percent federal poverty level threshold, which is one indicator used to identify taxpayers who are at risk of economic hardship, and under the ALE classification could not likely pay their tax liability. During FY 2018, 69 percent of taxpayers who fell under the 200 percent federal poverty level threshold and under the ALE classification could not pay their tax liability. During FY 2018, 28 percent of taxpayers who fell under the 100 percent federal poverty level threshold and under the ALE classification could not pay their tax liability. These figures show that many taxpayers likely need other collection alternatives and could benefit from the IRS adoption of an economic hardship filter to proactively flag cases in collection.

Figure 4.3.1 shows that over five years, the 250 percent of the FPL threshold consistently excluded about 85 percent of taxpayers that the ALE analysis predicted could not pay IRS debts without incurring economic hardship. Furthermore, 250 percent FPL had the lowest percentage of taxpayers where ALE analysis said they could not pay but the FPL analysis predicted they could. Not surprisingly, 250 percent FPL also has the highest percentage of taxpayers who the ALE analysis shows could pay but the FPL analysis says could not pay. Because the harm of collecting tax from someone experiencing economic hardship is so great (*i.e.*, the taxpayer cannot pay his or her basic living expenses), we recommend that the IRS err on the side of caution and adopt 250 percent FPL as the proxy for ALEs. For the three percent of taxpayers who are screened out by the 250 percent FPL, where the ALE analysis indicates an ability to pay, the IRS can attempt to engage the taxpayers, verify their financial information, and educate them about payment options.

We believe that ALEs are the best threshold for the IRS to use because they represent what amount of money the IRS determined is necessary for a taxpayer and his or her family to meet all necessary living expenses. Anything above this amount will be considered in calculating the taxpayer's ability to pay the tax liability. ALEs now play a large role in many types of collection cases. However, if the IRS needs to use a proxy for ALEs, 250 percent of the federal poverty level represents an appropriate measure because that is the level Congress chose for access to Low Income Taxpayer Clinics (*i.e.*, clinics that assist vulnerable taxpayers otherwise unable to afford representation to navigate the collection process).<sup>33</sup> Congress has also expressed interest in a 200 percent of the FPL threshold in the context of protecting taxpayers from PCAs.<sup>34</sup>

## CONCLUSION

The IRS's unwillingness to try to identify taxpayers with incomes below the ALEs not only burdens financially struggling taxpayers but wastes IRS resources and creates rework for IRS and Taxpayer Advocate Service employees. It is past time for the IRS to become proactive in this area and use its data to protect vulnerable taxpayers, rather than solely to harm them.

The National Taxpayer Advocate will continue to urge the IRS to adopt our two-step approach. First, to use existing data to create an automated algorithm to identify vulnerable taxpayers, and second, to use this algorithm to shield vulnerable taxpayers from potentially harmful collection actions that are taken without financial analysis. Adopting such an approach would allow the IRS to create special markers proactively identifying cases to allow for further engagement with the taxpayers to verify financial

<sup>33</sup> See IRC § 7526(b)(1)(B).

<sup>34</sup> See Taxpayer First Act of 2019, H.R. 3151, 115th Cong. (2019) (enacted). See also Bloomberg Law: Daily Tax Report, *Truce on IRS Debt Collection Program Wrapped Into Bipartisan Bill (2)* <https://news.bloombergtax.com/daily-tax-report/truce-on-irs-debt-collection-program-wrapped-into-bipartisan-bill-2> (Mar. 28, 2019).

information. It would also allow the IRS to further engage with and educate those taxpayers who are at risk of economic hardship about available options and collection alternatives.

Because the IRS does not have the resources to speak with all taxpayers, this indicator could help avoid situations where the IRS would just issue a levy and hope the taxpayer would then, after the fact, reach out to the IRS to explain their situation. These proactive steps by the IRS to identify, engage, and educate taxpayers who may potentially face economic hardship would improve tax administration and strengthen public confidence in the fairness of the tax system.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Continue advocating for the IRS to develop and utilize an algorithm to proactively identify taxpayers at risk of economic hardship throughout the collection process;
- Offer assistance to the IRS on how to best utilize the algorithm once it is adopted, including the creation of a filter to automatically screen out taxpayers at risk of economic hardship from potentially collectible inventory;
- Provide suggestions to the IRS on how to educate those taxpayers at risk of economic hardship, including the issuance of educational notices, on collection alternatives and additional assistance available;
- Continue to advocate that the IRS create a new phone line dedicated to responding to taxpayers at risk of economic hardship and help these taxpayers determine the most appropriate collection alternative, including OICs, and educate taxpayers on additional assistance available, including TAS and Low Income Taxpayer Clinics; and
- Continue to research this issue to find feasible solutions to improve voluntary compliance and provide more effective tax administration.

## Area of Focus #4 TAS Will Continue to Advocate for Counsel to Disclose Emailed Advice

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

#### Disclosure of Counsel's Legal Analysis Helps Taxpayers

The transparency of the IRS Office of Chief Counsel (Counsel) is important to taxpayers. The *right to be informed* is the first right listed in the Taxpayer Bill of Rights for good reason. If taxpayers do not know the rules and why the IRS has adopted them, they cannot determine if they should exercise their other rights (e.g., the *right to challenge the IRS's position and be heard* or the *right to appeal an IRS decision in an independent forum*). Information about how Counsel interprets the law helps taxpayers avoid taking positions that would incur penalties or ensnare them in audits or litigation.<sup>2</sup>

Transparency was particularly important in 2018 because Congress had just enacted the Tax Cuts and Jobs Act (TCJA) at the end of 2017. The TCJA raised legal questions that Counsel was answering for IRS program managers. The program managers acted on Counsel's advice, sometimes relaying Counsel's conclusions to the public as FAQs, fact sheets, publications, instructions, etc., without the underlying legal analysis.

#### Counsel Is Required to Disclose Program Manager Technical Advice

Fortunately for taxpayers, the Freedom of Information Act (FOIA) and a settlement with Tax Analysts require the IRS to disclose Counsel advice to IRS program managers (called Program Manager Technical Advice or PMTA) on the basis of standards applied in two cases.<sup>3</sup> The cases permit Counsel to withhold deliberative and pre-decisional communications, but not its final legal positions. The U.S. Court of Appeals for the District of Columbia Circuit explained “[i]t is not necessary that the TAS

- 1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).
- 2 The IRS response to our recommendations in the 2018 Annual Report to Congress says a “[T]axpayers’ right to be informed is satisfied when the IRS provides guidance ... to those who are charged with tax administration.” See National Taxpayer Advocate Fiscal Year 2020 Objectives Report vol. 2, [www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020), available July 2019. However, a taxpayer needs to receive information to be informed. When the IRS provides guidance to itself, it is wrong to suggest that it has satisfied the taxpayer’s right to be informed. [Emphasis added.]
- 3 The IRS settled with Tax Analysts in July 2007, agreeing to disclose Program Manager Technical Advice (PMTA) dated or prepared after 1994 “on the basis of the standards announced by” the U.S. Court of Appeals for the District of Columbia Circuit in its June 14, 2002, opinion in *Tax Analysts v. IRS*, “as applied by the district court” in its February 7, 2007, opinion. *Tax Analysts v. IRS*, Stipulation of Decision, CA No. 1:96-2285-CKK (July 23, 2007) (citing *Tax Analysts v. IRS*, 294 F.3d 71 (D.C. Cir. 2002), *remanded*, 483 F. Supp. 2d 8 (D.D.C. 2007)).

[advice] reflect the final programmatic decisions of the program officers who request them. It is enough that they represent OCC's [the Office of Chief Counsel's] final legal position...."<sup>4</sup> Once Counsel sends its legal analysis to a program manager, it is presumably sending its final legal position, which must be disclosed.<sup>5</sup>

TAS assumed the IRS would issue and disclose more PMTAs following the TCJA. That assumption was wrong. Counsel posted fewer PMTAs in 2018 than it did in 2017 before the TCJA was enacted.<sup>6</sup>

### Delayed Disclosure Can Lead to Controversy

Although TAS does not know what advice went undisclosed, one example of delayed disclosure involves taxpayers subject to the new transition tax under Internal Revenue Code (IRC) § 965, which could be paid in interest-free installments over eight years.<sup>7</sup> On March 13, 2018, the IRS posted an FAQ instructing taxpayers to designate a specific payment for this new tax. Some who had fully paid made an extra payment, which they assumed they could recover. On April 13, 2018, the IRS posted an FAQ, which said they could not. Without the underlying legal analysis, practitioners thought the FAQ was wrong or could be changed. They asked TAS for help in recovering the extra payment. Program managers informed TAS they were relying on a Counsel opinion (probably an email) when they posted the FAQ on April 13, but the opinion was not formally issued as a memo and disclosed until August 2, 2018.<sup>8</sup>

Had the PMTA been disclosed before or at the same time as the program manager posted the FAQ, some of the controversy and confusion could have been avoided.<sup>9</sup> More taxpayers would have been aware of the IRS's legal reasoning before making extra payments and fewer would have assumed the FAQ was an error. Those who still felt it was an error could have addressed the underlying legal reasoning, helping to ensure the IRS's conclusions were correct.

<sup>4</sup> *Tax Analysts v. IRS*, 294 F.3d at 81.

<sup>5</sup> The IRS has not taken the position that IRS program managers work with Counsel on legal advice. If the IRS were to take that position, then there would be a risk that unlicensed program managers would be engaged in the unauthorized practice of law. For program managers who were licensed as attorneys, there would be a risk that they were in violation of Treasury Order 107-04 (Jan. 16, 2009) and Treasury General Counsel Directive No. 2 (July 8, 2015). Those authorities generally require attorneys whose duties include providing legal advice to report to the IRS Chief Counsel.

<sup>6</sup> Counsel issued and posted only 13 PMTAs in 2018, down from 15 in 2017. TAS analysis of PMTAs posted on IRS.gov (May 29, 2019). In contrast, it issued and posted 68 PMTAs following tax legislation enacted in 1998—more than double the 32 it issued and posted in 1997. *Id.*

<sup>7</sup> For a more detailed discussion of this issue, see Nina E. Olson, NTA BLOG, *IRS Administration of the Section 965 Transition Tax Contravenes Congressional Intent and Imposes Unintended Burden on Taxpayers* (Aug. 16, 2018), <https://taxpayeradvocate.irs.gov/news/nta-blog-irs-administration-of-the-section-965-transition-tax-contravenes-congressional-intent-and-imposes-unintended-burden-on-taxpayers?category=TaxNews>.

<sup>8</sup> PMTA 2018-16 (Aug. 2, 2018), [https://www.irs.gov/pub/lanoa/pmta\\_2018\\_16.pdf](https://www.irs.gov/pub/lanoa/pmta_2018_16.pdf). In its response to our 2018 Annual Report recommendations, the IRS asserts that “a final decision about how to address the issue was made in conjunction with the decision to issue ...[the PMTA.]. After that decision was made, the PMTA was issued and immediately released.” See National Taxpayer Advocate Fiscal Year 2020 Objectives Report vol. 2, [www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020), available July 2019. However, Counsel's advice must have been issued before the program manager relied on it to issue the FAQ on April 13, 2018. Once a client receives advice and acts on it, it is final. The advice is not retroactively converted into deliberative material that can be withheld simply because it is later reconsidered.

<sup>9</sup> Moreover, neither this memo nor any other legal analysis posted by the IRS addressed whether the IRS could grant applications on Form 4466, *Corporation Application for Quick Refund of Overpayment of Estimated Tax*, for refunds of excess estimated tax payments pursuant to IRC § 6425, before any tax had been assessed for 2017. That issue was not addressed by PMTA 2018-16. Therefore, taxpayers asked TAS for assistance in obtaining such “quickie” refunds. The IRS does not believe it can pay such refunds. Although it received advice from Counsel, it has not released a PMTA addressing the issue.



A lack of timely guidance led 115 taxpayers to make \$2.8 billion in payments on their transition tax liability that they did not intend to make and that they could not recover from the IRS.<sup>10</sup> Some suffered severe cash flow problems. The IRS could minimize such problems by disclosing PMTA more quickly after they are provided to program managers.

### Disclosure Helps IRS Employees Do Their Jobs

Without prompt and complete direct access to Counsel's advice to program managers, other IRS employees, including the National Taxpayer Advocate, the Chief Counsel, the IRS Commissioner, and other attorneys in Counsel might not know that it exists or that they could request a copy. IRS attorneys generally check publicly available sources—including PMTAs that have been released—when analyzing a legal issue. If they cannot find PMTAs that they or their colleagues have issued (*e.g.*, when they work in different areas, memories fail, or attorneys retire or change jobs), they are more likely to provide inconsistent or incorrect legal advice when faced with similar issues in the future.

The IRS Commissioner and the Chief Counsel may also need direct access to the advice so that they can supervise their employees. Similarly, the National Taxpayer Advocate, who is required by IRC § 7803(c)(2) to assist taxpayers and to address systemic problems, needs to know the basis for IRS decisions that require her attention. A program manager or Operating Division Commissioner can revisit a policy decision, whereas only Counsel, the IRS Commissioner, the Treasury Secretary, or Congress can revisit a legal decision. When the IRS does not know the basis for its decisions, the National Taxpayer Advocate sometimes encounters finger pointing, with Counsel saying it is a policy decision and a program manager saying it is a legal decision. Indeed, program managers told TAS the IRC § 965 issue (discussed above) was a legal decision, but Counsel waited until August 2, 2018, to provide TAS with the legal analysis underlying the FAQ that was published on April 13. Thus, the National Taxpayer Advocate needs prompt and complete direct access to Counsel advice so that she can timely fulfill her statutory mandate to assist taxpayers.

### The IRS Will Address Some But Not All of the Disclosure Problems

As described in the National Taxpayer Advocate 2018 Annual Report to Congress, Counsel had no written guidance about what it would disclose as PMTA, no firm targets for when it would disclose PMTA, and was telling (but not encouraging) its attorneys they could withhold advice that would otherwise have to be disclosed if they issued it as an email, rather than as a memo.<sup>11</sup> Most attorneys would probably prefer to avoid disclosing their advice to the public because doing so can reveal errors or disagreements. Yet, the IRS's response says, "Counsel attorneys do not provide formal advice to program managers by email to avoid the release of legal advice to the public."<sup>12</sup> This is impossible to verify. It seems more likely that attorneys do issue advice by email to avoid disclosure. For this very reason, Counsel attorneys probably issue memos (rather than emails) only upon request. When the National Taxpayer Advocate asks Counsel for legal advice she receives an email unless she specifically asks for a

10 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2019-34-033, *Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges* 12 (May 22, 2019).

11 National Taxpayer Advocate 2018 Annual Report to Congress 34-51 (Most Serious Problem: *Transparency of the Office of Chief Counsel: Counsel Is Keeping More of Its Analysis Secret, Just When Taxpayers Need Guidance More than Ever*). See also Nina E. Olson, NTA Blog, *The IRS Office of Chief Counsel Is Using Email to Avoid Disclosure of Program Manager Technical Advice* (Mar. 6, 2019), [https://taxpayeradvocate.irs.gov/IRS\\_Office\\_of\\_Chief\\_Counsel\\_Transparency](https://taxpayeradvocate.irs.gov/IRS_Office_of_Chief_Counsel_Transparency); *The National Taxpayer Advocate on the IRS Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 116th Cong. (2019) (statement of Nina E. Olson, National Taxpayer Advocate).

12 See National Taxpayer Advocate Fiscal Year 2020 Objectives Report vol. 2, [www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020](http://www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020), available July 2019.

memo. Thus, the National Taxpayer Advocate's report said that Counsel's focus on form over substance was making a mockery of the FOIA and the settlement with Tax Analysts.

The IRS has agreed to update the Chief Counsel Directives Manual (CCDM) to more clearly explain what must be disclosed as PMTA and to post PMTAs more quickly after they are issued. However, it has not agreed to systemically identify PMTAs (*e.g.*, by expanding the email system that it currently uses to identify Chief Counsel Advice). It has not agreed to treat PMTAs as issued when first transmitted to or acted on by a program manager. Nor has it agreed to require disclosure of any advice that is, in substance, PMTA, even if it is issued by email.

### The IRS Has Not Explained Why It Does Not Disclose Emailed Advice as Program Manager Technical Advice

The form of Counsel's advice as an email or a memo has no bearing on how much thought went into the analysis, whether it is Counsel's final position, or how it will be used. The cases that the IRS agreed to follow make no distinction based on the form of the advice. Any such distinction would be wrong. *It would be like concluding that memos written in blue ink must be disclosed, but those written in black ink do not.* Moreover, the IRS apparently did not believe the distinction made sense in 2007 when it posted at least three PMTA that were issued as emails.<sup>13</sup> Indeed, the distinction between emails and memos makes even less sense than the IRS's former two-hour rule—the rule that the IRS would withhold Counsel advice prepared in less than two hours—which the U.S. Court of Appeals for the D.C. Circuit found lacked any legal basis.<sup>14</sup>

## CONCLUSION

Within a specific period after an IRS program manager receives a PMTA or relies on the advice to make a decision (*e.g.*, drafting an FAQ, fact sheet, instruction, publication, news release, IRM, etc.), the PMTA should be disclosed regardless of its form.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Continue to advocate for the IRS to require disclosure of any advice that is, in substance, PMTA, even if it is transmitted by email;
- Continue to advocate for the IRS to disclose a PMTA within a specific period after it is transmitted to a program manager or a program manager relies on it to make a decision;
- Continue to advocate for the IRS to establish a systemic process to ensure PMTA are being identified. For example, it could require attorneys to copy a disclosure mailbox or expand the automated email system that Counsel currently uses to identify Chief Counsel Advice to field employees that must be disclosed; and
- Work with Counsel on CCDM revisions that will clarify how attorneys should identify PMTA and reduce delays between the issuance and disclosure of PMTA.

<sup>13</sup> See, *e.g.*, PMTA 2008-01567 (Sept. 28, 2007); PMTA 2007-01190 (Aug. 14, 2007); PMTA 2007-01186 (June 11, 2007).

<sup>14</sup> See *Tax Analysts v. IRS*, 495 F.3d 676, 681 (D.C. Cir. 2007) ([the IRC § 6110 disclosure provision] “requires no particular form or formality. Nor does it distinguish between advice a lawyer renders in less than two hours and advice that takes longer than two hours to prepare. Thus, given the broad definition of “Chief Counsel advice” in section 6110(i)(1)(A), we believe that the temporal distinction the IRS draws in its two-hour disclosure rule is contrary to the unequivocal statutory directive...”).

**Area of Focus #5**      **TAS Will Continue to Advocate for Vulnerable Taxpayers Whose Cases Are Assigned to Private Debt Collection Agencies (PCAs) and for a Reduction of Inactive PCA Inventory**

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### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

The National Taxpayer Advocate in past reports has raised several concerns about how the IRS is administering the current Private Debt Collection (PDC) program.<sup>2</sup> These include:

- The impact on taxpayers who are likely experiencing economic hardship; and
- The growth in inactive inventory in the hands of private collection agencies (PCAs), with the risk of PCA inventory becoming a mere substitute for the IRS collection queue.<sup>3</sup>

The IRS can identify taxpayers who are likely experiencing economic hardship by comparing their incomes to other amounts, such as the federal poverty level or IRS allowable living expense (ALE)

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 286 (Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*); National Taxpayer Advocate 2017 Annual Report to Congress 277 (Most Serious Problem: *Private Debt Collection: The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*); National Taxpayer Advocate 2016 Annual Report to Congress 172 (Most Serious Problem: *Private Debt Collection (PDC): The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

3 The IRS collection queue is a holding area where unresolved cases go prior to being assigned to a revenue officer for in-person collection when resources become available. Internal Revenue Manual (IRM) 1.4.50.8.3, *Queue* (Sept. 12, 2014). Because revenue officer resources are limited, cases may sit in the collection queue for an extended period of time before assignment to a revenue officer.

standards.<sup>4</sup> Several different measures all lead to the same conclusion: more than half of taxpayers whose debts are assigned to PCAs are likely experiencing economic hardship:

- 62 percent have gross incomes at or below 250 percent of the federal poverty level;<sup>5</sup>
- 55 percent have adjusted gross incomes at or below 200 percent of the federal poverty level;<sup>6</sup> and
- 60 percent have gross incomes at or below their ALEs.<sup>7</sup>

Moreover, as the pace of IRS assignments of *new* inventory to PCAs has grown, the volume of *inactive* PCA inventory has increased even more rapidly:

- At the end of fiscal year (FY) 2018, the IRS had assigned 778,859 cases to PCAs. As of March 28, 2019, the IRS had assigned 1,620,771 cases, an increase of 108 percent;<sup>8</sup> and
- At the end of FY 2018, there were 405,609 unresolved or unproductive cases in PCA inventory.<sup>9</sup> As of March 28, 2019, there were 973,598 such cases in PCA inventory, an increase of 140 percent.<sup>10</sup>

Thus, unresolved case inventory has increased from 52 percent at the end of FY 2018 to 60 percent as of March 28, 2019, and PCAs are quickly becoming the equivalent of the IRS collection queue rather than a means of resolving the queue, which defeats the purpose of the PDC initiative. Unproductive and unresolved cases are moved from one holding area to another, except that the IRS will pay commissions to PCAs on payments taxpayers happen to make while the debt remains in PCA inventory.

The National Taxpayer Advocate is also concerned that:

- The IRS unnecessarily discloses to PCAs that, according to its records, a taxpayer did not file a required return;
- PCAs solicit unfiled returns from taxpayers without the statutory authority to do so; and
- The IRS plans to assign the debts of business taxpayers to PCAs, including payroll tax liabilities. These liabilities, when left uncollected, quickly escalate due to the accrual of penalties and interest.

4 The allowable living expense (ALE) standards determine how much money taxpayers need for basic living expenses such as housing and utilities, food, transportation, and health care, based on family size and where they live. If the ALE standards exceed the taxpayer's gross income, the taxpayer is unable to pay his or her necessary living expenses. See IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>. See also IRM 5.14.1.4, *Installment Agreement Acceptance and Rejection Determinations* (Sept. 19, 2014).

5 Accounts Receivable Dollar Inventory (ARDI), Individual Returns Transaction File (IRTF), Information Returns Master File (IRMF), Compliance Data Warehouse (CDW) (Mar. 28, 2019). Examples of how this measure is used in tax administration include IRC § 7526(b)(1)(B)(i) (relating to eligibility for assistance from Low Income Taxpayer Clinics) and IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016) (the IRS's "low income filter" for excluding taxpayers from the automated federal payment levy program).

6 ARDI, IRTF, IRMF, CDW (Mar. 28, 2019). The Taxpayer First Act of 2019, H.R. 1957, 116th Cong. § 1205 (2019), discussed below, uses this measure to identify taxpayers whose debts should be excluded from assignment to private collection agencies (PCAs).

7 ARDI, IRTF, IRMF, CDW (Mar. 28, 2019).

8 *Id.*

9 *Id.* As discussed below, we term as inactive, unproductive, or unresolved those cases in which: the taxpayer entered into an installment agreement (IA) but made no payment for more than 120 days thereafter; and cases in which the taxpayer has neither entered into an IA nor made any payment, and more than three months have elapsed since the case was assigned.

10 *Id.*

### The IRS Assigns the Debts of Vulnerable Taxpayers to Private Collection Agencies

As the IRS prepared to launch the current PDC initiative, the National Taxpayer Advocate voiced her concern that the program as implemented would create or exacerbate taxpayers' economic hardship.<sup>11</sup> As a proxy for economic hardship, the IRS sometimes uses the measure of gross income that is up to 250 percent of the federal poverty level.<sup>12</sup> When the IRS evaluates proposed installment agreements (IAs), it compares taxpayers' gross income with their ALEs. The National Taxpayer Advocate has recommended excluding taxpayers from the PDC program when their gross incomes are less than 250 percent of the federal poverty level *or* less than their ALEs.<sup>13</sup> As Figure 4.5.1 demonstrates, both measures reveal that the PDC program burdens a significant portion of taxpayers who are likely in economic hardship.<sup>14</sup>

**FIGURE 4.5.1, Relationship of Gross Income to the Federal Poverty Level and to Allowable Living Expenses of 1,620,771 Taxpayers Whose Debts Were Assigned to Private Collection Agencies**

Gross Income Compared to Poverty Level	Number of Taxpayers	Percent of Taxpayers	Number of Taxpayers with Gross Income At or Below ALE	Percent of Taxpayers with Gross Income At or Below ALE
Gross Income At or Below Federal Poverty Level	605,451	37 percent	605,451	100 percent
Gross Income Above Federal Poverty Level up to 250 Percent of Federal Poverty Level	401,340	25 percent	336,181	84 percent
<b>Subtotal</b>	<b>1,006,791</b>	<b>62 percent</b>	<b>941,632</b>	<b>94 percent</b>
Gross Income Above 250 Percent of Federal Poverty Level	613,980	38 percent	35,958	6 percent
<b>Total</b>	<b>1,620,771</b>	<b>100 percent</b>	<b>977,590</b>	<b>60 percent</b>

Moreover, the measures produce similar results:

- 62 percent of taxpayers would be excluded from the program, measured by gross income up to 250 percent of the federal poverty level; and
- 60 percent would be excluded, measured by gross income at or below ALEs.

On April 9, 2019, the U.S. House of Representatives passed the Taxpayer First Act of 2019, which excludes from assignment to PCAs the debts of taxpayers with adjusted gross incomes (rather than gross income) of up to 200 percent of the federal poverty level (rather than 250 percent of the federal poverty

11 See National Taxpayer Advocate 2016 Annual Report to Congress 172 (Most Serious Problem: *Private Debt Collection (PDC): The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

12 See IRC § 7526 (to identify taxpayers who qualify for assistance from low income taxpayer clinics); IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016) (to identify certain retirement income recipients who are likely to be in economic hardship in order to exclude them from the IRS's automatic levy program, the Federal Payment Levy Program).

13 See, e.g., National Taxpayer Advocate 2019 Purple Book (Legislative Recommendation: *Amend IRC § 6306(d) To Exclude the Debts of Taxpayers Whose Incomes Are Less Than Their Allowable Living Expenses from Assignment to Private Collection Agencies or, If That is Not Feasible, Exclude the Debts of Taxpayers Whose Incomes Are Less than 250 Percent of the Federal Poverty Level*) (Dec. 31, 2018).

14 All income amounts shown in figures are based on the most recently filed tax return from 2017 or later. For cases with no recently filed tax return, the income was based on third party reports of income.

level).<sup>15</sup> As Figure 4.5.2 demonstrates, this measure would exclude 55 percent of taxpayers from the PDC program (*i.e.*, seven percent fewer taxpayers than if the measure used to exclude taxpayers were gross income compared to 250 percent of the federal poverty level).<sup>16</sup>

**FIGURE 4.5.2, Relationship of Adjusted Gross Income to the Federal Poverty Level and Relationship of Gross Income to Allowable Living Expenses of 1,620,771 Taxpayers Whose Debts Were Assigned to Private Collection Agencies**

Income Compared to Poverty Level	Number of Taxpayers	Percent of Taxpayers	Number of Taxpayers With Gross Income At or Below ALE	Percent of Taxpayers With Gross Income At or Below ALE
Adjusted Gross Income At or Below Federal Poverty Level	614,821	38 percent	612,927	100 percent
Adjusted Gross Income Above Federal Poverty Level Up To 200 Percent of Federal Poverty Level	278,548	17 percent	275,789	99 percent
Adjusted Gross Income Above 200 Percent of Federal Poverty Level	727,402	45 percent	88,874	13 percent
<b>Total</b>	<b>1,620,771</b>	<b>100 percent</b>	<b>977,590</b>	<b>60 percent</b>

The Taxpayer First Act of 2019 also excludes from assignment to PCAs the debts of taxpayers “substantially all of whose income consists of disability insurance benefits” (SSDI).<sup>17</sup> There were 91,034 SSDI recipients whose debts were assigned to PCAs. For 65,056 taxpayers, SSDI payments comprise more than 90 percent of their incomes.<sup>18</sup>

Some taxpayers entered into IAs while their debts were assigned to PCAs. Figure 4.5.3 shows these taxpayers’ ability to pay depending on whether the measure is:

- Adjusted gross income as a multiple of the federal poverty level; or
- Gross income in relation to ALEs.

15 Taxpayer First Act of 2019, H.R. 1957, 116th Cong. § 1205 (2019). According to the H. Comm. on Ways and Means, “an exception from the private debt collection program is needed for certain low-income individual taxpayers to protect such taxpayers from entering into payment plans they cannot afford, which ultimately does not result in an increase in actual payments recovered.” H.R. REP. NO. 116-39, at 43 (2019).

16 As Figure 4.5.2 also shows, if the relationship of adjusted gross income to ALEs is the measure used to exclude taxpayers from the PDC program, the same proportion of taxpayers would be excluded from the program as if the relationship of gross income to ALEs were used (60 percent).

17 See Taxpayer First Act of 2019, H.R. 1957, 116th Cong. § 1205 (2019), excluding from assignment to PCAs the debts of taxpayers “substantially all of whose income consists of disability insurance benefits under section 223 of the Social Security Act or supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93–66).” The National Taxpayer Advocate has also recommended excluding these taxpayers’ debts from assignment to PCAs. See National Taxpayer Advocate 2018 Annual Report to Congress 286 (Most Serious Problem: *Private Debt Collection: The IRS’s Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*).

18 ARDI, IRTF, IRMF, CDW (Mar. 28, 2019).

**FIGURE 4.5.3, Comparison of Ability to Pay As Measured By the Relationship Between Adjusted Gross Income (AGI) and the Federal Poverty Level With Ability to Pay As Measured by the Relationship Between Gross Income and ALEs for 70,348 Taxpayers Who Entered Into Installment Agreements While Their Debts Were Assigned to PCAs**

	AGI Up To 100 Percent Federal Poverty Level		AGI Up To 200 Percent Federal Poverty Level		AGI Up To 250 Percent Federal Poverty Level	
	Cannot Pay	Can Pay	Cannot Pay	Can Pay	Cannot Pay	Can Pay
<b>ALE Classification, Cannot Pay</b>	51.6%	48.4%	89.4%	10.6%	97.6%	2.4%
<b>ALE Classification, Can Pay</b>	0.4%	99.6%	1.5%	98.5%	10.4%	89.6%

As Figure 4.5.3 shows, 98 percent of taxpayers whose adjusted gross incomes were at or below 250 percent of the federal poverty level *also* had ALEs in excess of their incomes. Thus, excluding from the PDC program taxpayers whose adjusted gross incomes are at or below 250 percent of the federal poverty level would almost always achieve the same result as excluding taxpayers whose ALEs exceed their gross incomes.<sup>19</sup>

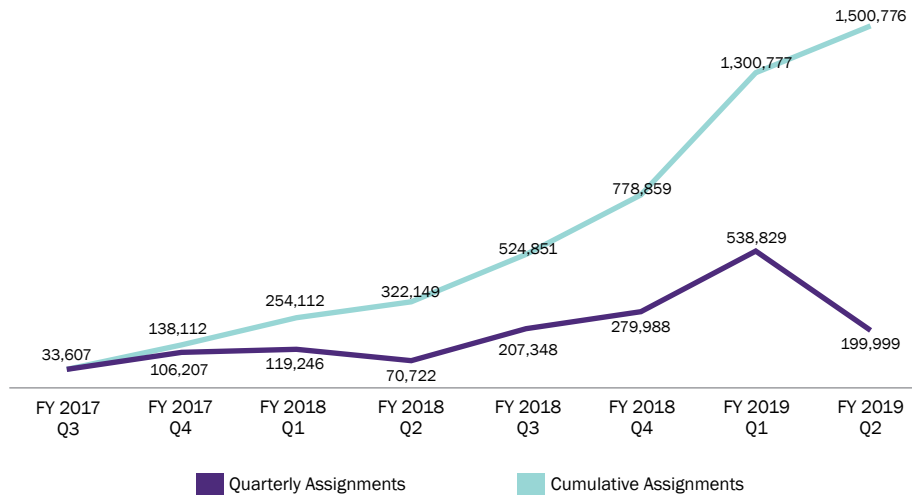
### The Pace of Assignments to PCAs is Increasing

As Figure 4.5.4 demonstrates, the number of cases the IRS assigned to PCAs increased in six out of the eight full quarters the program has been operating.

<sup>19</sup> For taxpayers whose debts were not assigned to PCAs, but to the IRS's Automated Collection System, the results are similar: over a six-year period (2013-2018), about 85 percent of taxpayers whose adjusted gross incomes were at or below 250 percent of the federal poverty level also had ALEs in excess of their incomes. See Nina E. Olson, NTA BLOG, *The IRS Is Not Doing Enough to Protect Taxpayers Facing Economic Hardship* (May 24, 2019), [https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship?category=Tax News](https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship?category=Tax%20News).

FIGURE 4.5.4<sup>20</sup>

## Cases Assigned to Private Collection Agencies



Assignments for the second quarter of FY 2019 were lower than the previous quarter due to the 35-day lapse in IRS appropriations that began on December 22, 2018.<sup>21</sup>

Due to the rapid increase in the rate at which the IRS assigns inventory to PCAs, the number of assigned cases at the end of FY 2018 (778,859) jumped to 1,620,771 cases by the end of the second quarter of FY 2019, an increase of 108 percent.<sup>22</sup>

### Inactive PCA Inventory Continues to Grow

In her 2018 Annual Report to Congress, the National Taxpayer Advocate raised concern about the length of time cases had remained in PCA inventory as of September 20, 2018 without being resolved.<sup>23</sup> Categories of inactive or unproductive PCA inventory include:

- Cases in which the taxpayer entered into an IA, but for 120 days thereafter did not make a payment; and
- Cases in which the taxpayer neither entered into an IA nor made payments within 90 days after the case was assigned to the PCA.

20 ARDI, IRTF, IRMF, CDW, reflecting activity on tax modules with an unreversed Transaction Code 971 with an Action Code 054 (Mar. 28, 2019). In addition to the data shown in Figure 4.5.4, we identified 119,995 cases that were selected for assignment in March for delivery to PCAs in the third quarter of FY 2019.

21 Some pre-programmed inventory was delivered to PCAs on Dec. 31, 2018, but the IRS did not assign any other inventory during the lapse in appropriations and PCAs did not engage in collection activity during that time. Email from PDC Program Manager (Jan. 30, 2019), on file with TAS.

22 There were 1,500,776 cases assigned by the end of the second quarter of FY 2019, as shown in Figure 4.5.4 and an additional 119,995 cases that were selected for assignment in March for delivery to PCAs in the third quarter of FY 2019. ARDI, IRTF, IRMF, CDW (Mar. 28, 2019).

23 National Taxpayer Advocate 2018 Annual Report to Congress 286 (Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*).



None of these cases are being resolved, thus defeating the purpose of outsourcing tax collection. Moreover, as discussed below, PCAs may receive commissions on amounts taxpayers do pay, independently of whether the payment was the result of recent PCA activity, as long as the case remains in PCA inventory.

Figure 4.5.5 shows the number of taxpayers whose unresolved debts remained in PCA inventory as of March 28, 2019, compared to the data at the end of FY 2018.<sup>24</sup>

**FIGURE 4.5.5, Number of Taxpayers Whose Debts Are In PCA Inventory and Are Not Being Resolved as of March 28, 2019, Compared to September 30, 2018**

	Number of Taxpayers	Average Number of Days Elapsed After Assignment	Median Number of Days Elapsed After Assignment
<b>IA and No Payment For More Than 120 Days</b> (Excluding Defaults, Recalled Cases, and Returned Cases)			
<b>As of Mar. 28, 2019</b>	4,094	256	199
<b>As of Sept. 30, 2018</b>	3,222	272	279
<b>Increase (Decrease)</b>	<b>872</b>	<b>(16)</b>	<b>(80)</b>
<b>No IA or Payment For More Than Three Months</b> After Assignment (Excluding Recalled Cases and Returned Cases)			
<b>As of Mar. 28, 2019</b>	969,504	258	213
<b>As of Sept. 30, 2018</b>	402,387	244	195
<b>Increase</b>	<b>567,117</b>	<b>14</b>	<b>18</b>
<b>Overall</b>			
<b>As of Mar. 28, 2019</b>	973,598	258	213
<b>As of Sept. 30, 2018</b>	405,609	244	195
<b>Increase</b>	<b>567,989</b>	<b>18</b>	<b>18</b>
<b>Percent Increase</b>	<b>140 percent</b>	<b>7 percent</b>	<b>9 percent</b>

As noted in Figure 4.5.5, from October 1, 2018 to March 28, 2019, the number of cases assigned to PCAs increased by 108 percent (from 778,859 cases to 1,620,771 cases). In the same period, as Figure 4.5.5 demonstrates, the number of cases in inactive or unproductive PCA inventory increased 140 percent. Thus, as the IRS assigns new inventory to PCAs, inactive PCA inventory also increases—at a faster rate. Moreover, the percent of assigned cases that were in inactive inventory increased during that same period, from 52 percent (405,609 out of 778,859 cases) to 60 percent (973,598 out of 1,620,771 cases).

When taxpayers make payments while their debts are assigned to PCAs, the IRS retains up to 25 percent of the payment, as authorized by Internal Revenue Code (IRC) § 6306(e)(1), to pay for the costs of services performed by PCAs, including commissions. The IRS retains an additional amount of up to 25 percent of those payments for itself, as authorized by IRC § 6306(e)(2), to pay for additional IRS compliance personnel. Thus, when taxpayers make payments while their debts are in PCA inventory, up

<sup>24</sup> ARDI, IRTF, IRMF, CDW (Mar. 28, 2019). Because a taxpayer may have had more than one module assigned, the average and median number of days are computed based on the oldest (highest age or earliest assigned) module in open inventory.

to 50 percent of payments they make are diverted from the public fisc, whether or not the payment was preceded by any recent collection activity by the PCA.

In contrast, when taxpayers whose debts are not assigned to PCAs make payments, the public fisc—U.S. taxpayers—receive the full benefit of those payments. Moreover, research studies show that the IRS could elicit payments from taxpayers whose accounts are in the IRS’s collection queue by simply sending them monthly collection letters.<sup>25</sup>

### The IRS May Unnecessarily Disclose That Taxpayers Have Unfiled Returns

In FY 2018, the IRS began assigning to PCAs cases in which the taxpayer did not file a return which, according to IRS records, was required to be filed (referred to as a delinquent return).<sup>26</sup> The electronic records the IRS uses to assign inventory to the PCAs indicate when there appears to be a delinquent return.<sup>27</sup>

IRC § 6103(n) and the regulations thereunder authorize the IRS to disclose return information to persons “to the extent necessary” in connection with “the providing of other services, for purposes of tax administration.”<sup>28</sup> Taxpayers are required to file delinquent returns as a condition to entering into an IA, but not, for example, as a condition to fully paying their account.<sup>29</sup> Thus, it is not clear that disclosing delinquent return information to PCAs—before it has been determined that the taxpayer intends to enter into an IA—is necessary for purposes of tax administration within the meaning of IRC § 6103(n). Likewise, the PCA may establish that the taxpayer does *not* intend to enter into an IA (for example, because he or she cannot afford to make payments), which would appear to make the prior disclosure of delinquent return information unnecessary.

Moreover, even if there are circumstances in which IRC § 6103 permits the IRS to disclose delinquent return information to PCAs, it is not clear that PCAs have the authority, under IRC § 6306, to solicit unfiled returns from taxpayers.<sup>30</sup>

25 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 159 (Research Study: *Further Analyses of “Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution”*).

26 As the National Taxpayer Advocate has noted, IRS records indicating a return was required are not always accurate. See National Taxpayer Advocate 2014 Annual Report to Congress 197, 202 (Most Serious Problem: *Federal Payment Levy Program: Despite Some Planned Improvements, Taxpayers Experiencing Economic Hardship Continue to Be Harmed by the Federal Payment Levy Program*), reporting that 21 percent of the accounts the IRS identified as delinquent were not actually those of nonfilers (*i.e.*, a return had actually been filed) or there was little or no tax due.

27 Section 4.3.2, *Weekly Files*, PCA Policy and Procedures Guide (PPG) (Feb. 2019), noting “[t]he weekly files will be available every Monday and must be reviewed prior to making any contact with the taxpayer. For example, while monitoring a payment arrangement, the PCA can identify payment transactions and delinquent returns in the weekly files.”

28 IRC § 6103(n); Treas. Reg. § 301.6103-1(b)(1), providing that “[d]isclosure of returns or return information in connection with a written contract or agreement for the acquisition of property or services described in paragraph (a) of this section will be treated as necessary only if the performance of the contract or agreement cannot otherwise be reasonably, properly, or economically carried out without the disclosure.”

29 See, e.g., IRM 5.14.1.4.2 *Compliance and Installment Agreements* (July 16, 2018).

30 Under IRC § 6306(b)(1)(B), PCAs may request the taxpayer to fully pay the liability within 120 days, or, alternatively, may propose an IA. The only other PCA activities authorized by IRC § 6306(b)(1) are to locate and contact the taxpayer (IRC § 6306(b)(1)(A)), and “to obtain financial information specified by the Secretary with respect to such taxpayer” (IRC § 6306(b)(1)(C)).

### The IRS Will Assign Business Taxpayers' Debts to Private Collection Agencies in 2019

Because the IRS is more likely to assign larger business tax liabilities to a revenue officer for personal contact and immediate collection, the business debts available for assignment to PCAs are likely to have lower balances.<sup>31</sup> However, even low balances can quickly escalate, especially if the liability consists of payroll taxes, due to the accrual of interest and the imposition of penalties.<sup>32</sup> As discussed above, inactive PCA inventory (which currently consists only of individual taxpayers' liabilities) is increasing and remains unresolved for an average of 258 days. To the extent business tax cases are similarly unproductive or inactive, the purpose of the PDC program is defeated.<sup>33</sup>

## CONCLUSION

As the pace of assignments to PCAs continues to increase, more vulnerable taxpayers are at risk of having their debts assigned to PCAs. As more cases are assigned, inactive PCA inventory is likely to increase. In the meantime, the IRS will disclose to PCAs information about taxpayers' unfiled returns, and PCAs will solicit unfiled returns from taxpayers, but the legal authority for either of these practices is unclear.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Request an opinion from IRS Chief Counsel about whether the IRS's practice of disclosing return information to PCAs, including its records showing the taxpayer has unfiled returns, is permissible, and the circumstances in which PCAs are authorized to solicit unfiled returns from taxpayers;
- Continue to advocate for excluding the debts of taxpayers who are likely in economic hardship from assignment to PCAs; and
- Advocate for recalling inactive individual and business tax liabilities from PCA inventory.

31 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 81 (Research Study: *Collecting Business Debts: Issues for the IRS and Taxpayers*).

32 Business taxpayers often file quarterly employment tax returns and are therefore more likely to be delinquent on more than one business return. Typically, at least half of the balance due by the third year after the IRS assigns an unresolved business account to Taxpayer Delinquent Account status (which occurs at the conclusion of a four-month notice period) is attributable to penalties and interest. National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 91 (Research Study: *Collecting Business Debts: Issues for the IRS and Taxpayers*).

33 Recalling inactive business accounts from PCAs would be consistent with the National Taxpayer Advocate's recommendations with respect to recalling inactive individual taxpayer accounts in PCA inventory. National Taxpayer Advocate 2018 Annual Report to Congress 286, 294 (Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*).

## Area of Focus #6 TAS Plans to Design Sample Notices to Better Protect Taxpayer Rights and Reduce Taxpayer Burden

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

In the 2018 Annual Report to Congress, the National Taxpayer Advocate expressed concerns about IRS notices that fail to adequately inform taxpayers about their rights, responsibilities, and procedural requirements. She identified three types of notices as Most Serious Problems: Collection Due Process (CDP) Notices, Math Error Notices, and Statutory Notices of Deficiency (SNODs).<sup>2</sup> Notices are key to informing taxpayers of important events, such as the IRS's intent to increase the taxpayer's tax liability, the IRS's filing of a Notice of Federal Tax Lien (NFTL) against the taxpayer's property, or of the IRS's intent to levy the taxpayer's wages or bank account. Collection notices also inform taxpayers of the right to a hearing to challenge the IRS's collection actions—the CDP hearing.<sup>3</sup> Failure to respond to notices can often lead to the loss of core taxpayer rights, such as the *right to pay no more than the correct amount of tax, to appeal an IRS decision in an independent forum, and to a fair and just tax system.*

Many IRS notices fail to adequately inform taxpayers of their rights and effectively guide taxpayers through what they must do in response to receiving a notice. The IRS designs its notices with collection and compliance at the forefront, while often burying or omitting vital information about taxpayers'

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 See National Taxpayer Advocate 2018 Annual Report to Congress 170-173 (Most Serious Problem: *Introduction to Notices: Notices Are Necessary to Inform Taxpayers of Their Rights and Obligations, Yet Many IRS Notices Fail to Adequately Inform Taxpayers, Leading to the Loss of Taxpayer Rights*); National Taxpayer Advocate 2018 Annual Report to Congress 174-197 (Most Serious Problem: *Math Error Notices: Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer Rights and Increasing Taxpayer Burden*); National Taxpayer Advocate 2018 Annual Report to Congress 198-211 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*); National Taxpayer Advocate 2018 Annual Report to Congress 212-222 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*); National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 194-210 (Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*).

3 See IRC §§ 6320 & 6330.

rights to challenge an IRS decision or the services available to help them resolve their issues with the IRS. Further, as discussed in a literature review in the 2018 Annual Report to Congress, the IRS does not adequately utilize insights from available psychological, cognitive, and behavioral science research to design its notices.<sup>4</sup> The language and design of notices can help taxpayers understand what they may owe and how to resolve their tax balance, or it can confuse taxpayers.

In this upcoming fiscal year, TAS plans to develop new sample notices based on the recommendations made in the 2018 Annual Report to Congress. The National Taxpayer Advocate has reviewed many IRS notices and will design sample notices to address both specific and general improvements to three important notice types described below.

### Math Error Notices

Math error authority allows the IRS to make summary changes to a taxpayer's return when there are mathematical or clerical errors that are obvious by looking at the face of the return.<sup>5</sup> However, the range of issues that fall under these definitions has steadily expanded and the IRS is using math error authority to summarily resolve more complex issues.<sup>6</sup> This has led the IRS to erroneously deny tax benefits to some taxpayers.<sup>7</sup>

Math error notices inform taxpayers of the additional tax the IRS has assessed because of a purported mathematical or clerical error on their return. If the taxpayer disagrees with the assessed tax or believes the IRS made a mistake in its assessment, taxpayers must respond to these notices within 60 days and request abatement. If they do not respond within 60 days, they will lose their right to appeal the IRS's assessment in the Tax Court before paying it. These notices, if not properly drafted and presented, could result in either an inaccurate tax assessment or the taxpayer giving up important procedural rights.

The National Taxpayer Advocate's specific concerns about math error notices are that the deadline to request abatement of the tax and retain the right to petition the Tax Court is not mentioned in some math error notices. This lack of information limits the ability of some taxpayers to know about and exercise that right.<sup>8</sup> Further, many math error notices lack clarity as to the specific error the taxpayer made and the change the IRS made to their return. They only give taxpayers short, generic explanations of the purported errors, and do not direct taxpayers to the exact issue with their return.<sup>9</sup> The IRS also does not attempt to correct possible errors by referring to its historical data, which leads the IRS to send many math error notices to taxpayers who are actually entitled to the tax benefits the IRS has summarily denied.

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4 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 194-210 (Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*).

5 IRC §§ 6213(b), (g).

6 Compare the Revenue Act of 1926, Pub. L. 69-20 § 274(f) (1926) with Tax Reform Act of 1976, Pub. L. 94-455 and IRC § 6213(g) (which lists all current definitions of mathematical or clerical errors).

7 See, e.g., National Taxpayer Advocate 2011 Annual Report to Congress vol. 2 114, 120 (Research Study: *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*).

8 See CP11, *Math Error Balance Due of \$5 or More*.

9 See Taxpayer Notice Codes (TPNCs).

To address these concerns, TAS plans to design a sample math error notice that:

- Improves the clarity of the math error explanation by better describing the specific error on the notices, along with including the line on the taxpayer's return where the error was made;
- Includes and emphasizes taxpayers' right to petition the Tax Court if they disagree with the IRS's change to their returns; and
- Includes, on the first page of the notice, the deadline date by which taxpayers must request abatement to retain their right to make a prepayment petition in Tax Court.

### Statutory Notices of Deficiency

SNODs notify taxpayers if there is a proposed additional tax due and give taxpayers the right to challenge the proposed deficiency in the Tax Court without prepayment, but only if they petition within 90 days. The SNOD is the “ticket” to Tax Court. If the taxpayer does not petition the Tax Court within 90 days, the IRS will assess the tax, send the taxpayer the tax bill, and start collection. The SNOD is critical to many low income and middle income taxpayers because generally without it they would be required to pay the tax first and go to refund fora, such as federal district courts or the United States Court of Federal Claims, in order to challenge the tax adjustment.<sup>10</sup> TAS found that many taxpayers may not be availing themselves of their rights, in part because of faulty design and poor presentation of information in the notices.<sup>11</sup>

The National Taxpayer Advocate's specific concerns about SNODs are that they do not effectively communicate the information needed for taxpayers to understand their rights and the consequences of not exercising them, the relevant tax issues, or how to respond.<sup>12</sup> SNODs do not sufficiently apply plain writing principles or incorporate behavioral research insights, as directed by the Plain Writing Act<sup>13</sup> and Executive Order 13707.<sup>14</sup> Finally, the IRS continues to omit Local Taxpayer Advocate (LTA) information required by law on certain SNODs, thereby violating taxpayer rights.<sup>15</sup>

10 Nearly 59 percent of those receiving a non-automated substitute for returns (ASFR) statutory notice of deficiency (SNOD) make less than \$50,000 per year. Yet low income taxpayers, who may be eligible for representation through Low Income Taxpayer Clinics (LITCs), are less likely to petition the Tax Court. In fiscal year (FY) 2018, the median total positive income for individuals who did not petition the Tax Court in response to a SNOD issued after an audit was about \$24,000. See National Taxpayer Advocate 2018 Annual Report to Congress 199 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*).

11 See National Taxpayer Advocate 2018 Annual Report to Congress 198-211 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*).

12 See, e.g., CP3219A, *Automated Underreporter (AUR) Statutory Notice of Deficiency*. For example, one notice directs taxpayers to an IRS website, which tells taxpayers to submit to the IRS the same form whether they agree or disagree with the tax changes the IRS made. See also IRS website at <https://www.irs.gov/individuals/understanding-your-cp3219a-notice> (last visited Dec. 13, 2018).

13 5 U.S.C. § 301.

14 80 Fed. Reg. 56,365 (Sept. 15, 2015).

15 See National Taxpayer Advocate Proposed Taxpayer Advocate Directive (TAD) 2019-2, *Include Local LTA Addresses on All Notices of Deficiency Sent By the IRS* (Apr. 18, 2019); National Taxpayer Advocate 2014 Annual Report to Congress 237–244 (Most Serious Problem: *Statutory Notices of Deficiency: Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice*).

To remedy these flaws, TAS plans to design a sample SNOD that:

- Uses plain language to clearly inform taxpayers of their rights, the results of inaction, and how to respond to the SNOD;
- Clearly conveys taxpayers' proposed tax increase, their right to challenge the IRS's determination before the Tax Court, and their ability to obtain TAS or Low Income Taxpayer Clinic (LITC) assistance; and
- Includes the relevant LTA information as is required by law.

### Collection Due Process Notices

CDP rights provide taxpayers with an independent review by the IRS Office of Appeals of the decision to file an NFTL or the IRS's proposal to undertake a levy action,<sup>16</sup> which can be appealed to Tax Court.<sup>17</sup> The IRS communicates these important rights during two critical times. The IRS communicates the right to request a CDP hearing via the intent to levy notice or the NFTL.<sup>18</sup> Following the CDP hearing, the IRS communicates its determination to the taxpayer via a notice of determination.<sup>19</sup> Perhaps because the notices provide confusing instructions regarding the due date to file a response, the response rate for CDP notices ranges from under one percent to around ten percent.<sup>20</sup> Moreover, CDP notices emphasize collection actions and under-emphasize the statutory due process protections afforded by the hearings, leading unrepresented taxpayers to forego the exercise of important taxpayer rights.

The National Taxpayer Advocate's specific concerns about CDP notices are that the design and wording in these notices underemphasizes the importance of a taxpayer's CDP rights. The notices do not sufficiently explain what a hearing is or why a taxpayer may want to request one.<sup>21</sup> Additionally, the notices do not clearly mention important information, such as the deadline to file a hearing request. The notice of determination lacks a specific date by which a taxpayer must file a petition in the Tax Court and does not explain why the notice is salient to taxpayers.

16 IRC § 6330(b).

17 IRC § 6330(d)(1).

18 IRC § 6330(a).

19 See, e.g., IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (July 2018).

20 See National Taxpayer Advocate 2018 Annual Report to Congress 212-222 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*).

21 For instance, during the collection due process (CDP) hearing, the Appeals Officer (AO) must obtain verification that "requirements of any applicable law or administrative procedure have been met." The AO also must consider "whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." Taxpayers are given the opportunity to raise a collection alternative, such as an installment agreement or offer in compromise, and in some instances, they can contest the underlying liability. IRC § 6330(c).

To address these shortcomings, TAS plans to design a sample CDP notice that:

- Includes information about why a taxpayer may want to request a CDP hearing and why the notice is relevant to the taxpayer;
- Explains the importance of these CDP hearings in terms relating to taxpayer rights and protections;
- Provides more accurate notification of the due date for CDP hearing requests with respect to NFTL filings;
- Includes the exact date on the notices of determination by which the taxpayer must file a petition in Tax Court;
- Highlights the specific deadline date to file a petition in the Tax Court in bold font; and
- Additionally, test these notices, both as part of a Small Business/Self-Employed Division (SB/SE)-led study<sup>22</sup> and a TAS study.<sup>23</sup>

### General Improvements to Notices

In addition to the more specific concerns discussed above, there are many improvements that can and should be made to all IRS notices. The following are general improvements to notices that TAS will incorporate into its new sample notices:

- Framing notices with a taxpayer rights focus (including and emphasizing taxpayer rights and the necessary steps taxpayers must take);
- Improving notice clarity using plain language principles;
- Designing notices using psychological, cognitive, and behavioral science insights to improve taxpayer understanding and reduce taxpayer burden;
- Prominently including important deadlines, such as the deadline date to retain appeal rights;
- Including information about the availability of Low Income Taxpayer Clinics (LITCs) and TAS to help taxpayers;
- Including the Tax Court website and telephone number where relevant;
- Including links in the notices to additional explanations and content on TAS's toolkit and irs.gov websites; and
- Translating notices to languages other than English and including information on notices to direct taxpayers to those translated notices.

The IRS's Wage and Investment division is hosting a Taxpayer Correspondence Summit, most recently scheduled to take place in Summer 2019, to discuss plans to improve notices. This is a welcome step in the upcoming fiscal year.

22 Small Business/Self-Employed Division (SB/SE) is leading a study on Automated Collection System (ACS) LT11 notices (which explain CDP rights). The study will test four sample letters designed by SB/SE, as well as two letters designed by TAS, sending out the sample letters and evaluating their effectiveness based on a variety of metrics.

23 TAS will be designing additional sample LT11 notices and testing them in its own study, where notice design is not limited by an SB/SE template, as it is in the SB/SE-led study mentioned above. See National Taxpayer Advocate FY 2020 Objectives Report to Congress (TAS Research Initiatives), *infra*.



## CONCLUSION

The National Taxpayer Advocate has many concerns with the current design of IRS notices, particularly the ones that have legal significance. The IRS must improve the design of its notices, and in the coming fiscal year, TAS plans to develop its own sample notices to demonstrate how certain notices may be improved to benefit taxpayer rights and understanding, as well as lessen taxpayer burden.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Establish teams to design sample notices to conform with TAS's suggestions to make rights-based notices for notices that have legal significance;
- Incorporate general improvements, including design insights from psychological, cognitive, and behavioral science and plain language principles in its sample notices;
- Translate select notices to languages other than English and provide information on notices to direct taxpayers to those translated notices;
- Solicit advice from the tax community on the design of TAS's sample notices; and
- Create links in the notices to additional explanations and content on TAS's toolkit and irs.gov websites.<sup>24</sup>

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<sup>24</sup> See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress (Area of Focus: *TAS Is Developing an Electronic Roadmap Tool to Assist Taxpayers As They Navigate Through the Complex Tax System*), *supra*, for a discussion of efforts to create an electronic roadmap that will allow taxpayers to input their letter or notice number and see where they are in the tax administration roadmap, as well as receiving a plain language description of the purpose of the notice and what taxpayers need to do.

**Area of Focus #7**      **TAS Is Analyzing Its Cases to Identify Ways to Strengthen Earned Income Tax Credit (EITC) Advocacy and to Improve IRS EITC Audits**

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

#### Background

The Earned Income Tax Credit (EITC) is one of the primary forms of public assistance for low income working taxpayers. However, the EITC is a complex law that involves eligibility rules based on a taxpayer's income, marital status, and parental or other caretaker arrangements, which can often change on a year-to-year basis. The population claiming the EITC is also constantly in flux, with approximately one-third of the eligible population changing every year.<sup>2</sup> At the same time, the population of taxpayers who rely on the EITC often share a common set of characteristics, such as limited education and high transiency, which create challenges for taxpayer compliance.<sup>3</sup> In this environment of complex eligibility rules and potentially vulnerable taxpayers, it is easy to see how some taxpayers claim the EITC incorrectly (or not at all).<sup>4</sup>

The IRS consistently approaches this problem by focusing on compliance efforts (audits). In fact, in fiscal year (FY) 2018, approximately *37 percent of all individual returns selected for audit were selected on the basis of an EITC claim.*<sup>5</sup> This rate of audit selection occurs despite the fact that EITC returns account for approximately 18 percent of all individual returns filed in calendar year 2017.<sup>6</sup> Also, EITC misreporting is a relatively small portion of the tax gap—six percent of the gross tax gap and ten percent of the tax gap attributable to individual income tax misreporting.<sup>7</sup> To address EITC noncompliance in

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 IRS, *EITC [Earned Income Tax Credit] Fast Facts*, <https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts>.

3 National Taxpayer Advocate 2015 Annual Report to Congress 235-239.

4 For a thorough discussion of how a taxpayer could understandably claim a child incorrectly for the Earned Income Tax Credit (EITC), see *Cowan v. Commissioner*, T.C. Memo. 2015-85; National Taxpayer Advocate 2015 Annual Report to Congress 242.

5 IRS, *2018 Data Book*, table 9a (May 2019).

6 *Id.*

7 National Taxpayer Advocate 2018 Annual Report to Congress 98-99. The most recent estimate of the gross tax gap, based on data for tax years 2008-2010, is \$458 billion. A portion of the gross tax gap, \$264 billion, or 68 percent, is attributable to individual income tax misreporting. IRS, Research, Analysis & Statistics, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010*, Publication 1415, 1 (May 2016). Of the \$40 billion in misreported credits, \$26 billion is attributable to EITC misreporting. IRS, Research, Analysis & Statistics, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010*, Publication 1415, 19 (May 2016).

a *proportionate* manner, the IRS needs to adopt alternate strategies rather than just a disproportionate audit rate.<sup>8</sup>

To get a better understanding of how TAS can improve its advocacy for EITC taxpayers and how the IRS can better work its EITC cases, TAS plans to review 540 randomly selected EITC cases to identify points in the case history where advocacy opportunities were missed or places where TAS struggled to resolve the case with the IRS. By studying how TAS interacts with taxpayers and works its cases with the IRS, we will glean information about how EITC casework can be improved both by TAS and the IRS. Moreover by reviewing TAS cases we can identify areas of taxpayer confusion. With this knowledge, the IRS can do better education and outreach, including soft letters sent out before the filing season.<sup>9</sup>

### *TAS Is In a Unique Position to Study EITC Advocacy Opportunities*

TAS case advocates (CAs) routinely work EITC cases. As Figure 4.7.1 shows, TAS receives a substantial number of EITC cases each year, a number which has grown in the last two years. In fact, *EITC cases make up the second highest cause of taxpayers coming to TAS in FY 2018 and through April FY 2019.*<sup>10</sup> Through working EITC cases, TAS has been able to identify some issues facing taxpayers, such as extensive delays in evaluating documentation submitted by taxpayers.<sup>11</sup> And TAS improved its internal guidance in 2018 with Internal Revenue Manual (IRM) 13.1.24.4.1, which highlights EITC issues. In particular, IRM 13.1.24.4.1.1 now explains challenges faced by low income taxpayers, thereby alerting case advocates they may have to make extra efforts at communication and advocacy with this population.

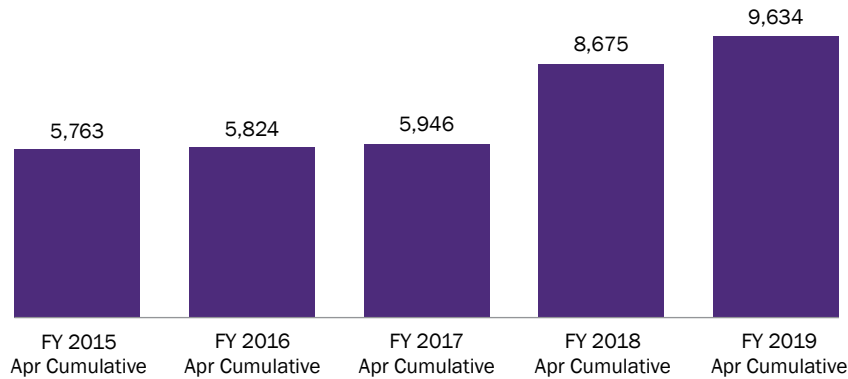
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8 For example, see National Taxpayer Advocate 2018 Annual Report to Congress 91-104; National Taxpayer Advocate 2017 Annual Report to Congress 141-150.

9 TAS Research has already shown the positive impact of sending educational notices to EITC taxpayers. See TAS Research Initiatives, *infra*; National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 14-40; National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 32-52.

10 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Apr. 1, 2018; Apr. 1, 2019).

11 National Taxpayer Advocate 2018 Annual Report to Congress 559-560.

**FIGURE 4.7.1**<sup>12</sup>**TAS Earned Income Credit (EIC) Receipts  
FYs 2015 Through 2019 (Cumulative Through April)**

As for relief rates, the results are rather low, but improving slightly.<sup>13</sup> Figure 4.7.2 shows the relief rate for TAS EITC cases between FYs 2015 and 2018, with FY 2019 cumulative through April. While the lowest relief rate, 60.6 percent, occurred in FY 2016, it has improved to a relief rate of 68.2 percent (for FY 2019 cumulative through April). If TAS is successfully advocating *and* educating taxpayers, we would hope to see this rate continue to improve. Improving this relief rate is a goal of the TAS case review.<sup>14</sup>

**FIGURE 4.7.2, EITC Case Relief Rates, FYs 2015–2018, FY 2019 Cumulative Through April**<sup>15</sup>

Fiscal Year	Relief Rate
2015	63.5%
2016	60.6%
2017	64.8%
2018	66.4%
2019	68.2%

<sup>12</sup> Data obtained from TAMIS (Apr. 1, 2015; Apr. 1, 2016; Apr. 1, 2017; Apr. 1, 2018; Apr. 1, 2019).

<sup>13</sup> For information on TAS relief rates, see Internal Revenue Manual (IRM) 13.1.21.1.2.1.3, *TAO/Relief Assistance Codes* (Feb. 1, 2011).

<sup>14</sup> A certain number of cases are closed each year because the case advocate (CA) could not provide relief or the taxpayer did not respond. In 2018, 27 percent of the EITC cases were closed for such reasons. While TAS could perhaps work to identify why taxpayers are unresponsive and improve this number, there will always be a population of cases that cannot obtain relief. Data obtained from TAMIS (Oct. 2, 2018).

<sup>15</sup> In fiscal year (FY) 2015, TAS received 11,530 EITC cases and obtained relief in 7,319 cases. In FY 2016, TAS received 11,550 EITC cases and obtained relief in 7,003 cases. In FY 2017, TAS received 13,023 EITC cases and obtained relief in 8,441 cases. In FY 2018, TAS received 18,642 EITC cases and obtained relief in 12,377 cases. Data obtained from TAMIS (Oct. 1, 2016; Oct. 1, 2017; Oct. 1, 2018, and Apr. 1, 2019).

Cycle time represents the amount of time it took for TAS to work a case from receipt to completion of all issues presented in the case. Figure 4.7.3 shows the average cycle time for EITC cases between FYs 2015 and 2019 (cumulative through April). Cycle time for TAS to work EITC cases has decreased in recent years. In FY 2015 the average amount of time to work a case was 80.2 days. This average has decreased to 69.6 days in FY 2018.

Extended cycle times may result from the time it takes for taxpayers to gather necessary documents or for the IRS to analyze the documents and make a decision. Any delay in case processing can be harmful to a low income taxpayer who relies on the EITC. New internal guidance for TAS employees should help CAs work with taxpayers to identify adequate documentation sooner in the process.<sup>16</sup> Likewise, TAS is provided with an advocacy opportunity when the IRS is taking an extraordinary amount of time to analyze a taxpayer's submitted documents. This is something the TAS case review will observe.

**FIGURE 4.7.3, EITC Case Cycle Time, Fiscal Years 2015-2018<sup>17</sup>**

Fiscal Year	Average Cycle Time in Days
2015	80.2
2016	85.2
2017	69.8
2018	69.6

### *The TAS Case Advocacy Process*

When TAS does not have authority to take specific actions necessary to resolve taxpayer issues on its own, TAS must use Form 12412, *Operations Assistance Request (OAR)* to request actions from the IRS.<sup>18</sup> For the OAR to be effective, the TAS CA must fully explain the case facts and legal standard to the IRS and provide necessary documentation to build a persuasive case. Generally this requires communication with the taxpayer and research into the case and applicable laws. TAS has provided explicit information to CAs on how to draft effective OARs in IRM 13.1.24.4.1.5. If the IRS does not agree to take the actions discussed in the OAR, the CA must elevate the case to his or her manager, who will then continue to negotiate with the IRS and may consider the issuance of a Taxpayer Assistance Order (TAO).<sup>19</sup>

Each step in this process provides an opportunity for advocacy. These steps include: initial contact with taxpayer, research on the case, communication with the IRS, and elevated communications between managers, if necessary.

16 IRM 13.1.24.4.1.5 (May 11, 2018); IRM 13.1.24.4.1.3 (May 11, 2018).

17 FY 2019 data is not included in this analysis due to the government shutdown. It would be impossible to calculate what could have occurred with casework during this time. Data obtained from TAMIS (Apr. 1, 2015; Apr. 1, 2016; Apr. 1, 2017; Apr. 1, 2018; Apr. 1, 2019).

18 IRM 13.1.19.1 (Nov. 14, 2014).

19 IRC § 7811; IRM 13.1.19.6 (May 5, 2016); IRM 13.1.20.2 (Feb. 1, 2011).

### *The TAS Review of Cases*

As noted above, TAS is reviewing a random sample of 540 EITC cases. Some things that will be considered in the review include:

- Contact made by TAS to the taxpayer via phone or mail;
- How did the TAS employee research and analyze the case;
- Did the TAS employee explore alternative documentation with the taxpayer;
- Did the IRS employee explain the reasons for disallowance, whether in whole or in part; and
- Did the IRS employee disallow documents not specifically mentioned in IRM 4.19.14?

## CONCLUSION

TAS plays a critical role in the EITC audit process through its interactions with taxpayers and the IRS as it works its cases. However, the current TAS relief rate for EITC cases of about 68 percent indicates that TAS needs to shore up its advocacy efforts for EITC taxpayers. This is particularly important given the complex nature of the EITC and the unique attributes of the taxpayers claiming it. One solution is to increase the assistance and education that taxpayers claiming the EITC receive. Another solution is to improve the education TAS and IRS employees receive.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Complete its review of EITC cases and analyze the results;
- Based on the results of the analysis, identify shortcomings in training provided to IRS and TAS employees and design and deliver the training where necessary; and
- Consider changes to guidance provided to TAS employees when working EITC cases, such as having a specialized review prior to submitting a case to the IRS and enhanced training for managers that could include a guide to advocating in elevated EITC cases.

## Area of Focus #8 **Because Oversight Is Weak, the Risk of Erroneous Approvals of Form 1023-EZ Applications Continues to Be Great**

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Finality*

### DISCUSSION

The National Taxpayer Advocate has for many years raised concerns about the length of time it takes the IRS to process Forms 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.<sup>2</sup> The IRS's goal has been to process all applications within six months.<sup>3</sup> If an application goes unanswered for 270 days (about nine months), taxpayers may request a declaratory judgment as to their status as an organization described in IRC § 501(c)(3).<sup>4</sup>

In 2014, when the Form 1023 processing time was 315 days, the IRS adopted Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to address its Form 1023 inventory backlogs.<sup>5</sup> Form 1023-EZ consists of checkboxes that allow applicants to attest, rather than require them to demonstrate, that they meet essential requirements for exempt status. By fiscal year (FY) 2016, Form 1023 cycle time had decreased to 96 days.<sup>6</sup> Form

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 National Taxpayer Advocate 2017 Annual Report to Congress 64 (Most Serious Problem: *Exempt Organizations: Form 1023-EZ, Adopted to Reduce Form 1023 Processing Times, Increasingly Results in Tax Exempt Status for Unqualified Organizations, While Form 1023 Processing Times Increase*); National Taxpayer Advocate 2013 Annual Report to Congress 165 (Most Serious Problem: *Exempt Organizations: The IRS Continues to Struggle with Revocation Processes and Erroneous Revocations of Exempt Status*); 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*); National Taxpayer Advocate 2011 Annual Report to Congress 442 (Most Serious Problem: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*); National Taxpayer Advocate 2007 Annual Report to Congress 210 (Most Serious Problem: *Determination Letter Process*); National Taxpayer Advocate 2004 Annual Report to Congress 193, 203 (Most Serious Problem: *Application and Filing Burdens on Small Tax-Exempt Organizations*).

3 Jeff Carlson, *IRS Making Progress in Improving 501(c)(3) Application Process, Says Koskinen*, CCH News (Apr. 8, 2014), reporting on Comm'r Koskinen's testimony before the House Appropriations Committee Subcommittee on Financial Services and General Government on the Fiscal Year (FY) 2015 IRS budget at <http://tst-news.cchgroup.com.php56-7.ord1-1.websitetestlink.com/2014/04/08/irs-making-progress-in-improving-501c3-application-process-says-koskinen/>.

4 IRC § 7428(a)(2).

5 National Taxpayer Advocate FY 2015 Objectives Report to Congress 47-48 (Area of Focus: *Despite Improvements, TAS Remains Concerned About IRS Treatment of Taxpayers Applying for Exempt Status*). Processing time, or cycle time, is a 12-month rolling average of the number of days that elapse from the date the application is submitted through the date it is closed.

6 Tax Exempt and Government Entities (TE/GE) response to TAS information request (Aug. 31, 2017).

1023-EZ cycle time was 13 days, and the average cycle time for all applications processed by the Exempt Organization (EO) function was 54 days.<sup>7</sup>

Cycle times for applications other than Form 1023-EZ are higher now than they were in 2016 and the data available thus far indicates they may continue to rise. For example, average processing time for Form 1023 applications (and other applications other than Form 1023-EZ) was 100 days as of September 25, 2018, but had risen to 160 days as of December 11, 2018.<sup>8</sup>

The IRS did not process applications for exempt status in the 35-day period that began on December 22, 2018, when IRS appropriations lapsed. This interruption lengthened the Form 1023 processing times that were already increasing.<sup>9</sup>

As described below, in January 2018, the IRS revised Form 1023-EZ to elicit additional information from applicants. The average age of open Form 1023-EZ inventory, although rising, has remained relatively small (23 days at the end of September 2018, 36 days by mid-February 2019).<sup>10</sup> Thus, on one hand, soliciting the additional information does not appear to be impeding the IRS from making determinations about Form 1023-EZ applicants within a reasonable amount of time. On the other hand, as discussed below, the IRS is not adequately evaluating the additional information it receives.

### The IRS Has Not Changed Its Procedures in Light of Additional Information Form 1023-EZ Elicits Since It Was Revised in 2018

Since Form 1023-EZ was adopted in 2014, the National Taxpayer Advocate has been concerned that it does not elicit enough information to allow the IRS to make an informed determination about whether an organization qualifies for IRC § 501(c)(3) status.<sup>11</sup> As discussed below, in 2015, 2016, and 2017, TAS reviewed the articles of incorporation of representative samples of successful Form 1023-EZ applicants

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- 7 TE/GE response to TAS information request (Oct. 20, 2017). Almost all of the Exempt Organization (EO) function's processing work consists of Form 1023 or Form 1023-EZ applications, but EO also processes a relatively small number of applications for exempt status under other subsections of IRC § 501(c), or for other types of determinations. Of 95,529 applications EO received in FY 2018, 87,764, or 92 percent, were Form 1023 or Form 1023-EZ applications. TE/GE, *FY 2017 Accomplishments* 8 (Mar. 2018).
- 8 EO Tax Journal *Email Updates* 2018-188 (Sept. 25, 2018) and 2018-248 (Dec. 26, 2018), reporting remarks of the EO Division Director to members of the TE/GE Exempt Organizations Council. TAS plans to develop more complete cycle time data in this fiscal year.
- 9 EO Tax Journal *Email Updates* 2019-94 (May 13, 2019), reporting remarks of the EO Division Director to members of the TE/GE Exempt Organizations Council, who noted that "current case processing time for 1023 applications is 178 days. For the non-1023 cases it is slightly higher than that and those are running at about 186 days."
- 10 EO Tax Journal *Email Updates* 2019-51 (Mar. 14, 2019), reporting remarks of the EO Division Director to members of the TE/GE Exempt Organizations Council.
- 11 See, e.g., National Taxpayer Advocate FY 2015 Objectives Report to Congress 54-57 (Area of Focus: *Despite Improvements, TAS Remains Concerned About IRS Treatment of Taxpayers Applying for Exempt Status*).



from states whose articles were publicly available.<sup>12</sup> The study findings led the National Taxpayer Advocate to issue a Taxpayer Advocate Directive (TAD), which induced the IRS to revise the form.<sup>13</sup>

TAS reviewed the sampled organizations' articles of incorporation to ascertain whether they contained purpose and dissolution clauses as required by Treasury regulations, thereby conforming with the statutory organizational test for tax exempt status.<sup>14</sup> The studies found that too often—between 26 and 42 percent of the time—the requirements for IRC § 501(c)(3) status were not met and the IRS approval was erroneous.<sup>15</sup> However, Form 1023-EZ applications were approved over 90 percent of the time.<sup>16</sup> The IRS's own data showed that it frequently conferred exempt status on Form 1023-EZ applicants in error.<sup>17</sup>

On September 26, 2016, the National Taxpayer Advocate issued a TAD directing the IRS, among other things, to revise Form 1023-EZ to require applicants to submit a brief narrative statement of their actual or planned activities, and the IRS acquiesced to that portion of the directive.<sup>18</sup> Since January 2018, Form 1023-EZ has contained a field for the description. The instructions to the form direct applicants to “consider your past, present, and planned activities” and to briefly (in 255 characters or less) “describe your mission or most significant activities.”<sup>19</sup>

In light of the frequency with which Form 1023-EZ applications are approved erroneously, we expected that the IRS, armed with more complete information about applicants, would correspond with applicants whose brief narrative statement raised concern. Applicants could revise their organizing documents if needed or otherwise perfect their applications. However, current IRS procedures have not been revised to require applicants to submit their organizing documents or amended organizing

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- 12 National Taxpayer Advocate 2015 Annual Report to Congress vol. 2 1-31 (*Study of Taxpayers That Obtained Recognition As IRC § 501(c)(3) Organizations on the Basis of Form 1023-EZ*); National Taxpayer Advocate 2016 Annual Report to Congress 254 (Most Serious Problem: *Exempt Organizations: Form 1023-EZ: The IRS's Reliance on Form 1023-EZ Causes It to Erroneously Grant Internal Revenue Code § 501(c)(3) Status to Unqualified Organizations*); National Taxpayer Advocate 2017 Annual Report to Congress 64-72 (Most Serious Problem: *Form 1023-EZ, Adopted to Reduce Form 1023 Processing Times, Increasingly Results in Tax Exempt Status for Unqualified Organizations, While Form 1023 Processing Times Increase*).
- 13 The National Taxpayer Advocate has the 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) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.” See Delegation Order 13-31 (formerly DO-250, Rev. 1), *reprinted as Internal Revenue Manual (IRM) 1.2.50.4* (Jan. 17, 2001); see also *IRM 13.2.1.6* (July 16, 2009).
- 14 See *Treas. Reg. §§ 1.501(c)(3)-1(b)(1)(i)(a), (b); 1.501(c)(3)-1(b)(4); 1.501(c)(3)-1(b)(2)*.
- 15 See National Taxpayer Advocate 2015 Annual Report to Congress vol. 2 1-31 (*Study of Taxpayers That Obtained Recognition As IRC § 501(c)(3) Organizations on the Basis of Form 1023-EZ*), finding a 37 percent erroneous approval rate; National Taxpayer Advocate 2016 Annual Report to Congress 254 (Most Serious Problem: *Form 1023-EZ: The IRS's Reliance on Form 1023-EZ Causes It to Erroneously Grant Internal Revenue Code § 501(c)(3) Status to Unqualified Organizations*), finding a 26 percent erroneous approval rate; National Taxpayer Advocate 2017 Annual Report to Congress 64-72 (Most Serious Problem: *Form 1023-EZ, Adopted to Reduce Form 1023 Processing Times, Increasingly Results in Tax Exempt Status for Unqualified Organizations, While Form 1023 Processing Times Increase*), finding a 42 percent erroneous approval rate.
- 16 See *Form 1023-EZ Update Report 4*, [https://www.irs.gov/pub/irs-tege/form\\_1023ez\\_update\\_report\\_final.pdf](https://www.irs.gov/pub/irs-tege/form_1023ez_update_report_final.pdf), referenced in Tax Exempt and Government Entities FY 2017 Work Plan 2 (Sept. 28, 2016, as amended Mar. 8, 2017), noting a 94 percent approval rate of Form 1023-EZ applications.
- 17 *Id.* at 3-4, noting that “EO has approved 94% of all Form 1023-EZ applications closed to date. Through the predetermination review process [a process in which the IRS requests a few additional pieces of information from an applicant, such as organizing documents], approximately 79% of applications have been approved.”
- 18 Memorandum from the Deputy Commissioner for Services and Enforcement to the National Taxpayer Advocate (Oct. 25, 2016) sustaining in part National Taxpayer Advocate TAD 2016-1, *Revise Form 1023-EZ to Require Additional Information from Applicants, Require Review of Such Additional Information Before Making a Determination, and Explain Your Conclusions With Respect to Each of 149 Organizations Identified by TAS* (Oct. 5, 2016).
- 19 IRS, *Instructions for Form 1023-EZ 5* (Jan. 2018).

documents.<sup>20</sup> Thus, the IRS is not ensuring that organizations take curative steps, even when it identifies a defect in the application on the basis of the additional information the form elicits.<sup>21</sup>

The IRS plans to develop a revised electronic Form 1023, to be released in January 2020, and is including TAS in discussions about the process. While it may be appropriate to shorten Form 1023 as part of this process, TAS will seek to insure that the revised form does not undermine the IRS's oversight role of the tax exempt sector as occurred in 2014 with the introduction of Form 1023-EZ.

### EO's Plan to Manage the Risk of Erroneous Approvals by Auditing Exempt Organizations Does Not Appear to Have Been Implemented

When it introduced Form 1023-EZ, the IRS recognized that using the form posed the following risks:

- Decreased IRS involvement in applicant engagement and education;
- Insufficient information on the form for the IRS to make an accurate determination;
- Increased likelihood of fraud;
- Perception that applicants could be treated inconsistently; and
- Possibility that application processing may be inadequate.<sup>22</sup>

The IRS planned to mitigate these risks by:

- Providing extensive educational materials and clarifying instructions;
- Implementing the predetermination review process; and
- Implementing the post-determination compliance program.<sup>23</sup>

The National Taxpayer Advocate agrees that the IRS should provide educational materials and helpful instructions, but the IRS's own data demonstrates that these measures have not sufficiently mitigated the identified risks. As noted above, the IRS's predetermination reviews show that a significant level of Form 1023-EZ applications are approved erroneously. As discussed below, its post-determination process does not appear to be mitigating the risks created by a lack of up-front oversight.

The IRS has always intended to substitute up-front oversight primarily with post-determination audits.<sup>24</sup> In 2016, EO identified for audit a random sample of 1,182 organizations whose Form 1023-EZ applications had been approved and who had been operating for at least a year.<sup>25</sup> As of March 29, 2018,

20 IRM 7.20.9.4 (11), *General Case Processing* (Sept. 9, 2018).

21 The IRS is also not denying Form 1023 or Form 1023-EZ applications more frequently. IRC § 6110 requires the IRS to publish final letters that revoke or deny an organization's exempt status, but with taxpayer identifying information deleted. The IRS posts redacted revocation and denial letters at *IRS Written Determinations*, <https://apps.irs.gov/app/picklist/list/writtenDeterminations.html;jsessionid=ae0lcixXzkTYpdDZKWMqaEHPPEljoPrD8KhdUcVM.-?value=&criteria=uilc&submitSearch=Find>. In addition, Tax Analysts, the publisher of Tax Notes, publishes these written determinations in *Tax Notes Today*. We identified 44 denial letters to organizations seeking IRC § 501(c)(3) status issued in calendar year 2017 and 43 in 2018.

22 *Form 1023-EZ Update Report 11*, [https://www.irs.gov/pub/irs-tege/form\\_1023ez\\_update\\_report\\_final.pdf](https://www.irs.gov/pub/irs-tege/form_1023ez_update_report_final.pdf), referenced in Tax Exempt and Government Entities (TE/GE) FY 2017 Work Plan 2 (Sept. 28, 2016, as amended Mar. 8, 2017).

23 *Id.*

24 See, e.g., TE/GE, *Business Performance Review (BPR) First Qtr. FY 2015 30*, Appendix B, TE/GE Risk Register (Feb. 2015), noting that its response to "perceived inadequate oversight of the tax-exempt sector as we undertake strategic shifts in how we conduct the up-front review of applications for tax-exempt status..." included transferring that risk to the Exempt Organization Exam function. The risk would be mitigated in the future by "expanded compliance efforts."

25 *Form 1023-EZ Update Report 10*, [https://www.irs.gov/pub/irs-tege/form\\_1023ez\\_update\\_report\\_final.pdf](https://www.irs.gov/pub/irs-tege/form_1023ez_update_report_final.pdf), referenced in TE/GE FY 2017 Work Plan 6 (Sept. 28, 2016, as amended Mar. 8, 2017), noting that 31 EO employees from the Determinations unit were realigned to the Examinations function.

51 percent of the randomly-selected organizations were noncompliant, or risked noncompliance, in some respect.<sup>26</sup>

In 2018, EO hired 11 tax examiners to process Form 1023-EZ applications, and 20 EO Examinations employees volunteered for one year to process EO applications rather than conduct audits.<sup>27</sup> By 2019, in view of increased Form 1023 processing times, the IRS announced that “we are re-allocating resources basically from examination to help us with the determination inventory.”<sup>28</sup> Thus, the backstop to the truncated up-front reviews for Form 1023-EZ will be reduced.

## CONCLUSION

The IRS has struggled for years to contain Form 1023 processing times. With Form 1023-EZ, the IRS reduced Form 1023 cycle times—at the cost of exercising actual oversight of the tax-exempt sector—only to see them rise again. Post-determination compliance efforts (*i.e.*, audits) were intended to correct for the lack of up-front oversight; however, the IRS is shifting resources away from these compliance efforts in order to keep up with its increasing cycle times. These developments, coupled with a potentially over-simplified revised Form 1023 application, mean that even more applicants will be recognized as IRC § 501(c)(3) organizations when they do not qualify for that status. Once exempt status is recognized, organizations will operate with a tax subsidy and will be subject to little compliance review by the IRS.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Review a representative sample of corporations in states that make articles of incorporation available online whose Form 1023-EZ was approved to determine how often the IRS confers IRC § 501(c)(3) status on organizations that do not qualify for that status;
- Report on Form 1023 and Form 1023-EZ cycle times;
- Report on EO Determinations and Examinations staffing levels;
- Report on post-determination revocations and audit outcomes of successful Form 1023-EZ applicants; and
- Advocate for a revised Form 1023 that is not oversimplified and that, unlike Form 1023-EZ, does not allow applicants to simply attest that they meet essential requirements for IRC § 501(c)(3) status without requiring documentation that they qualify for that status.

26 See TE/GE, *FY 2017 Accomplishments* 4 (Mar. 2018), reporting that 565 audits had closed, only 49 percent with no change. For a description of the type of noncompliance, see TE/GE, BPR Third Qtr. FY 2017 30 (Oct. 2017), reporting that as of Oct. 2017, 486 of these examinations had closed, of which only 250, or 51 percent, closed with no change: 144 organizations were issued advisories; 66 provided amendments to their organizing documents; four provided related returns or delinquent returns; two terminations; and one revocation of exempt status.

27 TE/GE, BPR, Fourth Qtr. FY 2018 7 (undated).

28 EO Tax Journal *Email Update* 2019-51 (Mar. 14, 2019), reporting remarks of the EO Division Director to members of the TE/GE Exempt Organizations Council. But see EO Tax Journal *Email Update* 2019-56 (Mar. 21, 2019) reporting remarks of the EO Examinations Director to members of the TE/GE Exempt Organizations Council, describing plans for April 2019 to hire approximately 50 revenue agents and 14 Tax Compliance Officers for EO Examinations work only, and to continue to hire Examination employees throughout the year.

Area of  
Focus #9**The Office of Appeals' Relatively Narrow Geographic Footprint Creates Barriers to In-Person Conferences and Limits Appeals' Effectiveness****TAXPAYER RIGHTS IMPACTED<sup>1</sup>**

- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

**DISCUSSION**

In several Annual Reports to Congress, the National Taxpayer Advocate has discussed the importance of in-person conferences to both taxpayers and the IRS Office of Appeals (Appeals).<sup>2</sup> An in-person conference is sometimes essential to properly explaining and settling a controversy, particularly for cases involving factual or legal complexity, credibility of witnesses, or hazards of litigation settlements.<sup>3</sup>

Closely linked to the availability and effectiveness of in-person conferences is the taxpayer's physical proximity to the Appeals Technical Employee (ATE) assigned to the case. If a taxpayer must travel hundreds of miles to obtain a desired in-person conference, or if the ATE has little understanding of the taxpayer's local circumstances, then the communication and commonality often necessary for case resolution can be compromised. TAS has long urged Appeals to address these related concepts and will continue to monitor developments throughout fiscal year (FY) 2020.

**Appeals Has Taken Positive Steps to Make All Taxpayers Eligible for In-Person Conferences**

Taxpayers whose cases are assigned to Appeals field offices have historically had access to in-person conferences.<sup>4</sup> By contrast, Appeals campus cases were made ineligible for such conferences in October 2016.<sup>5</sup> This action created a particular hardship for low and middle income taxpayers, whose cases are disproportionately assigned to the campuses.<sup>6</sup>

To its credit, Appeals, taking to heart the urgings of the National Taxpayer Advocate and other stakeholders, has recently changed its policy and reinstated the right of campus taxpayers to transfer their cases to field offices in order to accommodate an in-person conference.<sup>7</sup> Appeals has also indicated

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 National Taxpayer Advocate 2018 Annual Report to Congress 307-313; National Taxpayer Advocate 2017 Annual Report to Congress 195-202; National Taxpayer Advocate 2016 Annual Report to Congress 206-210; National Taxpayer Advocate 2014 Annual Report to Congress 46-54; National Taxpayer Advocate 2014 Annual Report to Congress 311-314.

3 Letter from American College of Tax Counsel to Kirsten Wielobob, Chief, Appeals (Oct. 10, 2016), 2016 TNT 197-16. See also Letter from Texas Soc'y of Cert. Pub. Accts. to John Koskinen, Comm'r of IRS (Jan. 24, 2017), 2017 TNT 16-16; ABA Members Comment on Recent Appeals Division Practice Changes, 2017 TNT 89-10 (May 10, 2017).

4 IRS, Interim Guidance Memorandum (IGM) AP-08-1017-0017, *Appeals Conference Procedures* (Oct. 13, 2017).

5 Effective October 1, 2016, Internal Revenue Manual (IRM) 8.6.1.2.2, *Transfers for the Convenience of Taxpayers*, was deleted, eliminating the right of taxpayers to transfer cases out of campuses.

6 National Taxpayer Advocate 2018 Annual Report to Congress 307-313.

7 IRS, IGM AP-08-1118-0013, *Appeals Conference Procedures* (Nov. 30, 2018).

that it will continue to pursue additional strategies aimed at ensuring that taxpayers' requests for in-person conferences are accommodated, regardless of whether the assigned ATE is located in a campus or in the field.<sup>8</sup> This progress in facilitating in-person conferences should continue and could serve as an important step along the path toward providing taxpayers with meaningful choice regarding the type and location of their Appeals conferences.

The National Taxpayer Advocate applauds Appeals for undertaking its recent policy change with respect to in-person conferences. This progress, however, does not alone eliminate the larger systemic problems attributable to the channeling of taxpayers' cases to campus locations.<sup>9</sup> For example, a taxpayer whose case remains in a campus will not have access to a highly graded ATE, even when the complexity of the case might warrant such an assignment. Ninety-four percent of ATEs in field offices are Grade 13 or above, whereas all ATEs in campuses are Grade 12 or below.<sup>10</sup> Further, although Appeals' new transfer policy is beneficial, it does not adequately address geographic access to in-person conferences and thereby minimizes Appeals' effectiveness in resolving cases.

### **Appeals' Reliance on Campuses Presents Physical Barriers to In-Person Conferences and Makes It Difficult for Campus Taxpayers to Have Their Cases Heard by Higher-Graded, Locally Based Appeals Technical Employees**

Appeals has only six campus locations spread throughout the United States: Philadelphia, Pennsylvania; Brookhaven, New York; Fresno, California; Ogden, Utah; Memphis, Tennessee; and Florence, Kentucky.<sup>11</sup> Fifty-three percent of Appeals cases are assigned to these campuses.<sup>12</sup> By contrast, the remaining 47 percent are spread among Appeals' 67 field offices.<sup>13</sup> The geographic dispersal of the campuses and field offices is shown in Figure 4.9.1.

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8 IRS, IGM AP-08-1118-0013, *Appeals Conference Procedures* (Nov. 30, 2018).

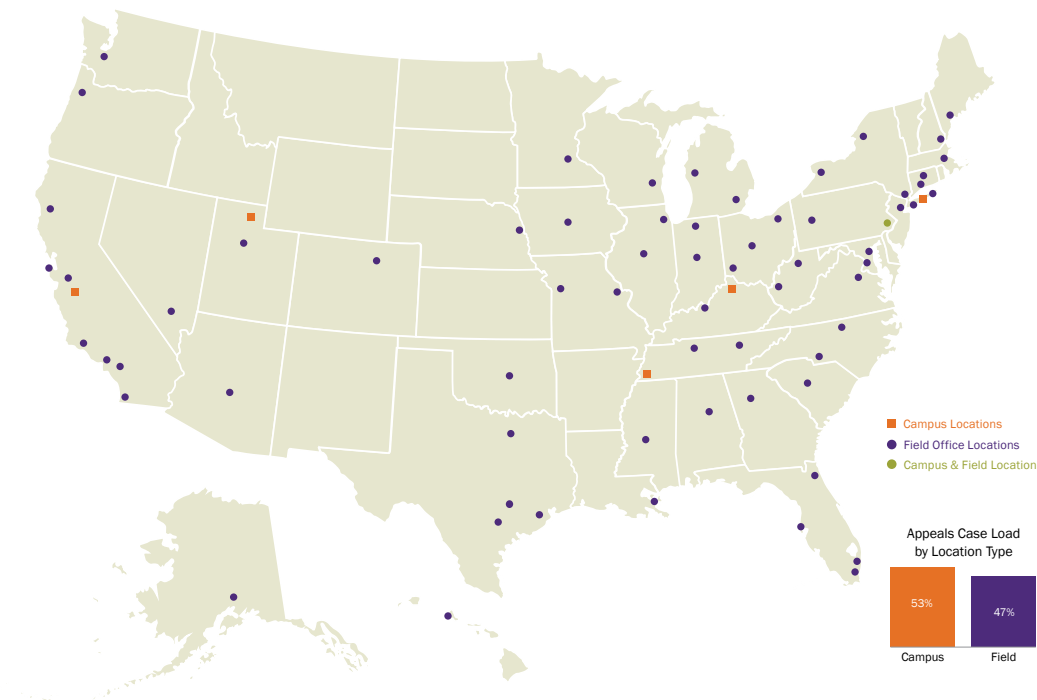
9 National Taxpayer Advocate 2018 Annual Report to Congress 307-313.

10 IRS response to TAS information request (Oct. 26, 2018).

11 IRS response to TAS information request (May 7, 2018).

12 IRS response to TAS information request (Oct. 26, 2018).

13 *Id.*

**FIGURE 4.9.1, Appeals Campus and Field Locations<sup>14</sup>**

Thanks to Appeals' reinstatement of campus taxpayers' right to seek a case transfer to facilitate an in-person conference, taxpayers are no longer inextricably bound to campuses. Nevertheless, Appeals' campus-centric approach can make this right difficult to exercise. Appeals states that it will use its best efforts to schedule an in-person conference at a location that is reasonably convenient for taxpayers and Appeals. However, given the geographic scarcity of field offices, which are the primary venues for in-person conferences, and the fact that twelve states and Puerto Rico lack a field office altogether, taxpayers wishing for an in-person conference may well be required to travel substantial distances and incur significant cost in order to attend an in-person conference.<sup>15</sup>

The circumstance that 53 percent of all Appeals cases are decided out of only six widely scattered offices is problematic because Appeals best serves taxpayers when it has a broad and diverse geographic footprint.<sup>16</sup> This presence allows ATEs to negotiate case resolutions based on an understanding of the local economic circumstances and prevailing community issues faced by taxpayers. Similarly, taxpayers are more likely to develop a rapport with, and respect the decisions of, ATEs with whom they share common experiences.<sup>17</sup> An Appeals function that is embedded within communities provides a more effective environment for establishing trust and achieving case resolutions.<sup>18</sup> This optimal environment,

14 This map was developed based on information provided in the IRS response to TAS information request (May 7, 2018).

15 IRS response to TAS fact check (Nov. 21, 2018).

16 Although 68 field offices would appear ample in comparison with only six campus locations, that number is insufficient to cover the entirety of the U.S., its territories, and the District of Columbia. Currently, 12 states and Puerto Rico lack any Appeals presence offering in-person conferences. Appeals response to TAS information request (Oct. 26, 2018).

17 National Taxpayer Advocate Fiscal Year (FY) 2019 Objectives Report to Congress 138.

18 *Id.*

however, is systematically denied to campus taxpayers unless they opt for an in-person conference, which they may or may not need to resolve their cases. Additionally, given Appeals' current staffing model, Appeals may lack any personnel whatsoever located within a taxpayer's vicinity.

Appeals could expand its geographic footprint and minimize its reliance on campuses by using attrition from the campuses to increase staffing in local field offices with ATEs of various grades and designations such that the office could cover cases ranging from the Earned Income Tax Credit (EITC) to itemized deductions to Schedule C controversies.<sup>19</sup> Likewise, Appeals could enhance its case assignment flexibility by re-designating technically or factually complex case categories, such as those involving EITC claims, so that they could be assigned to higher-graded ATEs where appropriate.<sup>20</sup> These steps would not only expand Appeals' geographic footprint and facilitate the accessibility of in-person conferences, but would lay the foundation for a structure that more effectively and equitably serves both campus and field taxpayers.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Monitor the availability of in-person conferences in both campus and field cases;
- Encourage and work with Appeals to expand its geographic footprint; and
- Advocate for taxpayers who do not receive a high-quality independent appeal by maintaining close contact with the tax practitioner community, entering into issue- and case-specific dialogues with Appeals, and issuing taxpayer assistance orders where appropriate.

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<sup>19</sup> Appeals explains its reluctance to allow case transfers out of the campuses because Appeals concentrates specialized knowledge in particular campuses and because Appeals Technical Employees (ATEs) in campuses are typically lower graded than those in the field and therefore handle less complex cases. Andrew Velarde, *IRS Appeals Confident That In-Person Campus Conferences Will Return*, 2018 TNT 21-63 (May 21, 2018).

<sup>20</sup> This step was recommended by the National Taxpayer Advocate to the Chief of Appeals as part of a May 31, 2016, meeting. In that meeting, the then-Chief of Appeals expressed the view that Earned Income Tax Credit (EITC) cases were less complex and therefore best suited for lower-graded ATEs. Given the often challenging factual scenarios and legal issues involved in these cases, however, this perspective should be reevaluated.

## Area of Focus #10 **TAS Will Continue to Assist Taxpayers in Exercising Their Administrative Rights While They Face Passport Consequences**

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

In early 2018, the IRS began implementing the legislatively directed program to certify taxpayers' seriously delinquent tax debts to the Department of State.<sup>2</sup> Under the law, the Department of State must deny an individual's passport application and may revoke or limit an individual's passport if the IRS has certified the individual as having a seriously delinquent tax debt. This term refers to an "unpaid, legally enforceable federal tax liability of an individual," which has been assessed, is greater than \$52,000, and meets either of the following criteria: (1) a notice of lien has been filed under Internal Revenue Code (IRC) § 6323 and the Collection Due Process (CDP) hearing rights under IRC § 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC § 6331.<sup>3</sup> The law requires only two forms of notice to taxpayers: language in CDP hearing notices and a notice sent "contemporaneously" with the certification the IRS sends to the Department of State.<sup>4</sup>

The statute provides exceptions to passport certification for debts timely paid through installment agreements (IAs) and offers in compromise (OICs), and for debts for which collection is suspended because the taxpayer has a requested or pending CDP hearing or has requested relief from joint liability (known as innocent spouse relief). Additionally, the IRS has exercised its discretion to create exceptions for debts that:

- Are determined to be in Currently not Collectible (CNC) status due to hardship;
- Result from identity theft;
- Belong to a taxpayer in a disaster zone;
- Belong to a taxpayer in bankruptcy;
- Belong to a deceased taxpayer;
- Are included in a pending OIC or IA; and
- For which there is a pending claim, and the resulting adjustment is expected to result in no balance due<sup>5</sup> or an adjustment to the account that reduces the original certification amount below the threshold.<sup>6</sup>

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-32 (2015) (codified at IRC § 7345) (hereinafter Fixing America's Surface Transportation (FAST) Act).

3 IRC § 7345(b)(1). The \$52,000 amount has been adjusted for inflation.

4 IRC §§ 6320(a)(3)(E), 6331(d)(4)(E), 7435(d).

5 Internal Revenue Manual (IRM) 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Dec. 26, 2017) and IRM 5.1.12.27.4, *Discretionary Exclusions from Certification* (Dec. 20, 2017).

6 IRM 5.1.12.27.8, *Reversal of Certification* (Dec. 20, 2017) and IRM 5.19.1.5.19.9 *Reversal of Certification* (Dec. 26, 2017).



As of May 17, 2019, the IRS had sent almost 389,000 certification notices to taxpayers, which includes repeat certifications for taxpayers who were certified, decertified, and then certified again.<sup>7</sup> Also, as of mid-May 2019, the IRS had decertified about 100,000 taxpayers.<sup>8</sup> The top three reasons for decertification were taxpayers in a disaster zone, taxpayers with a pending IA request, and taxpayers for whom the statutory period of limitation on collection had expired.<sup>9</sup> Although the IRS began certifying eligible taxpayers in phases, TAS understands the IRS anticipates being able to certify all eligible individual taxpayer accounts by September 1, 2019.<sup>10</sup>

### TAS Continues to Help Taxpayers Meet Exclusions From Certification or Become Decertified, Despite the IRS's Refusal to Exclude Already Open TAS Cases

Recognizing the significant rights that may be abridged when a person's passport is taken, Congress intended for passport certification to occur only once a taxpayer's administrative rights have been exhausted or lapsed. Taxpayers working with TAS are exercising important administrative rights—rights expressly granted to them by Congress. As part of the *right to a fair and just tax system*, taxpayers have the right to seek assistance from TAS if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. However, the IRS continues to certify taxpayers who are already working with TAS, declining to follow the Taxpayer Advocate Directive issued by the National Taxpayer Advocate in 2018.<sup>11</sup>

Since the start of the passport certification program, TAS has issued over 1,000 Taxpayer Assistance Orders (TAOs) related to passport issues. Almost 800 of these TAOs were issued in early 2018, requesting exclusion from certification for taxpayers with cases already open within TAS. While the IRS complied with these initial TAOs, it has since refused to exclude any taxpayers from certification solely based on their preexisting cases with TAS.

During fiscal year (FY) 2019 through May 31, 2019, TAS issued 342 TAOs related to passport certification, including:

- 128 TAOs requesting exclusion from passport certification based on an already open TAS case;
- 127 TAOs requesting the IRS take an action that would resolve the taxpayer's debt and qualify the taxpayer for decertification;
- 58 TAOs requesting expedited decertification;
- 29 TAOs requesting a manual decertification where a taxpayer was eligible for decertification, but a systemic decertification had not or would not occur.<sup>12</sup>

The IRS expressed concerns that excluding already open TAS cases would allow taxpayers to circumvent the statute and allow cases to stay open for extended periods of time, however, the data simply does not

7 This number also includes taxpayers who were certified for one tax year, then certified for an additional tax year. IRS response to TAS information request (May 23, 2019).

8 This number includes taxpayers who received a certification letter, but whose certification was never sent to the Department of State because they no longer had a seriously delinquent tax debt or met a certification exclusion prior to their name being transmitted to the Department of State. IRS response to TAS information request (May 23, 2019).

9 *Id.*

10 *Id.*

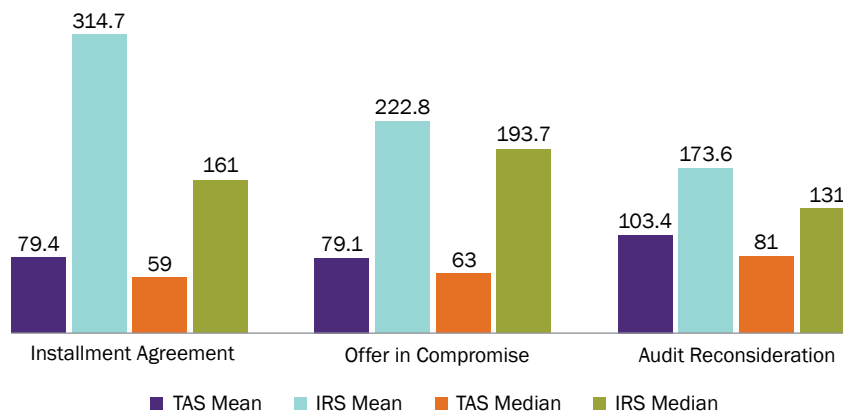
11 See National Taxpayer Advocate Fiscal Year (FY) 2019 Objectives Report to Congress 87-113 (Appendix A: *Taxpayer Advocate Directive 2018-1, TAS Passport Exclusion*).

12 An example of a situation where a systemic decertification would not occur would be if the taxpayer's liability was reduced through an audit reconsideration to below the \$52,000 threshold, but not eliminated completely.

bear this out. In cases where taxpayers resolved their debts, TAS taxpayers accomplished debt resolution, which is the fundamental purpose of the passport statute, significantly faster than those working on their own with the IRS, as shown in figure 4.10.1.

**FIGURE 4.10.1**<sup>13</sup>

**Cycle Times (in Days) for TAS Cases vs. Non-TAS Cases**



In terms of already certified taxpayers, of 919 cases TAS closed during the first half of FY 2019, TAS achieved decertification for approximately one-third of taxpayers, with the most common reasons being an IA and CNC hardship status, as shown in Figure 4.10.2.<sup>14</sup>

13 Accounts Receivable Dollar Inventory for Individuals and the Individual Master File for FY 2018 as of week 8 of 2019; Enforcement Revenue Information System Audit Reconsideration database (Jan. 2019). These cycle times are for all taxpayers, not just those with a seriously delinquent tax debt. In the case of installment agreements (IAs) and offers in compromise (OICs), the IRS cycle time captures the time from when a case was assigned by the IRS to collection status (Automated Collection System or the field) to when the case was placed in IA or OIC status. For the IA and OIC cycle times for TAS cases, the cycle time measures the length of time between when the taxpayer opened the TAS case and when the case was placed in IA or OIC status.

14 The 919 cases included all cases that were closed during FY 2019 through the end of February involving a taxpayer whose seriously delinquent tax debt had been certified.

**FIGURE 4.10.2, Resolved TAS Passport Certification Cases by Type of Resolution**

Resolution	Percentage
Installment Agreement	26%
Currently Not Collectible	24%
Other	19%
Audit Reconsideration	10%
Offer in Compromise	7%
Full Pay	6%
Amended Return	4%
Collection Due Process	2%
Bankruptcy	1%
Innocent Spouse	1%
Identity Theft	1%

TAS will continue advocating and issuing TAOs requesting individual taxpayers already working with TAS be excluded from passport certification.

### **TAS Helps Taxpayers Become Decertified, Who Often Are Not Aware of the Passport Certification Until After They Are Certified and Need to Travel**

As explained above, the law only requires two forms of notice to affected taxpayers: a contemporaneous notice issued to the taxpayer at the time of the certification or reversal and language included in the taxpayer's CDP notice. The contemporaneous notice, issued within days of the certification, does not provide taxpayers with an opportunity to come into compliance before the IRS makes the certification and in fact advises the taxpayer that the certification has already occurred.

First, this lack of notice raises due process concerns by depriving taxpayers of a notice and an opportunity to be heard prior to their fundamental right to travel being infringed.<sup>15</sup> Second, it leads to an unnecessary strain on resources—including those of TAS, the IRS, and Department of State, who must process certifications and decertifications for taxpayers who may have resolved their liabilities prior to being certified if they were notified in advance.

In one TAS case during 2018, the IRS reinstated the taxpayer's IA after the taxpayer had stopped paying due to a serious health problem, but the Revenue Officer neglected to input the IA into the system.<sup>16</sup> The taxpayer first learned of this failure not with a pre-certification notice that would have allowed the taxpayer to alert the IRS to the problem, but instead with a notice that the taxpayer's debt had already been certified to the Department of State, despite the taxpayer meeting a statutory exception to certification. In another TAS case, the taxpayer, who also had serious health problems, had paid the liability in full. However, the payment was not input in the system until eight days later due to computer system limitations, and this was the same date the taxpayer's account was pulled by the IRS

15 See Nina E. Olson, NTA BLOG, *The IRS's New Passport Program: Why Notice to Taxpayers Matters (Part 1 of 2)* (June 7, 2017), <https://taxpayeradvocate.irs.gov/news/the-irs-s-new-passport-program-why-notice-to-taxpayers-matters-part-1-of-2?category=TaxNews>.

16 In this example, as well as the one directly following it, TAS received written consent from the taxpayers to discuss publicly the facts of their individual cases.

for certification. A full two weeks after the account showed a zero balance, the IRS sent a passport certification notice to the taxpayer.<sup>17</sup>

In many cases, the unnecessary certifications require extra resources for the IRS to process expedited decertifications for taxpayers with impending travel. Since the implementation of the passport program, the IRS has issued 969 expedited decertification requests. A 30-day notice sent prior to certification could mitigate these issues.

TAS continues to hear from practitioners concerned about the IRS's inability to provide the passport certification and decertification notices to taxpayers' representatives. Our understanding is that currently, due to restrictions based on how the notices are generated, the IRS does not send passport notices to any representatives at all, even if they have a valid power of attorney on file that includes all the tax years that comprise the seriously delinquent tax debt. TAS advocated for the IRS to update the CP508 Certification Notice to make this clear to taxpayers by stating "You will need to contact your POA directly since this notice will not be sent to your POA." While the IRS agreed to make this change, we understand the work order to complete this change will not be completed until the beginning of 2020. TAS will continue to explore what steps can be taken to allow the passport certification and decertification notices to be sent to representatives where such disclosure is authorized under the law.

TAS has noted in some cases certified taxpayers are not aware of the certification when they come to TAS for assistance. Although TAS pulled a representative sample of its own cases to gauge how widespread the lack of knowledge was, there was difficulty in determining from the case files whether taxpayers knew of the certification. TAS will research this problem further and try to pinpoint potential causes, including lack of notice to Powers of Attorney (POAs), undelivered mail, and timing of the notice.

### **TAS Is Limited in Which Taxpayers It Can Assist With Expedited Decertification Due to IRS Requirements**

Although not required by statute, the IRS has created an expedited decertification procedure for taxpayers who live abroad or have plans to travel within 45 days. Although this process has proven highly beneficial to a number of taxpayers, including those working with TAS, there is a major limitation. Expedited decertification is only available to taxpayers with a pending passport application, despite the fact that taxpayers who are certified and have current passports run the risk of having their passports revoked under the statute at any time.

In one TAS case, a certified taxpayer was stranded abroad, needing to return to the United States to obtain an equity loan to pay his federal tax balance.<sup>18</sup> The consulate in the foreign country confiscated the taxpayer's passport when he applied for renewal and refused to issue him a limited passport for return only to the United States. Although the taxpayer worked with TAS to meet a criterion that qualified him for decertification, the consulate initially refused to process the taxpayer's passport application (and thus provide a pending passport application number) until he could provide proof that he had resolved his IRS issue. At the same time, the IRS refused to grant the taxpayer's request for an expedited decertification until the taxpayer could supply a passport application number. Although the

17 Although TAS understands that in this case the IRS was able to prevent the actual certification to the Department of State from occurring, the taxpayer nonetheless received a letter stating that he or she had been certified, creating unnecessary anxiety and further communication with the IRS to confirm the taxpayer was not actually certified.

18 The taxpayer in this case has signed a written consent allowing TAS to discuss publicly the facts of his individual case.

consulate ended up accepting a tax transcript as proof that the taxpayer had resolved the issue, this case demonstrates the problems with requiring a pending passport application for expedited decertification.

In addition to the above example, TAS is aware of numerous instances of taxpayers with seriously delinquent tax debts having their passports revoked, such as certified taxpayers who sought consular services for replacement pages for a passport or for registering the birth of a child. For example, merely contacting the Department of State to ask about the ability to use one's passport can result in revocation of the passport and removal from an airplane. Clearly, there is a need for taxpayers with current passports to receive expedited decertification if they have imminent travel planned. TAS will continue to request expedited decertification for any taxpayers with an urgent need to travel.

### Taxpayers Are Reporting Difficulty Requesting the Emergency and Humanitarian Exception

The law provides that the Department of State may issue a passport to a certified taxpayer in emergency circumstances or for humanitarian reasons.<sup>19</sup> However, TAS has heard from multiple taxpayers expressing frustration with the ability to request this exception. Taxpayers have reported to TAS receiving inconsistent information from Department of State employees, for example, that the emergency/humanitarian exception applied only to "officers" who need to travel back to the United States or it does not apply if the family member one is visiting is not a U.S. citizen. Other taxpayers have reported simply that the Department of State employee they spoke with was unfamiliar with the exception.

The IRS has acknowledged that it "has the discretion to request a decertification for other reasons [in addition to the statutory provisions requiring decertification]."<sup>20</sup> However, the IRS has not created a discretionary exclusion formally listed in the IRM for emergency and humanitarian purposes. For taxpayers who are in regular contact with the IRS and working on resolving their tax liabilities, creating a formal IRS administered decertification exception for emergency and humanitarian purposes could prevent irreparable harm to taxpayers who are being prevented from traveling in an emergency. The IRS could prevent taxpayers from taking improper advantage of this exception by subsequently making a revocation recommendation for any taxpayers who were temporarily granted an emergency or humanitarian exception, but no longer should be excluded from passport certification.

## CONCLUSION

In implementing the passport provisions of the Fixing America's Surface Transportation (FAST) Act, the IRS has been proactive in some areas by taking actions not required by Congress to protect taxpayer rights. For example, the IRS created discretionary exceptions to passport certification and an expedited decertification process. However, there are some longstanding problems that the IRS has not addressed, such as the lack of a stand-alone notice prior to passport certification, the refusal to exclude already open TAS cases, and the inability for representatives to receive copies of passport correspondence. Additionally, the IRS is missing opportunities to protect taxpayer rights by ensuring expedited decertification is available to all taxpayers who have a need for it.

19 FAST Act § 32101(e)(1)(B).

20 IRM 5.19.1.5.19.9, *Reversal of Certification* (Dec. 26, 2017).

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Update technical guidance to TAS employees working cases to take into account revised expedited decertification and revocation recommendation procedures;
- Compile detailed TAS case data regarding cycle time, outcomes, taxpayer notification, and other metrics on passport cases for certified and not yet certified taxpayers;
- Further research the limitations that prevent the IRS from issuing the passport notices to authorized representatives and make recommendations for how the IRS could address this problem;
- Meet with the Department of State to discuss taxpayer problems in requesting the emergency/humanitarian exception, updates to the expedited decertification process, and the possibility of including TAS language on the Department of State passport notices;
- Issue a Taxpayer Rights Impact Statement proposing categories for an IRS administered emergency/humanitarian exception that would qualify a taxpayer for decertification;
- Continue to issue TAOs requesting exclusion from passport certification for already open TAS cases; and
- Assist taxpayers in having their accounts timely decertified to the Department of State.

## Area of Focus #11 Facilitate Digital Interaction Between the IRS and Taxpayers While Still Maintaining Strict Security of Taxpayer Information

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Confidentiality*

### DISCUSSION

The IRS continually expands its offerings of digital service options for taxpayers in an effort to meet taxpayer demand, as well as provide more efficient service delivery methods. While TAS acknowledges that many taxpayers prefer to interact with the IRS electronically in certain transactions, we also continue to advocate for the IRS to maintain an omnichannel service environment.<sup>2</sup> Further, we believe that the IRS should apply the results of two pilot programs, the Taxpayer Digital Communications Secure Messaging (TDC) pilot and the Office of Appeals WebEx Virtual Conference pilot, to improve its digital service offerings. Accordingly, during fiscal year (FY) 2020, TAS plans to explore the following issues:

- During the TAS TDC pilot, taxpayers expressed concerns over the burdensome e-authentication requirements where they merely wanted to submit documentation or payments to the IRS. TAS will meet with representatives of the National Institute of Standards and Technology (NIST) to determine if there is a less burdensome approach for these types of interactions.
- The results of the Appeals WebEx pilot support the expansion of the technology to other various customer service and enforcement programs within the agency, including TAS.

### Participants in the TAS Taxpayer Digital Communications Pilot Expressed Concerns Over the Burden Imposed by e-Authentication Requirements

The Taxpayer Advocate Service, along with several other organizations within the IRS, conducted a pilot of the TDC system.<sup>3</sup> The pilot used the same three-factor e-authentication requirements as the IRS online account application, Secure Access.<sup>4</sup> The TDC pilot enabled the participating IRS organizations to send and receive electronic webmail, along with certain digital documents (including uploaded

- 1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).
- 2 See National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).
- 3 In addition to TAS, the following organizations conducted a Taxpayer Digital Communications (TDC) pilot: Small Business/Self Employed (SB/SE) Exam, Large Business and International (LB&I). IRS response to TAS information request (Nov. 22, 2017).
- 4 The three-factor requirements for Secure Access include: (1) personal information, including: name, email address, tax identification number, tax filing status, and mailing address; (2) financial account information from one of the following: credit card (no American Express, debit or corporate cards), student loan, mortgage, home equity loan, home equity line of credit (HELOC), or auto loan; and (3) mobile phone linked to the taxpayer's name (alternatively, the taxpayer can provide a mailing address and receive an activation code by mail). See IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited Apr. 28, 2019).

scanned or photographed documents), to and from taxpayers through a secure portal. The pilot also enabled taxpayers to communicate within the system using computers, smartphones, or tablets.<sup>5</sup>

TAS conducted the pilot in two phases. Phase I started in April 2017 and paused September 30, 2017, due to an IRS Secure Access vendor change. Phase II of the pilot started June 18, 2018, and ended November 30, just prior to the installation of a new version of the system software. Combined, Phase I and Phase II covered approximately one year.

The Phase I pilot included unrepresented taxpayers with Earned Income Tax Credit (EITC) or levy cases.<sup>6</sup> TAS expanded the pilot in Phase II to include cases with open audits, audit reconsiderations, innocent spouse, offers in compromise (all types), currently not collectible, other installment agreements, Affordable Care Act Premium Tax Credit, and all series of liens.<sup>7</sup> In both phases of the pilot, very few taxpayers participated in the program. In Phase I, out of the about 750 taxpayers who were invited to participate in the pilot, fewer than ten taxpayers passed the Secure Access e-authentication requirements necessary to open an account.<sup>8</sup> In Phase II, the number of invitations to participate increased by approximately 50 percent (over 1,100 offers made in Phase II), yet only about a dozen taxpayers were able pass Secure Access.<sup>9</sup>

During both phases of the TAS pilot, the strict e-authentication requirements created a barrier to participation. Many pilot participants (both TAS Case Advocates and taxpayers) noted that the e-authentication requirements were a main reason for not opening an account. The requirements were either too burdensome or the taxpayers did not have the necessary information to pass Secure Access.<sup>10</sup> They also noted that it was simply easier to use another method of communication to provide information, such as fax, phone, or correspondence.<sup>11</sup>

TAS pilot participants raised concerns about the unnecessarily burdensome e-authentication requirements where the taxpayer merely wanted to electronically submit documents.<sup>12</sup> They raised a valid point: when confidential taxpayer information is only flowing *into* the IRS, there is little risk that the IRS will wrongly disclose confidential information, especially once the IRS has already established personal contact with taxpayer.<sup>13</sup> For example, when a taxpayer is submitting documentation for an audit or providing evidence of economic hardship to TAS, the taxpayer is not receiving information from the IRS. In such circumstances, it seems unnecessarily burdensome to require the user of the

5 TAS TDC Summary - Cumulative Data from 6/18/2018 Through 12/3/2018 (Dec. 3, 2018).

6 TAS conducted the pilot in the following four offices: Dallas, Nashville, New Orleans, and Cleveland. TAS TDC Summary - Cumulative Data from 6/18/2018 Through 12/3/2018 (Dec. 3, 2018).

7 TAS Fiscal Year (FY) 2018 Quarter 2 Business Performance Review Report Commissioner's Briefing; TAS TDC Summary - Cumulative Data from 6/18/2018 Through 12/3/2018, *Participation Agreement Information by Primary Issue, 6/18/2018 Through 12/3/2018*, 29 (Dec. 3, 2018).

8 TAS, *Working Data for Taxpayer Digital Communications Project* (Figures shown from 04/05/2017 to 09/30/2017).

9 TAS TDC Summary - Cumulative Data from 6/18/2018 Through 12/3/2018, *Participation Agreement Information by Primary Issue, 6/18/2018 Through 12/3/2018* (Dec. 3, 2018).

10 TAS TDC Summary - Cumulative Data from 6/18/2018 Through 12/3/2018 (Dec. 3, 2018); IRS response to TAS information request (Nov. 22, 2017).

11 *TAS Taxpayer Digital Communication (TDC) Pilot: TAS Online Survey Report 5* (2018).

12 *Id.*

13 There is always a risk of criminals attempting to hack into IRS systems or sending attachments with malware, but the IRS has methods other than Secure Access to protect against these risks. The purpose of Secure Access is to prevent unauthorized IRS disclosure of confidential taxpayer information. Internal Revenue Manual (IRM) 21.2.1.58, *Secure Access eAuthentication* (Oct. 9, 2018).



online application to pass the strict three-factor requirements of Secure Access.<sup>14</sup> A taxpayer submitting documentation by mail or fax is not subject to authentication requirements because the IRS does not disclose confidential tax return information in this one-way inbound communication. In addition, while in some instances an identity thief might submit false documents, this is not a security risk, and the IRS has procedures in place to review and determine the legitimacy of documents.<sup>15</sup>

The IRS has previously indicated that online transactions should be as easy and simple as policy, process, and technology will allow, especially for inbound document submission processes where taxpayers are attempting to voluntarily comply with tax obligations.<sup>16</sup> The IRS must follow guidelines issued by NIST, which released updated guidelines in June 2017.<sup>17</sup> The IRS subsequently developed an omnichannel authentication strategy and is in the process of applying the new NIST standards to each online application.<sup>18</sup> For example, the IRS implemented an enhanced security two-factor authentication requirement for limited online applications. The two-factor authentication is less burdensome and is currently applied to the Online Payment Agreement applications.<sup>19</sup> Figure 4.11.1 includes the verification rates for the various types of e-authentication levels from FY 2017 to FY 2019 (through March 23, 2019).

**FIGURE 4.11.1, e-Authentication Verification Rates, FYs 2017–2019 (through March 23, 2019)<sup>20</sup>**

Type of e-Authentication	FY 2017	FY 2018	FY 2019 (through March 23)
Legacy Two-Factor Verification Rate	82.5%	78.9%	76.7%
Enhanced Two-Factor Verification Rate (beg. July 2018)	N/A	74.3%	65.9%
Three-Factor Verification Rate	33.3%	39.2%	37.2%

14 For a detailed description of the information required to pass Secure Access requirements, see IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited Apr. 28, 2019).

15 We acknowledge that the IRS is under significant pressure to increase its online security controls to battle continuous cybersecurity threats and we firmly believe that strict e-authentication is necessary to promote a high level of confidence in the tax system in general and online services in particular. See *The Internal Revenue Service's Taxpayer Online Authentication Efforts: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. (Sept. 26, 2018) (statement of Michael E. McKenney, Deputy Inspector General for Audit, Treasury Inspector General for Tax Administration).

16 IRS Response to Recommendation 3-3, National Taxpayer Advocate FY 2019 Objectives Report vol. 2 36 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress*).

17 National Institute of Standards and Technology, Special Publication 800-63-3, *Digital Identity Guidelines* (June 2017). The IRS must also comply with Office of Management and Budget M-04-04, *E-Authentication Guidance for Federal Agencies* (Dec. 16, 2003).

18 IRS Identity Assurance Operations, IRS Office of Privacy, Governmental Liaison and Disclosure (PGLD), *Secure Access Verification Rates* (Apr. 25, 2019); IRS Response to Recommendation 3-3, National Taxpayer Advocate FY 2019 Objectives Report vol. 2 36 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress*).

19 IRS Identity Assurance Operations, PGLD, *Secure Access Verification Rates* (Apr. 25, 2019). With two-factor authentication, the user is required to create a profile, which involves the IRS verifying personal information and mailing address, and either (1) verify a financial account, (2) activate via SMS (phone verification), or (3) activate via postal activation code. Authentication, Authorization, and Access (A3) Executive Governance Board Meeting (Apr. 11, 2019).

20 IRS Identity Assurance Operations, PGLD, *Secure Access Verification Rates* (Apr. 25, 2019). In July 2018, the IRS enhanced the legacy Level of Assurance (LOA) 2 with additional security and began migrating legacy applications, including Online Payment Agreement (OPA). For three-factor, FY 2018 represents activity since the December 10, 2017, relaunch (after the October to December 2017 temporary shut-down).

To address the needs of taxpayers expressed during the TDC pilot, TAS plans to meet with representatives of NIST to evaluate the feasibility of creating a method to electronically submit documents to the IRS with reduced e-authentication standards, while still maintaining compliance with the new NIST standards. The platform we envision should be the digital functional equivalent to faxing or mailing documents to the IRS. It would be easier for both the taxpayer and the IRS if the taxpayer had the ability to submit documents electronically while still on a call with the IRS. It would save time for both parties because they could both review and discuss the documents in real time and immediately address any concerns. However, requiring a taxpayer to first pass three-factor Secure Access in order to submit documents electronically is going to keep out a substantial number of taxpayers.

### **TAS Plans to Evaluate the Office of Appeals WebEx Pilot and Advocate for Expansion to Other Service and Compliance Initiatives**

From August 1, 2017 through September 30, 2018, the IRS Office of Appeals conducted a pilot using Cisco WebEx Meeting Server (WebEx) technology for virtual face-to-face conferences with taxpayers and representatives.<sup>21</sup> For the pilot, Appeals used videoconference, document viewing, and chat features available on WebEx software. Appeals did not record WebEx meetings and, although documents can be shared onscreen, no actual file transfer took place.<sup>22</sup>

Over 80 Appeals Officers, Settlement Officers and other Appeals employees who routinely interact with taxpayers and representatives volunteered to participate in the pilot.<sup>23</sup> Participating volunteers provided the taxpayer the option of conducting a WebEx conference. Those taxpayers who agreed to participate in the pilot needed a computer, tablet, or other mobile device with an internet connection. The IRS also requested the taxpayer to install WebEx, a free commercial software, on their device, but there was also an option to run a temporary application, which did not require installation but also had less optimal performance, to join the meeting. In addition, while it was preferable that the taxpayer's device had video camera capabilities, taxpayers without this capability could still participate in a WebEx conference for audio and the visual sharing of documents.<sup>24</sup>

The pilot produced overall favorable results. Over 3,500 taxpayers and representatives were offered to use the technology and almost 40 percent of the Appeals volunteers conducted 130 WebEx conferences. On average, participating taxpayers and representatives rated the experience between very good and excellent (4.28 on a 5-point scale) and about 90 percent indicated that they preferred it over telephone conferences.<sup>25</sup>

A WebEx conference had both benefits and limitations for both taxpayers and the IRS. The program benefits include: (1) providing a virtual face-to-face opportunity to meet, ensuring engagement and facilitating communication; (2) reducing the time and effort associated with taxpayer travel to an Appeals office; and (3) allowing visual presentation of information in real time. However, technical difficulties also arose as audio and video efficiency are affected by internet connectivity, bandwidth,

21 IRS Office of Appeals, *Appeals' WebEx Pilot – Final Results and Recommendations* (Nov. 6, 2018).

22 IRS, Appeals Virtual Conferences – WebEx, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Apr. 17, 2019).

23 IRS Office of Appeals, *Appeals' WebEx Pilot – Final Results and Recommendations* (Nov. 6, 2018).

24 IRS, Appeals Virtual Conferences – WebEx, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Apr. 17, 2019).

25 IRS Office of Appeals, *Appeals' WebEx Pilot – Final Results and Recommendations* (Nov. 6, 2018).

and the equipment and operating systems used by each party to the conference.<sup>26</sup> In addition, the WebEx server was taken offline in late April due to an apparent attempt to “hack” the related audio conference bridge. The IRS brought the server back online on May 22, 2018, after it deployed upgraded programming.<sup>27</sup>

Appeals has indicated that it intends to expand the use of WebEx by incorporating the technology into conference practices more broadly, going forward.<sup>28</sup> In addition, the favorable results of the pilot support the expansion of WebEx technology for virtual conferences in other areas of the IRS. In fact, TAS plans to conduct a pilot of the technology beginning in FY 2020.<sup>29</sup>

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Meet with representatives of the National Institute of Standards and Technology (NIST) to determine if most recent standards allow for the creation of less burdensome e-authentication requirements for interactions limited to the inbound transfer of information, such as when the taxpayer submits documents to the IRS and the IRS does not release any taxpayer-specific data in return; and
- Conduct a pilot using WebEx virtual conference technology with TAS cases and model the terms of such pilot on the one conducted by Appeals.

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26 IRS, Appeals Virtual Conferences – WebEx, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Apr. 17, 2019).

27 IRS Office of Appeals, *Business Performance Review (BPR), Third Quarter - Fiscal Year 2018 2* (Aug. 23, 2018).

28 IRS Office of Appeals, *Appeals' WebEx Pilot – Final Results and Recommendations* (Nov. 6, 2018); IRS Office of Appeals, FY 2019 Appeals Program Letter 1-3.

29 For a detailed discussion of the planned development of TAS WebEx pilot, see *Efforts to Improve Taxpayer Advocacy, infra*.

## Area of Focus #12 TAS Will Advocate for Greater Clarity and Certainty With Respect to the IRS's Updated Voluntary Disclosure Practice

### TAXPAYER RIGHTS IMPACTED<sup>1</sup>

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

Over the years, the IRS has developed various programs to encourage taxpayers who learn they could be subject to draconian civil and criminal penalties to come into compliance voluntarily. Pursuant to its longstanding voluntary disclosure practice (VDP), the IRS would take a person's voluntary disclosure into account in determining whether to refer them for criminal prosecution (*i.e.*, a disclosure would significantly reduce the risk for a taxpayer being referred for criminal prosecution).<sup>2</sup> To qualify, the person had to (a) make a timely disclosure (*i.e.*, generally before the government begins an investigation or learns of the noncompliance), (b) cooperate with the IRS, and (c) arrange to pay the liability in full.<sup>3</sup>

Historically, taxpayers who made a voluntary disclosure could often avoid civil penalties as well.<sup>4</sup> Some practitioners advised that if penalties did apply to a voluntary disclosure involving an offshore account, they would typically amount to 12 to 15 percent of the balance of the undisclosed account in question.<sup>5</sup> However, people could often achieve a similar result (*i.e.*, no criminal penalties and little or no civil

1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 Internal Revenue Manual (IRM) 9.5.11.9, *Voluntary Disclosure Practice* (Dec. 2, 2009). Technically, the IRS can still refer a taxpayer who makes a voluntary disclosure for criminal prosecution, but it must consider the disclosure in making that decision. *Id.*

3 *Id.* The voluntary disclosure practice (VDP) is not available to those with illegal-source income. *Id.*

4 See, e.g., Mark E. Matthews and Scott D. Michel, *IRS's Voluntary Disclosure Program for Offshore Accounts: A Critical Assessment After One Year*, 181 DTR J-1, 5 (Sept. 21, 2010) (noting that before the offshore voluntary disclosure program (OVDP), "taxpayers rarely paid any penalties in connection with voluntary disclosures on offshore accounts. Indeed, most taxpayers, relying on the advice of skilled tax professionals, many of whom have decades of prior experience in the Justice Department (DOJ), or IRS, simply filed amended returns and paid the tax and interest. They were never audited. No penalties were ever asserted...").

5 Baker and McKenzie, *Undeclared Money Held Offshore: U.S. Voluntary Compliance Programs (Part 2)*, 21 J. INT'L. TAX'N 36, 43 (2010).

penalties) by making a “quiet” disclosure—filing an amended return and paying any tax delinquency—without making a formal voluntary disclosure.<sup>6</sup>

Beginning in 2009, the IRS offered a series of offshore voluntary disclosure (OVD) programs to settle with taxpayers who had failed to report offshore income and file one or more related information returns (e.g., Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*). As the National Taxpayer Advocate described in prior reports, these programs applied a one-size-fits-all approach designed for “bad actors” who intentionally tried to evade taxes, to “benign actors” who inadvertently violated the rules, requiring them to opt-in and then opt-out, and threatening them with lengthy examinations and draconian civil and criminal penalties.<sup>7</sup>

### Overview of Initiatives Available for Taxpayers With Unfiled Returns or Unreported Income

On September 28, 2018, the IRS ended its latest variation of the OVD program.<sup>8</sup> In lieu of an OVD program, the IRS recently announced changes to its VDP.<sup>9</sup>

Like the longstanding VDP, the objective of the updated VDP is to provide an avenue for taxpayers with potential exposure to criminal liability with a means “to come into compliance with the law and potentially avoid criminal prosecution.”<sup>10</sup> The updated VDP provides continued opportunities to make domestic or offshore voluntary disclosures.<sup>11</sup> However, the updated VDP gives examiners less discretion in the application of civil penalties.<sup>12</sup>

6 See, e.g., Mark E. Matthews and Scott D. Michel, *IRS’s Voluntary Disclosure Program for Offshore Accounts: A Critical Assessment After One Year*, 181 DTR J-1 (Sept. 21, 2010); Baker and McKenzie, *Undeclared Money Held Offshore: U.S. Voluntary Compliance Programs (Part 2)*, 21 J. INT’L. TAX’N 36, 43 (2010) (“most practitioners generally recommended to their clients the use of informal or ‘quiet’ disclosures. In theory, the taxpayer ran the risk of being ‘caught’ but, in practice, the taxpayer rarely heard anything back from the Service or DOJ. Further, if one did participate in the formal voluntary disclosure process, most, if not all, penalties generally were abated.”).

7 The National Taxpayer Advocate discussed the IRS’s OVD in eleven reports to Congress and in Taxpayer Advocate Directive (TAD) 2011-1, which was elevated to former Commissioner of Internal Revenue Douglas Shulman. See, e.g., National Taxpayer Advocate Fiscal Year (FY) 2018 Objectives Report to Congress 43-50; National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 210-228; National Taxpayer Advocate FY 2016 Objectives Report to Congress vol. 2 32-35; National Taxpayer Advocate FY 2015 Objectives Report to Congress vol. 2 91-95; National Taxpayer Advocate FY 2014 Objectives Report to Congress 36-39; National Taxpayer Advocate 2014 Annual Report to Congress 79-93; National Taxpayer Advocate FY 2013 Objectives Report to Congress 21-29; National Taxpayer Advocate 2013 Annual Report to Congress 222-237; National Taxpayer Advocate FY 2012 Objectives Report to Congress 23-24; National Taxpayer Advocate 2012 Annual Report to Congress 134-153; National Taxpayer Advocate 2011 Annual Report to Congress 206-272 (including TAD 2011-1 and the IRS response). See also *IRS Reform: Lessons Learned from the National Taxpayer Advocate: Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight* 115th Cong. 24 (2017) (testimony of Nina E. Olson, National Taxpayer Advocate).

8 See IRS, *IRS to End Offshore Voluntary Disclosure Program; Taxpayers With Undisclosed Foreign Assets Urged to Come Forward Now*, IR-2018-52 (Mar. 13, 2018).

9 Memorandum for Division Commissioners, Chief, Criminal Investigation, *Updated Voluntary Disclosure Practice* (Nov. 20, 2018). The VDP permits both domestic and offshore disclosures. *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

Taxpayers who are not concerned about criminal liability can still make “quiet” disclosures, or in certain circumstances they may be eligible for the:

- (1) Streamlined Filing Compliance Procedures (SFCP);<sup>13</sup>
- (2) Delinquent FBAR Submission Procedures;<sup>14</sup> or
- (3) Delinquent International Information Return Submission Procedures.<sup>15</sup>

None of these options provide the taxpayer with the finality that their tax issues are resolved because the IRS can still audit their returns and theoretically even refer them for criminal prosecution.<sup>16</sup>

### Taxpayers May Be Unclear About Which Option to Use

A taxpayer may be confused whether a voluntary disclosure is appropriate because the IRS is routing all voluntary disclosures from the IRS Criminal Investigation Division to the Large Business & International (LB&I) Division and then from LB&I to the appropriate IRS division.<sup>17</sup> This may create the perception that the updated VDP is only available for LB&I taxpayers.<sup>18</sup> Additionally, having LB&I serve as a routing function could result in increased timeframes for non-corporate, domestic filers because of the additional routing involved and the possibility of increased errors in routing from LB&I to the appropriate function.

Additionally, some taxpayers may not know whether their conduct was willful, and therefore subject to enhanced penalties, including the possibility of criminal prosecution. Given this uncertainty, some who were not even clearly negligent are going to want to apply to the VDP to reduce the already-low possibility that they might have to pay to defend themselves in public against criminal charges.

Because “willfulness” can be inferred based on various facts and circumstances, taxpayers who feel they have acted reasonably might still be concerned that the IRS would view their conduct as willful and

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- 13 For additional information about the Streamlined Filing Compliance Program, see IRS, *Streamlined Filing Compliance Procedures*, <https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures> (last visited Apr. 5, 2019). The IRS indicated it may end the Streamlined Filing Compliance Program in the future. IRS, *IRS Reminds Those With Foreign Assets of Annual April 15 FBAR Deadline*, IR-2019-63 (Apr. 4, 2019); IRS, *IRS To End Offshore Voluntary Disclosure Program; Taxpayers With Undisclosed Foreign Assets Urged to Come Forward Now*, IR-2018-52 (Mar. 13, 2018).
  - 14 For additional information about the Delinquent Report of Foreign Bank and Financial Accounts (FBAR) Submission Procedures, see IRS, *Delinquent FBAR Submission Procedures*, <https://www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures> (last visited Apr. 5, 2019).
  - 15 For additional information about the Delinquent International Information Return Submission Procedures, see IRS, *Delinquent International Information Return Submission Procedures*, <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures> (last visited Apr. 5, 2019).
  - 16 Returns filed under the Streamlined Filing Compliance Procedures will not be acknowledged by the IRS and will not result in a closing agreement. See IRS, *Streamlined Filing Compliance Procedures*, <https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures> (last visited Apr. 5, 2019). FBARs may be selected for audit through existing audit selection procedures. See IRS, *Delinquent FBAR Submission Procedures*, <https://www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures> (last visited Apr. 5, 2019). Information returns filed with amended returns may be selected for audit through existing audit selection procedures. See IRS, *Delinquent International Information Return Submission Procedures*, <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures> (last visited Apr. 5, 2019).
  - 17 Memorandum for Division Commissioners, Chief, Criminal Investigation, *Updated Voluntary Disclosure Practice* (Nov. 20, 2018).
  - 18 The Large Business & International (LB&I) Division serves corporations, subchapter S corporations, and partnerships with assets greater than \$10 million. See IRS, *Large Business and International Division At-a-Glance*, <https://www.irs.gov/businesses/international-businesses/large-business-and-international-division-at-a-glance> (last visited Apr. 8, 2019). The LB&I Division also serves international taxpayers. See IRS, *Full List of LB Large Business and International Campaigns*, <https://www.irs.gov/businesses/full-list-of-lb-large-business-and-international-campaigns> (last visited Apr. 8, 2019).

assert draconian civil and possibly even criminal penalties.<sup>19</sup> To avoid this risk and to settle the matter with finality, some will apply to the VDP. When they do, taxpayers will find they face the choice of paying penalties designed for criminals or proving their innocence without the normal procedural protections.

### The Updated VDP Is More Favorable to Taxpayers Who Engaged in Willful or Criminal Behavior

The burden of proving fraud has always been the responsibility of the IRS.<sup>20</sup> However, the updated VDP *presupposes* fraud.<sup>21</sup> While the guidance permits a taxpayer to seek a penalty other than civil fraud, the guidance says “imposition of lesser penalties is expected to be exceptional.”<sup>22</sup> The IRS is avoiding its legal responsibility by starting with the premise that fraud exists and then requiring the taxpayer to bear the burden of proving a lesser penalty.

A taxpayer who has engaged in willful or criminal behavior, such as the purposeful underreporting of their offshore income by hiding income in offshore accounts, will likely benefit from the VDP. By cooperating and agreeing with the examiner, the taxpayer will be assessed either a civil fraud penalty or a fraudulent failure to file penalty for the one tax year with the highest tax liability.<sup>23</sup>

However, taxpayers who joined the VDP merely because they were concerned they may have a scintilla of criminal exposure will have a greater threshold to overcome to obtain a reasonable settlement. These taxpayers will have to convince the examiner that their conduct is not fraudulent. Additionally, if the examiner perceives a taxpayer as not agreeing or being uncooperative, the examiner could apply the fraud penalty to all six years of the disclosure period or beyond.<sup>24</sup>

### Taxpayers May Fear Requesting an Independent Appeal if They Do Not Agree With the Examiner

Unlike the OVD programs, the updated VDP guidance allows taxpayers the right to request an appeal with the Office of Appeals.<sup>25</sup> The Office of Appeals is an impartial, independent organization within the IRS available to taxpayers to resolve tax disputes with the IRS.<sup>26</sup> Allowing such appeals is consistent with the taxpayer’s *right to appeal an IRS decision in an independent forum*.<sup>27</sup>

However, the VDP makes it seem risky for taxpayers to request an appeal. An appeals conference is generally requested at the conclusion of an exam, by filing a written protest, after the taxpayer has failed to reach an agreement with the examiner.<sup>28</sup> Disturbingly, the VDP guidance states that if a voluntary

19 Although willfulness is generally not inferred in a criminal context, taxpayers whose conduct the IRS deems willful for the purpose of civil penalties might still be concerned about the cost and burden of defending criminal charges. See, e.g., IRC § 7201.

20 See, e.g., IRC § 7454(a); *DiLeo v. Comm’r*, 96 T.C. 858, 873 (1991), *aff’d*, 959 F.2d 16 (2d Cir. 1992).

21 Memorandum for Division Commissioners; Chief, Criminal Investigation, *Updated Voluntary Disclosure Practice* (Nov. 20, 2018).

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 IRS, *About the Office of Appeals*, <https://www.irs.gov/appeals> (last visited Apr. 8, 2019).

27 IRC § 7803(a)(3)(E).

28 IRS, *Requesting An Appeal*, <https://www.irs.gov/appeals/preparing-a-request-for-appeals> (last visited Apr. 8, 2019).

disclosure is “not resolved by an agreement,” the examiner has the discretion to expand the scope and to assert the maximum penalties under the law.<sup>29</sup>

This suggests that after a taxpayer requests an appeal, the examiner could expand the scope of the examination, and assert maximum penalties under the law. Without further clarification, the guidance sends the message to taxpayers that they could be punished for exercising their rights.

### Additional VDP Guidance is Warranted

The IRS should provide guidance about what constitutes full payment for the disclosure period. The guidance should clarify whether a taxpayer is permitted to enter into an installment agreement to satisfy the taxes, interest, and penalties resulting from a voluntary disclosure.

The IRS should also provide additional guidance regarding the application of penalties. The guidance should describe the facts and circumstances in which examiners may apply the civil fraud or fraudulent failure to file penalty to more than one year, including when other penalties such as when the failure to file information returns and willful FBAR penalties, will be imposed and to which tax years.

## CONCLUSION

The IRS should modify the VDP so that those who fear their particular circumstances may rise to criminal exposure do not have to convince the IRS of their innocence. Additionally, the IRS should clarify that examiners should not expand the scope of a disclosure or assess more penalties solely because a taxpayer may disagree with the examiner and requests an appeals conference. Lastly, the IRS should provide additional guidance on whether installment agreements will be permitted, and what facts and circumstances will allow an examiner to assess additional penalties.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Advocate for taxpayers experiencing problems with the IRS’s VDP and streamlined programs, including issuing Taxpayer Assistance Orders where appropriate;
- Advocate for the IRS to modify its VDP guidance to clarify that an examiner will not expand the scope of the disclosure or assess more penalties just because a taxpayer has exercised his or her appeal rights; and
- Propose VDP guidance changes to expressly allow installment agreements and to clarify what facts and circumstances will result in additional penalties under the VDP.

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29 Memorandum for Division Commissioners, Chief, Criminal Investigation, *Updated Voluntary Disclosure Practice* (Nov. 20, 2018).



## Efforts to Improve Taxpayer Advocacy

TAS plays an integral role in helping taxpayers experiencing or about to experience significant economic or irreparable harm. This year TAS's role has been especially critical due to the implementation of the Tax Cuts and Jobs Act that took effect for tax year 2018, as well as a 35-day partial government shutdown that ended the week before the start of the 2019 filing season.<sup>1</sup> As discussed previously, the extended shutdown impacted not only TAS casework but also many of our key priorities for fiscal year (FY) 2019. Throughout FY 2019, TAS continues to focus on reaching underserved taxpayers through an expansion of local offices and the Centralized Case Intake (CCI) function coupled with enhanced outreach to underserved taxpayers, including Problem Solving Days (PSDs). These priorities will continue to be a foundation of TAS's advocacy efforts in FY 2020.

### TAS FURTHER EXPANDS GRASSROOTS OUTREACH EFFORTS TO REACH UNDERSERVED TAXPAYERS

#### Community Outreach and Problem Solving Day Events

Local Taxpayer Advocates (LTAs) use outreach events as platforms to inform internal stakeholders, taxpayers, tax professionals and others about TAS's mission and services. TAS's outreach plays a critical role in creating TAS awareness in and around local communities, and in allowing TAS to better understand and address the needs and issues within the local community. Additionally, outreach events provide TAS the chance to build and maintain relationships while educating taxpayers and their practitioners about their tax responsibilities, taxpayer rights, and tax reform changes.

**FIGURE 5.1, FY 2019 Outreach Events Completed and Planned Through May 31, 2019<sup>2</sup>**

	Internal	Congressional	Practitioner	External	Media	ID Theft	EITC	Tax Reform
Events Completed	196	1,250	125	937	5	3	23	11
Events Planned	459	2,192	204	1,785	11	6	32	12

The LTAs in each state learn about local issues through congressional cases, local PSD events, community events, and dialogues with other community-specific sources such as local tax professional organizations. TAS offices frequently participate in veterans' events, visit local shelters for victims of domestic violence, reach out to immigrant populations, and partner with local agencies based on the needs of their local taxpayers.

PSD events allow LTAs and their staff to meet with taxpayers and representatives in person to discuss unresolved IRS tax matters. In FY 2019, each LTA conducted at least one PSD event per quarter. The types of events vary, but many happen in underserved areas where there is not an IRS facility open to meet with taxpayers in person; others are held with partnering professional groups that give taxpayers and their representatives the opportunity to bring difficult cases to TAS and have the issues resolved onsite

1 For a discussion on the impact of the shutdown on TAS operations, see *Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service*, *supra*.

2 Data obtained from Taxpayer Advocate Service Outreach Hub (May 31, 2019).

or taken in as a case. TAS conducted over 227 events through May 31, 2019, assisting almost 3,010 taxpayers, resulting in the intake of over 290 TAS cases.<sup>3</sup>

### TAS Expands Tax Roadmaps to Help Assist Taxpayers

Introduced in the 2018 Annual Report to Congress, TAS produced a series of roadmaps to reflect the taxpayer's journey through various IRS encounters.<sup>4</sup> TAS's Area of Focus: *TAS Is Developing an Electronic Roadmap Tool to Assist Taxpayers As They Navigate Through the Complex Tax System* explores the phased roadmap project. One of the goals in creating the roadmaps was to demonstrate the complexity of the taxpayer's journey while dealing with IRS.<sup>5</sup> TAS is currently working on a printed version of a comprehensive roadmap that will allow taxpayers, congressional leaders, and tax professionals to understand the complete process from beginning to end, including the taxpayer's journey in navigating the complex tax compliance process. TAS then expects to create a digital version of this journey map in which taxpayers can input the number of the letter or notice they received, and the digital tool will inform them of:

- Where they are in the process;
- How they got there;
- What the notice or letter means to them in their situation;
- What are possible next steps;
- What are their rights; and
- Where to find more help.

### TAS Pilots Outreach Van to Reach Underserved Communities

Over the past several years TAS has successfully improved its outreach efforts to reflect the changing needs of taxpayers. Beginning in FY 2019 continuing through FY 2020, TAS will continue to improve our outreach capabilities with the addition of the TAS Van. The TAS Van will increase our ability to connect with taxpayers as a part of our current outreach program and will also provide TAS an opportunity to respond quickly in communities affected by disasters.

We expect the first TAS Van to be delivered to our Louisville, Kentucky, office before the end of 2019.<sup>6</sup> Placement at the Louisville office provides an opportunity for mobile outreach to rural taxpayers throughout Kentucky, West Virginia, and other areas. The TAS Van will also allow for response to communities in crisis. This includes areas affected by economic hardships such as the closure of a large employer and communities impacted by natural disasters. TAS can quickly dispatch the TAS Van to provide support to those taxpayers who are facing hardship and are otherwise unable to contact TAS.

The TAS Van will be a mobile office, equipped with the technology and resources necessary to provide on-site service to taxpayers. TAS staff will be able to perform case intake, do case research, and answer taxpayer questions the same as if they were communicating via phone or in the local TAS office. The TAS

3 Data obtained from Taxpayer Advocate Service Outreach Hub (May 31, 2019).

4 National Taxpayer Advocate 2018 Annual Report to Congress 10-16 (The Taxpayers Journey: *Roadmaps of the Taxpayer's Path Through the Tax System*).

5 See Area of Focus: *TAS Is Developing an Electronic Roadmap Tool to Assist Taxpayers as They Navigate Through the Complex Tax System*, *supra*.

6 Due to delays in the approval process, the van has been delayed and delivery is now expected in November or December of 2019.

Van will also serve as a mobile reminder of the TAS mission and will feature a graphic representation of the Taxpayer Bill of Rights on its exterior.

The FY 2020 pilot program will allow TAS to evaluate the effectiveness of the van in reaching underserved taxpayers. TAS hopes to move forward with expanding the number of mobile vans throughout the country.

TAS expects to build on the planned success of the first TAS Van in Louisville by adding three additional vans at other locations in the eastern, central, and western areas of the country. These additional TAS Vans would be ordered in FY 2020 and placed into service during early FY 2021.

### TAS to Engage in Tax Court Pre-Docket Settlement Days to Assist in Resolving Related Issues

For several years, a handful of Low Income Taxpayer Clinics (LITCs), *pro bono* volunteers, and IRS Office of Chief Counsel representatives have arranged pre-docket settlement days to try to resolve taxpayer cases in advance of calendar calls at the U.S. Tax Court.<sup>7</sup> These events have the potential to reduce burden on the court, Chief Counsel, and LITCs, and provide quicker resolution for the taxpayer. The interactions between tax professionals and self-represented taxpayers can lead to settlement or reduce the issues that need to be litigated at trial. These efforts had varied success likely due in part to a lack of a coordinated approach, lack of resources, and the inability to find an effective way to encourage unrepresented taxpayers to participate in these events.<sup>8</sup>

The U.S. Tax Court, the IRS, practitioners, and the American Bar Association Tax Section have expressed interest in revitalizing and revamping the pre-docket settlement days. The National Taxpayer Advocate, Chief Counsel, and IRS Chief of Appeals convened an LITC Liaison team where the parties could raise issues and concerns and work collaboratively to find solutions. One of the first items on the team's agenda is pre-docket settlement days. The group is made up of a diverse group of LITCs from both rural and urban settings as well as academic and nonprofit clinics; members from Chief Counsel's Office; representatives from Appeals, Exam, and Collection offices; an LTA; and a member of the LITC Program Office staff.

Traditionally, LTAs have not been a part of the pre-docket settlement days; however, in revamping the format, an LTA was included to enhance service delivery to taxpayers at these events. Inclusion of LTAs in these events will allow TAS to address the taxpayer's issues more holistically—beyond just the issues in the pending litigation. The LTA can provide a complete view of all the taxpayer's issues pending before the IRS and assist with document and record retrieval. This information will allow the practitioner assisting the taxpayer to understand the full scope of issues confronting the taxpayer and craft a strategy that takes into consideration all issues that need resolution. Having a more comprehensive understanding will help the taxpayer to make a fully informed decision in the taxpayer's pending case.

7 Per the Tax Court's website, "Tax clinics and Bar sponsored calendar call programs provide important advice and assistance to many low income, self-represented taxpayers who have disputes with the Internal Revenue Service. Calendar call takes place on the first day the Tax Court schedules hearing cases in a particular location. The clerk reads the names of all the cases that remain unresolved and are set for trial. For many taxpayers, the day of the calendar call will be the first time they speak to an IRS employee face-to-face." U.S. Tax Court, <http://www.ustaxcourt.gov/clinics.htm> (last visited June 7, 2019).

8 For a more in-depth discussion, see National Taxpayer Advocate 2018 Annual Report to Congress 295-306 (Most Serious Problem: *Pre-Trial Settlements in the U.S. Tax Court: Insufficient Access to Available Pro Bono Assistance Resources Impedes Unrepresented Taxpayers From Reaching a Pre-Trial Settlement and Achieving a Favorable Outcome*).

## Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Place an emphasis on raising awareness of and advocating for taxpayer rights;
- Partner with stakeholders, including Congressional offices, to conduct PSD events—some events with an emphasis on military and veterans, the Earned Income Tax Credit (EITC), and taxpayers with English as a second language throughout the country;
- Use the individual Annual Report to Congress roadmaps in outreach activities to show stakeholders how to correctly navigate the IRS;
- Use the printed full journey roadmap to help Congress, practitioners, and taxpayers understand the complexity of their tax journey and where their tax matter falls within the IRS; explain actions needed to resolve tax issues, such as collection and examination issues; and provide education to prevent similar situations in the future;
- Reach out to taxpayers and professional groups to demonstrate the taxpayer roadmap and digital tool and receive commentary as it is being developed;
- Increase awareness of the TAS website and digital tools through partner organizations, search enhancements and content relevance;
- Widely promote the use of the Systemic Advocacy Management System to report IRS process or system breakdowns that affect taxpayers' ability to comply so TAS can advocate for change;
- Pilot the TAS Van to provide outreach to underserved taxpayers with a plan to expand the number of vans by the end of FY 2020 and early FY 2021; and
- Participate in Tax Court pre-docket settlement days to assist taxpayers in resolving related issues and handle any subsequent collection or related issues after the resolution of the taxpayer's case.

## TAS IDENTIFIED CASE PROCESSING EFFICIENCIES TO ENHANCE TAXPAYER SERVICE

### Impact of Pre-Refund Wage Verification Hold Issues on TAS Cases

Through May 31, TAS has experienced a 12 percent increase in TAS total case receipts for FY 2019 compared to the same period in FY 2018.<sup>9</sup> Pre-Refund Wage Verification Hold (PRWVH) continues to be the top issue in TAS case receipts and the largest driver of the overall increase in receipts.<sup>10</sup> As discussed earlier,<sup>11</sup> the PRWVH program freezes selected refund returns as potential refund fraud until the IRS receives and can compare third-party information against the income and withholding reported on the taxpayer's return. As shown in Figure 5.2, TAS's PRWVH receipts increased 53 percent in FY 2019 (cumulative through May) compared to the same period in FY 2018, continuing a trend of increasing PRWVH cases in TAS.<sup>12</sup> Some of this increase is attributable to problems left over from prior processing years. Through May FY 2019, nearly 30 percent of the PRWVH cases involved tax years before the 2018 tax year.<sup>13</sup>

9 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (June 1, 2018; June 1, 2019). Through May, TAS received 151,599 cases in fiscal year (FY) 2019, and 135,014 cases in FY 2018.

10 Data obtained from TAMIS (June 1, 2019).

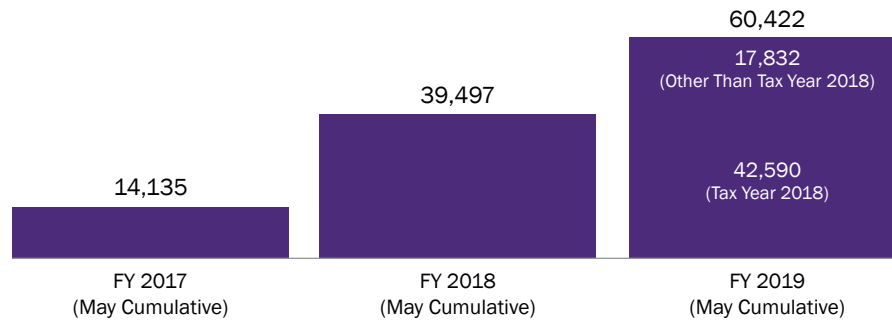
11 See Review of the 2019 Filing Season (*Special Topics, Refund Fraud*), *supra*.

12 Data obtained from TAMIS (June 1, 2017; June 1, 2018; June 1, 2019).

13 Data obtained from TAMIS (June 4, 2019; June 12, 2019). In FY 2018, approximately 16 percent or 5,501 of the PRWVH cases involved tax years before the 2017 tax year.

FIGURE 5.2

### TAS Pre-Refund Wage Verification Hold Receipts FYs 2017-2019 (Cumulative Through May)



### Changes to TAS Case Acceptance Criteria Where the Taxpayer's Issue Is Resolved Without TAS Intervention

To address the rising PRWVH cases, TAS studied existing inventory to understand why these cases are coming to TAS and how TAS works them, and to identify ways to speed case resolution and manage resources. As part of that review, we identified that Filter X (Integrity Verification Operation (IVO) Non-Identify Theft (Non-IDT)) cases were making up a significant part of the PRWVH inventory in TAS.

The IVO Non-IDT Filter X selects returns where the EITC or Advanced Child Tax Credit is claimed on the return and there is no third-party information available to verify the income or withholding on the return.<sup>14</sup> IVO programming suspends these returns and runs them against all Information Return Master File data. If a match is found to verify the taxpayer's reported income and withholding, the return will be systemically refiled and the refund released.

Generally, these cases are resolved in one of three ways:

- **Without TAS intervention.** For these cases, new income information comes in to the IRS (daily during the filing season), the IRS matches the information on the taxpayer's return, and the refund is systemically released.
- **With minimal TAS intervention.** If the incoming case meets specific requirements, TAS provides the taxpayer's information to the IRS's Return Integrity Operations (RIO) organization, and the taxpayer's account is quickly corrected.<sup>15</sup>
- **With full TAS intervention.** These cases may require the taxpayer to provide additional income information or to file an amended return.

14 Filter X selects returns where the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC) is claimed on the return, and there is no third-party information available to verify the income or withholding on the return. Filter I selects returns where EITC or ACTC have been claimed, and there is a discrepancy of income between the return and the W-2 information. See Review of the 2019 Filing Season (*Special Topics, Refund Fraud*), *supra*.

15 A case meets the requirements when there is Return Integrity Operations (RIO) involvement, the only issue of concern are the wages and withholding amounts reported on the return, and there are internal IRS sources available to support the wages and withholding claimed on the return. See *Using Bulk Operations Assistance Request (OAR) to Resolve Taxpayer's Issues Quicker*, *infra*.

We reviewed new case receipts to determine how many fell into each of the three categories and found that 35 percent of the cases reviewed were resolved or would have been resolved without TAS intervention shortly after initial contact with TAS.<sup>16</sup> Generally, the resolution for the remaining cases would require either:

- An update to the IRS's third-party documentation, which matches what has been reported on the taxpayer's return to allow a systemic release of the refund;
- The taxpayer to provide additional verification of the wages he or she earned; or
- The taxpayer to file a Form 1040X, *Amended U.S. Individual Income Tax Return*, to correct income or credit errors.

On April 2, 2019, TAS issued interim guidance modifying TAS case acceptance criteria to exclude PRWVH cases originating from IVO Non-IDT Filter X during the first three weeks after being stopped by this filter.<sup>17</sup> This three-week moratorium gives the IRS's normal processes time to work and resolve these cases automatically without intervention from TAS. TAS implemented this moratorium because although taxpayers may meet TAS case acceptance criteria during this period, TAS's intervention will not result in faster relief than otherwise available through IRS normal processing. It is only after this three-week period that TAS intervention will be able to accelerate relief. The only exceptions to this moratorium are for congressional referrals and taxpayers who are seeking and are eligible for an Offset Bypass Refund.<sup>18</sup> TAS will provide the taxpayer with a firm date to call us back if he or she has not yet received a refund at the end of the three-week period.

TAS is negotiating with the Wage and Investment (W&I) Division to incorporate procedural changes that will allow IRS telephone assistants to easily identify IVO Non-IDT Filter X indicators. By identifying returns where new income information matches the income and withholding reported on the taxpayer's return, the assistant can explain to the taxpayer that the refund is scheduled to be systemically released. This will improve communications with taxpayers and reduce the need for taxpayers to seek TAS assistance with these issues.

### Using Bulk Operations Assistance Requests to Expedite Case Resolution

When TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, it works with the responsible IRS Business Operating Division (BOD) or function to resolve the issue.<sup>19</sup> TAS uses an Operations Assistance Request (OAR) to convey a recommendation or request that the IRS take action to resolve the issue. When information reported on the taxpayer's return closely matches income and credit information in IRS systems, TAS provides a weekly listing of cases to RIO, requesting they be reviewed and the refunds released. This process, known as a Bulk OAR, is an efficient way to provide relief in simple cases and prevents case advocates from having to reach out to RIO on each individual case. This speeds processing for the case advocate and the IRS function and speeds up case resolution for the

16 Data obtained from TAMIS (Mar. 10, 2019). TAS reviewed a sample of Pre-Refund Wage Verification Hold (PRWVH) cases received between March 3 through 9, 2019 and where the taxpayer only reported wages on their tax return.

17 Interim Guidance Memorandum (IGM) TAS-13-0419-0004, *Interim Guidance on Exclusion from TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold – Filter X* (Apr. 2, 2019). This guidance will not be included into the next revision of Internal Revenue Manual (IRM) 13.1.7, as it is temporary in nature and will be rescinded at the end of the filing season with a separate IGM.

18 IRM 21.4.6.5.11.1 (Nov. 18, 2017).

19 IRM 13.1.19 (May 5, 2016).

taxpayer. TAS has been successful in working with W&I to dedicate resources to this process. Through June 3, TAS used a Bulk OAR on 1,882 RIO cases in FY 2019.<sup>20</sup>

Sometimes, a taxpayer with a PRWVH TAS case will find that he or she has to correct income or credit errors. In these cases, the taxpayer will file a Form 1040X, *Amended U.S. Individual Income Tax Return*. TAS will work with the taxpayer and the IRS until the taxpayer's account is corrected, a process that often requires TAS to issue multiple OARs. TAS and the W&I Accounts Management (AM) function have agreed to use a Bulk OAR to process certain Forms 1040X correcting income or credit reporting errors for an eight-week period to determine if the Bulk OAR will expedite account resolution. At the end of the eight-week period, TAS and W&I AM will determine if this process can be expanded.

### Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Review case data and determine the timeframes for when certain PRWVH cases can come to TAS at the beginning of the FY 2020 filing season;
- Continue to analyze TAS inventory to identify ways to focus TAS's efforts on cases where TAS has an advocacy role in the resolution of the taxpayer's issues; and
- Expand use of the Bulk OAR to expedite issue resolution.

## TAS CONTINUES TO EVALUATE AND EXPAND ITS LOCAL PRESENCE TO MEET TAXPAYER DEMAND

Under the Internal Revenue Code (IRC) § 7803(c)(2)(D), the National Taxpayer Advocate is required to maintain at least one Local Taxpayer Advocate in each state. As discussed in prior year Objectives Reports to Congress, the National Taxpayer Advocate and her staff evaluated the need for additional TAS offices to meet the needs of underserved taxpayers.<sup>21</sup> It is an ongoing, multi-year effort to provide localized service that is critical due to the IRS shrinking its local presence by closing Taxpayer Assistance Centers and reducing the number of its field compliance offices and its field education and outreach personnel. In FY 2018 and in the first half of FY 2019, TAS opened new offices in El Paso, Texas and Charlotte, North Carolina. By the end of FY 2019, TAS plans to expand its existing offices in Columbia, South Carolina and Birmingham, Alabama. TAS continues to evaluate its cases as well as census and related demographic data to identify where there are underserved populations. As a result, TAS has identified San Antonio, Texas; Tallahassee, Florida; Grand Rapids, Michigan; Trenton, New Jersey; Sioux Falls, South Dakota; Spokane, Washington; and Roanoke, Virginia as potential locations for new TAS offices.

In order to support these new offices and ensure the best use of TAS resources, TAS is consolidating the two offices in Philadelphia and two offices located in Atlanta, cities with multiple offices located within the same geographical area. These changes will help ensure resources are best positioned to meet taxpayers' needs.

<sup>20</sup> The Bulk OAR is sent to the RIO office. Data obtained from TAMIS (June 3, 2019).

<sup>21</sup> National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 145.

## Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Work to open new offices in San Antonio, Texas; Tallahassee, Florida; Grand Rapids, Michigan; Trenton, New Jersey; and Sioux Falls, South Dakota;
- Continue pursuing additional office openings in Savannah, Georgia; Spokane, Washington; Columbus, Ohio; and Roanoke, Virginia; and
- Continue analyzing TAS casework and population data to identify underserved areas of the country in need of TAS assistance.

## TAS CONTINUES CENTRALIZED CASE INTAKE EXPANSION

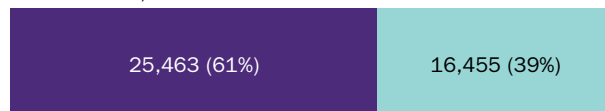
The TAS Intake Function serves as the first contact for most taxpayers coming to TAS for assistance. Intake Advocates (IAs) are responsible for answering calls and conducting in-depth interviews with taxpayers to determine the correct disposition of their issue(s). IAs take actions where possible to resolve the issue upfront, create cases after validating the taxpayer meets TAS criteria, and offer taxpayers information and assistance with self-help options.

TAS also has IAs in the Centralized Case Intake function (CCI). Taxpayers who call the IRS National Taxpayer Advocate Toll-Free line—which is staffed by IRS employees—are transferred to the TAS CCI unit if the IRS assistors have been unable to assist the taxpayer and they have determined that the taxpayer issue meets TAS criteria. CCI assistors perform the same function as IAs in local TAS offices and conduct in-depth interviews with taxpayers and assist in resolving their issue or creating a case; however, their work is focused on answering those calls transferred from the National Taxpayer Advocate Toll-Free line. In FY 2019 through May, CCI IAs were able to resolve 39 percent of calls by providing other assistance without creating a new case.<sup>22</sup>

**FIGURE 5.3**<sup>23</sup>

### Centralized Case Intake Calls Answered and Resulting TAS Cases Created (Cumulative Through May)

**FY 2019: 41,918 Total CCI Calls Answered**



**FY 2018: 58,736 Total CCI Calls Answered**



■ TAS Cases Created From CCI Transferred Calls

■ TAS Provided Assistance Without Creating a New Case

<sup>22</sup> Data obtained from TAMIS (June 1, 2019).

<sup>23</sup> Data obtained from TAMIS (June 1, 2018; June 1, 2019). IRS Joint Operations Center (JOC), *Executive Level Summary Report* (May 31, 2018; May 31, 2019).



TAS received funding in FY 2019 to expand its CCI operation and assume the direct transfer of taxpayer calls from additional IRS toll-free lines. TAS identified the need to hire four new teams of IAs. CCI began the hiring process, fully staffing two new groups and partially staffing a third. However, due to the continuing resolutions and shutdown, training classes were cancelled for newly hired staff and the hiring process stopped. As a result, CCI was unable to hire and train the number of employees needed to expand its program as planned. Attrition and competitive selections in other areas also delayed TAS's ability to meet current demands and take direct transfer calls from other IRS toll-free lines. Since the shutdown, TAS is nearing completion of the training of the newly hired IAs and hiring has resumed. In FY 2019, TAS hired 32 IAs and expects to hire an additional 60. CCI expects to add at least one IRS toll-free call site transferring calls from the IRS's 1040 line by the end of the fiscal year and the remaining 24 lines over the next two fiscal years.

### Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Continue to expand the direct transfer of the 1040 toll-free call to CCI;
- Expand CCI staffing in Seattle and Puerto Rico; and
- Continue to plan for long-term expansion of CCI over the next two years to ensure adequate staffing is available to meet taxpayer demand.

## TAS CONTINUES ITS EFFORTS TO RESOLVE HIRING BACKLOGS DESPITE HUMAN CAPITAL OFFICE DELAYS

Hiring remains one of TAS's biggest challenges. All IRS and TAS hiring is centralized under the Human Capital Office (HCO). With the decline in IRS budgets over recent years, HCO's Employment Office staffing to support BODs has declined; moreover, new hiring and the "learning curve" within Employment has slowed hiring activities. To further exacerbate the problem, HCO continues to prioritize hiring for more visible projects such as filing season and the Tax Cuts & Jobs Act, which overshadows hiring for smaller organizations such as TAS. As a result, TAS was unable to fill critical vacant positions for an extended period of time.

TAS reached a critical point where it could no longer wait to hire. In FY 2019, TAS proactively took control of its hiring by detailing four staff members to HCO to work TAS-specific hiring packages full time and trained two additional staff members to work management hiring announcements to address the backlog.<sup>24</sup> As a result of these efforts, in FY 2019 TAS was able to select and onboard 186 employees through May 11, 2019. The ability to fill behind vacancies is critical to TAS's ability to continue providing timely quality service to taxpayers.

TAS is working to assume permanent responsibility for processing its own internal and external hiring actions. This is in line with the National Taxpayer Advocate's statutory authority in IRC § 7803(c)(2)(C)(i) & (D)(i), which gives the National Taxpayer Advocate the authority to take personnel actions with respect to any employee in any local office. This approach also aligns with HCO's new initiative, HCO 2022, which will allow business units to have greater engagement on certain high-touch components, such as hiring, classification, and training.

<sup>24</sup> For additional discussion of the impact of the government shutdown on TAS's hiring efforts, see *Shutdown Negatively Impacted TAS's Ability to Advocate for Taxpayer Rights in IRS Guidance and Assess Potential Systemic Issues*, *supra*.

## Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Continue working its hiring packages full time;
- Expand our CCI function by adding an additional three groups to begin to take over calls from a portion of the IRS 1040 call sites;<sup>25</sup> and
- Negotiate with HCO leadership to assume permanent responsibility for processing its own internal and external hiring actions.

## TRAINING AND EMPLOYEE DEVELOPMENT INITIATIVES FOCUS ON IMPROVING ADVOCACY, PROTECTING TAXPAYER RIGHTS, AND PROVIDING BETTER SERVICE TO TAXPAYERS

TAS is focused on training and educating our employees to ensure we have the technical knowledge about tax law and procedures to advocate effectively for taxpayers and to protect their rights. In FY 2019, we focused our training on tax reform and new Taxpayer Advocate Management Information System enhancements, including a congressional lookup table, a quick closure screen, an initial contacts record, a TAO screen, a scheduler screen, an OAR Screen, a closing action Screen, a referral screen; and document attachments.

TAS also delivered a refresher training course, “Advocating for Taxpayers Facing Passport Certification/Denial,” advising how to advocate for taxpayers with serious delinquent tax liabilities facing passport denial and highlighting key advocacy techniques. For the remainder of FY 2019, TAS is focused on delivering a week-long virtual symposium of courses for all employees on a variety of technical and administrative topics to help employees build existing skills and develop new ones in areas of their choosing. TAS will also deliver new hire training to our 100 new case advocates and intake advocates. This new hire training will likely carryover into FY 2020.

### TAS Creates Pilot Program for Case Advocate Specialists to Help Employees Continue Their Development

TAS created a GS-12 position for Case Advocate Specialists (CASs) to bridge casework, Intake and Technical Support (ITS), and Systemic Advocacy (SA). CASs will spend half their time working cases with a focus on their specialization and the other half doing ITS- or SA-sponsored work. The GS-12 CAS position benefits the organization by allowing the specialists the benefit of seeing systemic and technical issues in case work that they could more fully develop into focused, detailed SA submissions, and case policy and procedural guidance. We anticipate hiring eight CASs throughout the country by the end of FY 2019.

<sup>25</sup> When a taxpayer calls the main “1040” line and the telephone assistor (a Wage & Investment employee) determines the taxpayer is likely to meet TAS’s case-acceptance criteria, the telephone assistor generally records key taxpayer information and loads it into a database for transmission to TAS. There is then typically a delay of several days until the case is transmitted to TAS, entered into TAS’s case management system, and assigned to a TAS Case Advocate. To enable taxpayers to reach TAS more easily, TAS has developed plans to accept calls transferred directly from the IRS’s 1040 line. Direct transfers would allow taxpayers to talk to a TAS assistor at the earliest possible time and allow TAS assistants to quickly resolve calls that do not need to become full TAS cases. It would also reduce work for telephone assistants who staff the 1040 line, as they would not have to collect information and load it onto the database.

### TAS Offers Third Announcement of Operations Specialist Positions

In 2012, TAS developed a program to create a new, career-ladder position providing opportunities for outstanding secretaries and support staff to transition into the analyst field. Employees in the Operations Specialist program spend three to four years in rotations every six months through various TAS functions (including SA; Employee Support and Development; Technical Analysis and Guidance; the Low Income Taxpayer Clinic Program Office; and Communications, Stakeholder Liaison and Online Services) to gain a broad understanding of the organization and participate in a series of progressively-challenging developmental experiences. Upon successful completion of the program, participants are placed in an analyst position within TAS. Final placement is based on the employee's career development goals and skills as well as TAS's current organizational needs.

The program has operated twice since 2012 and resulted in five former secretaries and one Intake Advocate completing the program and being permanently assigned as GS-0343-12, non-bargaining unit analysts. TAS will announce the third offering of the program in 2019 and is scheduled to begin with the new selections by the end of FY 2019.

### Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Focus on transfer of knowledge to enable us to be prepared as we continue to experience attrition of fully-trained staff due to an aging workforce;
- Continue training delivery to the more than 100 case and intake advocates hired in FY 2019;
- Generate training opportunities from the wealth of technical knowledge contained in our Annual Reports to Congress, program letter, and operational plan, and use this technical and legal expertise to advance advocacy for our taxpayers;
- Continue to explore innovative low-cost virtual and local face-to-face training methods to maximize student interaction while minimizing costs;
- Contribute to the IRS's Servicewide Virtual Library to provide IRS employees with the knowledge, tools, and resources needed to fulfill their role of assisting taxpayers, providing top-quality service, and protecting taxpayer rights;
- Incorporate ways to promote the protection of taxpayers' rights into all of our training and development efforts;
- Begin the third round of the TAS Operations Specialist Program to create career opportunities for TAS support staff; and
- Pilot the GS-12 Case Advocate Specialist position to provide developmental experience to case advocates who wish to specialize in a specific area and help bridge the gap between Case Advocacy and Systemic Advocacy.

## TAS EXPLORES INNOVATIVE WAYS TO COMMUNICATE WITH TAXPAYERS

### TAS Completes Second Phase in Taxpayer Digital Communication Pilot

TAS partnered with the IRS in the Taxpayer Digital Communications (TDC) pilot Phase 1 started in April 2017 and paused September 30, 2017, due to an IRS Secure Access (e-authentication) vendor change. The TDC pilot was designed to test a taxpayer secure messaging portal to be used by taxpayers and TAS employees working specific types of taxpayer cases and issues in four LTA offices across the

country. TAS carefully chose the issues for both phases of the pilot to gather data on how underserved communities, especially EITC taxpayers, could utilize the digital communication tool to resolve their issues. The data seen in the first six months of this pilot confirmed TAS's hypothesis regarding the ability of the unrepresented low income taxpayer to utilize digital systems such as TDC. *While hundreds of TAS taxpayers were offered the option of using the TDC system, fewer than a dozen set up or used an account.* Phase 2 of the pilot started June 18, 2018 and ended November 30, 2018 just prior to the installation of a new version of the system software. Combined, Phase 1 and Phase 2 covered approximately one year.

Even with the different phase focuses, procedures, and expanded case topics in Phase 2, the overall data showed very similar results in both phases and revealed the following:

- In Phase 2, *TAS offered TDC to about 1,100 taxpayers and only 13 accepted and passed authentication.*<sup>26</sup> A similar percentage of taxpayers, in both phases, were able pass IRS Secure Access and use the system: six in Phase 1 and 13 in Phase 2.
- A majority of taxpayers offered TDC preferred other communication methods, *e.g.*, phone, fax, and letters, to communicate with TAS. A barrier to using TDC was the ability to pass IRS Secure Access and the system's availability. Twenty percent of taxpayers passing IRS Secure Access in Phase 1 and ten percent in Phase 2 highlighted the issue taxpayers have in trying to even use the system.<sup>27</sup>
- TAS employee pilot participants found the Secure Messaging system cumbersome, not user-friendly or intuitive, and more complex than it needed to be.

TAS will continue to monitor IRS progress on its future TDC pilots but will not be participating further at this time based on the unpromising results.

### TAS Virtual Face-to-Face Pilot (WebEx)

TAS is continuously exploring ways to improve the customer experience, communications, engagement, and advocacy opportunities for taxpayers. TAS intends to initiate a pilot for virtual face-to-face meetings using WebEx. WebEx is a software that serves as a communication tool with individuals internal and external to the IRS network. WebEx allows taxpayers access from their phones, tablets, or computers while the TAS employee can access from his or her desk. The Office of Appeals is currently using WebEx as a virtual face-to-face option during appeals conferences. Appeals has developed policy and procedures for its pilot, which TAS will consider in the planning stages for the implementation of the TAS pilot.

The TAS pilot will start on a small scale at specific offices, providing TAS the ability to identify the best uses of this technology and the challenges taxpayers and employees experience when using the virtual tool.

### Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Consider results from the Appeals WebEx Pilot to identify or refine the best process to apply use for the TAS pilot;
- Determine feasibility of and what methods are best to pursue for the implementation of TAS's pilot;
- Develop policies and procedures for the use of Web-Ex within TAS; and

<sup>26</sup> Data obtained from the TAS Taxpayer Digital Communications (TDC) Portal (Dec. 31, 2018).

<sup>27</sup> Data obtained from TAS TDC Portal (Nov. 1, 2017).

- Negotiate with the National Treasury Employees Union, where appropriate, to roll out the WebEx pilot.

## THE OFFICE OF SYSTEMIC ADVOCACY ADVOCATES FOR SYSTEMIC AND PROCEDURAL CHANGE

Systemic Advocacy supports TAS's mission of helping taxpayers resolve problems and recommending changes that will prevent the problems. SA is continuously assessing the impact of IRS policy and procedural changes on large groups or segments of taxpayers and advocating for systemic and procedural changes both before and after implementation.

### Advocating for Taxpayers Impacted by the IRS Fraud Detection Process

To combat refund fraud, the IRS's RIO utilizes two programs to detect and prevent IDT and non-IDT refund fraud using filters and models.<sup>28</sup> The National Taxpayer Advocate has written extensively on the burden these programs cause to legitimate taxpayers.<sup>29</sup> SA refund fraud analysts who serve as subject matter experts (SMEs) work collaboratively with RIO to proactively advocate on issues identified as causing taxpayer burden to legitimate return filers or impacting taxpayer rights.

SA SMEs identified taxpayer rights omissions while performing an Internal Revenue Manual review where RIO removed the instruction for IRS telephone assistants to read the contents of the letter sent to taxpayers who call the IRS concerning their refund and state they have not received any correspondence.<sup>30</sup> Normally, IRS issues this letter to taxpayers upon return selection into the PRWVH process advising of delayed refund issuance. Without this letter, the taxpayer would be unaware of the potential contact between RIO and a third party to verify the taxpayer's income and withholding information. RIO issued a procedural update to telephone assistants to verbally provide the taxpayer with this guidance, thereby protecting the taxpayer's *rights to confidentiality* and *to be informed*.<sup>31</sup> Notifying taxpayers about the IRS contacting third parties is a statutory requirement (IRC § 7602(c)) that supports the *right to confidentiality*.

Additionally, SA SMEs advocated for RIO to consider the impact of employers' non-compliance with timely submissions of employees Forms W-2, *Wage and Tax Statement*, on PRWVH return selections. Based on their analysis of delinquent 2018 Forms W-2 information, RIO developed a process to release refunds from impacted legitimate taxpayers' returns when all other return items are verifiable. This process has resulted in 210,583 refunds released through May 18, 2019.<sup>32</sup>

28 See Review of the 2019 Filing Season (*Special Topics, Refund Fraud*), *supra*.

29 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 79-90; National Taxpayer Advocate 2016 Annual Report to Congress 151-160; National Taxpayer Advocate 2015 Annual Report to Congress 45-55, 180-87; National Taxpayer Advocate 2014 Annual Report to Congress vol. 2 44-90; National Taxpayer Advocate 2013 Annual Report to Congress 75-83; National Taxpayer Advocate 2012 Annual Report to Congress 42-67, 95-110; National Taxpayer Advocate 2011 Annual Report to Congress 48-73; National Taxpayer Advocate 2009 Annual Report to Congress 307-317; National Taxpayer Advocate 2008 Annual Report to Congress 79-94; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 25-54, 180-191; National Taxpayer Advocate 2004 Annual Report to Congress 133-136; National Taxpayer Advocate 2003 Annual Report to Congress 175-181.

30 Letter 4464C, *Questionable Refund 3rd Party Notification* (Mar. 4, 2019).

31 Interim Procedural Update (IPU) 18U0944 (June 15, 2018); IRM 21.5.6.4.35.3.1, *-R Freeze Phone Procedures for Accounts With Integrity and Verification Operations (IVO) Involvement* (June 15, 2018).

32 IRS, Identity Theft (IDT) and *Integrity Verification Operations (IVO) Modeling Analysis Performance Report 5* (May 22, 2019).

### Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Continue to advocate on issues impacting taxpayer rights as RIO modifies its refund fraud IDT and non-IDT procedures;
- Continue to work with RIO on PRWVH, recommending improvements and alternative approaches, with an emphasis on decreasing time to refund on legitimate tax returns; and
- Continue to analyze RIO filter and model results to protect taxpayer rights and identify efficiencies in detecting potential refund fraud.

### TAS PARTNERS WITH THE OFFICE OF TAXPAYER CORRESPONDENCE TO IMPROVE TAXPAYER CORRESPONDENCE

TAS is partnering with the Office of Taxpayer Correspondence (OTC) to review and revise various IRS correspondence. OTC is hosting a “summit” this year to bring all stakeholders together who are involved in generating, creating, reviewing, and publishing correspondence to taxpayers. The stakeholders will attend the summit and discuss their role in the correspondence process. The goal is to better understand each stakeholder’s purpose and identify ways to work more collaboratively and efficiently. At the summit, TAS will advocate for a rights-based approach to all notices as well as a focus on plain language and visual learning.

W&I Operations Support (Modernization) plans to introduce a discussion at the summit covering the new Correspondex (CRX) letter generating system. TAS’s focus at the summit will be to encourage a broader discussion on how IRS systems must be updated to be more flexible and responsive to better serve taxpayers (*e.g.*, accommodate changes due to legislation, support research studies into taxpayer understanding and behavioral responses). TAS’s focus is to ensure any new systems are developed with the goal of serving the taxpayer and also having the flexibility to meet diverse business unit needs. Thus, any new system, like the update to the CRX system, must be compatible with Enterprise Case Management, IRS’s modernization of case management.

As discussed elsewhere in this report, TAS is undertaking several studies that are putting our research about notice clarity and rights-based focus into practice.<sup>33</sup> TAS will examine the effectiveness of Automated Collection System Letter 11 prototypes that IRS is preparing to test, which afford taxpayers Collection Due Process rights.<sup>34</sup> While the IRS intends to measure the number of taxpayers who do avail themselves of appeal rights, most of the measures are based on the effectiveness in securing delinquent payments. TAS plans to test two of the redesigned Letter 11 prototypes as part of the IRS study focusing on taxpayer rights.

Additionally, TAS will examine long-term EITC compliance of taxpayers who received educational letters from TAS after appearing to have erroneously claimed EITC.<sup>35</sup> The National Taxpayer Advocate

33 See Area of Focus: *The Taxpayer Advocate Service Plans to Design Sample Notices to Improve Taxpayer Rights and Reduce Taxpayer Burden*, *supra*, for a discussion of the National Taxpayer Advocate concerns with the current design of IRS notices.

34 See TAS Research Initiatives, *infra*.

35 *Id.*

has expressed concerns about IRS notices failing to adequately inform taxpayers about their rights, responsibilities, and procedural requirements and continues to advocate for change.<sup>36</sup>

### Focus for Fiscal Year 2020

In fiscal year 2020, TAS will:

- Continue to work with OTC and other IRS divisions to revise and improve taxpayer correspondence;
- Continue to actively participate on the development teams for new taxpayer correspondence systems with a focus on reducing taxpayer burden and protecting taxpayer rights;
- Examine the effectiveness of IRS Automated Collection System Letter 11 prototypes; and
- Examine long-term compliance of taxpayers who received TAS EITC educational letters.

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<sup>36</sup> See National Taxpayer Advocate 2018 Annual Report to Congress 170-173 (Most Serious Problem: *Introduction to Notices: Notices Are Necessary to Inform Taxpayers of Their Rights and Obligations, Yet Many IRS Notices Fail to Adequately Inform Taxpayers, Leading to the Loss of Taxpayer Rights*); National Taxpayer Advocate 2018 Annual Report to Congress 174-197 (Most Serious Problem: *Math Error Notices: Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer Rights and Increasing Taxpayer Burden*); National Taxpayer Advocate 2018 Annual Report to Congress 198-211 (Most Serious Problem: *Statutory Notices of Deficiency: The IRS Fails to Clearly Convey Critical Information in Statutory Notices of Deficiency, Making it Difficult for Taxpayers to Understand and Exercise Their Rights, Thereby Diminishing Customer Service Quality, Eroding Voluntary Compliance, and Impeding Case Resolution*); National Taxpayer Advocate 2018 Annual Report to Congress 212-222 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*); National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 159-192 (*Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution"*); Nina E. Olson, NTA BLOG, *Although the IRS Has Made Some Improvements, Math Error Notices Continue to Be Unclear and Confusing, Thereby Undermining Taxpayer rights and Increasing Taxpayer Burden* (May 2, 2019), <https://taxpayeradvocate.irs.gov/news/nta-blog-Math-Error-Notices-Continue-to-Be-Unclear-and-Confusing?category=TaxNews>.

## TAS Research Initiatives

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The National Taxpayer Advocate is a strong proponent for the role of theoretical, cognitive, and applied research in effective tax administration. TAS Research is currently conducting a number of new and continuing research initiatives. A primary focus of these research initiatives is to better understand taxpayer compliance behavior and to evaluate IRS programs by balancing the goals of taxpayer compliance with minimizing taxpayer burden. Several research initiatives that TAS Research continues to conduct for the remainder of fiscal year (FY) 2019 and FY 2020 are detailed below.

### TAS Measures the Number and Characteristics of Taxpayers Who Qualify for TAS Services But Do Not Seek TAS Assistance

TAS defines the number of taxpayers who qualify for TAS assistance but who do not seek such assistance as the TAS underserved population. Periodically, TAS measures the underserved population to assess the number and characteristics of taxpayers who are negatively impacted by IRS operations and to determine how well TAS services are known among those taxpayers eligible for TAS assistance. Another purpose of this research is to determine how best to communicate with eligible taxpayers about TAS's existence and to determine the demographics of those taxpayers who are more likely to need TAS assistance. This information allows TAS to target its outreach to underserved demographic groups, while also understanding the best communication channels to reach these taxpayers. Prior to the current study, the most recent study of the TAS underserved population was over six years ago. The 2012 study estimated the TAS underserved population at nearly nine million taxpayers.

This TAS research initiative will also include focus groups with underserved taxpayers to better understand why these taxpayers have not sought TAS assistance. TAS plans to use a contractor to conduct four focus groups in diverse regions of the country. We will target one focus group in an area where we would expect to receive considerably more TAS cases than we have historically received. This work will help us understand how we can improve the communication of TAS services in this area.

The first survey will size the TAS underserved population. The contractor will then conduct a subsequent survey to determine the composition of the underserved population. Additionally, as mentioned, TAS will conduct four focus groups to better understand why some taxpayers who qualify for TAS services do not seek TAS assistance. TAS expects the survey and focus group work to be completed by the end of FY 2019 with the results to be published in FY 2020.

### TAS Plans to Test the Effectiveness of Prototype Automated Collection System Letters 11, Which Afford Collection Due Process Rights to Many Taxpayers

The IRS is currently preparing to test four redesigned Automated Collection System (ACS) Letter 11 prototypes. In addition to requesting immediate payment of a tax delinquency now assigned to ACS for collection, this letter also provides the official legal notice of a taxpayer's right to a Collection Due Process (CDP) hearing. While the IRS does intend to measure the number of taxpayers who avail themselves of their CDP rights after receiving one of the new redesigned Letter 11 prototypes being tested, most of the measures are concerned with the letter's effectiveness in securing delinquent payments. In fact, the four redesigned Letter 11 prototypes no longer contain the attachment whereby a taxpayer requests a CDP hearing. Instead, the resigned letters refer the taxpayer to the IRS website to obtain a copy of the form



required to request a CDP hearing. This will present a barrier for the 14 million taxpayers who have no access to the internet and the 41 million taxpayers who do not have broadband access in their homes.<sup>1</sup>

During FY 2019, TAS will be testing two redesigned Letter 11 prototypes as part of the IRS study. These letters will focus on taxpayer rights. One version will emphasize that a taxpayer has CDP rights, including the possible beneficial effects of requesting a timely CDP hearing. The second redesigned letter will focus on the rights a taxpayer will forfeit if the taxpayer does not submit a timely CDP request. However, TAS cannot make changes to the letter which deviate from the IRS's baseline redesigned Letter 11. Therefore, TAS plans to contract with external researchers who have specialized experience with both behavioral research and tax compliance to test additional Letter 11 prototypes in FY 2020, which deviate from the IRS baseline. This work will allow TAS to draw upon the experience of external professionals knowledgeable in taxpayer behavior to design this letter in a way that encourages taxpayers to exercise their CDP rights.

Additionally, TAS will test the effectiveness of different letters with different types of taxpayers. As one example, many taxpayers will not currently have the financial wherewithal to afford making payments. TAS believes it is important to send notices to these taxpayers to encourage a resolution of the account, not just elicit a payment the taxpayer cannot really afford. Conversely, an emphasis on information consumption and behavioral messaging can garner a better response and more payments from those taxpayers likely able to afford payments. The IRS has systemically available data to determine with a high degree of accuracy whether the taxpayer can afford to satisfy or make payments towards satisfying their tax delinquency.<sup>2</sup> Most importantly, all redesigned Letter 11 prototypes should be rights-based and focus on the CDP rights afforded to taxpayers. During recent years, only about two percent of taxpayers have availed themselves of their CDP rights.<sup>3</sup> A Letter 11 which focuses on taxpayer rights may increase the extremely low number of taxpayers requesting a CDP hearing. Since the purpose of the CDP hearing is to identify appropriate collection alternatives and other resolutions (*e.g.*, innocent spouse relief) early in the collection process, increased use of these hearings will benefit both taxpayers and the IRS.

TAS expects the design for this study to begin in early FY 2020. We plan to mail the actual letters during the first half of FY 2020, with the analysis to be completed by the end of the year.

### TAS Studies the Longer-Term Compliance Effect of its Earned Income Tax Credit (EITC) Educational Letters

In early 2016, prior to the beginning of the filing season for tax year (TY) 2015 returns, TAS sent letters to a random sample of about 7,000 taxpayers who appeared to have erroneously claimed Earned Income Tax Credit (EITC) on their TY 2014 return, but who were not selected for audit. The apparent error was based on a residency, relationship, or duplicate claimed EITC dependent rule tripped in the IRS Dependent Database (DDB) by the taxpayer's TY 2014 return. We also selected a control group comprised of taxpayers whose TY 2014 return was not audited, nor did they receive a TAS educational letter, but they had similar DDB scores to those taxpayers who were audited or received an educational letter.

1 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 64 (Research Study: *A Further Exploration of Taxpayer Varying Abilities Toward IRS Options for Fulfilling Common Taxpayer Needs*).

2 National Taxpayer Advocates 2018 Annual Report to Congress 236 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

3 *Id.* at 216 (Most Serious Problem: *Collection Due Process Notices: Despite Recent Changes to Collection Due Process Notices, Taxpayers Are Still at Risk for Not Understanding Important Procedures and Deadlines, Thereby Missing Their Right to an Independent Hearing and Tax Court Review*).

The results of the study showed that taxpayers receiving the TAS letter targeted toward taxpayers who broke DDB relationship rules were statistically less likely than the control group to make a relationship error on their TY 2015 return filed in 2016. When projecting the reduction in subsequent EITC claims because of a dependent not meeting the EITC relationship test, the TAS educational letter would be expected to eliminate \$47 million dollars of improper EITC claims annually. The TAS educational letters did not have a statistically significant effect on the number of taxpayers who subsequently filed a TY 2015 return with a dependent who appeared not to meet the residency test. When compared to similar taxpayers who were audited, subsequent EITC compliance improved for both audited taxpayers who broke residency or relationship DDB rules when compared to either the taxpayers who received the TAS educational letter or the control group. Interestingly, however, audited taxpayers who claimed a dependent also claimed on another tax return were more likely to make a different EITC error the next year, when compared to the group receiving a TAS letter or the control group.

In early 2017, TAS repeated this study with taxpayers who tripped DDB rules on their TY 2015 returns. In addition to the three groups of taxpayers used in the prior year, TAS also had a fourth group of taxpayers who tripped a residency DDB rule whose educational letter also contained the offer of a dedicated “Extra Help” toll-free number to call with questions about their EITC eligibility for their upcoming TY 2016 tax return. The results of this study were very similar to the results from the prior year with taxpayer receiving a TAS letter because of tripping a DDB relationship rule in the prior year being again statistically less likely to file a TY 2016 return repeating the relationship error.<sup>4</sup> The standard TAS educational letter mailed to taxpayers with an apparent residency error in the prior year again showed no statistically significant effect in preventing these taxpayers from making an apparent residency error on their TY 2016 return. However, the TAS educational letter with a dedicated “Extra Help” telephone number to call for assistance mailed to a separate group of taxpayers who also claimed an EITC dependent not appearing to meet the residency requirements in the prior year did show a statistically significant reduction in the number of taxpayers subsequently claiming a child who appeared not to meet the EITC residency requirement. Projected to the entire population of taxpayers who made only an apparent residence error, an educational letter with a dedicated help line would prevent an estimated \$44 million in improper EITC claims.

During FY 2020, TAS will examine the EITC compliance of these taxpayers for returns due in the years after the original TAS educational letter was received. Although the TAS educational letters improved compliance in the immediate year for taxpayers appearing to not meet the relationship EITC eligibility rule and on taxpayers appearing to not meet the EITC residency eligibility rule if a special telephone number to receive assistance was also provided, it is unknown whether the educational letters had a lasting effect on compliance, or if the positive impact of the educational letter is limited to the tax return due immediately after the letter is received. We will compare the longer-term EITC compliance of taxpayers receiving the TAS educational letter, taxpayers who were audited previously, and a control group who were neither audited nor received the TAS letter. The results will assist the IRS by gauging whether “soft” treatments must occur annually or can be issued at less frequent intervals.

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<sup>4</sup> The reduction of improper Change EITC to Earned Income Tax Credit (EITC) claims resulting from EITC dependents not meeting the relationship test was \$53 million, when projected to the entire population of EITC dependents breaking only a Dependent Database (DDB) relationship rule.

### TAS Studies the Effect of Correspondence and Face-to-Face Audits on Subsequent Compliance

TAS has contracted with experts specializing in tax compliance and economic psychology to study if the effect of an audit on subsequent compliance is influenced by whether the audit is conducted through correspondence or through face-to-face contact with an IRS examiner. TAS previously published a study by this contractor which explored the attitudinal effects of audits on Schedule C taxpayers occurring between 2010 and 2015.<sup>5</sup>

The overall audit rate for U.S. individual income tax returns has decreased from one percent of returns filed in 1990 to sixth-tenths of one percent of returns filed in 2016.<sup>6</sup> The composition of audits has also changed substantially over this period. Whereas face-to-face audits accounted for the majority (62 percent) of all examinations of returns filed in 1990, the lion's share (77 percent) of all audits of returns filed in 2016 were conducted through correspondence.<sup>7</sup> One of the study findings was that less than 40 percent of taxpayers who experienced an IRS correspondence audit recalled being audited. Conversely, those taxpayers who underwent a face-to-face audit recalled the audit with much greater frequency.<sup>8</sup>

The IRS shift to more correspondence audits and the fact that nearly two-thirds of taxpayers audited by correspondence do not recall the audit compels TAS to compare the effect of correspondence and face-to-face audits on subsequent taxpayer compliance. The contractor will develop an extended statistical framework to distinguish the effects of correspondence and face-to-face examinations on future taxpayer reporting behavior. The contractor will then apply this framework to data samples containing tax-related information on audited and unaudited taxpayers to measure the impact of each type of examination. The research will focus on when the audit method (correspondence or face-to-face) produces significantly different rates of subsequent compliance. The results from this analysis are significant for the IRS's future plans for audit resource allocations. TAS expects this study to be ongoing through FY 2019 with a final report to be published in FY 2020.

### TAS Studies the Downstream Effects of Math Errors Issued by the IRS

The IRS issues math errors when IRS computer algorithms detect clerical and mathematical errors. However, apparent errors may actually occur because the taxpayer has entered information incorrectly on another part of the return. Furthermore, some of the clerical errors are simple transpositions of numbers that the IRS has the data to correct without issuing the math error. For example, if a dependent claimed for EITC purposes has a transposed Social Security number (SSN), the IRS will disallow the EITC for that child even though the IRS has access to the child's SSN data and can easily see that the incorrectly entered SSN is a simple transposition error, as the SSN has been entered correctly on the taxpayer's past several years' tax returns. In a TAS study published in 2011, 55 percent of the math errors issued disallowing a dependency exemption because of a child's incorrectly entered SSN were later reversed by the IRS.<sup>9</sup> In addition to the disallowance of the dependency exemption, the incorrect SSN affected

5 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 77-130 (Research Study: *What Influence do IRS Audits Have on Taxpayer Attitudes and Perceptions? Evidence from a National Survey*).

6 IRS Data Book fiscal year (FY) 1991 IRS, Table 11 and IRS Data Book FY 2017, Table 9a.

7 IRS, 2017 Data Book, Oct. 1, 2016 to Sept. 30, 2017, Table 9a. *Examination Coverage: Recommended and Average Recommended Additional Tax After Examination by Type and Size of Return, FY 2017*.

8 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 77-130 (Research Study: *What Influence do IRS Audits Have on Taxpayer Attitudes and Perceptions? Evidence from a National Survey*).

9 National Taxpayer Advocate 2011 Annual Report to Congress vol. 2 117 (Research Study: *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*).

other credits including child and dependent care expenses, child tax credits, additional child tax credits, and education credits.<sup>10</sup> Furthermore, during a review of a sample of these math errors that remain unreversed, we found that over half of the returns were entitled to claim the dependent for one of these credits or the EITC credit; however, the taxpayer never objected to the math error. When projected to the entire population of taxpayers with these unreversed math errors for an incorrect SSN for a dependent, taxpayers forfeited at least \$44 million of credits.

While many IRS math errors have low abatement rates, some IRS math errors do not. TAS has compiled the IRS math errors issued for TY 2016, noting certain math errors, including the ones described above, still have very high abatement rates. TAS is studying those math errors frequently reversed to analyze the subsequent cost to the IRS of reversing the math error as well as the burden placed on taxpayers to correct an error, which could often be corrected by the IRS, without taxpayer involvement. Furthermore, TAS is calculating the amount of unnecessary tax burden being imposed on taxpayers who do not question the IRS decision to issue the math error, even though the taxpayer claim was valid.

During FY 2020, TAS will analyze math errors issued by the IRS for TY 2017 to see if the abatement rates detected in TY 2016 are still present. We will also quantify the cost to the IRS to reverse unnecessary math errors, estimate the taxpayer time to respond to an incorrect math error issued by the IRS, and calculate the amount of additional taxes paid unnecessarily by taxpayers who do not refute the erroneous IRS math error. We expect to complete this study and report on the findings during FY 2020.

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<sup>10</sup> For Notice Code 743 (incorrect Taxpayer Identification Number (TIN) for EITC), 61 percent, or 35,000 were resolved fully or partially. *Id.* at 134.

## APPENDIX 1: Evolution of the Office of the 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).<sup>1</sup>

In TBOR 1, Congress added Internal Revenue Code (IRC) § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) if, in the determination of the Ombudsman, a taxpayer is suffering or is about to suffer significant hardship because of the way the Internal Revenue laws are being administered by the Secretary.<sup>2</sup> Further, TBOR 1 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 delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.<sup>3</sup>

In 1996, the 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.<sup>4</sup> 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.<sup>5</sup>

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;
- 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.<sup>6</sup>

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, 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

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

2 *Id.*

3 *Id.*

4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453–56 (July 30, 1996).

5 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 20 (Dec. 18, 1996).

6 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453–54 (July 30, 1996).

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.”<sup>7</sup>

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.<sup>8</sup> 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) 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 two 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.”<sup>9</sup>

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.”<sup>10</sup> For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute 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.<sup>11</sup>

<sup>7</sup> J. Comm. on Tax’n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

<sup>8</sup> Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453–54 (July 30, 1996).

<sup>9</sup> J. Comm. on Tax’n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

<sup>10</sup> *Id.*

<sup>11</sup> Pub. L. No. 104-168, § 102(b), 110 Stat. 1452, 1456 (July 30, 1996).

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 [N]ational 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.<sup>12</sup>

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).<sup>13</sup>

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.<sup>14</sup> 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.”<sup>15</sup>

Congress also granted the LTAs discretion to not disclose to the IRS the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.<sup>16</sup> RRA 98 also expanded the definition of “significant hardship” in IRC § 7811 to include four specific circumstances:

1. An immediate threat of adverse action;
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.<sup>17</sup>

The Committee Reports make clear that this list is a non-exclusive list of what constitutes a significant hardship.<sup>18</sup>

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(a), 112 Stat. 685, 699 (July 22, 1998).

14 Pub. L. No. 105-206, § 1102(a), 112 Stat. 701 (July 22, 1998).

15 Internal Revenue Code (IRC) § 7803(c)(4)(A)(iii).

16 IRC § 7803(c)(4)(A)(iv).

17 IRC § 7811(a)(2).

18 See, e.g., H.R. REP. No. 105-599, at 215 (1998) (Conf. Rep.).

Prior to 2011, Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, after Congress expanded the definition of “significant hardship” in the statute in 1998, the definition in the regulation was inconsistent. However, on April 1, 2011, the IRS published in the Federal Register final regulations under IRC § 7811 that contain a definition of significant hardship consistent with existing law and practice.<sup>19</sup>

The National Taxpayer Advocate has long since advocated that the IRS establish a TBOR. In June 2014, the IRS finally adopted the Taxpayer Bill of Rights—a set of ten fundamental rights that taxpayers should be aware of when dealing with the IRS.<sup>20</sup> One of those ten rights is the *right to a fair and just tax system*, which gives taxpayers the right to receive assistance from the Office of the Taxpayer Advocate if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. In December 2015, Congress enacted IRC § 7803(a)(3), which requires the Commissioner to ensure that employees of the IRS are familiar with and act in accord with taxpayer rights, including the *right to a fair and just tax system*.<sup>21</sup>

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19 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 Fed. Reg. 18,059, 18,060-61 (April 1, 2011).

20 See IR-2014-72 (June 10, 2014).

21 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401, 129 Stat. 2242, 3117 (Dec. 18, 2015).



## APPENDIX 2: Case Acceptance Criteria

### Taxpayer Advocate Service Case Acceptance Criteria

As an independent organization within the IRS, TAS protects taxpayer rights under the Taxpayer Bill of Rights, 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.<sup>1</sup>

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.<sup>2</sup>

- 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.<sup>3</sup>

- 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.

#### 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.<sup>4</sup>

- Criteria 9** The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

1 Internal Revenue Code (IRC) § 7803(c)(2)(A)(i).  
 2 TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See IRM 13.1.7.3(d) (Feb. 4, 2015).  
 3 See IRM 13.1.7.2.3 (Feb. 4, 2015).  
 4 See Interim Guidance Memorandum (IGM) TAS-13-0219-003, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Feb. 21, 2019).

## APPENDIX 3: List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent low income individuals in disputes with the Internal Revenue Service (IRS), including audits, appeals, collection matters, and federal tax litigation. 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 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. Using poverty guidelines published annually by the Department of Health and Human Services (HHS), each LITC decides if you meet the income eligibility guidelines and other criteria before it agrees to represent you. Eligible taxpayers must generally have incomes that do not exceed 250 percent of the poverty guidelines. Income ceilings for 2019 are shown in Figure 7.3.1:

**FIGURE 7.3.1, LITC Income Guidelines (250 Percent of Federal Poverty Guidelines)**

Size of Family Unit	48 Contiguous States, D.C., and Puerto Rico	Alaska	Hawaii
1	\$31,225	\$39,000	\$35,950
2	42,275	52,825	48,650
3	53,325	66,650	61,350
4	64,375	80,475	74,050
5	75,425	94,300	86,750
6	86,475	108,125	99,450
7	97,525	121,950	112,150
8	108,575	135,775	124,850
For each additional person, add	11,050	13,825	12,700

LITCs receiving federal funding for the 2019 calendar year are listed below and are operated by nonprofit organizations or academic institutions. Although LITCs receive partial funding from the IRS, LITCs, their employees, and their volunteers are completely independent of the IRS. This publication is not a recommendation by the IRS that taxpayers retain an LITC or other similar organization to represent them before the IRS; the decision to obtain representation will not result in the IRS giving preferential treatment in handling the dispute or problem.

In lieu of an LITC, low income taxpayers may be able to receive assistance from 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.

Contact information for clinics may change, so please check for the most recent information at <http://www.taxpayeradvocate.irs.gov/about/litc>.

## Low Income Taxpayer Clinic List

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center LITC	800-478-3474 907-562-0335	Other languages through interpreter services.
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-832-4570	Other languages through interpreter services.
AR	Little Rock	UALR Bowen School of Law LITC	501-324-9441	Spanish
	Springdale	Legal Aid of Arkansas	479-442-0600	Spanish, Marshallese
AZ	Phoenix	Community Legal Services LITC	800-852-9075 602-258-3434	Spanish, Other languages through interpreter services.
	Tucson	Southern Arizona Tax Clinic	520-622-2801	Spanish, Other languages through interpreter services.
CA	Los Angeles	Bet Tzedek Legal Services Tax Clinic	323-939-0506	Spanish, Russian, Other languages through interpreter services.
	Los Angeles	KYCC Low Income Taxpayer Clinic	213-232-2700	Spanish, Korean
	Los Angeles	Pepperdine LITC	213-673-4831	Spanish
	Northridge	Bookstein Tax Clinic	818-677-3600	Spanish
	Orange	Chapman University Tax Law Clinic	714-628-2535	Spanish, Vietnamese, Mandarin
	Riverside	Inland Counties Legal Services LITC	888-245-4257 951-368-2555	Spanish, Other languages through interpreter services.
	San Diego	Legal Aid Society of San Diego LITC	877-534-2524	Spanish, Vietnamese, Tagalog, Arabic, Other languages through interpreter services.
	San Diego	University of San Diego LITC	619-260-7470	Spanish, Other languages through interpreter services.
	San Francisco	Chinese Newcomers Service Center	415-421-2111	Cantonese, Mandarin, Vietnamese
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-982-1600	Spanish
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2951	Spanish
	Santa Ana	Community Legal Aid So Cal LITC	800-834-5001 714-571-5200	Spanish, Vietnamese, Korean
CO	Denver	Colorado Legal Services LITC	844-440-4848 303-837-1321	Spanish, Other languages through interpreter services.
	Denver	University of Denver Graduate Tax Program LITC	303-871-6331	Spanish, Chinese
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	Spanish, Other languages through interpreter services.
	Hartford	UConn Law School Tax Clinic	860-570-5165	Spanish, Other languages through interpreter services.
DC	Washington	The Catholic University of America LITC	202-319-6788	Spanish
	Washington	The Janet R. Spragens Federal Tax Clinic	202-885-3440	All languages through interpreter services.
DE	Wilmington	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-690-5000	Spanish, Hindi, Italian

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
FL	Ft. Myers	FRLS Low Income Tax Clinic	888-582-3410	Spanish, Creole
	Gainesville	Three Rivers Legal Services, Inc.	866-256-8091 904-394-7450	Most languages available through interpreter services.
	Miami	Legal Services of Greater Miami Community Tax Clinic	305-576-0080	Spanish, Haitian, Creole
	Plant City	Bay Area Legal Services Inc. LITC	813-752-1335	Multiple languages through interpreter services.
	Plantation	Legal Service of Broward and Collier Counties LITC	954-765-8950	Spanish, Creole
	St. Petersburg	Gulfcoast Legal Services LITC	727-821-0726	Spanish, Other languages through interpreter services.
	Tallahassee	Legal Services of North Florida LITC	850-385-9007	Spanish, Other languages through interpreter services.
	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	Spanish
GA	Atlanta	The Philip C. Cook Low Income Taxpayer Clinic	404-413-9230	Spanish
	Hinesville	JCVision and Associates, Inc.	866-396-4243 912-877-4243	Spanish
IA	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-2151	Spanish, Other languages through interpreter services.
ID	Boise	University of Idaho College of Law LITC	877-200-4455 208-364-6166	Spanish
	Twin Falls	La Posada Tax Clinic	208-735-1189	Spanish
IL	Chicago	Ladder Up Tax Clinic	312-630-0274	Spanish
	Chicago	Loyola University Chicago School of Law LITC	312-915-7176	All languages through interpreter services.
	Elgin	Gospel Justice Initiative	847-844-1100	Spanish, Other languages through interpreter services.
	Wheaton	Prairie State Legal Services LITC	855-829-7757	All languages through interpreter services.
IN	Bloomington	Indiana Legal Services LITC	800-822-4774	Spanish, Other languages through interpreter services.
	Indianapolis	Neighborhood Christian Legal Clinic	855-275-7550 317-429-4131	Spanish, French, Arabic, Burmese, Karen, Hakha Chin, Kinyarwanda, Tigrinya, Mara, Swahili, Other languages through interpreter services.
KS	Kansas City	Kansas Legal Services, Inc. LITC	800-723-6953 913-621-0200	Spanish, French, German, Russian, Other languages through interpreter services.
KY	Covington	Center for Great Neighborhoods LITC	859-547-5542	Spanish
	Louisville	Legal Aid Society, Inc.	800-292-1862 502-584-1254	All languages through interpreter services.
	Richmond	AppalRed Low Income Taxpayer Clinic	800-477-1394 859-624-1394	All languages through interpreter services.
LA	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	Spanish, Vietnamese, Other languages via language line.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-317-1234	All languages through interpreter services.
	Jamaica Plain	Legal Services Center of Harvard Law School LITC	866-738-8081 617-522-3003	All languages through interpreter services.
	Springfield	Springfield Partners for Community Action LITC	844-877-4722 413-263-6500	Spanish, Vietnamese, Cantonese, Russian, Korean
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-539-6800	All languages through interpreter services.
	Baltimore	University of Baltimore School of Law LITC	410-837-5706	All languages through interpreter services.
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	Spanish, French, Other languages through interpreter services.
ME	Bangor	Pine Tree Legal Assistance LITC	207-942-8241	All languages through interpreter services.
MI	Ann Arbor	University of Michigan LITC	734-936-3535	All languages through interpreter services.
	Detroit	Accounting Aid Society LITC	866-673-0873 313-556-1920	Spanish, Arabic
	East Lansing	Alvin L. Storrs Low Income Taxpayer Clinic	517-432-6880	All languages through interpreter services.
	Grand Rapids	West Michigan Low Income Taxpayer Clinic	800-442-2777 616-774-0672	Spanish, Other languages through interpreter services.
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-292-4150 612-334-1441	Spanish, Somali, Hmong, Russian, Arabic, Oromo, Amharic, Other languages through interpreter services.
	Minneapolis	University of Minnesota LITC	612-625-5515	Somali, Spanish, Hmong, Karen, Other languages through interpreter services.
MO	Kansas City	Legal Aid of Western Missouri	800-990-2907 816-474-6750	Spanish, Other languages through interpreter services.
	Kansas City	Kansas City Tax Clinic	816-235-6201	All languages through interpreter services.
	St. Louis	Washington University School of Law LITC	314-935-7238	Spanish
MS	Oxford	Mississippi Taxpayer Assistance Project	888-808-8049	All languages through interpreter services.
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	Spanish, Other languages through interpreter services.
NC	Charlotte	Western North Carolina LITC	800-247-1931 800-247-1931 (SP) 704-376-1600	Spanish, Other languages through interpreter services.
	Durham	North Carolina Central University School of Law LITC	919-530-7166	Spanish
NE	Omaha	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	All languages through interpreter services.
NH	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	All languages through interpreter services.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
NJ	Camden	South Jersey Legal Services LITC	800-496-4570 856-964-2010	All languages through interpreter services.
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	Spanish, Haitian Creole, Portuguese, Korean, French, Other languages through interpreter services.
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	Spanish, Korean, Hindi, Urdu, Hebrew, Arabic, Portuguese, Tagalog
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	Spanish
NM	Albuquerque	Instituto Legal Mobile Tax Clinic	505-944-9065	Spanish
	Albuquerque	New Mexico Legal Aid LITC	866-416-1922 505-243-7871	Spanish, Other languages through interpreter services.
	Farmington	Four Corners LITC	505-566-3314	Spanish, Navajo
NV	Las Vegas	Nevada Legal Services LITC	702-386-0404	Spanish, Mandarin, Other languages through interpreter services.
	Las Vegas	Rosenblum Family Foundation Tax Clinic	702-895-2080	All languages through interpreter services.
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	All languages through interpreter services.
	Bronx	Legal Services NYC-Bronx LITC	718-928-3700	Spanish, Other languages through interpreter services.
	Brooklyn	Brooklyn Legal Services Corp A LITC	718-487-2300	Spanish, Other languages through interpreter services.
	Brooklyn	Brooklyn Low-Income Taxpayer Clinic	718-237-5528	Spanish, Russian, Haitian Creole, American Sign Language, Other languages through interpreter services.
	Buffalo	Erie County Bar Association Volunteer Lawyers Project LITC	800-229-6198 716-847-0662	All languages through interpreter services.
	Hempstead	Hofstra Law School Federal Tax Clinic	516-463-5934	Spanish, Other languages through interpreter services.
	Jamaica	Queens Legal Services LITC	917-661-4500	Spanish, Chinese, Other languages through interpreter services.
	New York	Fordham Law School Tax Clinic	212-636-7353	Spanish, Other languages through interpreter services.
	New York	Mobilization for Justice	212-417-3839	Spanish, Mandarin, Other languages through interpreter services.
	New York	The Legal Aid Society LITC	212-426-3013	Spanish, Mandarin, Chinese, Other languages through interpreter services.
Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	All languages through interpreter services.	

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
OH	Akron	Community Legal Aid Service LITC	800-998-9454	Spanish, Other languages through interpreter services.
	Cincinnati	Legal Aid of Greater Cincinnati LITC	800-582-2682 513-241-9400	All languages through interpreter services.
	Cleveland	The Legal Aid Society of Cleveland LITC	888-808-2800 216-861-5500	Spanish, Other languages through interpreter services.
	Columbus	The Legal Aid Society of Columbus LITC	877-224-8374 614-224-8374	Spanish, Other languages through interpreter services.
	Columbus	Southeastern Ohio Legal Services LITC	800-837-2508 740-354-7563	All languages through interpreter services.
	Toledo	Legal Aid of Western Ohio LITC	888-534-1432 877-894-4599	Spanish, Other languages through interpreter services.
	Toledo	Toledo Tax Controversy Clinic LITC	419-530-4326	Arabic
OK	Tulsa	Legal Aid Services of Oklahoma LITC	918-236-9572	Spanish, Other languages through interpreter services.
OR	Gresham	El Programa Hispano Catolico's LITC	503-489-6845	Spanish, French
	Portland	Legal Aid Services of Oregon LITC	503-224-4086	Spanish, Mandarin, Japanese, Other languages through interpreter services.
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	All languages through interpreter services.
PA	Philadelphia	Philadelphia Legal Assistance	215-981-3800	Spanish, Farsi, Other languages through interpreter services.
	Pittsburgh	University of Pittsburgh School of Law LITC	412-648-1300	Spanish, French
	Villanova	Villanova Federal Tax Clinic	888-829-2546 610-519-4123	Spanish, Other languages through interpreter services.
	Washington	Southwestern Pennsylvania Legal Services LITC	724-225-6170	Spanish, Russian, Chinese, Other languages through interpreter services.
	York	The Low-Income Taxpayer Clinic of MidPenn Legal Services	844-675-7829	Spanish, Other languages through interpreter services.
RI	Providence	Rhode Island Legal Services LITC	401-274-2652	Spanish, Other languages through interpreter services.
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	Spanish, Other languages through interpreter services.
SD	Vermillion	University of South Dakota School of Law LITC	844-366-8866 605-677-6342	All languages through interpreter services.
TN	Memphis	Memphis Area Legal Services LITC	901-523-8822	Spanish
	Oak Ridge	Tennessee Taxpayer Project	866-481-3669 865-483-8454	Spanish, Other languages through interpreter services.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
TX	Fort Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	Spanish, Other languages through interpreter services.
	Fort Worth	Texas A&M University School of Law LITC	817-212-4062	Spanish, Other languages through interpreter services.
	Houston	Houston Volunteer Lawyers LITC	713-228-0732	Spanish, Chinese, Other languages through interpreter services.
	Houston	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	Spanish, Vietnamese, Other languages through interpreter services.
	Houston	South Texas College of Law Houston LITC	800-646-1253 713-646-2900	Spanish, Vietnamese, Other languages through interpreter services.
	Lubbock	Texas Tech University School of Law LITC	800-420-8037 806-742-4312	Spanish
	San Antonio	Texas Rio Grande Legal Aid-Texas Taxpayer Assistance Project	888-988-9996 210-212-3747	Spanish, Other languages through interpreter services.
UT	Provo	Centro Hispano LITC	801-655-0258	Spanish, Other languages through interpreter services.
	Salt Lake City	University of Utah College of Law LITC	801-587-2439	Spanish
VA	Fairfax	Legal Services of Northern Virginia LITC	866-534-5233 703-778-6800	Spanish, Other languages through interpreter services.
	Lexington	Washington and Lee University School of Law Tax Clinic	540-458-8918	All languages through interpreter services.
	Richmond	The Community Tax Law Project	800-295-0110 804-358-5855	Spanish, Arabic, Russian, French
VT	Burlington	Vermont Low Income Taxpayer Clinic	800-889-2047	All languages through interpreter services.
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158	Spanish, Russian, Swahili, Portuguese, Tagalog, Kyrgyz
	Spokane	Gonzaga University Federal Tax Clinic	800-793-1722 509-313-5791	All languages through interpreter services.
WI	Milwaukee	Legal Action of Wisconsin LITC	855-502-2468 414-274-3400	All languages through interpreter services.
	Milwaukee	The Legal Aid Society of Milwaukee, Inc.	888-562-8135 414-727-5326	Spanish
	Wausau	Northwoods Tax Project	800-472-1638 715-842-1681	Spanish, Hmong



## APPENDIX 4: TAS Performance Measures and Indicators

### Resolve Taxpayer Problems Accurately and Timely

Measure	Description	FY 2019 Target	FY 2019 March Cumulative <sup>1</sup>
Overall Quality of Closed Cases	Percentage of sampled closed cases meeting the prescribed attributes of advocacy, customer and procedural focus.	93.7%	91.4%
Advocacy Focus	Percentage of sampled closed cases where TAS advocated effectively in resolving taxpayers' issue, protecting taxpayers' rights, taking substantive actions, issuing Operations Assistance Requests (OARs) and Taxpayer Assistance Orders (TAO) and keeping taxpayers informed.	94.7%	92.4%
Customer Focus	Percentage of sampled closed cases where TAS took timely actions and adhered to disclosure requirements.	94.8%	92.5%
Procedural Focus	Percentage of sampled closed cases where TAS took actions in accordance with the tax code, Internal Revenue Manual (IRM), and technical and procedural requirements.	90.0%	87.6%
OAR Reject Rate <sup>2</sup>	Percentage of TAS's rejected OAR requests for IRS operating division or function's actions.	Indicator	2.8%
Expired OAR Rate <sup>3</sup>	Percentage of OARs that were open at the end of a period where the Requested Completion Date (RCD) or (if present) Negotiated Completion Date (NCD) is more than five workdays overdue.	Indicator	7.9%
Customers Satisfied <sup>4</sup>	Percentage of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	88%	
Customers Dissatisfied	Percentage of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	9%	
Solved Taxpayer Problem <sup>5</sup>	Percentage of taxpayers from the customer satisfaction survey who indicate the Taxpayer Advocate Service employee did their best to solve the taxpayer's problems.	87.8%	
Relief Granted <sup>6</sup>	Percentage of closed cases where TAS provided full or partial relief.	Indicator	75.5%

(continued on next page)

- Results for the following categories are pre-dialogue unweighted, cumulative October through December Fiscal Year (FY) 2019: Overall Quality of Closed Cases; Advocacy Focus; Customer Focus; and Procedural Focus. Results for the following categories are post-dialogue weighted October-March FY 2019: Accuracy of Closed Advocacy Projects; Timeliness of Actions on Advocacy Projects; and Quality of Communication on Advocacy Projects.
- Operations Assistance Request (OAR) Reject Rate excludes reject reason Business Operating Division (BOD)/Function Disagrees.
- This metric is a point estimate as of the date the report is run and is not cumulative. Results will vary depending on report run date. March FY 2019 Business Objects Enterprise-Business Performance Management System (BOE-BPMS) report used run date 04/01/2019.
- Due to neutral responses by customers, the total percentage of Customers Satisfied (88 percent for FY 2017) and Dissatisfied (9 percent for FY 2017) will not add up to 100 percent. TAS administers an internally developed customer satisfaction survey annually. FY 2018 results are not available at the time of this report.
- TAS administers an internally developed customer satisfaction survey annually. FY 2018 results are not available at the time of this report. FY 2017 results showed 87 percent for this survey question.
- TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing. Internal Revenue Manual 13.1.21.1.2.1.2 (Dec. 3, 2015) requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. The codes reflect full relief, partial relief, or assistance provided.
- Internal Revenue Code (IRC) § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the tax laws are being administered.

Measure	Description	FY 2019 Target	FY 2019 March Cumulative
Number of TAOs Issued <sup>7</sup>	Count of TAOs issued by TAS.	Indicator	303
Median – Closed Case Cycle Time	Median number of days taken to close TAS cases. This indicator <i>does not</i> include reopened cases.	Indicator	67
Mean – Closed Case Cycle Time	Mean number of days taken to close TAS cases. This indicator includes reopened cases.	Indicator	86.3
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all labor hours reported to the Executive Director of Case Advocacy).	Indicator	141.9
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	Indicator	445.1
Systemic Burden Receipts	Percentage of systemic burden receipts, Criteria 5 through 7, compared to all receipts excluding reopened case receipts.	36.0%	45.0%
Percentage of NTA Toll Free Calls Answered by Centralized Case Intake (CCI)	Percentage of National Taxpayer Advocate (NTA) Toll-Free calls answered compared to the total number of NTA Toll-Free calls transferred to CCI.	Indicator	43.6%
CCI Created Cases	Number of cases created that met the TAS case acceptance criteria.	Indicator	17,399
Quick Closures	Number of quick closures by all Intake Advocates.	Indicator	720
CCI Assistance Provided and No Case Created <sup>8</sup>	Number of calls CCI provided assistance without creating a case or quick closure.	Indicator	12,280

<sup>8</sup> Data only reflects activity of intake advocates in Centralized Case Intake (CCI) sites using the Aspect phone system and does not include activity of intake advocates in local offices that do not have the Aspect system.

## Protect Taxpayer Rights and Reduce Burden

Measure	Description	FY 2019 Target	FY 2019 March Cumulative
Accuracy of Closed Advocacy Projects	Percentage of advocacy projects where Systemic Advocacy (SA) took correct actions in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	90%	81.0%
Timeliness of Actions on Advocacy Projects	Percentage of advocacy projects where SA took timely actions in accordance with IRM guidance, including contacting the submitter, developing an action plan, and working the project without unnecessary delays or periods of inactivity.	90%	87.9%
Quality of Communication on Advocacy Projects	Percentage of advocacy projects where SA provided substantive updates to the submitter during the initial and subsequent contacts, contacted internal and external stakeholders, wrote correspondence following established guidelines, and took outreach and education actions when appropriate.	90%	81.8%
Overall Quality of Immediate Interventions <sup>9</sup>	Percentage of the immediate interventions meeting the timeliness, technical, and communication quality attributes' measures.	90%	NA
Systemic Advocacy Management System (SAMS) Review Process Median Days	Median count of days it takes Systemic Advocacy to complete the three-level review process from the issue submission date to the date issue is closed on SAMS.	Indicator	28
Satisfaction of SAMS Users	Percentage of SAMS users who indicate they agree or strongly agree to the survey question, "I would recommend SAMS to others as a way to elevate systemic issues."	75%	70%
Satisfaction of Taxpayer Advocacy Panel (TAP) members <sup>10</sup>	Percentage of satisfaction of TAP members who indicate they agree or strongly agree to the member survey question, "I have been satisfied as a member of the TAP."	90%	
Projects Validated as Involving a Systemic Issue	Percentage of overall advocacy projects closed that the Director (Processing Technical Advocacy, Exam Technical Advocacy, or Collection Technical Advocacy) validates as a systemic issue.	95%	100%
Internal Management Document (IMD) Recommendations Made to IRS	Count of TAS IMD recommendations made to the IRS.	Indicator	242
IMD Recommendations Accepted by the IRS	Percentage of TAS's IMD recommendations accepted by the IRS.	Indicator	53%
Advocacy Effort Recommendations Made to the IRS	Count of advocacy effort recommendations. Advocacy efforts include projects, task forces, collaborative teams, Advocacy Issue Teams and rapid response teams (excludes IMD/Single Point of Contact (SPOC) and Annual Report to Congress).	Indicator	8
Advocacy Effort Recommendations Accepted by the IRS	Count of TAS advocacy effort recommendations accepted by the IRS.	Indicator	7
TAP recommendations Fully or Partially Accepted <sup>11</sup>	Percentage of fully or partially accepted TAP recommendations accepted by the IRS.	Indicator	

9 The FY 2019 March cumulative results are not available because Systemic Advocacy does not have an immediate intervention closure.

10 The Taxpayer Advocacy Panel (TAP) survey is administered to all Panel members. Results are not available at the time of this report.

11 Results are not available at the time of this report.

### Sustain and Support a Fully Engaged and Diverse Workforce

Measure	Description	FY 2019 Target	FY 2019 March Cumulative
Employee Satisfaction <sup>12</sup>	Percentage of satisfaction of employees who respond satisfied or very satisfied to the employee satisfaction survey question, "Considering everything, how satisfied are you with your job?"	75%	
Employee Participation	Percentage of employees who take the employee satisfaction survey.	70%	

12 Employee satisfaction (71 percent for FY 2018) and employee participation (59 percent for FY 2018) are from the annual Federal Employee Viewpoint Survey (FEVS). FY 2019 results are not available at the time of this report.

## APPENDIX 5: Glossary of Acronyms

Acronym	Definition
ABA	American Bar Association
AC	Action Code
ACA	Affordable Care Act
ACS	Automated Collection System
ACSI	American Customer Satisfaction Index
ACTC	Advanced Child Tax Credit
ALE	Allowable Living Expense
AM	Accounts Management
AO	Appeals Officer
ARC	Annual Report to Congress
ARDI	Accounts Receivable Dollar Inventory
ASFR	Automated Substitute for Return
ATE	Appeals Technical Employees
AUR	Automated Underreporter
BMF	Business Master File
BOD	Business Operating Division
BOE	Business Objects Environment
BPMS	Business Performance Measurement System
BPR	Business Performance Reviews
CA	Case Advocate
CAR	Collection Activity Report
CCA	Chief Counsel Advice
CDDM	Chief Counsel Directives Manual
CCI	Centralized Case Intake
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CNC	Currently Not Collectible
CP	Computer Paragraph
CRX	Correspondex
CSR	Customer Service Representative
CTC	Child Tax Credit
CX	Customer Experience
CY	Calendar Year
D.C.	District of Columbia
DDB	IRS Dependent Database
DOJ	Justice Department
ECM	Enterprise Case Management
EIC	Earned Income Credit
EITC	Earned Income Tax Credit
EO	Exempt Organizations

Acronym	Definition
ESAPR	Enterprise Self-Assistance Participation Rate
FAQ	Frequently Asked Question
FAST	Fixing America's Surface Transportation or Field Assistance Scheduling Tool
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FCR	First Contact Resolution
FDR	Fraud Detection Rates
FEVS	Federal Employee Viewpoint Survey
FICA	Federal Insurance Contributions Act
FOIA	Freedom of Information Act (FOIA)
FPLP	Federal Payment Levy Program
FPR	False Positive Rate
FS	Filing Season
FTA	First Time Abatement
FTE	Full-Time Equivalent
FTI	Federal Tax Information
FY	Fiscal Year
GAO	Government Accountability Office
HCO	Human Capital Office
HELOC	Home Equity Line of Credit
HHS	Health and Human Services
HR	Human Resource
IA	Intake Advocate or Installment Agreement
ID	Identity
IDT	Identity Theft
IDTVA	Identity Theft Victim Assistance
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IMS	Integrated Master Schedule
IP	Internet Protocol
IP PIN	Identity Protection Personal Identification Number
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRS	Internal Revenue Service
IRTF	Individual Returns Transaction File
ISRP	Individual Shared Responsibility Payment

Acronym	Definition
IT	Information Technology
ITA	Interactive Tax Assistant
ITLA	Interactive Tax Law Assistant
ITIN	Individual Taxpayer Identification Number
IUP	Infrastructure Upgrade Project
IUP- ER	Upgrade Program-Endpoint Replacement
IVO	Integrity & Verification Operations
JCT	Joint Committee on Taxation
JOC	Joint Operations Center
LB&I	Large Business & International
LEP	Limited English Proficiency
LIF	Low Income Filer
LITC	Low Income Taxpayer Clinic
LOS	Level of Service
LT	Letter
LTA	Local Taxpayer Advocate
MEA	Math Error Authority
MEC	Minimum Essential Coverage
MISC	Miscellaneous Income
MSP	Most Serious Problem
N/A	Not Applicable
NCD	Negotiated Completion Date
NFTL	Notice of Federal Tax Lien
NIST	National Institute of Standards and Technology
NTA	National Taxpayer Advocate
OAR	Operations Assistance Request
OCC	Office of Chief Counsel
OIC	Offer in Compromise
OTC	Office of Taxpayer Correspondence
OVD	Offshore Voluntary Disclosure
OVDP	Offshore Voluntary Disclosure Program
PATH	Protecting Americans from Tax Hikes
PCA	Private Collection Agency
PDC	Private Debt Collection
PDF	Portable Document File
PGLD	RS Office of Privacy, Governmental Liaison and Disclosure
PMTA	Program Manager Technical Advice
POA	Power of Attorney
PPG	Policy and Procedures Guide
PR	Puerto Rico
PRO	Problem Resolution Officers

Acronym	Definition
PSD	Problem Solving Day
PTC	Premium Tax Credit
QC	Qualifying Child
RAAS	Research Applied Analytics and Statistics
RCD	Requested Completion Date
RICS	Return Integrity and Correspondence Services
RIN	Regulation Identifier Number
RIO	Refund Integrity Operations
ROI	Return on Investment
RRA 98	IRS Restructuring and Reform Act of 1998
RRP	Return Review Program
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System
SB/SE	Small Business/Self-Employed Division
SFCP	Streamlined Filing Compliance Procedures (SFCP)
SFR	Substitute for Return
SNOD	Statutory Notice of Deficiency
SP	SharePoint or Submission Processing or Spanish
SPB	Strategic Business Plan
SPEC	Stakeholder Partnerships, Education, and Communication
SPOC	Single Point of Contact
SPP	Service Priority Project
SRP	Shared Responsibility Payment
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
SSN	Social Security Number
TA	Tax Analyst
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TAI	Taxpayer Anxiety Index
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR	Taxpayer Bill of Rights

Acronym	Definition
TC	Transaction Code
TCE	Taxpayer Counseling for the Elderly
TCJA	Tax Cuts and Jobs Act
TDC	Taxpayer Digital Communications
TES	Taxpayer Experience Survey
TE/GE	Tax Exempt and Government Entities division
TFA	Taxpayer First Act
TIGTA	Treasury Inspector General for Tax Administration

Acronym	Definition
TIN	Taxpayer Identification Number
TNT	Tax Notes Today
TPNC	Taxpayer Notice Codes
TPP	Taxpayer Protection Program
TY	Tax Year
U.S.	United States
VITA	Volunteer Income Tax Assistance
VDP	Voluntary Disclosure Practice
W&I	Wage & Investment



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