

NATIONAL TAXPAYER ADVOCATE

# OBJECTIVES REPORT TO CONGRESS

Volume 1

Fiscal Year 2017



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## PREFACE: National Taxpayer Advocate's Introductory Remarks, Including an Update on the National Taxpayer Advocate Public Forums on Taxpayer Needs and Preferences

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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.

In my 2015 Annual Report to Congress, I identified the IRS's Future State plan as the Number 1 Most Serious Problem for taxpayers.<sup>3</sup> In doing so, I articulated several concerns, including the lack of transparency and coordination with stakeholders such as Congress, taxpayers, and tax practitioners. Commendably, in response to my Report, the IRS created a webpage dedicated to the Future State, on which it has placed a large volume of material.<sup>4</sup> The IRS has also announced that it will make a presentation on the Future State at Tax Forums this summer,<sup>5</sup> and the Commissioner has addressed the IRS Future State plans in several appearances before congressional committees and in speeches.<sup>6</sup>

Also in my Report, I announced that over the next year I would be holding Public Forums on Taxpayer Needs and Preferences throughout the country, some co-hosted by some Members of Congress, particularly those serving on committees actively engaged in IRS oversight. It has been my great privilege to host eight of these Public Forums to date, and we have several more planned through the end of the calendar year.<sup>7</sup> I and my small team have been welcomed into communities large and small; our Congressional co-hosts were actively engaged in the planning and promotion of the Forums as well as attending and participating in them. I am deeply grateful to Congressmen Roskam, Serrano, and Meadows, and Senators Casey, Grassley, and Cardin for their generous support and personal commitment to this important endeavor.

We held two Public Forums at IRS headquarters in Washington, DC, at which we heard from representatives from four Federal Advisory Committees to the IRS and four major national organizations of tax

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

2 IRC § 7803(c)(2)(B)(iii).

3 See National Taxpayer Advocate 2015 Annual Report to Congress 3-13 (Most Serious Problem: *The IRS Has Developed a Comprehensive "Future State" Plan That Aims to Transform the Way It Interacts With Taxpayers, But Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet*).

4 IRS, *IRS Future State*, <https://www.irs.gov/uac/newsroom/irs-future-state> (last visited June 29, 2016).

5 See IRS Press Release, *IRS Adds Future State Discussion to Nationwide Tax Forums*, IR-2016-8 (June 2, 2016), <https://www.irs.gov/uac/newsroom/irs-adds-future-state-discussion-to-nationwide-tax-forums>.

6 See *Can the IRS Protect Taxpayers' Personal Information: Hearing Before the H. Subcomm. on Research and Technology, 114th Cong. (2016)* (Statement of John Koskinen, Commissioner, Internal Revenue); John Koskinen, Commissioner, Internal Revenue, Address at the National Press Club (Mar. 24, 2016).

7 To date, we have held two Public Forums in Washington DC, and others in Glen Ellyn, IL; Bronx, NY; Hendersonville, NC; Harrisburg, PA; Red Oak, IA; and Baltimore, MD. Upcoming Public Forums include Wadsworth, OH and Los Angeles, CA.

practitioners, among other witnesses.<sup>8</sup> I was particularly pleased to have two separate panels with witnesses that reported on various research studies about individuals' use of the internet and online services, as well as the digital divide in this country.<sup>9</sup> I continue to be concerned that the IRS's design for the Future State ignores or dismisses the significant body of data that shows large portions of the taxpaying public either unable or unwilling to engage with government online services for anything other than the most routine tasks, if those.<sup>10</sup>

At each of the other Public Forums, we heard from a panel of witnesses representative of the community we were visiting. Each panel included a representative from a Volunteer Income Tax Assistance (VITA) site and a Low Income Taxpayer Clinic (LITC). We also included at least one attorney, Certified Public Accountant, or Enrolled Agent who is active in representing small businesses and individuals in the community. Finally, several of the Public Forums included witnesses focusing on particular topics: English-as-a-Second-Language (ESL) and immigrant taxpayers; the elderly and retirement; farming; international and United States citizens abroad; disabled taxpayers; identity theft victims; and victims of payroll service provider fraud.

Although the National Taxpayer Advocate has been charged by Congress to be the voice of the taxpayer inside the IRS, what we heard at the Public Forums were the voices of real taxpayers and their real representatives. They are compelling, articulate, and clear about what they need in order to comply with the tax laws. So I present in the pages that follow a sampling of those voices. Full transcripts of all of the Public Forums are available online at <http://taxpayeradvocate.irs.gov/news/national-taxpayer-advocate-public-forum-transcript>. They are worth reading in their entirety.

I've organized these comments around several of the concerns about the IRS Future State plans that either I identified in the 2015 Annual Report or consistently arose in the Public Forums. They are:

- IRS engagement with taxpayers and practitioners and how to increase trust in the tax agency.
- Building a Future State before the IRS current state of taxpayer service is fixed.
- The taxpayer experience as told by taxpayers.
- The continuing trend away from person-to-person and face-to-face taxpayer service and compliance activities, including audit, collection, and appeals, as well as a declining geographic IRS presence and increased centralization.
- The benefits and limitations of online accounts.
- Doing digital right.

<sup>8</sup> On February 23, 2016, panelists included representatives from four IRS federal Advisory Committees (FACAs): Internal Revenue Service Advisory Committee (IRSAC), Information Reporting Program Advisory Committee (IRPAC), Electronic Tax Administration Advisory Committee (ETAAC) and Taxpayer Advocacy Panel (TAP). Federal Advisory Committees (FACAs) provide expert advice, ideas, and diverse opinions to the federal government. Federal Advisory Committee Act, Pub. L. 92-463, §2, 86 Stat. 770 (1972). On May 17, 2016, panelists included representatives of American Bar Association (ABA), American Institute of Certified Public Accountants (AICPA), National Association of Enrolled Agents (NAEA) and National Society of Accountants (NSA).

<sup>9</sup> On February 23, 2016, we heard from Consumer Federation of America, Pew Research and Consumer & Community Development Research and Board of Governors of the Federal Reserve. On May 17, 2016, we heard from Forrester Research, Inc., NerdWallet and Council for Electronic Revenue Communication Advancement (CERCA).

<sup>10</sup> Ironically, as I write this, major IRS systems are offline, including the Accounts Management System; in addition, my government email account was locked on all three of the electronic platforms accessible to me — my blackberry, my laptop, and my tablet. This recurring situation at the IRS should give anyone pause as we consider moving to a primarily online interaction.

- The lack of clarity around what will be offered as self-service online options, and the legal and due process implications of “self-corrections.”
- The implications of online accounts for taxpayers with limited online access or digital expertise, and the impact of security concerns on taxpayer online account usage.
- The implications of granting access to taxpayers’ online accounts to unregulated return preparers.
- The increasing workload for VITA sites and the compression of the filing season for professional tax preparers.
- The IRS Mission — what should the IRS be focusing on in the 21<sup>st</sup> century.

I have been pleased beyond all expectations at the sincerity and goodwill of the panelists and attendees at our Public Forums. The excerpts that follow are just a sampling.

For the rest of the year, I and my office will hold focus groups on the IRS Future State at the IRS Tax Forums, in addition to holding several more Public Forums. We will also conduct a nationwide survey of a statistically representative sample of U.S. taxpayers about their needs, preferences, and experiences with IRS taxpayer service.<sup>11</sup> We will also be conducting meetings with each Taxpayer Advocate Service (TAS) office, including Local Taxpayer Advocates, to hear their observations and concerns. With all this information in hand, we will then set forth our vision of the IRS Future State in the 2016 National Taxpayer Advocate’s Annual Report to Congress. This plan, I can say with confidence, will be based on taxpayers’ needs and preferences, as they and their representatives have expressed them to us.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
30 June 2016

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<sup>11</sup> For more information about this study, see TAS Research Initiatives, *infra*.

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## IRS engagement with taxpayers and practitioners and how to increase trust in the tax agency

### *National Taxpayer Advocate Public Forum – Public Comments*

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**MS. PAM OLSON:**<sup>12</sup> ... [T]here is no agency of the federal government except perhaps the Post Office that we as citizens interact with more than with the IRS. And our views of the government are shaped by our interactions with them. And so I think what the IRS is doing here is more important than just for the tax system. I think it is important for us as citizens of this country as well. So it is really important that the IRS do what it can to get this right. ...

So there are two things that I put at the top of the list as being critically important to designing the IRS Future State. The first is opening the design process to the public which is what you are doing here today. Again my compliments.

And the second is building trust. I think that the two of them lead to and reinforce each other; the greater the transparency around the design, the greater the trust; the greater the trust, the greater the willingness to engage and participate in the process.

There is much to be gained from an open and collaborative process that includes taxpayers and tax professionals in the designs because we as taxpayers and tax professionals have needs and capabilities that should be taken into account. And the best way to understand them is through an open and transparent dialogue.

One comment on the future state vignettes that the IRS released and that is that they are premised on tax administration rather than law enforcement. Those of you who know me know that I've not been fond of use of the word enforcement when it comes to the IRS because I think enforcing the law is an action that compels people to do something and it is not something that has to be visited on the average taxpayer. The average taxpayer wants to voluntarily comply and we just need to make sure they have the tools and the resources to do it. They may need advice or assistance but rarely do they need an enforcement action to compel them to pay their tax or to punish them for failing to do so. [2/23/16, Washington DC, pages 18–19, 20–22]

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**PROFESSOR BOOK:**<sup>13</sup> I think a fundamental starting point in thinking about service is that the IRS needs to know whom it is serving and the characteristics and challenges associated with a particular group of taxpayers or parties it is regulating. It sounds easy enough but knowing the taxpayer actually is a very resource intensive endeavor. An agency fixated on efficiency and delivering services at lowest possible short term costs without knowing the impact and burdens of its actions may find itself pushing more serious problems down the road while at the same time jeopardizing taxpayer rights.

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12 Pamela F. Olson, PWC Washington National Tax Services Practice Leader, Washington, DC.

13 Leslie Book, Professor of Law, Villanova University School of Law, Villanova, PA.



While taxpayers with resources can perhaps delegate responsibility to third parties to address a more distant and automated tax administrator, over time continued poor service has a potential for undermining respect and confidence in the tax system. Once the public loses trust in an agency charged with administering the tax system, it is difficult to recapture. As Pam mentioned I think trust is a fundamental theme that underlies service and thinking about service. [2/23/16, Washington, DC, pages 27–28]

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**MS. PAM OLSON:** [T]rust is absolutely critical. And there is a perception from time to time that the IRS kind of goes into a shell generally speaking. It is never good to speak with too much in the way of a generality but sort of generally speaking there is a feeling sometimes that the IRS goes into a cocoon and closes down to interaction from outside.

And those are the times when I think tax administration suffers the most and taxpayers on the receiving end of tax administration suffer the most.

I think that the more we spend time talking with each other the more that we realize our similarities and the extent to which we have mutual goals. And so the more that we can do to open up the process to share information I think the better off we will all be.

And it certainly can feel risky to open up to discussion, put your ideas out there to allow somebody to criticize them, to take the criticism, to be willing to give criticism back. But I think it really is an essential part of operating a tax system that functions at the highest level. [2/23/16, Washington DC, pages 53–54]

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**PROFESSOR BOOK:** I think, however, getting back to trust and how that relates to taxpayers there is no question that sanctions alone is really not the way, a sanctioned based approach is not the only way to encourage voluntary compliance. There needs to be an emphasis on insuring that interactions with taxpayers enhances trust and trust between the taxpayer and the IRS is a two-way street but if the taxpayers have an absence of trust in what the IRS is doing it leads to kind of spirals and increases noncompliance.

And without going in too deep in terms of the way the IRS manages its compliance with respect to many lower income taxpayers it is mostly done via automated correspondence examinations where there is very little personalized interaction between the IRS and claimants. And for many individuals it causes a lack of connection or understanding as to what, in fact, the IRS is doing or why it is doing it.

So if you are looking to education and educating taxpayers to comply going forward, a compliance-based, correspondence-based exam approach really falls short. And my experience with many individuals who may have mistakenly claimed a credit or taken a position or return they come out of the experience with the IRS not really understanding why, in fact, their position is incorrect. The point is that in thinking about trust and thinking about compliance it requires a more personalized engagement with individuals as well as in the pre-filing environment. [2/23/16, Washington, DC, pages 55–56]

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**MR. WALL:**<sup>14</sup> I do understand that the IRS has been under significant budget cuts which resulted in staffing and training issues and technology issues. In my view, the IRS must do several things regardless of their budget. Number one, they must maintain the highest standard for employee integrity and hold those who fall short accountable.

Number two, they must administer tax justice in a fair and unbiased manner and hold those who fail to do so accountable.

Number three, they need to take steps to rebuild public trust in the IRS, to collect the tax according to the law as written, and hold those individuals who fail to do so accountable for their actions. Accountability is critical, in my view, not only for us as taxpayers. They are going to hold all of us accountable. If we did something wrong, we need to be able to hold them accountable as well. [4/4/16, *Hendersonville, NC, page 47*]

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**CONGRESSMAN ROSKAM:**<sup>15</sup> [W]e need an Internal Revenue Service that people have confidence in.

I told Commissioner Koskinen one time, you need to be like my fourth grade teacher, tough but fair. Just do the work, collect the taxes, and be done with it. There's all kinds of issues now that are coming to fore. There's issues in terms of identity theft. There's issues in terms of larger vision. There's issues in terms of use of information. There's issues as it relates to the IRS having certain types of data that they've collected, do they need this sort of information and so forth. [3/9/2016, *Glen Ellyn, IL, page 7*]

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**CONGRESSMAN SERRANO:**<sup>16</sup> The IRS is a very complex operation. It has a bad reputation, it has a bad name and lot of people, believe it or not would like it to disappear, the same people who want roads built, the same people who want hospitals, the same people who want school buildings built, universities and colleges. The same folks who want the government to continue to function in some way, but they don't want to pay taxes and they don't want the IRS to exist. ... I think somebody much smarter than I said, for every dollar the IRS spends in going after people who didn't pay their taxes or who are not paying what they should be paying, I think it's either \$6 or \$7, right, back that they get. So, it's a great investment. [3/18/16, *Bronx, NY, page 4*]

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14 Robert Wall, Esq. Attorney, Member, Spilman Thomas & Battle, PLC, Winston-Salem, NC.

15 U.S. Congressman Peter Roskam (6th District, Illinois)

16 U.S. Congressman José E. Serrano, (15th Congressional District, New York)

**CONGRESSMAN MEADOWS:**<sup>17</sup> I want to say this. It is real easy to be negative. The IRS has some of the most dedicated employees wanting to do what is best on behalf of the American taxpayer and certainly our country. They have been restricted. Where is the bureaucratic red tape? Where is the true financial need and resources? And then ultimately how do we fix that so that a four-hour, or a two-hour hold in getting reception is not the norm. [4/4/16, Hendersonville, NC, pages 101–102]

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**SENATOR GRASSLEY:**<sup>18</sup> The IRS has never been, and likely will never be, an agency that anyone is glad to hear from; however, American taxpayers should have confidence that they will receive a fair shake from the agency. ... Taxpayers also deserve topnotch service from the IRS that absolutely serves everyone. ... Ensuring the IRS is properly performing its job while adequately serving taxpayers and respecting their rights is an ongoing process. [5/5/16, Red Oak, IA, pages 3–5]

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**SENATOR CARDIN:**<sup>19</sup> [O]n the culture of the IRS, I agree with the concerns. Some of it is budgetary. There's no question about it. But the IRS needs to be in a consumer-friendly mode. It's a service industry. They have to be able to depend upon the relationships. Since our tax codes are so much voluntary, as far as compliance, as you've seen in some of the returns that are not accurate, and if you don't have that type of consumer-friendly service, you're not going to get the maximum amount of compliance, and that has to change.

We thought we did [in RRA 98]. We thought we were moving in that direction, but I do think it was the combination of additional responsibilities and lack of resources and just the anti-government feelings that have all built up a problem. And then the third point an observation that I think is very important about direct person-to-person exchanges rather than the online: the story told about the individual who finally understood his taxes and literally cried, we need public confidence in our tax system.

We need people to believe that the system is fair. That they're being treated fairly and its rationale. That they're being treated the same as their neighbor. A lot of the reaction against government today is that a lot of people just don't think it's fair, so they resent it. They resent government. They resent the paying of taxes. And I think the more people understand what we're doing, the better off that's going to be. And the one-on-one contacts, I think are very important. [5/13/16, Baltimore, MD, pages 57–59]

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17 U.S. Congressman Mark Meadows (11th Congressional District, North Carolina)

18 U.S. Senator Charles Grassley (Iowa)

19 U.S. Senator Ben Cardin (Maryland)

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## Building a Future State before the IRS current state of taxpayer service is fixed

*National Taxpayer Advocate Public Forum – Public Comments*

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**MS. BORLAND:**<sup>20</sup> I think there's a lot of problems that the IRS needs to solve about their customer service now, and if they improve their services as they stand now and then move to a web-based platform, or at least offering more web-based platform, then I think they will have a good model to build upon, but I don't think they're there yet. [5/5/16, Red Oak, IA, page 16]

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**MS. PAM OLSON:** I think about the tax world and everything being in taxese and taxese is something that is difficult for those of us who are tax professionals to understand. When you take it and you send it out to the general public it is even more of a challenge.

So there is, I think it is a Dave Berry joke, the IRS is now printing forms in Spanish can English be far behind. [2/23/16, Washington, DC, page 59]

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**MR. VANSINGEL:**<sup>21</sup> Over the past few years, it's become increasingly difficult just to get a hold of somebody just to figure out what the problem is, let alone how to solve that problem. A client of mine recently told me she only gets a 30-minute lunch break and she's unable to get through to the IRS. Other clients have told me about these "courtesy disconnects," and whoever coined that phrase really needs to look up the word courtesy because I'm from the Midwest and if you hang up on somebody after making them wait for a long time, that's anything but courteous. [3/9/16, Glen Ellyn, IL, page 22]

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**AUDIENCE MEMBER [Glen Ellyn, IL]:** I just [have] one little comment. I think the IRS should be forced to change the hold music every six weeks. [3/9/16, Glen Ellyn, IL, page 124]

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**MR. TEJEDA:**<sup>22</sup> On our intake we do ask, "What language would you prefer us to communicate with you in?" I don't know if it's possible, maybe you do, but if someone says to us, "I'd love to get a notice, if there isn't a problem, in Chinese" or "I'd love to get a notice in Spanish." That's a big barrier. You know, "Can you talk to me so I can understand you?" [3/18/16, Bronx, NY, page 43]

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20 Tamara Borland, Esq., Director, LITC, Iowa Legal Aid, Des Moines, IA.

21 Andrew VanSingel, Director, LITC, Prairie State Legal Services, Inc., Rockford, IL.

22 German Tejeda, Director, NYC Food Bank Free Tax Assistance and Financial Empowerment Services Programs.

**MR. HURST:**<sup>23</sup> The [NYC] Department of Consumer Affairs has actually recently placed a notice on its licenses asking “What language would you like your inspections conducted in?” And we will send an inspector who speaks their language to conduct their inspections and it has been received very, very positively. It has been very successful. Now, New York City is a unique place, but we are really proud of the fact that we have done that. [3/18/16, *Bronx, NY*, page 48]

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**MR. TEJEDA:** The bigger problem comes with the filing of their notices. We also need to address as much as possible to make sure we have enough language preparers, Chinese not just Spanish, or African, the French, they are in Harlem, they are moving in. We know communities try to address that and move forward and be sensitive to the communities that are out there. But when they get notices — at one time, one agency, literally someone said, “Oh, yes, we sent this out.” 50 percent of them don’t even respond because they didn’t understand what you sent them. That’s the problem and they count on the fact that 50 percent of the folks will simply not respond because they are just scared, or they didn’t read it, or understand it. If it is in their language they will read it, they will respond, and people will get the benefit that they deserve. So, I think it is the notices that are the problem. [3/18/16, *Bronx, NY*, pages 53–54]

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**MR. ALVEREZ [Bronx, NY Audience Member]:** I’m a Latino tax preparer and also a practitioner for many years and I would like to address two issues. Number one, how come the IRS is downsizing in our community? There have been two offices that have been shut down, the one on 55 at 135th Street and 110 at 44th Street. Now, we used to have a 3000 White Plains Road. That used to be a big office and always they accommodate the population. Now, we have the one at 1200 Water Place that is kind of like play number to see someone to get an appointment, to have an opportunity to enter into the space.

Now that we have increasing issues with the IRS, people have to go in person. They need to go. There is no other way around it. They need to go in person and now that we have downsizing offices in our area it’s kind of an inconvenience for everybody. Tell them they are doing an ugly job for our community, downsizing the IRS. [3/18/16, *Bronx, NY*, page 79]

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**MR. QUINONES:**<sup>24</sup> I want to say something in defense of the IRS publications. They are an excellent sleeping aid. [3/18/16, *Bronx, NY*, page 91]

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23 James Hurst, Legal Ombudsman, NYC Department of Consumer Affairs.

24 Elliot Quinones, Elliot Quinones & Associates, Bronx, NY.

**MR. BARTLETT:**<sup>25</sup> We find that audit reconsiderations are now taking about a year to complete. This was not always the case, and it seems likely that fewer IRS employees are now working these requests.

A whole year is far too long to wait in order to correct a tax liability that we have determined should not exist. Even if we determine that a taxpayer will owe, having the client come to us for assistance before assessment is made gives us and the taxpayer time to plan for how to deal with their liability.

The IRS could assist us in reaching taxpayers sooner by modifying its correspondence to prominently display information about taxpayer rights and available resources, like the Taxpayer Advocate Service and low income taxpayer clinic. In most instances this would certainly lead to fewer IRS resources being used over time to resolve the taxpayer's issues. [4/4/16, *Hendersonville, NC, page 16*]

It is harder today to deal with the IRS than it was when I started representing taxpayers nine years ago. Since 2010 the IRS has generally become worse at timely answering phone calls, and every call to the Practitioner Priority Service or collections is more of a game of chance. If you're lucky you get someone who is well trained and responsive. And if you're not, you're left to slog through the call or try again later.

In addition, the IRS is failing to timely reply to mail. We are now seeing many more "We need additional time" letters from all parts of the IRS. These issues must, at least to some extent, be the result of service cuts. More people and better training are the keys to fixing these issues, and they would go a long way to helping us expeditiously resolve our cases. [4/4/2016, *Hendersonville, NC, pages 17–18*]

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**MR. GROSECLOSE:**<sup>26</sup> The hassle and process of working through situations and getting to a resolution has certainly gotten worse, as Arthur [Bartlett] mentioned, in the last nine years. I have been doing this about 20 years. It has gotten a lot more difficult to deal with the IRS and find answers. But still, telephone, in our experience, gets us the most answers. [4/4/16, *Hendersonville, NC, page 29*]

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25 Arthur Bartlett, Director, LITC, Legal Services of Southern Piedmont, Charlotte, NC.

26 Rollin Groseclose, CPA, Johnson, Price, Sprinkle, PA, Asheville, NC.

**NATIONAL TAXPAYER ADVOCATE NINA OLSON:** Can I ask a follow up question? On the Practitioner Priority Line, for those of you who call it, what things would be helpful on it that they are not doing now? I know that when you call with a collection issue they hand you over to ACS, automated collection directly, rather than dealing with you, but are there things that you would find very helpful that you're not able to do through the line right now?

**MR. GROSECLOSE:** I think the challenge that I have a lot of times is figuring out what triggered what, and how we got to this point? We have had correspondence two or three times, responded based on the request, and then we get something else back or we get a repeat of that. And finally we speak with someone to try to figure out exactly where is this originating. Sometimes it might say, it's a service center, or it might say it's under reporting or something, but a lot of times it doesn't add up. We are getting information — conflicting information, if it is something on appeals, or we are getting two different offices that are still keeping the appeals file active. Who are we supposed to respond to and trying to navigate that we use practitioner priority as kind of a police, and they can't always find the answer, or they will give a recommendation and it doesn't quite line up with the documentation we received. So they seem to have limited, either training in some instances, or access to information within the databases that the IRS has. Those seem to be the two sources of difficulty. We try to use them largely like a referee to give us some direction on where to go when we can't piece together the information we have. [4/4/16, Hendersonville, NC, pages 64–65]

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**MR. LEROY (Hendersonville, NC Audience Member):** I have always been one that thinks beyond the box. There is no thinking beyond the box anymore. There used to be a lot of that. We used to have what we call — you've heard about the IRS manual it has gone from this much to — as Reagan would put it out there — tons of stacks of books, which is terrible. But we used to talk about the spirit of the manual. Now all they want to talk about are little Is and Ts. One part of the manual may say one thing, and another say another. And because it is in a different section, even though it pertains to the same issue, they don't honor it. In other situations, other than the little cubby hole they want to look at it from. [4/4/16, Hendersonville, NC, pages 99–100]

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**MS. ATKINSON:**<sup>27</sup> [T]here's a lot of resources wasted on, you know, doing things over and over again. And part of it is because employees at the IRS — when I worked at the IRS, there were a lot of really good IRS employees who want to do the right thing for the taxpayer.

Often, they are unable to do that because there is a gap in authority. For instance, in the walk-in centers you've got very capable people. And back in the old days when I worked at the IRS, they had something called Office Branch. And Office Branch took care of most things very, very well, even before computers. And then when there was something that was really complicated that they couldn't handle, they would go fetch somebody who could deal with it in that same building. And so things got resolved and all of this automation has — you know, people think automation is the answer to everything and it does do some things very, very well, but when there's an exception, as

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27 Elizabeth Atkinson, Esq., LeClairRyan, PC, Baltimore, MD.

she said, if you're missing a form or whatever, it is extraordinarily difficult. [5/13/16, *Baltimore, MD*, 82–83]

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**MR. BAILEY:**<sup>28</sup> So when I look at the Internal Revenue Service, one of the things — one of the challenges that they have is, in this continuous education business, being able to reach everybody in the way that they learn how to do things.

Now, this is not the time for the Internal Revenue Service to be reducing the communications they have with the public and with the taxpayers, and so the Internal Revenue Service really needs to — use every means — and by the way, they have a tremendous plethora of means to communicate with the public now, with the Internet and all of those other things — and so they really — Internal Revenue Service really needs to get creative in the way that they interface with the general public. [5/5/16, *Red Oak, IA*, pages 8–9]

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**MS. MAITRE:**<sup>29</sup> I loved my job at IRS, and — but I also saw that every single time there was budget issues, the first thing that fell victim to that was customer service. IRS — this might be hard to believe, but IRS taught me customer service. When I came in in '86, I can't remember how many times I said, IRS, Kristy Maitre, how can I help you, that sort of thing, on the telephones. But I've seen customer service slowly dwindle away and employee training also dwindle. And outreach has pretty much disappeared. ... [5/5/16, *Red Oak, IA*, pages 23–24]

So as we talk about this future state, the IRS must recognize that preparers have certain needs. Our taxpayers have certain needs. They need to understand our system is fair and just, and it's difficult to attain this if there isn't any type of education out there. Education is all about understanding. They want to be informed, and they should have services that meet those needs. Can these on-line systems do that? I doubt it. Also, the security of the data is so concerning with all the breaches IRS has had recently.

The other thing that I feel very strongly about is there also has to be a cultural change within IRS where compliance is not king. I was very concerned yesterday when I heard that IRS is going to hire 700 more compliance individuals. What about customer service? I mean, those are the calls that aren't being taken. Those are the people that aren't being served. Examination and collection brings in the money. That can be measured. So consequently, Congress, there's funding; okay? Yet crucial funding for more intangible things like customer service is generally the first to be cut. Customer service educates, it empowers, not only you as an individual taxpayer, which all of us are, but also our tax professional community to understand the complex laws that we have to face and maneuver through. It improves the quality of filing, it increases the accuracy, reduces the IRS work on the back end, yet it's more difficult to measure the impact of the education or the value of understanding. [5/5/16, *Red Oak, IA*, pages 25–26]

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28 Varel Bailey, President, Bailey Farms, Inc., Anita, IA.

29 Kristy Maitre, Tax Specialist, Agricultural Education & Studies, Iowa State University, Ames, IA.



**MS. DEIBER [Red Oak, IA, Audience Member]:** My name is Audra Deiber, and I am a tax practitioner here in Iowa. And the first area I'm concerned with and I've seen as a concern of my clients is courtesy disconnects. When I call the IRS, if I'm willing to wait on the phone for two hours, at the two-hour mark that IRS phone system will cut you off and drop the call. We need to know that we can reach the IRS and that we can speak to the IRS. I'm asking that they discontinue that practice. If I can wait, three, four, five hours, I will do it, but I need to know that I can get through to the IRS.

The second part of that with communication is face-to-face hearings. We received a lot of pushback lately where they deny them. They require that I give a reason why. The taxpayers want to meet with the IRS face-to-face. They want to go through their documents. They want to give them the proof that they have submitted a return that is accurate, and we're asking that the IRS give less pushback for face-to-face meetings. ...

The third area — and I'm kind of looking a little bit at Senator Grassley for this one — is that the fraudulent tax preparers out there, there's a lot of them. The IRS cannot require a minimum amount of education, training, CLEs, anything, but other states have started to set up requirements for just a few courses, something that would give the people of Iowa confidence that their tax preparers actually know what they are doing. I represent tax preparers who are accused criminally of fraudulently preparing returns, and we need this. We need to know that individuals are actually qualified to be preparing these returns. [5/5/16, Red Oak, IA, pages 36–37]

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**[Red Oak, IA, Audience Member]:** [Regarding improved phone service.] Define “improve.” I had faster response time; however, I had to be prepared to educate almost every agent that I reached on the phone. And if we're going to ask taxpayers, Go ahead and have this phone call contact, you're still dealing with fairly uneducated people on those lines. If it's not on their checklist, and I can literally hear them going down the — okay, what are you talking about, okay, let me get my — I hear pages flipping or something or the computer system is slowing down. I cannot imagine how another taxpayer without some basis of knowledge would be able to get satisfaction or resolution to the question. [5/5/16, Red Oak, IA, pages 47–48]

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**[Red Oak, IA, Audience Member]:** Kristy, you talked about a cultural change and compliance is not king, which I wrote in capital letters on my notes, in measuring the impact of customer service, which we all know is difficult. And Mr. LaMar talked about a knowledgeable and sympathetic ear being important, and several of you talked about educated staff. And my question is: why can't compliance staff be customer service staff? I mean, do you think that that is possible? Because everybody in this room who talks about complicated farm returns wants to talk to somebody who understands complicated farm returns. Do I need to educate an auditor on complicated farm returns and a customer service agent, or can I teach my educated auditor to be a customer service agent? Because isn't future compliance the goal? [5/5/16, Red Oak, IA, page 51]

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**MS. BRUCKNER:**<sup>30</sup> Our survey [of participants in the on-demand economy], taken together with our additional research indicates that at best, a number of these small business operators are short changed from filing their taxes. At worst, they fail to file altogether. Moreover, a significant percentage of these taxpayers face potential audit and penalty exposure for failing to comply with filing rules that are triggered by relatively low amounts of earned income.

The population we surveyed can generally be considered experienced, self-employed taxpayers when viewed in terms of their NASE membership, yet their responses indicate a need for better outreach and education of taxpayer filing requirements. Consequently, we think that the IRS should focus, not only on the convenience of online accounts in its “Future State” plan, but also on the education and outreach needed to educate taxpayers about their filing responsibilities prior to tax day. [05/17/16, *Washington, DC*, page 19]

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**MS. HARNETT:**<sup>31</sup> [Y]ou know the work that we’ve been doing with the VITA and the community-based partners is truly a social impact model. It has involved a federal agency, thousands of local community-based organizations, and then a private sector that’s been doing the funding. And I think that the infographics that you shared here, that have been put forth by the “Future State” really need to provide additional infographics that look at you know Larry, the hourly service worker and what some of the issues that he might have, which are very different than what was portrayed here.

Or Mary, the waitress taxpayer, has two children, one with a disability, and has recently lost her apartment, and access to even our available services that are on the ground right now through VITA. I think the existing tax services for the low income really need — and I didn’t address this in my testimony because it’s its own testimony, is communications.

We have done a very poor job of communicating what is available to our low income taxpayers with and without disabilities. [5/17/16, *Washington, DC*, page 47]

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**MR. LEWIS:**<sup>32</sup> This filing season, I had a personal experience that exemplifies what taxpayers need. A client brought me a standard; computer-generated notice the IRS had sent requesting information about capital gain income.

The income, which was reported to the IRS on a Form 1099-B, was properly reported on my client’s tax return, and the appropriate amount of income tax had actually been paid. There was no error on the return. However, due to requirements in its matching system, the IRS needed additional information to verify the income was indeed properly reported.

The notice was a mere case of matching the third party information reported to the IRS with information reported on the return. However, it took me two letters and four months to resolve

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30 Caroline Bruckner, Executive-in-Residence, Accounting & Taxation Managing Director, Kogod Tax Policy Center, Kogod School of Business, Washington, DC.

31 Johnette Harnett, Ed.D., Senior Director, Strategy & Research, National Disability Institute, Washington, DC.

32 Troy K. Lewis, Chair, Tax Executive Committee, AICPA; Lewis & Associates, CPAs, LLC, Draper, UT.

this notice. It was a highly inefficient experience and an example of where change is clearly needed.

You may ask why I just didn't pick up the phone and call the IRS. It's been my experience that the IRS representative, who probably would have answered my call, would not have had the necessary tools or training to resolve the issue. Eventually, after some discussion, the representative will revert to the default position of asking me to provide my entire explanation and any related documentation in a letter. It is not efficient for either party, if the IRS representative is not able to deal with specific issues over the phone.

In today's environment after mailing the requested information, I still do not have the ability to speak with the representative who is specifically assigned this case, or someone who even has access to the documentation I submitted. The IRS' current technology does not allow for the sharing of information from one department to another; at best, they can only confirm receipt of the documents. The IRS must have modern and secure technology. [5/17/16, *Washington, DC, pages 72–73*]

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**NTA OLSON:** Well, you know I, every year, in preparing my own return, like to get a paper copy of the 1040 Instructions. And before this filing season, I was able to walk into my place of business, namely here, the main IRS headquarter, and pick up a copy of the 1040. And I thought that was much wiser because it was printed with soy ink and it was on thinner recycled paper than anything I could print out on my laser printer at home with thicker paper and more trees killed.

And lo and behold, the IRS was not stocking paper forms in the headquarters of the IRS so I couldn't get my copy of the 1040 from them. We have heard a lot of complaints from taxpayers in walk-in sites all over the United States that forms have run out, on the shelves and the stacks at the walk-in sites, the paper forms. And the IRS's position has been, well what's causing the problem is that those stacks are empty, so we're going to remove the stacks and that will solve the problem.

You know I'm very concerned about this because I do believe we should go with what the taxpayers are saying they need. And there is a group of taxpayers who are saying that they need paper forms, that they want paper forms. And I don't know why we would get into an argument with taxpayers about that. [5/17/16, *Washington, DC, pages 125–126*]

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## The taxpayer experience as told by taxpayers

### *National Taxpayer Advocate Public Forum – Public Comments*

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**MS. ARMSTRONG [Victim of Payroll Service Provider Embezzlement]:**<sup>33</sup> My hospital is an emergency critical care hospital. We had a third-party payroll company do our payroll. In January of 2013, we had a representative from the IRS come to our hospital and say you're not paying your taxes. What's going on. And we said we are. You know, we showed them all the appropriate forms that said we are, that the payroll company had given us. But the payroll company was embezzling the money.

So we told the IRS representative that clearly, they were embezzling the money from it. We figured out what was going on, but she told us, "We're building the case. Stay with them because we're building the case." And we were like, we're putting tens and tens of thousands of dollars every payroll into their pockets. And she said, don't worry about it; just keep putting money in there. We're building our case. I had my accountant call her and she told my accountant the same thing, just keep putting the money in there, we're building our case.

Well, about two weeks later or so, my bookkeeper figured out how they were stealing the monies. This wasn't just federal, it was also on the state level too. And actually, in grander amounts of money. So we got my corporate attorney and my partner and my bookkeeper and I went to AccuPay.

And before this, I should say that in 2010 and 2012, AccuPay had been — they [IRS] found out that AccuPay was also stealing money from two businesses in Hartford County. They got it all straightened out and settled it, but the IRS never contacted the four to 500 other companies that AccuPay was embezzling from. So they worked it out with those two companies and then never said anything to us. We never knew anything.

So we felt sort of victimized twice; first by AccuPay. These are people that I've known for 20 years of doing this. They actually stole from their friends and family too. We were first victimized by them and then the IRS was telling us to keep your money in there. Keep your money in there, until we decided, no, we're not keeping our money in there. I mean, when an IRS person tells you to do it, we felt like we really should do it.

So we went into AccuPay and told them we knew what they were doing. We told them we had all the monies figured out that they had stolen from us, which on the federal level was \$32,000 and the state was over \$80,000. They lied and said they didn't know. They didn't know. And that night they shut down. When they shut down, they not only stole everyone that was still with them their tax money, they also stole their payrolls. [5/13/16, Baltimore, MD, pages 15–17]

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33 Angela Armstrong, Hospital Administrator and Founder, Animal Emergency Hospital, Bel Air, MD.

At that point, we started receiving late notices, threats of levying our accounts, threats of seizing our property. Like, a lot. So we're still trying to run our business. We're worried about making the next payroll while they have all this other money and the IRS is now telling us you have to pay it again. They might've stole it, but we still want it.

So we relentlessly contacted the IRS. We would get different people every time. Then those people would always have to talk to their boss and then they would get back with you. But the getting back with you was like, weeks sometimes and it just never happened. It just pushed from one person to another person. [5/13/16, *Baltimore, MD, page 19*]

So about two months later, I get a call from a woman in Texas who told me she is now the representative, the IRS representative for the AccuPay scandal. That all the AccuPay embezzlements have sent to Texas and she now wanted the money and what was I going to do.

So it went from Delaware and Baltimore, where they knew everything that was going on about the scandal with AccuPay that made news everywhere, not just in Maryland. I was in my car driving and I had to pull over and talk to her. I was just, you know, I'm feverishly trying to explain to her you have no idea what you're talking about because we weren't just somebody from IRS that also got embezzled.

We shut them [Accupay] down. We found out what they were doing. We were paying even though we told the tax guy at IRS we shouldn't paying this money. They told us to keep going and paying the money. [5/13/16, *Baltimore, MD, page 20*]

I could not have done this [offer in compromise] without the taxpayer advocate.

I cannot say enough about them, about how they helped me; how they educated me on what needed to be done. And, you know, they were there for me. If they said they would call you back, they called you back. We didn't always get that from the IRS. Or if I got a call back, it was with more questions or we're going to need some more time.

So they pretty much, I can't say enough good about them. I would not have been able to do it. If I would've had to do that online, which I know is something that they're considering doing, it would have been impossible. There's no way that I could type something — well, first of all, type the whole story. I don't know if you're planning on doing the tax, the taxpayer advocate, through the computer, there is no inflection in that and there's no — you don't know who you're getting, so they don't know if you're local and know the stories and know what's happening. [5/13/16, *Baltimore, MD, pages 26–30*]

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**MR. EBERLIN [Victim of Identity Theft]:**<sup>34</sup> On May 19th of 2014, after suffering a lot of setbacks from surgeries, being hospitalized many times, my wife passed away. As you can imagine, this was an incredibly painful and stressful time of my life, further complicated by being a victim of identity theft. With medical bills, funeral expenses, property taxes coming up to pay for, I was unable to obtain my refund from my taxes that I had filed earlier in 2014.

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34 Roger Eberlin, Identity Theft Victim, West Grove, PA.

I might have not have the exact time frames correct, as it was extremely stressful for me during that time for several months. I electronically filed my return with Turbo Tax, got the message back that my return had been accepted, and then that it had been approved, on the same day that I filed it.

After not receiving my refund for a month, I called the IRS help line. And after hearing, your call is very important to us, please continue to hold and someone will be right with you, after 20 minutes or so I heard, we are presently receiving a high volume of calls, please call back later, and then I heard the click. This happened to me several of times, quite a number of times, before I was finally able to reach a human being on the other end.

When I did finally speak to someone, I explained to her that I had not received my refund from my return I had filed months earlier. I was then put back on hold while they researched it, and once she came back online, I would be told, your return is in process. That same scenario happened several times. When I was lucky enough to get somebody on the other end, never once was I told there was a problem or when I might receive my return.

My niece, Brenda Lackey, had just started working for the Taxpayer's Advocate Services that year, so I called her and asked if this is normal. She connected me with the proper people and got them involved, and after that I had my return that followed within a few days. I thank goodness for that department, or, who knows, I might still be waiting. [4/8/16, Harrisburg, PA, pages 31–33]

Being a victim of identity theft myself at a time that my life had already been turned upside-down, I needed a human person to help me through the process. I did not need the added stress of having to call several times and getting through sometimes after lengths of hold time.

When I reached the person on the other end, it would have been far more helpful to have somebody that was able to help me and tell me what was going on.

I didn't get the answers that I needed for the refund I needed them to help me through the very stressful time until I went through Taxpayers Advocate Office.

Speaking from personal experience, identity theft is already a large issue with the IRS. I can't help but worry that going primarily online in the future will cause the identity theft issue to grow larger and will cost the taxpayers a lot more money. [4/8/16, Harrisburg, PA, page 32]

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**The continuing trend away from person-to-person and face-to-face taxpayer service and compliance activities, including audit, collection, and appeals, as well as a declining geographic IRS presence and increased centralization**

*National Taxpayer Advocate Public Forum – Public Comments*

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**MS. MACMILLAN:**<sup>35</sup> While enhancement of digital tools may create new efficiencies it does not justify cutting the level of other account specific services such as the practitioner priority support hotline.

Digital tools and electronic communications which are fully accessible to unrepresented taxpayers are also critically important but we cannot overemphasize the need for face-to-face, voice-to-voice communications and interactions will not disappear regardless of the depth, breadth and quality of digital tools deployed by the IRS.

Whether working directly with taxpayers or with their representatives, the range of necessary explanations, guidance and problem resolution will always require knowledgeable assisters who can advise on the best solutions to a vast array of issues particularly in the post-filing environment. [2/23/16, Washington, DC, pages 66–67]

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**MS. MACMILLAN:** [T]he number one issue that I think builds trust among taxpayers and practitioners with the IRS is to have a person that they can deal with either by phone or face-to-face. I think that is the most crucial thing required. And I don't see that going away even with advances in the digital tools. [2/23/16, Washington, DC, page 93]

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**MR. GONZALEZ:**<sup>36</sup> [C]onsumers have various options about how they interact with their bank. We visit a branch, go to an ATM, online banking, mobile phone, telephone. And what we find was that consumers like them all to a varying degree. We found that about 82% of reported using four or five of the channels, that is again over 80% use combination of channels. Only two percent used one or two. So very few people stick to one type or two types; most use various combinations.

You would think well what about mobile banking people, those are kind of slightly self-selected in terms of technology maybe that is how they choose to interact with financial institutions. Well among them usage of other channels is still quite high. We asked them what kind of channels

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35 Jennifer MacMillan, Chair, Internal Revenue Service Advisory Committee (IRSAC), Santa Barbara, CA.

36 Arturo Gonzalez, Chief, Consumer & Community Development Research, Board of Governors of Federal Reserve System, Washington, DC.

they use. 95% said that they used online banking, not surprising, 92% used an ATM, 85% visited a branch and spoke with a teller, 36% used a telephone. So all those other channels aside from the telephone seem to be utilized by mobile bankers throughout the previous 12 months of the survey, telephone less likely to be used than the other ones. But this again suggests as already has been mentioned that channels are more than likely used and viewed as substitutes rather than as compliments for each other. [2/23/16, *Washington, DC, pages 170–171*]

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**MR. CAREW [Glen Ellyn, IL, Audience Member]:** So, getting to this [the vignettes], what I don't like about this is as soon as there is a dispute, this isn't going to work. It will work great for the IRS because now you have no human to talk to. We counsel our clients you have got to get a face-to-face meeting, we have got to talk to a human. If we can't talk to a human, it's far too easy to tell you no over the phone, sorry but no, and your choices, you have options, you can pay the penalty amounts and go to court, there's the options. You have to have a face-to-face experience when there's a dispute. It looks like from this plan, there's no option for that. [3/9/16, *Glen Ellyn, IL, page 73*]

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**NTA OLSON:** I'm following up on James's [Hurst, Legal Ombudsman, NYC Department of Consumer Affairs] opening statement about the agency making a conscious decision to meet face-to-face with small business owners and I'd really like to hear a little more from you about that. What was the thinking behind that? What are you hoping to achieve from that?

**MR. HURST:** Well, what we are achieving is increased compliance with our laws and rules because there is more clarity. What we are talking about is not businesses who are looking to get around avoiding compliance, businesses who in advance, before they were issued a violation, contacted us saying, "What do I do to avoid getting a violation?" Or, they received a violation and they are saying, "I need to make corrections they way I do business. What do I need to do to make those corrections?" So we provide them with assistance and help them and direct them to the resources online and then give them personal assistance on how to comply. Sometimes it's simply, "I'm confused. I received a violation. I don't know how your tribunal operates. I don't know what my choices are? Can I settle?" It can be very confusing dealing with these documents. So, they will be connected with me and I'll walk them through the process or I'll put them in touch with a settlement officer who they can talk with one-on-one. People are very positive and appreciative of being able to speak with someone.

**NTA OLSON:** So, the City has budget constraints just like the IRS does. So, you have obviously decided this isn't a waste of money?

**MR. HURST:** Yes, that is definitely the case. We are doing the measuring and the metrics on the additional service that we are providing but I think the main thing is we are getting a lot of positive feedback from the business owners about being able to communicate with an inspector in their own language, being able to be in touch with a translator when they call us who is going to be able to communicate with them more effectively than they have in



the past, having someone who can answers their questions quickly if they come to the office. [3/18/16, Bronx, NY, pages 52–53]

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**MR. WALL:** The golden ticket, when dealing with the IRS, as everyone will back me up, is when you get a letter with someone's name and phone number on it. And when that happens, I would say nine times out of 10 you can get an answer within 15 minutes. [4/4/16, Hendersonville, NC, pages 59–60]

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**NTA OLSON:** I'm wondering what you think might be the impact of this shrinking geographic footprint and this expanding, you know, service center, 10 sites in Fresno, and Brookhaven, and Andover and where those are the employees that you're increasingly talking to. Does anyone want to weigh in on that?

**MR. GROSECLOSE:** I'm in Asheville, and with Asheville IRS office was for many years the resource for us to get issues resolved. We knew the people there. We could call them. Speak directly with them. We still have a couple of those contacts, but there is no phone answered anymore. It is just a repository of voice messages. And you may or may not get through, and if you know someone, that is great. You kind of apologize for constantly bugging that one person, but they will make a connection that's not as effective as it used to be because you don't have as much representation locally. Greensboro as well, we have some contacts there to go through. It is typically a spring board. We are trying to get in and we are trying to get information. We are trying to get somewhere else. And so having that connection has been critical in the past. It has been more difficult to leverage those in the last few years, whether the person has moved on or retired. You don't know who that next person is because they are not open and available. [4/4/16, Hendersonville, NC, pages 71–72]

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**MR. WALL:** You know, I have a tremendous amount of concern with centralization of the process to the effect that we might have where, you know, you can call Ogden, Utah — we are all familiar with Ogden. Ogden has a large IRS office there, or there is an IRS office known as the fort up in Philadelphia. And I do have concern that you route everything through there. There is not enough personal interaction. When I'm dealing with the IRS, and this is who I am, I'm from middle Georgia, I'm a kind of awe shucks kind of guy. My father always taught me you can catch more flies with honey. That doesn't necessarily resonate with people in Ogden or in Philadelphia. But it does work a little better when you're dealing with people locally. And these are people who maybe our kids — they're in the community. Maybe our kids play soccer together. That is an important component, because it does humanize the process. It is a necessary thing to do. To me it's scary to think about a process where you just punch in a few keys and then it's all mechanical. I grew up in '80s watching those movies about robots taking over the world. It does frighten me that you have less personal interaction. Number one, it impacts my ability to negotiate and argue. But number two, it leaves a bad impression for me as a taxpayer to think there is just some big

Watson, or whatever the computer Hal, whatever you want to call it there, that is determining how much I actually owe my government. [4/4/16, *Hendersonville, NC, pages 73–74*]

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**MS. MCKINNEY:**<sup>37</sup> When I first started doing taxes, I'll never forget, when I was working in East Baltimore, I had a taxpayer who started to cry at the end. He was getting a refund, which was good because sometimes if you owe, you're getting a very different reaction. He was getting a refund and he started to cry. And it wasn't that much money, it was like, maybe \$150. And I said oh, my gosh, why are you crying? Did I do something to upset you? He said, "I've been filing taxes for 45 years and you're the first person that ever explained them to me."

And to me, that is the value of in-person assistance. You know, you can go through some flow chart. There can be some online decision tree, but in the end, and you know, this was a person that was in their later 60s. No one had ever explained how and why he was getting a refund or why he didn't. And that was so meaningful. [5/13/16, *Baltimore, MD, pages 40–41*]

The social worker side of me says that there's an emotional component to that too to say I am looking at someone that is seeing me as a human being and giving me information about my personal case, not just generating the tax law that this has to do with. I think that that is a really important part. [5/13/16, *Baltimore, MD, pages 41–42*]

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**MS. WINSTEAD:**<sup>38</sup> [O]ne of the things that we have to do to be successful is that we have to get proximate to the community that we're trying to help. We have to get close to them.

So I see IRS as moving farther and farther away. They have already created these centralized units, which I absolutely hate, where if I file an Offer in Compromise, it gets reviewed somewhere in Alabama or Florida or New York, where they don't know the local economy of what's going on here in D.C. or Maryland. So to now put people in the position where they have to go to the computer, I think is definitely the wrong move. [5/13/16, *Baltimore, MD, pages 55–56*]

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**MS. HARNETT:** A reduction in the number of IRS taxpayer assistance walk-in centers serving taxpayers, and for many of you that don't know this that was a hot place for people with disabilities to go because they had, like screen readers and they helped people do their taxes. They actually would hire an interpreter. Now, appointments have to be made.

We had concern about what would happen to those taxpayers. Where did they go? The community-based partners were thinking, "How can we handle more taxpayers?" As the IRS designs the "Future State," my IRS account, similar to my social security account, it is imperative that a tool is developed that is customized and personalized based on the taxpayer's socioeconomic profile and experience of the VITA/EITC eligible user.

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37 Robin McKinney, Director and Co-founder, Maryland CASH Program, Baltimore, MD.

38 Beverly Winstead, Director and Clinical Law Director, LITC, University of Maryland Carey School of Law, Baltimore, MD.

Taxpayers with disabilities with sensory, deaf, and/or blind, physical, mental health, developmental cognitive challenges often experience barriers to access, whether through inaccessible technology websites, complicated content, lacking interpreters, English as a second language, or tax volunteers and personnel unfamiliar with accommodation strategies for taxpayers with disabilities. Many of the challenges raised by Congress in the late 1990s continue to plague American taxpayers and are heightened because of the growth of technology. [5/17/16, *Washington, DC*, pages 31–32]

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## The benefits and limitations of online accounts

### National Taxpayer Advocate Public Forum – Public Comments

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**MR. MIRSKY:**<sup>39</sup> During my busiest time of year, it would be beneficial to run the wage and income statement for taxpayers who believe they have other income and have not received their Form 1099 but want to report other income properly to avoid future notices and complications. [3/9/16, *Glen Ellyn, IL*, page 18]

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**GLEN ELLYN, IL, AUDIENCE MEMBER:** This sounds great, I mean I'm kind of in the middle of my career, early to mid of my career, so I have many years still. So, I think eventually this could be great. The execution though of it, I'm not sure. If like [healthcare.gov](http://healthcare.gov) is behind this, I wouldn't be an advocate of it. But if there was a strong, you know, at the back end that was going to make this a secure portal for everyone, you know, all taxpayers, accountants, you name it, I think it would be great. It's just the execution.

**NTA OLSON:** Right, right. Yes, and I'm glad you said it. You know, I actually had proposed an online account about a decade ago and I'm very supportive of it. You know, I'm just, we need to be very careful about what we do. I think also, you know, particularly for the practitioners, it would be very helpful.

I think for myself when I was a practitioner, to be able to look online and see, okay, there's a notice, to be able to go online and sort of figure out the problem, that would save me a phone call and 45 minutes waiting on the IRS. Now, when I get a notice, I have to call the IRS to find out just what even the problem is. But I personally, and this is just me personally, once I figure out the problem in most instances, unless it was something very simple, I would want to talk to somebody. I would use the online account to make sure that what they said they were going to do they actually did. I'd be checking it and it would save me those phone calls.

So, I think there's real benefits for that, absolutely.

**AUDIENCE MEMBER:** Or even having the initial interaction being the letter saying there is something amiss, something afoot.

**NTA OLSON:** Right.

**AUDIENCE MEMBER:** Go to this website, you know, if you have the means. If not, send us back, you know, the regular 18th century way of doing things, that's fine. But if you have the means of going online and doing this, we'll be posting up these letters and correspondence and you can send stuff through there.

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39 Mark Mirsky, Managing Director, ROI Business Services, LLC, Bartlett, IL.

**NTA OLSON:** Right, right.

**AUDIENCE MEMBER:** So, I don't know, that's just –

**NTA OLSON:** To be able to take digital pictures of the documentation and e-mail them in would be fabulous from everybody's point of view, depending on your camera, depending on the steadiness of your hands, you know. I mean, but I'm saying there are real benefits of that.

**AUDIENCE MEMBER:** Right. [3/9/16, *Glen Ellyn, IL, pages 117–119*]

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**MR. MIRSKY:** [W]e definitely have clients that try to resolve their issues on their own sometimes. When they do, it almost always leads to a much more complex situation than it otherwise would have been had they come to us first.

**NTA OLSON:** So, if they have the ability to log on to an account and agree to things online that are sort of explained online in the traditional way that the IRS sends notices, just what do you think? Can you project —

**MR. MIRSKY:** Well, it comes back to the trust issue. I just honestly don't think that at this point my clients would truly trust that what they are being told is accurate and complete when you have, you know, fake, fraudulent firms calling my clients at their home trying to get their Social Security number over the phone which we have to tell our clients that the IRS will not call you at home, but yet they still sometimes will answer those questions. So, I think there's a trust issue, and I don't know that just because they're told that it belongs there they're necessarily going to agree. [3/9/16, *Glen Ellyn, IL, page 67–68*]

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**MR. SCHRYVER:**<sup>40</sup> You're going to hear a little bit about the IRS's vision in the Future State and this is, I think of our middle school math teacher here [indicating EITC Vignette], but it's designed to work. It's sort of an online system. That could have some benefits for us. Right now we use an IRS system called e-Services. I have to have my clients sign a power of attorney on a piece of paper. I have to fax it to an office in Connecticut somewhere. I have to wait a couple of weeks for the IRS to process it to make sure they know I'm supposed to represent them and then I can go into the IRS system and get some limited information. Sometimes it's useful, some of it is not so useful, some of it is even confusing even for a professional.

It would be great if we could have a way for people to come in and get onto their records online and appoint us their representative on the spot and they can see that I am a licensed attorney, other people are enrolled agents with the IRS and are already subject to the IRS's authority, we are known to them. If we do something wrong the IRS can take steps to discipline us. So, those types of representatives would be able to get access to a lot more things a lot more quicker.

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40 Erik Schryver, Senior Staff Attorney, Esq., Bronx LITC, Legal Services NYC, Bronx, NY.

But, I think there are a lot of problems with this Future State as well. The number one and the most obvious is there are just unequal access to online services in the community. A lot of people don't have experience with computers. They may not own a computer or a tablet or a smart phone. If they have a phone they might have limited data or minutes to use on it. Again, I think, people who are faced with this sort of system and not much other choice will probably just give up and end up with worse problems. [3/18/16, Bronx, NY, pages 26–27]

**MR. HURST:** I just want to point out that it's my experience working with businesses, it's a very diverse set of opinions about technology and the ways they interact with technology. We have a number of businesses who want us to be more technologically adept with the Department of Consumer Affairs and have more electronic communication with us and that's great and others once we started doing it they wanted to know what's happening and they wanted to speak to someone on the phone. So, I think providing services that are flexible to those diverse needs of different members of the community, is great, this is fantastic and this can be very helpful for some people but we have to recognize that others are going to interact with this and need to speak to someone about it. [3/18/16, Bronx, NY, pages 71–72]

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**MR. BARTLETT:** The future vision of the IRS assumes that taxpayers have access to technology and will be able to navigate the IRS's online system to resolve their tax issues. We know from representing vulnerable populations, such as the poor, disabled and elderly, in dealing with our current tax system that they will have no easier time navigating some new online system. There will still be barriers created by poor literacy, mental and physical impairments in the complicated nature of our tax system, as well as new ones, such as access to technology and understanding how to use it. Given this, the IRS's future state vision could make the tax issues of low income and otherwise vulnerable taxpayers worse if they use the online system without fully appreciating what they are agreeing to and what rights they may be foregoing.

In addition, given the issues the IRS has in replying to mail, I do not have much confidence that electronic communications will be acted upon in a timely manner either. [4/4/16, Hendersonville, NC, pages 20–21]

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**MR. GROSECLOSE:** Our first choice of action, typically, if it is fairly straightforward we can compare numbers and see, okay, yeah, there was a mistake, something was missing. Maybe we didn't have certain information when preparing the tax return. Whatever it might be. We would probably handle that by correspondence. Write a check or write a letter. We will get it resolved, but a lot of times we need to get on the phone.

So one concern that I have, I think our office has in general with the future state is really looking towards heavy reliance on electronics, technology, to be able to tell us the information that we need.

Our experience has been that tells us half the story. It tells us what the IRS thinks is going on or what's in their system that might be causing a problem. But it doesn't actually resolve everything. We have had access to online services in the past, and it gives us some information about what is going on, why the IRS is sending this notice, what might have triggered it, that we can maybe

troubleshoot and figure out here is what is missing, or here's what they don't have. But the rest of the story typically takes a phone call. [4/4/16, *Hendersonville, NC, pages 25–26*]

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**MS. MCKINNEY:** And again, because people need back tax help, they need to get copies of their transcripts. In looking at the different ways that the IRS is considering how to get transcripts, I think if you're there on a Tuesday online, the moon is waxing and, you know, there's like a gerbil in the room, you qualify. I think it's like a very narrow set of people that are going to be able to use that. And again, for the folks that we have, the more hoops that you put through, it makes it more complicated. And if you already have a busy life and you're trying to figure out something stressful, putting more hoops in front of folks, they're just not going to do it. They're not going to move forward. And then they're actually going to end up in even more of a tax compliance situation. [5/13/16, *Baltimore, MD, page 44*]

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**MS. MCKINNEY:** I think what would be particularly challenging for is actually thinking through these vignettes, which is resolving a problem. I think resolving a problem would be incredibly difficult, especially just seeing the complex problems that we have dealing with. If you got the EITC and someone else claimed your dependent, you can't resolve that through an online platform. That's just way too technical. [5/13/16, *Baltimore, MD, page 64*]

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**MR. CRANDELL:**<sup>41</sup> I have a hard time imagining, you know, interacting with, you know, the tax return on a mobile phone. I mean, I consider myself fairly tech savvy and I had a hard enough time ordering a pizza last night on the mobile app, you know. And I'm trying to imagine Beverly's 87-year-old client on a smart phone trying to file a tax return. But it is true, I mean, the majority of my clients, they have access to mobile data technology but not a computer. So the emails are quick. The communication is there, but to do that level of interaction, I think is just – would be impossible. [5/13/16, *Baltimore, MD, page 68*]

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**MR. LAMAR:**<sup>42</sup> I've looked at these vignettes that have been distributed to everybody, if you picked one up, and considered the possibilities of each taxpayer having an online account as presented there. I think the ability to store and retrieve documents and the actions related to the return intrigues me, and I can see the possibilities of that type of a system. And it could facilitate resolution of errors if for no other reason as that the IRS would have a written record of communication of what has happened up to that point in time, which those of you have called and it's been alluded to, we find that we don't talk to the same person twice, and so we start from scratch. [5/5/16, *Red Oak, IA, page 18*]

For those that have the resources, the knowledge, the comfort, it could be a part of the solution, but it's never going to replace a knowledgeable, sympathetic ear on the phone. The IRS needs to

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41 Adam Crandell, Esq., Law Office of Adam N. Crandell, LLC , Baltimore, MD.

42 Alvin LaMar, Enrolled Agent, Iowa Farm Business Association, Iowa Falls, IA.

have people that fill that bill. And it would also be nice if the representative I talk to could address the issue and take it to a conclusion. I know this would necessitate sorting the calls by the type of business that I'm working with, but I think it could be done so I got a knowledgeable rep on the phone. [5/5/16, *Red Oak, IA, page 20*]

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**MR. HAMILTON:**<sup>43</sup> I think the future state plan addresses the real need for the IRS to provide a more complete online experience, as stated in the future state plan, both for taxpayers and tax professionals.

Major sources of delay in helping our clients is attempting to locate their notices, letters or records from the IRS, but the IRS already has, or should have, on file, particularly those documents submitted in connection with an audit.

The Form 2848, Power of Attorney, which our clients fill out at the beginning of representation, allows me to have access to their online transcripts, where I can obtain a clearer picture of what has transpired on their IRS account and where the taxpayer stands in the audit process; however, these transcripts only provide me with the dates of a notice or a letter that was issued, a short phrase summarizing that notice and the amount of the adjustment made to the client's account.

It would be much more useful if, for example, all of these documents could actually be uploaded, opened and viewed directly through the online services function; however, while these online upgrades and online interfaces could surely enhance my representation of taxpayers, I have serious doubts about taxpayers utilizing and relying exclusively on online services as a replacement to direct person-to-person contact with the IRS representatives.

The future state plan assumes that since other financial transactions, such as those involving the transfer of funds from a bank account or a consumer purchase have shifted online, every American would prefer online interactions when dealing with issues concerning the IRS. Not only is this assumption based on shaky logic, in my experience, the majority of low income taxpayers either do not have equal access to online services or they overwhelmingly prefer a human connection to assist them with a tax problem. For some of our clients, an internet connection is a luxury they just simply cannot afford. They are scraping by, living paycheck to paycheck, trying to support their families, often relying on a single source of income. In addition, some of our elderly clients do not use the internet to access information at all. Many others simply do not trust providing financial or personal information through a computer.

There are some clients who may be more tech-savvy than others and thus fit in the archetype of the future state taxpayer, but the overwhelming majority first contact the IRS by calling the number listed on their notice or letter, and it is rare that one of them will read the entire notice to know exactly what they need to do in order to comply with the IRS demands. Rather, they want a live person to explain to them exactly what they need to do. This builds a sort of trust with the IRS and that particular agent they're working with. [4/8/16, *Harrisburg, PA, pages 10–12*]

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43 Robert Hamilton, Managing Attorney MidPenn Legal Services LITC, Carlisle, PA.



I think the IRS future state plan envisions a simple, self-explanatory experience, where the taxpayer is both informed and up-to-date about tax rules and regulations, and is tech-savvy enough to navigate a revised online interface, is more idealized fantasy than accurate portrayal. [4/8/16, *Harrisburg, PA, pages 14–15*]

**MS. DIEHL:**<sup>44</sup> What I have observed is that the new individual and business taxpayer experience of the future model seemed to provide little room for personal contact. Granted, this will fit well into the constraints of the budget, but I fear that many will suffer and suffer greatly.

Let's consider retirees who have extremely involved questions. Who will help them? Will this model result in more unanswered phone calls with no resolution, or a resolution that comes too late leaving the taxpayer in a penalty situation. [4/8/16 *Harrisburg, PA, page 18*]

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**MR. HUDAK:**<sup>45</sup> So much time and energy's wasted with improper narrative. It's important that we don't forget that the Taxpayers' Bills of Rights includes the right to representation. The future plan doesn't put proper emphasis on that right.

Oftentimes, during the course of an audit, the taxpayer is — has taken a position on an issue that is perfectly fine, but because they don't understand the language of the law, they don't understand the language of regulations, they inaccurately communicate their point, their perspective, their position. And it isn't because they're taking an improper position, but because they don't know how to communicate it properly.

The future plan ignores that phenomenon, which is very real. Those who are the practitioners, those who have been through an audit have all experienced that, where the taxpayer might say something and it has to be immediately clarified to ensure that the revenue agent properly understands what he's trying to communicate. That happens almost with every audit that I do, the 30-second conversation. We know our clients, we know our customers. After detailed review of the tax matter, we could have a 30-second conversation with a revenue officer, cut to the chase and clear it up instantly. Much of the correspondence audits can be done automatically, but you have to properly structure the information that's given. The average taxpayer, no matter how much coaching, will find it very, very difficult to put it together properly so that it can be done in a very systematic and effortless way. [4/8/16, *Harrisburg, PA, pages 24–25*]

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**MS. SERRATO:**<sup>46</sup> The human element is critical for this community [of US citizens and US taxpayers abroad]. The ability to speak with the person for an individual guidance cannot be underestimated, especially with a complex tax code. For many coming into compliance, English is not their native language, resources for this need to be expanded. Reliance on mail delivery is a problem due to the lag times and errors in addressing; notifications often arrive after the due date for action.

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44 Susan Diehl, President, PenServ Plan Services, Inc., Horsham, PA.

45 Warren Hudak, EA, President, Hudak & Company, New Cumberland, PA.

46 Marylouise Serrato, Executive Director, American Citizens Abroad, Rockville, MD.

We support the creation of online tax accounts, where taxpayers can check the status of their tax affairs and self-correct. Done correctly and with the caveats I will outline, these can be a big help for our community. Consider high-speed Internet is not available in many geographic regions. Think of aid workers in Africa.

Using Internet cafes, public libraries for filing sensitive tax information is not acceptable for obvious security risks. The use of cutting edge technology may offer solutions, but many do not have access to these costly up-to-date software and computer systems. Security is a big issue. Identity theft monitoring systems are not widely available overseas.

In addition, exposure and loss of personal data can lead to Americans overseas being identified and targeted for terrorist actions. Holiday schedules differ from the U.S. People work on their tax returns in their free time. A need for 24/7 support service in different time zones and an 800 number with minimal wait times. A team within the IRS dedicated to overseas Americans, staff with individuals who have lived overseas and are knowledgeable in international tax filing. [5/17/16, *Washington, DC, pages 23–25*]

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**MR. KERR:**<sup>47</sup> As the IRS moves forward with online accounts, which are an integral part of its “Future State,” it must include access by those with unrestricted rights, to represent taxpayers in order for the strategy to be successful. The agency must find practical methods to authenticate practitioners and to authorize them to solve their clients’ problems. A solution that omits practitioners fails to recognize that many taxpayers benefit from representation because they:

- (a) Do not want to represent their selves;
- (b) Recognize that they are not proficient enough to represent themselves; or
- (c) Are afraid to engage with IRS enforcement staff.

A portal that faces taxpayers-only will place represented taxpayers at a disadvantage, force practitioners to continue to be parked on phone lines, and significantly impede taxpayers’ rights to be represented before the agency. [5/17/16, *Washington, DC, pages 77–78*]

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47 Robert Kerr, Senior Director, Government Relations, National Association of Enrolled Agents, Washington, DC.

**MR. LEWIS:** It's a great question: "What do those accounts look like? I think, first of all, you have to take one step back though and say, "Does one size really fit all?" And the answer is no.

So I envision an account that provides a lot of robust information for those that choose and have access, but it's not exclusive. It's only one element, just like today's financial institutions, you can bank several ways. And we need to recognize that we're going to have taxpayers that are going to choose for various reasons; some which we've heard and some that you can speculate. It's going to be different.

So in my mind, the kinds of things that I envision that an account would provide would be the types of information that we're now spending endless hours waiting on the phone trying to talk to somebody about. Things such as payment history, their filing history; what have you shown? [5/17/16, Washington, DC, page 95]

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## Doing digital right

### *National Taxpayer Advocate Public Forum – Public Comments*

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**MR. PARRISH:**<sup>48</sup> I'd like to talk to you about some of the results of that information, which I think really flies in the face of a lot of the conventional wisdom we often hear in D.C., about the public's attitude toward digital government, and I use it to kind of sound a cautionary note. [5/17/16, Washington, DC, page 132]

So interestingly, people are still more satisfied with dealing with federal agencies in person than they are either with mobile apps or websites. And then we ask more specific questions such as: "Should the government offer more digital services?" And this is one of those things where if you grab somebody off the street around here and ask them, they're going to say, "Oh, yeah. The public thinks the government should definitely offer more digital. People love digital."

Not true. Our dataset shows that when you ask people, "Should the government offer more digital services?" only 39 percent say yes. And that's actually down from 41 percent last year. Again this is real trend downward.

Fewer people think government should offer more digital services this year than they thought it last year. And by the way, this isn't people age 45 or age 60 and up. It's millennials too. You ask millennials: "Should the federal government offer more digital services?" only 39 percent say yes, down from 41. All right, so again a downward trend there. [5/17/16, Washington, DC, pages 133–135]

Then you ask people if you had the choice between trying to find the answer to a government question online, yourself, or just picking up the phone and calling somebody, which would you prefer? Sixty percent of people say they prefer to pick up the phone, including half of millennials. Not the story we usually hear about millennials, right? [5/17/16, Washington, DC, pages 116]

It doesn't mean don't do digital, right. What it means is you actually have to do digital right. Like I said at the beginning: good digital, not more digital, because after all — and it's a shame that I've been having to say this an awful lot lately, but I have — customers don't want digital.

What they want is the things that digital can provide if done right; right? They want ease, they want convenience, they want effectiveness. They want to feel safe, they want to feel good, right? They want to feel confident, right?

They don't want digital. They want the things digital can provide if it's done right, and too often it's not done right. So I'll offer a few pieces of advice here, on how to do digital right, and provide those things that people want:

- (1) First of all, find the right channel for each service. ...

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48 Rick Parrish, Senior Analyst, Customer Experience Professionals, Forrester Research, Inc., Cambridge, MA.

- (2) Second, design mobile services more strategically. ...
- (3) Third, you've got to market this stuff. Explain the benefits of digital channels. ...
- (4) And fourth, you've got to make sure that group of people that is not going to engage with you digitally is still able to interact with you as easily and conveniently, as effectively as possible because there is some group of people, whether it's because of Internet connectivity, or whether it's because of language skills or reading issues or whatever, might be unwilling to engage with you digitally. Don't forget about those people. [5/17/16, Washington, DC, pages 135–141]

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**MS. OREM:**<sup>49</sup> [Our] survey asked more than 1,600 U.S. adults a variety of questions about how they file, who helped them, and what they did with their refunds last year, as well as what they plan to do with their refunds this year. We also asked the respondents how they felt about taxes; namely, what they were afraid of and how confident they were that they would get the maximum refund, if they were in fact, entitled to a refund.

The results were segmented by gender and region, income, education, employment status, and other factors, and that revealed a variety of interesting findings. And one of them is that millennials are afraid of taxes, like really afraid. A whopping 80 percent said they're fearful about some aspect of preparing their taxes. [5/17/16 Washington, DC, page 144]

So what are the millennials afraid of? We found that about a quarter, so 22 percent said they're afraid of making a mistake on their tax returns. About one-in-six said they're afraid, they're leaving money on the table, and that they won't get the biggest possible refund.

And perhaps surprisingly, only 11 percent were worried about being audited. [5/17/16, Washington, DC, page 145]

What's also interesting is that the survey found that when they have tax questions, more millennials turned to tax professionals than go online for answers. And so this suggests that when things get complex, millennials still prefer humans to screens. However, millennials are leaving one authoritative source out in the cold, and that is the IRS.

Just nine percent said they'd turn to it with questions, which incidentally, is right in line with what other age groups reported in our survey. Perhaps most interesting, however, is our finding that millennials, who are digital natives, like filing paper returns more than most taxpayers do. An incredible 17 percent said they did a paper return last year and mailed it in, which is more than double the rate of those 35-and-older. [5/17/16, Washington, DC, pages 145–146]

So what does this all suggest? This all suggests there's definitely an opportunity to create a system that's less scary and more understandable for the largest generation in the history of the U.S., one that is still learning the ropes of adulthood. It also suggests that for many millennials, not everything revolves around a screen. Paper is still relevant, personal interaction is still valuable, and for some younger people, some things are best done the old-fashioned way. [5/17/16, Washington, DC, page 148]

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49 Tina Orem, Staff Writer, NerdWallet, San Francisco, CA.

**MS. OREM:** The good digital versus not-more digital, I think is spot-on. So often we characterize millennials as addicted to the screen. And it is really about quality, and not so much quantity, as we can see that sometimes they do opt for the paper returns. [5/17/16, Washington, DC, page 156]

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**MR. PARRISH:** One is this idea of paper rather than digital, you know there's some really interesting academic research. It's maybe two or three years old now, that showed that people's reading comprehension was a lot higher if they read in hard copy rather than on a screen, and that also cognition is better when you're handwriting rather than typing.

**NTA OLSON:** They handwrite it?

**MR. PARRISH:** Yes, indeed. [5/17/16, Washington, DC, pages 157–158]

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**MR. PARRISH:** Forrester has some really great data that show that if you provide people with a good experience when they have to deal with you, they are far more likely to come back to deal with you, even when they don't have to. ... One of the best things the IRS can do, is provide a much better experience when people do have to deal with them, and they will be much more likely to come back when they don't have to. [5/17/16, Washington, DC, pages 158–159]

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**MR. PARRISH:** You know one thing that I think works very well, and could build, dare we say, trust? And definitely works well in a digital format, is wizards. You know they guide people through tasks? ...

You know the IRS website is not you know a paragon of user-centric design at the moment, right? And so these sorts of wizards can be really valuable in helping people get comfortable with self-service in something that is scary, make it not scary, and help them see you guys as a trusted advisor. [5/17/16, Washington, DC, page 163]

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**MS. OREM:** I think that it's important to acknowledge that there are sort of two levels of tax preparation. First, you've got the mechanical level, which is calculations and you know completing the form, but there's also a strategic level that is important to consider. And with something like a wizard — or you know this is why human interaction is so important, is many people are — it's okay to file jointly, or separately, but should I?

I can physically do both, but which one should I choose: Should I itemize? Should I take the standard deduction? Those are things people are searching, for information for, all the time online. Basic strategic decisions like that. So it's important for any kind of online assistance or wizard to kind of acknowledge, you know to go beyond just helping with the mechanics, but walking people through, how to think about their tax situation in general. [5/17/16, Washington, DC, pages 164–165]

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**MR. SAPP:**<sup>50</sup> I think your previous panel pointed this out very well, the needs of the tax professional are different from the digital standpoint than the needs of the taxpayer, so we couldn't have one-size-fits-all, for example.

In our development of software, we have learned that a taxpayer doing their own taxes, they have a lot of questions and they want a lot of wizards, and they want a lot of pop-ups, and they want a lot of suggestions. They want, you're about to pick your filing status, here's some — whereas, the tax preparer, if we did that to them, they would be outside our doors with pitchforks because all they want is efficiency.

They know where they're going. They know what they want to do. They want to see how they got it done. So I think the approach digitally from the IRS side, would need to be the same.

Tax preparers, after all the hoops were jumped through, would want multiple access to multiple taxpayers, multiple clients dealing with multiple issues. Whereas a taxpayer usually would have a single issue, that they need to understand the issue, and they need someone to walk them through that. I think the wizard is a tremendous idea for the individual taxpayers, a way to walk them through those issues and get them the information they need. [5/17/16, Washington, DC, pages 167–168]

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**MR. PARRISH:** People have to walk away, not only with ease, not only with effectiveness, but also with the right emotion. You have to hit the right emotional quotient. We call these the “Three E's of customer experience: (1) Ease; (2) Effectiveness, and; (3) Emotion.” Right?

And our data shows that emotion is, in government, the most important one. You can make the experience as easy and effective as you want; unless it hits the right emotional triggers with people, they aren't going to walk away saying that was a good experience. And that doesn't mean it has to be melodramatic.

**NTA OLSON:** Right.

**MR. PARRISH:** It just means people have emotional needs, and those needs need to be met.

**MS. OREM:** I think that's 100 percent true. I was just going to say, I looked at — I was pulling more numbers out of the research the other night — that emotional connection and that need for acknowledgement that your situation may be unique to you, is important to people. [5/17/16, Washington, DC, pages 171–172]

**MS. OREM:** You know that people fear that which they don't understand. So introducing fear into the formula, you know there's a perceived lack of transparency that drives this need, I think, for a human interaction that is so important.

**MR. PARRISH:** And a human interaction that actually appears human, right? So often it's really easy to get stuck in that script — you know that script that was written by a committee of fifty lawyers, forty years ago, right? Sure that's technically, I suppose, a human interaction,

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<sup>50</sup> John Sapp, CPA, Chair, Council for Electronic Revenue Communication Advancement (CERCA); Vice President of Strategic Development, Drake Software, Franklin, NC.

but it doesn't actually have the hallmarks of a human interaction. And so it actually has to be a human interaction that feels human.

**MR. SAPP:** And that could include technology, such as a chat, right?

**MR. PARRISH:** Yes.

**MR. SAPP:** I mean a chat is done poorly then it's obvious that it's not a real human or at least a human doing fifty chats and not really paying attention.

**MR. PARRISH:** Right. Stop using macros and actually pay attention to me. [5/17/16, *Washington, DC, pages 176–177*]



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## The lack of clarity around what will be offered as self-service options, and the legal and due process implications of “self-corrections”

*National Taxpayer Advocate Public Forum – Public Comments*

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**MR. VANSINGEL:** If you think eligibility for the earned income credit, the premium tax credit, or education credits are easy to figure out, then I have a bridge to sell you. [3/9/16, *Glen Ellyn, IL*, page 23]

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**MR. MARZAH:**<sup>51</sup> I mean this example here [Jane, the Wage and Investment Taxpayer], the one that I’m just floored at is, you know, okay, I’d love to really see the sample communication that the IRS sends out saying your son does not have enough credits to be considered a full-time student. Because any time I look at an IRS notice, and I myself have gotten a number of them, it usually takes me three or four or five times to figure out what are they really trying to say. I think that gets to the crux of it and that’s why you need both the customer service from the IRS over the phone, and then the level of assistance that the clinics provide, or clinicians and representatives who really are providing a good service to say this is what this really means. All you need to do is go get the transcript.

I think in three-quarters of cases, whatever that notice would be, it would not be, you would not discern right away what it actually is asking you to do.

**NTA OLSON:** You know, in both of the vignettes, both in the Jane vignette and the small business vignette, there is this Jane resubmits her, she agrees with the IRS and she resubmits her return. In the small business vignette, everybody agrees with this assessment and you submit, you know, you agree to that virtually.

I have just been wondering what actually just happened in that, and particularly in the Jane scenario, and I think this goes to with getting W-2s and 1099s very early, so much work in the vision of the future is going to be frontloaded before you get past the refund and past the return being filed. So, this Jane scenario is very important. She agreed to changes on a return that has not yet been accepted. What does that mean? And if she didn’t agree since it’s in the pre-refund environment, it will automatically go to the notice of deficiency. She will not get the right to an administrative appeal. She will not get a 30-day letter because it is pre-refund environment.

You think about what’s being frontloaded in the pre-refund area, and I think that that’s something that we really need to be careful and think about and talk about. Even on that

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51 David Marzahl, President and CEO, Center for Economic Progress, Chicago, IL.

online stuff, even in the actual audit, you know, does the person actually understand what they're agreeing to? You know, if they're just accepting an adjustment, you know, do they actually understand what they're agreeing to online? [3/9/16, *Glen Ellyn, IL, pages 79–81*]

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**MS. ATKINSON:** One of the things that I noticed in doing some background reading on the future state proposal is these vignettes that were created to try to explain the online accounts. And don't get me wrong, I think having online accounts is a really wonderful thing. As a practitioner, you know, having that kind of accessibility would be really great. Some of the other panelists will talk about the digital divide and the challenges that that's going to create. But when you even look at the vignettes<sup>52</sup> that the IRS has prepared about this, what's astounding to me is that they're unsuccessful. And they got to write them. So how is it that these are unsuccessful?

For example, the woman, Jane, who checks into the earned income tax credit goes through these online educational steps. You know, if those had been done, perhaps, in a more interactive way — and this is why person-to-person contact or even telephone contact is so important, she might've realized before her tax return was submitted that she couldn't claim this earned income tax credit for her son. It's only later after she's already filed her return, there's this data matching and all of that. And even then, I question whether is this really a correct result because we don't have enough facts to really know whether there might've been some other qualifying criteria for her to claim the earned income tax credit in this case. And these online kind of flow charts and things like that are helpful and good, but they often miss the nuance.

Our tax code is very, very complicated and it's better for the IRS to be in a position of listening to the taxpayer than having an authoritarian type of regime that not only makes the taxpayer feel like he or she is not being listened to, but sometimes leads to incorrect results and downstream compliance problems because the person is so turned off to the tax system by their experience, they don't feel like complying anymore.

The other vignette<sup>53</sup> involving the small business owner, Bennett, really is even more disturbing to me because in this one, there is a bit more interaction and there's this discussion about how his business expenses may be excessive. And certainly, you know, when audit algorithms are created and things, the IRS is looking for situations where someone is over-claiming expenses. Those of us who work in the tax world are very familiar with that.

So here's an opportunity, prior to the return being filed to correct that behavior. And if the deductions are excessive, to educate the taxpayer and to get it right before the return is submitted. But in this example, that apparently doesn't work. And Bennett reviews the items and still claims them, which leads me to believe that he probably was entitled to claim those deductions. We don't really know.

So then he gets audited. And if I were Bennett, I would find that to be a very negative experience because here I've gone through what the IRS asked me to do and I was told about these deductions and I did review them very carefully before I submitted, but now I'm being audited anyway.

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52 IRS Taxpayer Experience of the Future Vignette – Individual Taxpayers, <https://taxpayeradvocate.irs.gov/public-forums>.

53 IRS Taxpayer Experience of the Future Vignette – Small Business Taxpayers, <https://taxpayeradvocate.irs.gov/public-forums>.

So then in the course of the audit, tellingly, he's assigned to someone on the other side of the country. And this is sort of back to Angela's experience. Well, is this person on the other side of the country, however well-meaning they may be, however smart they may be, really familiar with Bennett's situation? Maybe his business expenses are high because of the particular business he's in, his geographic location, other factors. We don't really know.

He then goes on and ends up conceding this audit after a bevy of "electronic communications." So we don't really know at the end of this whether this has been an outcome where the deductions were denied and that was proper. And even so, it was a negative experience for Bennett. Or whether really those expenses may have been valid and he just had such a poor experience that he gave up because he was paying a representative to handle the audit and it maybe just got too costly for him. [5/13/16, *Baltimore, MD*, pages 29–30]

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**MS. MCKINNEY:** And I also think the margin of error, anyone that's used a smart phone knows you swipe, you click in the wrong place — I have a lot of Facebook friends right now that my 4-and-half-year-old has requested for me. ... So I think now the margin for error for me is I guess I have some more friends now. But on your tax return, you know, if you're trying to handle complaints, there's a really serious implication if you're hitting something wrong or if you think you have the box lit up and it's not totally mobile-optimized. You could really mess up and make things actually worse. [5/13/16, *Baltimore, MD*, pages 68–69]

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**MR. HUDAK:** You know, in a tax matter you can take more than one position. We had a client in appeals. We came in late just for the appeal, and we actually took a position contrary to their previous attorney. And the client said, what are you doing? And when we presented a clear business case of why we had to take this position, she agreed, and we ended up saving the taxpayer \$60,000 because we took a position contrary to another practitioner.

This idea of an individual taxpayer solving their own problems, how would they know? Even when practitioners and revenue agents don't even agree sometimes, taking that dynamic out is dangerous. Millennials love to use their information, but there's ways to look at problems, tactically, strategically, which position should I take?

My partner Google isn't really good at that. [4/8/16, *Harrisburg, PA*, page 43]

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**MR. KERR:** We are deeply concerned the IRS will launch an account for individual taxpayers and then fail to follow through with the practitioner account, making it easy for taxpayers to pay balances the agency suggests are due, while making it difficult and expensive for representatives who are mired in a paper-and-phone process that takes weeks, if not months, to pursue statutorily-provided due process rights. [5/17/16, *Washington, DC*, page 79]

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**NTA OLSON:** So much of what's going on in the online account is viewed in the pre-refund environment. So if you file a return and there's an issue with it: you left off a 1099, or maybe, as in the vignette, with Jane, we've run you through the dependent database and we think you're not eligible for it this is all happening in pre-refund. The taxpayer is probably not going to be with a representative at that point, a practitioner, as you say, Bob.

So you're going to have these taxpayers, if they sign onto an online account, agreeing to things that will have lots of consequences going forward, that will become a self-assessed liability. And then when you, as a practitioner, go in to say, "Well that was wrong," the IRS will say, "Well, the taxpayer agreed to that." And then if you disagree, you will not get the right to an appeal because it's pre-refund. The next thing you'll get is a Notice of Deficiency. So I mean you can all comment, but I'm throwing it out to John, and then anybody who wants to.

**MR. AMS:**<sup>54</sup> Well, we've all gone online, you know every time there's a new app, or something that you download, and you have to agree to the you know, seventy-eight pages of legalese.

**MR. KERR:** And say that you read them, too.

**MR. AMS:** Oh, absolutely. And you know forget understanding them. But that is going to be a problem, especially if you're talking about not uneducated, but undereducated for that purpose, kind of a taxpayer. They're signing away rights that are on page 45 that you know they have no idea what it is. And this assumes that they know what their rights are before they even start down that path, which you know is not an assumption I'm willing to make. [5/17/16, Washington, DC, pages 100–102]

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54 John Ams, Executive Vice President, National Society of Accountants, Alexandria, VA.

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## The implications of online accounts for taxpayers with limited online access or digital expertise, and the impact of security concerns on taxpayer online account usage

*National Taxpayer Advocate Public Forum – Public Comments*

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**MR. VANSINGEL:** Indeed, the future state vision makes many assumptions. It assumes that people trust the government enough to engage with them online. It assumes that those people have the capacity, both from an access and connectivity standpoint and also from a literacy and computer proficiency standpoint. It also assumes that all problems can be fixed through this medium without the need for personal interaction. It assumes that we do not have vulnerable populations such as the elderly, the disabled, and those with language barriers. Taxpayers falling into these groups will have difficulty participating in the online interface.

If the IRS gets out of the business of talking to taxpayers through these traditional mediums, they will force some of our most vulnerable populations to pay someone just to comply with the tax laws. It is unknown if the Service will even have the authority to regulate these people that they're paying to help. [3/9/16, *Glen Ellyn, IL, pages 23–24*]

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**MR. MARZAH:** I will say in carefully reviewing the scenarios that the IRS has presented as part of its potential future state, that it does not mesh in any way with the reality that we experience at the Center for Economic Progress, our 70 staff who are at the front lines of providing taxpayer assistance and services, and the thousand volunteers who we deploy in the rolls from doing tax representation cases down to tax preparation assistance or just answering everyday questions. [3/9/16, *Glen Ellyn, IL, page 30*]

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**MR. SMITH [reporting on Pew Research Center data]:**<sup>55</sup> So at a broad level the first thing I think is worth noting is that even in the year 2016, 15% of Americans when we asked them if they use the internet from any device from any location tell us that they do not do that. So if you leave with nothing else the notion that everyone out there is even online regardless of what type of device they are using that should hopefully disabuse you of that notion. [2/23, *Washington, DC, pages 152–153*]

And when you look at the barriers to adoption for people who are not currently online what you find is that most of them have a number of challenges to accessing the online world. So many of them face challenges around digital literacy or technology skills so for instance if you ask people who don't currently use the internet whether they would be able to do that on their own the vast

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55 Aaron W. Smith, Associate Director, Pew Research Center Internet Project, Washington, DC.

majority of them tell you that they would not be able to do that without assistance. [2/23/16, *Washington, DC, page 153*]

[A]bout two-thirds of Americans say they have broadband at home and so obviously broadband at home is kind of the gold standard for online access. The FCC and various government entities have spent a lot of effort promoting increased broadband adoption.

And when you look at the data that we've collected what we've found is that broadband adoption has really plateaued in many ways in the last couple of years. So broadband adoption today is about what we found it to be three or four years ago.

And there is sort of an interesting kind of trend going on here. So we've seen broadband adoption plateau. At the same time when we ask people about the importance they place on broadband we see significantly more non broadband adopters today saying that a lack of broadband at home is a real disadvantage for doing various things. So whether that is getting access to government services, getting health information, accessing job information over the last five years we've see a big uptick in the perceived importance of broadband to non-broadband adopters. Broadband is seeming more important at the same time adoption has actually plateaued. [2/23/16, *Washington, DC, pages 154–155*]

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**MR. SMITH:** [P]eople's ability to engage with sort of complex activities or kind of cognitively challenging things that they need to do online can be much more difficult when they don't have access to a broadband subscription at home either because they are operating through a small smart phone screen or because they have to re-route their lives in order to get to a library or a coffee shop or I don't know if any of you read the New York Times article on school children without broadband. And they are literally sitting up against the wall of the school after hours trying to access the public wi-fi from the school so that they can do their homework.

So that is one impact of lack of adoption in a meaningful sense; it is just much more challenging for people to do anything beyond sort of basic activities. [2/23/16, *Washington, DC, pages 158–159*]

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**MS. MACMILLAN:** [T]axpayers who at least understand what they are doing and can understand the language of what their account is telling them, the fact that they will be able to self-correct I think will be a huge advance.

But also I know I am on the IRS website daily and I know what I'm looking for and where to find it and how to read what's on there. And last year's IRSAC, the 2014 report, we had looked at the language and how difficult it is to understand notices and Flesch-Kincaid reading level of both notice and all the letters that come from the IRS are somewhere around a 12th grade level whereas most American taxpayers read at a 9th grade or lower level. [2/23/16, *Washington, DC, page 99*]

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**MR. SMITH:** So I was thinking about examples of this that I could talk about in this discussion and picturing myself as a single mom whose got her kids home all day and needs to be able to talk to a representative during 8:00 to 5:00 business hours so that she can address her issue that she is having with her return. And you know for someone like me that is super easy; right. I've got a computer in front of my face literally 24 hours a day if I wanted one. For someone like that if they don't have a computer in the house they are going to have to find a way to park the kids somewhere for a few hours so they can go to a library or manage their kids running around at McDonald's. That is kind of a subpar user experience in a lot of way and doesn't really lend itself to being able to engage with sort of in many cases sort of crucial life decisions in a thoughtful informed way. So I think that would be my kind of take on what's the impact of that in terms of people's lives and how they can navigate these types of services. [2/23/16, Washington, DC, pages 178–179]

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**MR. GONZALEZ [reporting on Federal Reserve data]:** [F]olks in more rural areas tend to have about the same ownership of mobile phones, slightly less but not much different. But we see a large difference in the ownership of smart phones. Much lower incidence of smart phone ownership among rural Americans. It is about, if I can find that number, 54% smart phone ownership in rural areas as opposed to 63% in more urban areas. You need a smart phone to undertake more complicated transactions quite frankly. And then also once you do have a smart phone you need to have that mobile broadband access and folks in more rural areas say that they are less likely to always have available online access than those in urban areas. So at least these two factors might be contributing but of course there could be other reasons like are people in rural areas older? That alone is a demographic factor that explains overall lower usage in mobile banking, mobile payments, smart phone ownership, et cetera. [2/23/16, Washington, DC, page 186]

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**MR. GONZALEZ:** What I find intriguing is that non-users feel that the transactions that they are not undertaking are unsafe. So they are making an assessment about a transaction that has not occurred or methods that have not occurred. Second when you give them an option of saying well, those transactions have now been magically made more secure they are still not interested. [2/23/16, Washington, DC, page 181]

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**MR. HURST:** So, we [NYC Department of Consumer Affairs] are keenly aware of the budgetary challenges the IRS continues to face and the budget cuts that have been involved with some of these decisions. But we firmly believe that those resources that it does have should not be taken from the taxpayer engagement, outreach or VITA services. We think these are critical services being provided to New York City taxpayers. We share the NTA's concerns that the IRS's deliberations to reduce telephone and face-to-face interactions will leave low income and middle-class taxpayers, who may not have the resources to pay for individualized attention, without guidance or confidence to navigate the tax code. This may put further strains on localities, like New York City, to help facilitate preparer access and will undoubtedly open the door to further predatory behavior by some commercial tax preparers.

As Legal Ombudsman, I can speak to the importance of maintaining individualized services. Even though we may have a number of resources available online people, many New Yorkers, need to speak to someone directly. They want to talk to someone on the phone who will explain it to them and I see this with business owners all the time. Further, DCA would caution that the IRS not assume the technological improvements such as a self- service e-portal, will reduce taxpayers' need for personal service when, in fact, experience shows otherwise. New York City SPEC data shows that 76 percent of the EITC recipients in New York City used pay preparer services and this compares to 56 percent of EITC recipients nationally and we believe that this indicates that many low and middle income taxpayers want personal, one-on-one support in tax matters. [3/18/16, *Bronx, NY, pages 40–41*]

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**MS. SERRATO:** [I]dentity theft, data theft, just the same things that people are faced with here domestically, having you know your social security picked up, your bank account numbers, but sort of the added component that we feel for Americans overseas is being identified as an American. Somebody has your address.

They know where you are. They know your bank account. And in the heightened world of terrorist threats this is a big concern. [5/17/16, *Washington, DC, page 38*]

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**MS. BRUCKNER:** I think that with the population sharing economy, it would be a mistake to think that these people, while they are tech-savvy, that they have internet access in their homes. They primarily have internet access through their phones. And trying to figure out, whether or not you can expense a certain expense that you incurred in generating your business income, trying to do that research on your phone is incredibly frustrating, and I think we can all relate to that. [5/17/16, *Washington, DC, page 39*]

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**MR. SAPP:** Also, when we talk about promoting the different portals and those types of things, I found it interesting, that back-to-back weeks on *60 Minutes* — one week they talked about how the banking industry is going to cellular telephones; everybody has one, everybody can bank. You can send money phone-to-phone. The next week, they're talking about how every phone in the United States can be hacked, just like that.

So everyone that changed to digital currency, and changed to digital banking, the next week, was scared to death and had to turn it all off. We give mixed messages. We have to have a secure system that's in place, and provide taxpayers with methods, and partnerships with private industry, where appropriate, to help them comply with their tax obligation and do it in a way that they feel secure. [5/17/16, *Washington, DC, page 154*]



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## The implications of granting access to taxpayers' online accounts to unregulated return preparers

*National Taxpayer Advocate Public Forum – Public Comments*

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**MR. BEST:**<sup>56</sup> [B]efore we're expanding the role for unregulated preparer or unenrolled preparers we should be first making sure the role they have now even is working. We have to establish some kind of minimum standards for these folks. [2/23/16, *Washington, DC, page 150*]

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**MR. RAGHAVAN:**<sup>57</sup> So, some problems I [and Illinois Attorney General Office] see with IRS modernization for low income taxpayers, at least the ones that I deal with, they tend to have their returns prepared at brick and mortar stores that are out there in their neighborhood. These preparers are largely unregulated. They tend not to be CPAs or enrolled agents or attorneys. Many of them tend not to have any qualifications at all, often they're just high school dropouts that took maybe some online training course if their organization provided for it that some of the bigger chains do. [3/9, *Glen Ellyn, IL, page 37*]

[T]he ones that I see take advantage of low income taxpayers, price insensitivity and lack of sophistication by charging an exorbitant fee for really simple return items. These large fees can create really bad incentives. So, a lot of these preparers, they don't compete on price, they compete on size of refund and other incentives. So, when you compete on size of refund, it gives the preparer a real incentive to inflate income items because they're not going to bear any of the cost of an audit.

So, some examples, People v. Mo' Money. If you want to see, actually the perfect way to crystallize my talk, just Google Mo Money and look at one of their ads and you'll see why I'm concerned about exploitation in the neighborhoods. Mo' Money surprisingly was a large chain and it had 250 stores which is really frightening. So, in 2012, Mo' Money did this phantom bait and switch loan program. Basically, what they did is in December of 2011, they were advertising on television that you could get quick cash through these loans that they were offering. They had no financing for these loans, so what happened is consumers would go into their stores, they would apply for a loan and they would give their Social Security number, and then Mo' Money would say sorry, you've been rejected. Then Mo' Money would just file their return without their authorization and take 10 to 15 percent of their refund.

So, this next slide, this just shows Mo' Money's really complicated fee distribution chain. The main thing to takeaway from this is Mo' Money and all their friends, many of these were just Mo' Money's friends' companies, were just feeding off of people's refunds with these fake fees. Some of these entities are real.

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56 Michael Best, Senior Policy Advocate, Consumer Federation of America, Washington, DC.

57 Vijay Raghavan, Assistant Attorney General, Consumer Fraud Bureau, Office of the Illinois Attorney General, Chicago, IL.

So, we [Illinois Attorney General] sued Mo' Money in March of 2012. The Department of Justice filed a civil suit on December 5th and they also filed some criminal actions. We were able to recover a lot of this money. But Mo' Money can be a good example of how a bad prep can exacerbate noncompliance. [3/9/16, *Glen Ellyn, IL*, pages 37–40]

[B]ased on what I see, I'm concerned that though modernization may have many benefits, it could potentially put up great hazards for low income taxpayers that have to go to these brick and mortar stores and may have to give their information to these unscrupulous preparers. So, in the absence of any kind of regulation of these preparers, I worry about exploitation. [3/9/16, *Glen Ellyn, IL*, page 42]

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**MR. QUINONES:** I'm sure that the United States will never allow a mechanic to perform an open heart surgery or to have a surgeon prepare oil transmissions and cleaning. That is exactly what is happening right now. The bus driver prepares or anyone else, can prepare taxes. Sometimes a police officer comes to me and tell me there is a policeman in the precinct who does everybody's taxes. I think it's about time that the Department of the Treasury, the Internal Revenue Service, the United States Congress puts sufficient pressure to have qualified people preparing taxes and we have to educate our population to don't allow anyone to prepare your taxes unless you know that that person is qualified, that their name is on your return and that person is going to be there when you need their services again. That is the biggest problem that I have encountered. [3/18/16, *Bronx, NY*, page 20]

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**MR. HURST:** Finally, I would be remiss not to raise a concern regarding a proposal to provide tax preparers with greater access to taxpayer online accounts. In light of the complaints we have received regarding preparers filing taxes without an authorization, we are concerned that unscrupulous preparers may use this additional access to engage in further misconduct. Without strict security measures, there is an increased risk of identity theft and greater opportunities for unauthorized tax filing. [3/18/16, *Bronx, NY*, page 42]

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## The increasing workload for VITA sites and the compression of the filing season for professional tax preparers

*National Taxpayer Advocate Public Forum – Public Comments*

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**MR. MARZAHL:** We believe that there are unnecessary program grant restrictions on Volunteer Income Tax Assistance provided by organizations like Center for Economic Progress. We prepare Schedule C as our experienced staff will attest, we do a very good job of it. One in ten filers we serve has self employment income. The IRS traditionally does not allow most VITA organizations to do Schedule C returns. Furthermore, we think with the kind of experience we have in doing this work and the training we provide to our volunteers, we could be doing Schedule D's and F's and also more work preparing ITINs, individual taxpayer identification numbers for immigrants or others who qualify.

A few other points. We believe that grant funding is unnecessarily restrictive. We have to play games with our budgets in order to move the money around. Technically, under the VITA grant program, funding is not allowed for quality review of tax returns, and we have a very rigorous commitment to quality review. We do not want any of our returns to go through the system, to get rejected or otherwise end up as a tax clinic case that Andrew has to handle or that Paul who runs our tax clinic takes care of. So, the ability to do quality review, to serve as a certified acceptance agent for ITINs, and year-round services. [3/9/16 *Glen Ellyn, IL, pages 32–33*]

Under the VITA program, everyone has to fall under a very strict income standard. So, for example, technically, we could not serve a tax filer right now coming to us who has no job, no source of income, but who made \$60,000 last year. They would have to go pay a paid preparer. We think that's undue burden on us and really unfair on taxpayers. [3/9/16, *Glen Ellyn, IL, page 35*]

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**MR. TEJEDA:** [The VITA grant] has some limits on it. It doesn't allow us to pay for a quality reviewer which is critical, even as we use our volunteers we have to have quality reviewers who make sure that every tax return is seen by two people before it walks out the door, and we really want to have the ability to use that money to pay to strengthen that service and it doesn't allow us to use that same money to pay for the post season work. So, as you may think about reducing some of the calling centers realize that is just going to shift to the VITA sites. [3/18/16, *Bronx, NY, pages 15–16*]

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**MR. GROSECLOSE:** I would say in general my expectation is returns have gotten a lot more difficult. Just affordable care, for example, what do I do with this 1095? So there has been a lot more complexity. And compression — what we call compression, the work compression, January through April 15 has been a problem for our industry for a lot of years. Adding more complexity makes it more difficult for our pipeline. Our pipeline can only expand so much within four months. It's hard to find experienced people available for only four months of the year.

So either we staff up and hire for 12 months or we just extend. Some people — a lot of people don't like extending. They feel it puts them on the hit list with the IRS. We try to convince them there's no statistics of that. So it is very difficult. [4/4/16, *Hendersonville, NC*, page 93]

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**MR. HUDAK:** Compression is a really serious issue. You have practitioners making serious mistakes because they're really tired. There's a lot of pressure with the refundable tax credits. People want their money and they want it now. But the due dates and when they get the refund, those are arbitrary numbers. The first year there will always be transition pain, but, going forward, what's the difference if you get your money every February, as opposed to every April or every June? We could stagger some of this, you know, maybe by birth dates, maybe have two filing seasons; people born on odd dates and people born on even dates. It would improve the situation for the practitioner, and we would be able to do a better job. It certainly would serve the government's purpose.

The delaying the refundable tax credit is a very good move. Accelerating the dates is a terrible move. I liked your [NTAs] February suggestion in the 2013 report, as opposed to the January, because then at least we would have another month to help clean that stuff up. It serves nobody's purpose putting junk into the thing. And they are using all of this information, with filters, to determine whether or not it's a fraudulent return or it's actually connected to a real taxpayer. So to the extent that the information doesn't match is a problem. [4/8/16, *Harrisburg, PA*, pages 55–56]

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## The IRS Mission – what should the IRS be focusing on in the 21st century?

*National Taxpayer Advocate Public Forum – Public Comments*

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**MR. BAILEY:** But there's another aspect of Internal Revenue Service that is unique, I think, as a government agency in that it is — whether it realizes it or not, is in the education business. As we check off the exemptions, the deductions, and the way that we make our investments and our savings and our expenses and everything, the Internal Revenue Service actually shapes society and it actually shapes business. [5/5/16, Red Oak, IA, pages 8–9]

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**MS. PAM OLSON:** I have often thought that the reality is that given everything that we've put into the IRS's territory to administer for us that we actually need to divide the IRS into two separate agencies. We'll call one Revenue America be responsible for collecting the tax we need to fund the government. We'll call the other one Finance America and it will be the one that distributes all of the benefits. Because I think it does get to be a very difficult situation to have an agency charged with doing both of those things.

But so I think the most important thing is for the IRS to fully embrace the multifaceted responsibilities that it has with respect to both collecting tax as well as administering benefit system and administering lots of other things and making sure that it is factoring that into how it plans its service. [2/23/16, Washington, DC, pages 46–47]

## NATIONAL TAXPAYER ADVOCATE PUBLIC FORUMS PANELS

### WASHINGTON, DC

February 23, 2016

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**John A. Koskinen**, *Commissioner*, Internal Revenue Service, Washington, DC

**Pamela F. Olson**, *Washington National Tax Services Practice Leader*, PwC, Washington, DC

**Leslie Book**, *Professor of Law*, Villanova University School of Law, Villanova, PA

**Jennifer MacMillan**, *EA*, Chair, Internal Revenue Service Advisory Committee (IRSAC),  
Santa Barbara, CA

**Timothy J. McCormally**, *Vice Chair*, Internal Revenue Service Advisory Committee (IRSAC),  
*Director*, Washington National Tax, KPMG LLP, Washington, DC

**Michael Gangwer**, *Chair*, Information Reporting Program Advisory Committee (IRPAC),  
*Tax Advisor*, The Vanguard Group, Inc., Valley Forge, PA

**Jim Buttonow**, *Chair*, Electronic Tax Administration Advisory Committee (ETAAC), HR Block,  
Greensboro, NC

**Gina Jones**, *EA*, Chair, Taxpayer Advocacy Panel (TAP), Delhi, LA

**Michael Best**, *Senior Policy Advocate*, Consumer Federation of America, Washington, DC

**Aaron W. Smith**, *Associate Director*, Research, Pew Research Center, Washington, DC

**Arturo Gonzalez**, *Chief*, Consumer & Community Development Research, Board of Governors,  
Federal Reserve, Washington, DC

### GLEN ELLYN, IL

March 9, 2016

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Rep. Peter Roskam**, *Member of Congress*, 6th Congressional District, Illinois

**Andrew VanSingel**, *Director*, Low Income Taxpayer Clinic, Prairie State Legal Services, Inc.,  
Rockford, IL

**David Marzahl**, *President & CEO*, Center for Economic Progress, Chicago, IL

**Vijay Raghavan**, *Assistant Attorney General*, Consumer Fraud Bureau, Office of the Illinois Attorney  
General, Chicago, IL

**Mark Mirsky**, *Managing Director*, ROI Business Services, LLC., Bartlett, IL

### BRONX, NY

March 18, 2016

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Rep. José E. Serrano**, *Member of Congress*, 15th Congressional District, New York

**Elliot Quinones**, *Tax Accountant*, Elliot Quinones & Associates, Bronx, NY

**Erik Schryver**, *Senior Staff Attorney*, Bronx Low Income Taxpayer Clinic, Legal Services NYC, Bronx, NY

**German Tejada**, *Senior Director*, Income Policy, Food Bank for New York City, New York, NY

**James Hurst**, *Legal Ombudsman*, New York City Department of Consumer Affairs, New York, NY

### **HENDERSON COUNTY KING STREET MEETING ROOM, HENDERSONVILLE, NC** **April 4, 2016**

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Rep. Mark Meadows**, *Member of Congress*, 11th Congressional District, North Carolina

**Arthur Bartlett**, *Program Director / Attorney*, LITC Legal Services of Southern Piedmont, Charlotte, NC

**Rollin J. Groseclose**, *CPA, CGMA, Shareholder*, Johnson Price Sprinkle PA, Asheville, NC

**Bob Smith**, *Volunteer Coordinator*, AARP Tax Aide – Henderson County, Hendersonville, NC

**Robert Wall**, *Esq. Attorney, Member*, Spilman Thomas & Battle, PLC, Winston-Salem, NC

### **HARRISBURG, PA** **April 8, 2016**

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Senator Bob Casey**, United States Senate, Pennsylvania

**Robert Hamilton**, *Managing Attorney*, MidPenn Low Income Taxpayer Clinic, MidPenn Legal Services, Carlisle, PA

**Susan D. Diehl**, *CPC, QPA, ERPA, President*, PenServ Plan Services, Inc., Horsham, PA

**Warren Hudak**, *Enrolled Agent, Owner*, Hudak & Company, LLC, New Cumberland, PA

**Roger Eberlin**, *Identity Theft Victim*, West Grove, PA

### **RED OAK, IA** **May 5, 2016**

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Senator Charles Grassley**, United States Senate, Iowa

**Varel Bailey**, *President*, Bailey Farms, Inc., Anita, IA

**Tamara Borland**, *Director*, Low Income Taxpayer Clinic, Iowa Legal Aid, Des Moines, IA

**Alvin LaMar**, *Enrolled Agent*, Iowa Farm Business Association, Iowa Falls, IA

**Kristy Maitre**, *Tax Specialist*, Agricultural Education & Studies, Iowa State University, Ames, IA

**Wendy Smith**, *VITA Program Coordinator*, United Way of Wapello County, Ottumwa, IA

### **BALTIMORE, MD** **May 13, 2016**

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Senator Ben Cardin**, United States Senate, Maryland

**Angela Armstrong**, *Hospital Administrator and Founder*, Animal Emergency Hospital, Bel Air, MD

**Elizabeth Atkinson**, *Attorney*, LeClairRyan, PC, Norfolk, VA

**Adam Crandell**, *Attorney*, Law Office of Adam N. Crandell, LLC, Baltimore, MD

**Robin McKinney**, *Director and Co-founder*, Maryland CASH Campaign, Baltimore, MD

**Donald B. Tobin**, *Dean and Professor of Law*, University of Maryland, Maryland

**Beverly Winstead**, *Director*, University of Maryland Carey School of Law LITC, Winstead Law Group, LLC, Laurel, MD

## WASHINGTON, DC

May 17, 2016

**Nina E. Olson**, *National Taxpayer Advocate*, Taxpayer Advocate Service, Washington, DC

**Larry B. Gibbs**, *Member Miller & Chevalier*, Washington, DC, Former Commissioner, Internal Revenue Service

**Caroline Bruckner**, *Executive-in-Residence*, Accounting & Taxation Managing Director, Kogod Tax Policy Center Kogod School of Business, American University, Washington, DC

**Marylouise Serrato**, *Executive Director*, American Citizens Abroad, Rockville,

**MD Johnette Hartnett**, *Ed.D, Senior Director*, Strategy & Research, National Disability Institute, Washington, DC

**Eric L. Green**, *Attorney at law* Green & Sklarz, LLC, New Haven, CT

**Troy K. Lewis**, *Chair*, Tax Executive Committee, AICPA, Lewis & Associates, CPAs, LLC, Draper, UT

**Robert Kerr**, *Senior Director*, Government Relations National Association of Enrolled Agents, Washington, DC

**John Ams**, *Executive Vice President*, National Society of Accountants, Alexandria, VA

**Rick Parrish**, *Senior Analyst serving Customer Experience Professionals*, Forrester Research, Inc., Cambridge, MA

**Tina Orem**, *Staff Writer*, NerdWallet, San Francisco, CA

**John Sapp, CPA**, *Chair*, CERCA, *VP of Strategic Development* Drake Software Drake Software, Franklin, NC



## Review of the 2016 Filing Season

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A year ago, we assessed the 2015 filing season and analogized it to Charles Dickens' novel, *A Tale of Two Cities*:

For the majority of taxpayers who filed their returns and did not require IRS assistance, the filing season was generally successful. For the segment of taxpayers who required help from the IRS, the filing season was by far the worst in memory.<sup>1</sup>

We are pleased to report the 2016 filing season proceeded much more smoothly. Taxpayers who filed their returns without IRS assistance again experienced smooth sailing. Taxpayers who required help generally called the IRS, and the IRS nearly doubled the percentage of calls it answered and reduced wait times by more than half. The IRS deserves considerable credit for these improvements, as does Congress for providing the additional funding for taxpayer service in the Fiscal Year (FY) 2016 appropriations cycle.

However, the IRS continued to scale back traditional service options on which some taxpayers heavily rely. Among other things, the IRS continued its relatively recent restrictions on answering tax-law questions and helping taxpayers prepare returns; reduced walk-in service at its roughly 375 Taxpayer Assistance Centers (TACs); substantially reduced the availability of free tax forms, instructions, and publications in its TACs and other public places; and terminated an online tool through which taxpayers could obtain answers to general questions.

When these service reductions are viewed in combination with the IRS's "Future State" plan, which is largely designed to reduce the costs of taxpayer service by pushing taxpayers to use online accounts,<sup>2</sup> we are deeply concerned about the adequacy of taxpayer service options the IRS will be providing to taxpayers in five years and beyond.<sup>3</sup>

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1 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 8.

2 The IRS believes online taxpayer accounts will enable the agency to achieve significant cost savings. In recent congressional testimony, the Commissioner of Internal Revenue Service stated the move toward online accounts "is driven, in part, by business imperatives; when it costs between \$40 and \$60 to interact with a taxpayer in person, and less than \$1 to interact online, we must reexamine how we provide the best possible taxpayer experience." *FY 2017 Treasury Department Budget Request: Hearing Before the Subcomm. on Financial Services and General Government of the S. Comm. on Appropriations*, 114th Cong. (2016) (statement of John A. Koskinen, Commissioner of Internal Revenue Service).

3 The Preface, *supra*, includes comments from taxpayers, practitioners, and stakeholders concerning the Future State plan. See also National Taxpayer Advocate 2015 Annual Report to Congress 3-13 (Most Serious Problem: *Taxpayer Service: The IRS Has Developed a Comprehensive "Future State" Plan That Aims to Transform the Way It Interacts with Taxpayers, But Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet*).

There is no doubt taxpayers are experiencing many problems today because the IRS lacks adequate resources to assist them. At first glance, taxpayer service is labor-intensive. Since FY 2008, the IRS has received more than 100 million calls on its toll-free telephone lines and more than five million visits in its TACs every year. While some calls can be handled with automation, tens of millions of taxpayers with account-specific or detailed questions need to speak with an IRS employee. Since FY 2010, we estimate the IRS's budget has been reduced by about 19 percent on an inflation-adjusted basis.<sup>4</sup> This year, Congress has given the IRS an additional \$290 million, which it directed the IRS to spend to improve telephone service, combat refund fraud and identity theft, and enhance cybersecurity. The IRS has allocated this funding as follows:

**FIGURE 2.1.1, IRS Allocation of \$290 Million Increase in Appropriations from Fiscal Year (FY) 2015 to FY 2016 (Millions of Dollars)<sup>5</sup>**

Appropriation Account	Areas of Increase			Total
	Taxpayer Services	Cybersecurity	Identity Theft Protection	
Taxpayer Services	\$176.6	-	\$0.2	<b>\$176.8</b>
Operations Support	\$1.8	\$95.4	\$11.0	<b>\$108.2</b>
Enforcement	-	-	\$4.9	<b>\$4.9</b>
<b>Total</b>	<b>\$178.4 (61.5%)</b>	<b>\$95.4 (32.9%)</b>	<b>\$16.1 (5.6%)</b>	<b>\$290 (100%)</b>

Based on currently available information, it appears the IRS put these funds to good use. We encourage Congress to continue to provide the IRS with additional funding — combined with proper oversight to ensure the funding is well spent — so that our nation's taxpayers receive the assistance they deserve.<sup>6</sup>

Overall, the IRS received and processed most tax returns in a timely manner, and it issued timely refunds to most taxpayers who were entitled to them. The following figure provides the IRS's overall filing season statistics.

4 In FY 2010, the agency's appropriated budget stood at \$12.1 billion. For FY 2016, its budget is \$11.2 billion, a reduction of nearly 8 percent over the six-year period. Inflation over the same period is estimated at nearly 11 percent. See Office of Management and Budget, *Fiscal Year 2016 Budget of the U.S. Government, Historical Tables* (230-31), Table 10.1, <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist.pdf> (showing Gross Domestic Product (GDP) and year-to-year increases in the GDP). In addition, the IRS has had to implement the statutory requirements of the Patient Protection and Affordable Care Act and the Foreign Account Tax Compliance Act during this time, causing a further drain on its resources.

5 Government Accountability Office, GAO-16-459R, *Internal Revenue Service: Preliminary Observations on the Fiscal Year 2017 Budget Request and 2016 Filing Season Performance* 7 (Mar. 2016).

6 For a discussion regarding the connection between funding and taxpayer service levels, see National Taxpayer Advocate 2014 Annual Report to Congress 3 (Most Serious Problem: *Taxpayer Service: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers*).

**FIGURE 2.1.2, Filing Season Statistics Comparing Weeks Ending April 25, 2014; April 24, 2015; and April 22, 2016<sup>7</sup>**

		2014	2015	2016	% Change 2015–2016
Individual Income Tax Returns	Total Receipts	134,334,000	134,209,000	136,528,000	1.7%
	Total Processed	127,710,000	128,317,000	129,456,000	0.9%
e-Filing Receipts	Self-Prepared	46,177,000	48,911,000	51,682,000	5.7%
	Tax Professionals	70,379,000	70,491,000	70,864,000	0.5%
	Total e-Filing	116,556,000	119,402,000	122,546,000	2.6%
Web Usage	Visits to IRS.gov	277,260,138	310,407,523	326,261,102	5.1%
Total Refunds	Number	98,379,000	97,097,000	97,079,000	0.0%
	Amount	\$265.1 bil	\$262.2 bil	\$263.2 bil	0.4%
	Average Refund	\$2,694	\$2,700	\$2,711	0.4%
Direct Deposit Refunds	Number	78,887,000	80,383,000	81,221,000	1.0%
	Amount	\$224.6 bil	\$231.7 bil	\$234.3 bil	1.1%
	Average Refund	\$2,847	\$2,882	\$2,884	1.1%

## TELEPHONE ASSISTANCE

Last year, IRS telephone service was, as the Commissioner himself acknowledged, “abysmal.”<sup>8</sup> The percentage of calls answered by IRS telephone assistors (known as the “Customer Service Representative Level of Service” or “LOS”) and the average wait time constituted by far the worst service levels the IRS has provided since it adopted its current performance measures in 2001.<sup>9</sup> The IRS’s improvement in answering taxpayer calls during the 2016 filing season has been impressive. We remain concerned, however, that the IRS has continued its recent policy that sharply limits the scope of tax-law questions telephone assistors will answer. During the filing season, telephone assistors will answer only “basic” questions.<sup>10</sup> After the filing season, telephone assistors will not answer any tax-law questions at all, including questions from the nearly 15 million taxpayers who file their returns later in the year.<sup>11</sup>

7 IRS, *Filing Season Statistics for Week Ending April 22, 2016*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-22-2016>, and *Filing Season Statistics for Week Ending April 24, 2015*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-24-2015>. The report for the week ending April 22, 2016 includes the tax year (TY) 2015 filing deadline of April 18, 2016. The April 24, 2015 report provides data for the comparable time periods in the prior years. The web usage figure for 2015 is an updated figure contained in the April 22, 2016 report.

8 John A. Koskinen, Commissioner of Internal Revenue, Address at the National Press Club (Mar. 31, 2015).

9 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 9.

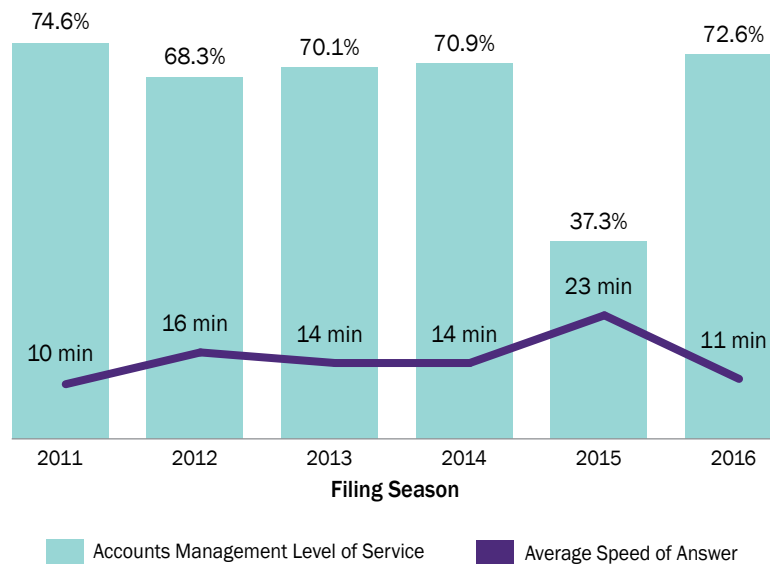
10 This policy was initially adopted for the 2014 filing season. IRS, e-News for Tax Professionals - Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013). Item no longer available on IRS.gov.

11 This policy was initially adopted for the 2014 filing season. IRS, e-News for Tax Professionals - Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013). Item no longer available on IRS.gov. In 2015, about 14.7 million returns were received after May 1st. See IRS 2015 *Filing Season Statistics*, <https://www.irs.gov/uac/2016-and-prior-year-filing-season-statistics> (showing 136.2 million returns received by May 1, 2015 and 150.9 million returns received by Dec. 25, 2015). For this computation, we use May 1st as a proxy for filing-season returns because the IRS receives a large number of returns close to the filing deadline that it takes a few weeks to process.

Aggregate figures for the Accounts Management lines, a rollup of 29 individual lines including the main TAX-1040 line, had the highest LOS since 2011. Figure 2.1.3 shows, by year, the LOS and the average hold times.

**FIGURE 2.1.3**<sup>12</sup>

**Overall Filing Season Service Levels on  
Accounts Management Phone Lines, 2011-2016**



To understand the IRS’s telephone statistics, a few concepts are important to review. First, the IRS tracks the total number of calls it receives, which is known as the “Enterprise Total.” The Enterprise Total includes calls to the “Accounts Management” (AM) telephone lines (which typically account for around 85–90 percent of all “Enterprise Total” calls), calls to the compliance telephone lines, and calls to a few additional low-volume telephone lines.<sup>13</sup> Second, answered calls are split between “Assistor Answered Calls” and calls handled by the IRS’s automated processes. Whether a call is routed to automation or to a customer service representative (CSR) depends on the telephone number the taxpayer calls and how the caller responds to the prompts he or she encounters. Third, the official LOS statistics reflect only calls routed to CSRs on the AM telephone lines.

<sup>12</sup> IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (weeks ending Apr. 21, 2012, Apr. 20, 2013, Apr. 19, 2014, Apr. 18, 2015, and Apr. 16, 2016). The filing deadline for TY 2015 was Monday Apr. 18, 2016, so the Apr. 16, 2016 report excludes the final day. We selected these reports because they minimize the non-filing season days when phone demand changes and are consistent periods from year to year. This is different from the reporting periods used in Figure 2.1.4, Filing Season Statistics. There, inclusion of the final return data is critical due to the large number of returns filed on the last day.

<sup>13</sup> For the Jan. 1–Apr. 16 period, the IRS received 52.2 million calls Enterprise-wide, and of that total, 47.3 million calls were directed to the AM telephone lines (91 percent). Typically, calls to the IRS compliance lines are answered at a somewhat higher level of service and with somewhat shorter hold times than the average call to an AM line. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 16, 2016).

The following figure shows the IRS's performance during the 2015 and 2016 filing seasons for the AM total and many of the filing season-related phone lines that are components of the AM total. Nearly every phone line shows an improvement in service, marked by a higher LOS and shorter times on hold ("Average Speed of Answer"). Significantly, IRS assistors answered five million more calls on the AM lines this filing season as compared to last, a 68 percent increase. At the same time, the number of call attempts on the AM lines fell from 49.9 million to 47.3 million, a 5.2 percent decrease. This overall decrease in calls is attributable, at least in part, to the higher LOS, because when more taxpayers get through to the IRS on their first call, there are fewer repeat calls.<sup>14</sup>

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14 It is worth noting the IRS does not provide information about how to contact the agency in the instructions for the Form 1040-series returns (Forms 1040, 1040A, and 1040EZ).

**FIGURE 2.1.4, 2015 & 2016 Filing Season Statistics for Selected Toll-Free Telephone Lines**<sup>15</sup>

Telephone Line	2015				2016				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	ASA Percentage Change	LOS Percentage Change
Accounts Management (AM) [SUM of 29 Lines]	49,911,868	7,386,265	22.9	37.3%	47,323,821	12,430,049	10.8	72.6%	-53%	94.8%
Refund Hotline 800-829-1954	15,932,300	79,882	23.0	25.6%	15,891,420	159,547	11.0	65.8%	-52%	157.2%
Individual Income Tax Services 800-829-1040 (800-TAX-1040)	9,488,071	1,196,965	22.5	25.7%	8,281,689	2,492,934	11.8	72.8%	47%	183.1%
Electronic Filing Pin Help 866-704-7388	5,761,360	610,380	23.7	31.6%	5,676,334	1,294,048	9.9	66.5%	-58%	110.2%
Refund Call Back 800-829-0582	2,920,614	471,840	21.2	35.9%	2,789,403	672,603	12.5	69.0%	-41%	92.1%
Wage & Investment IMF Customer Response 800-829-0922	2,782,645	399,557	22.8	24.5%	1,948,361	632,916	11.3	65.1%	-51%	165.4%
Identity Protection Specialized Unit (IPSU) 800-908-4490	1,555,860	530,010	25.4	54.1%	1,488,875	799,177	14.6	76.9%	-43%	42.0%
Business & Specialty Tax Services Line 800-829-4933	1,620,409	486,368	26.4	44.4%	1,293,382	669,258	11.0	77.0%	-58%	73.6%
Affordable Care Act (ACA) Hotline 800-919-0452	566,967	324,850	16.4	67.8%	1,108,872	759,141	13.3	72.2%	-19%	6.6%
Transcript 800-908-9946	627,918	41,342	26.9	53.3%	1,101,790	73,235	11.5	74.2%	-57%	33.5%
Self Employed IMF Customer Response 800-829-8374	1,403,300	220,540	23.2	26.2%	915,481	296,325	10.7	64.7%	-54%	146.7%
Taxpayer Assistance Center (TAC) Appointment 844-545-5640	n/a	n/a	n/a	n/a	896,621	589,653	5.3	76.1%	n/a	n/a
BMF Customer Response 800-829-0115	1,130,378	450,053	25.3	45.9%	797,999	564,231	11.5	81.2%	-54%	76.8%
Tax Law 866-883-0217	828,303	468,009	13.9	68.9%	683,537	405,857	9.2	70.7%	-34%	2.6%
Amended Return Hotline 866-464-2050	352,498	148,382	22.1	66.0%	667,551	410,917	11.5	75.0%	-48%	13.6%
Practitioner Priority Service (PPS) 866-860-4259	599,655	229,281	44.8	44.5%	514,309	366,862	7.3	83.7%	-84%	88.0%
National Taxpayer Advocate (NTA) 877-777-4778	359,596	102,399	18.8	38.5%	250,334	130,250	5.0	74.0%	-73%	92.5%
International 8775 (855-790-8775)	216,071	99,216	20.3	55.0%	238,481	144,740	7.0	74.2%	-66%	35.0%
Tax Exempt and Government Entities (TE/GE) 877-829-5500	208,596	91,266	30.0	55.7%	186,905	110,106	10.1	73.6%	-66%	32.2%
Individual Taxpayer Identification Number (ITIN) 800-908-9982	185,304	87,857	16.0	53.5%	113,666	67,939	10.0	71.1%	-38%	32.9%
Volunteers in Tax Administration (VITA) Location 800-906-9887	58,880	34,325	5.5	64.3%	55,769	38,318	2.8	76.1%	-49%	18.4%
VITA 800-829-8482	5,464	4,728	1.6	91.2%	4,109	3,712	0.8	94.3%	-50%	3.4%
Taxpayer Protection Program 800-830-5084	2,864,112	489,446	27.7	17.0%	4,444,710	987,448	10.2	22.7%	-63%	33.1%
Installment Agreement/Balance Due	3,151,030	1,250,973	24.3	39.7%	2,255,885	1,793,757	11.0	76.9%	-55%	93.6%
Forms Order Line 800-829-3676 (800-TAX-FORM)	2,135,892	824,769	7.2	58.8%	1,046,972	631,008	4.1	79.7%	-43%	35.4%
ASK TAS 877-275-8271 (877-ASK-TAS1)	36,745	30,988	4.2	92.3%	74,285	41,989	20.9	59.4%	396%	-35.6%
Combat Zone 800-908-0368	3,017	2,742	0.6	93.8%	3,399	3,041	0.5	92.2%	-17%	-1.7%
<b>Enterprise Total (Includes AM, Compliance, Forms Order Line, ASK TAS, and EPSS)</b>	<b>56,195,733</b>	<b>10,485,010</b>	<b>20.2</b>	<b>43.4%</b>	<b>52,189,665</b>	<b>14,865,923</b>	<b>11.6</b>	<b>71.7%</b>	<b>-43%</b>	<b>65.1%</b>

<sup>15</sup> IRS, JOC, Snapshot Reports: Enterprise Snapshot (Apr. 16, 2016) (source of AM and Enterprise Total data); IRS, JOC, Snapshot Reports: Product Line Detail (Apr. 16, 2016) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, FY 2016 Weekly TPP Snapshot Report (Apr. 16, 2016) (source of TPP line data). Data from Jan. 1–Apr. 16, 2016.

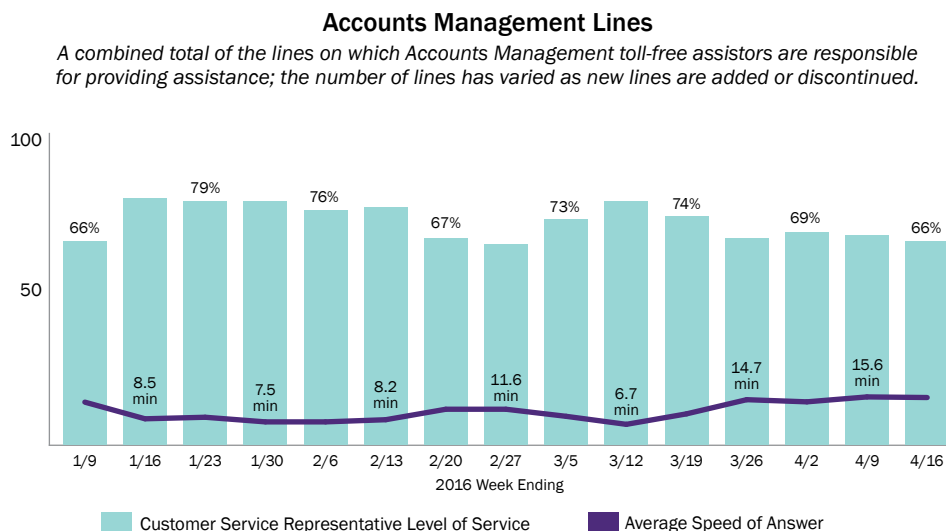
As the figure shows, the LOS and Average Speed of Answer varied by phone line. In the sections below, we discuss the weekly variation for selected phone lines during the filing season.

### Accounts Management Rollup

The official measure of IRS telephone performance is based on calls made to the “Accounts Management” telephone lines. There are 29 lines that are considered “Accounts Management” lines, including all lines shown in the phone graphs that follow (except for the Taxpayer Protection Program (TPP) line).<sup>16</sup>

The overall LOS ranged from 65 to 80 percent during the filing season, with wait times averaging between 7 and 16 minutes.

FIGURE 2.1.5<sup>17</sup>



### Individual Income Tax Services/Form 1040

The “1040” number serves as the general, all-purpose phone line for individual taxpayers seeking assistance in preparing tax forms or answers to general questions. The level of service ranged from 63 to 87 percent, with wait times averaging between 5 and 19 minutes.

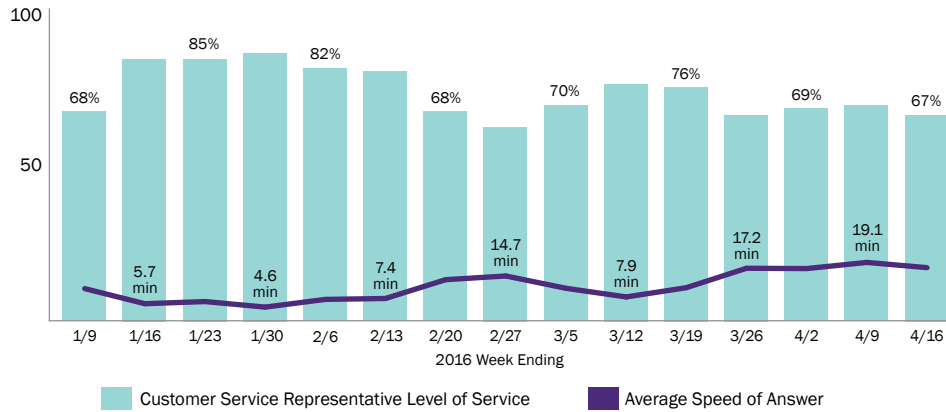
16 IRS, JOC, *Snapshot Reports: Enterprise Snapshot and Product Line Detail* (Apr. 16, 2016). The “Accounts Management” telephone lines were formerly known as “Customer Account Services” telephone lines. The number of lines may vary by year as the IRS adds or discontinues specialty lines for various topics.

17 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

FIGURE 2.1.6<sup>18</sup>

**IRS 1040 Individual Line**

*The general, all-purpose line for individual taxpayers needing assistance in preparing individual tax forms or for general individual questions.*



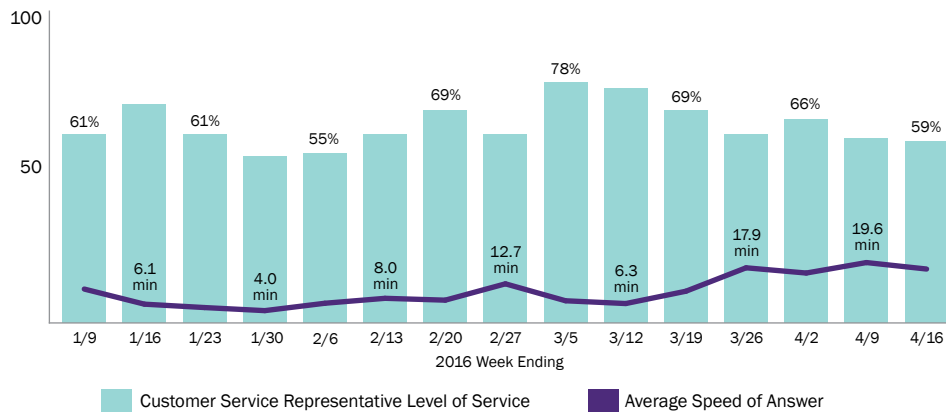
Refund Hotline

The Refund Hotline allows taxpayers to check on the status of their refund by phone. Because the IRS computer systems generally have the most current information, most calls are handled through automation. A relatively small percentage requires the involvement of a telephone assistor. Among assistor-answered calls, the LOS ranged from 54 to 78 percent, with wait times averaging between 4 and 20 minutes.

FIGURE 2.1.7<sup>19</sup>

**IRS Refund Hotline**

*Live assistors provide taxpayers who are unable to complete the automated process with the status of their refund*



18 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

19 *Id.*



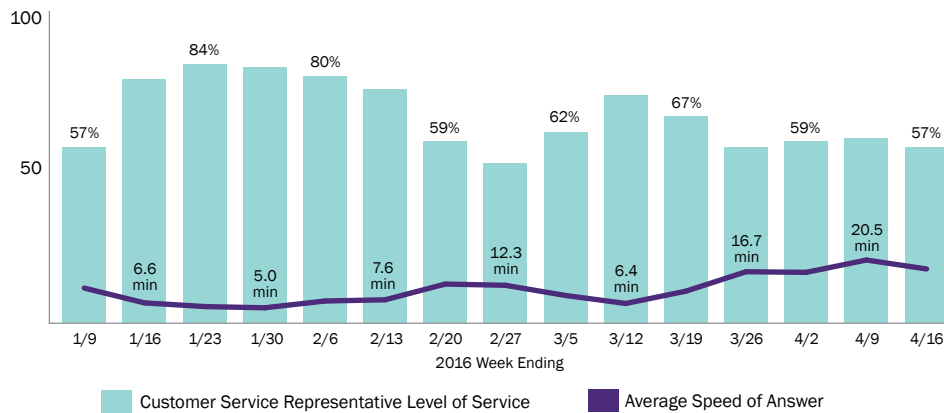
### Wage & Investment (W&I) Customer Response

The W&I customer response telephone number is provided to taxpayers who receive a notice, such as a math error notice, so they can contact the IRS to provide additional information or correct an error. The LOS ranged from 52 to 84 percent, with wait times averaging between 5 and 21 minutes.

**FIGURE 2.1.8**<sup>20</sup>

#### Wage & Investment Customer Response Line

*This line is provided to taxpayers who receive a notice, such as a math error notice, to contact the IRS and provide additional information or correct the error.*

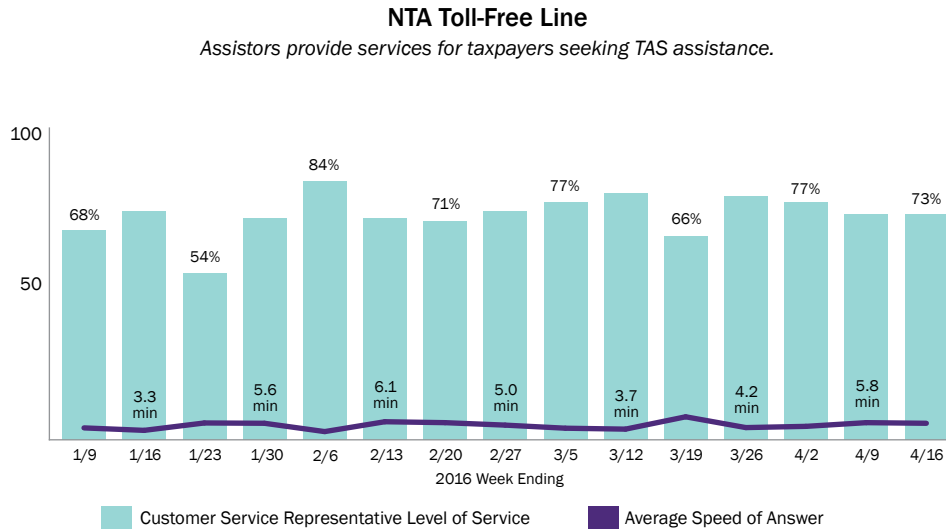


### National Taxpayer Advocate (NTA) Toll-Free Hotline

The NTA phone line, staffed by W&I employees, is used by taxpayers who believe they are experiencing financial or systemic burden and seek assistance from TAS. The LOS ranged from 54 to 84 percent, with wait times averaging between three and eight minutes.

<sup>20</sup> IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

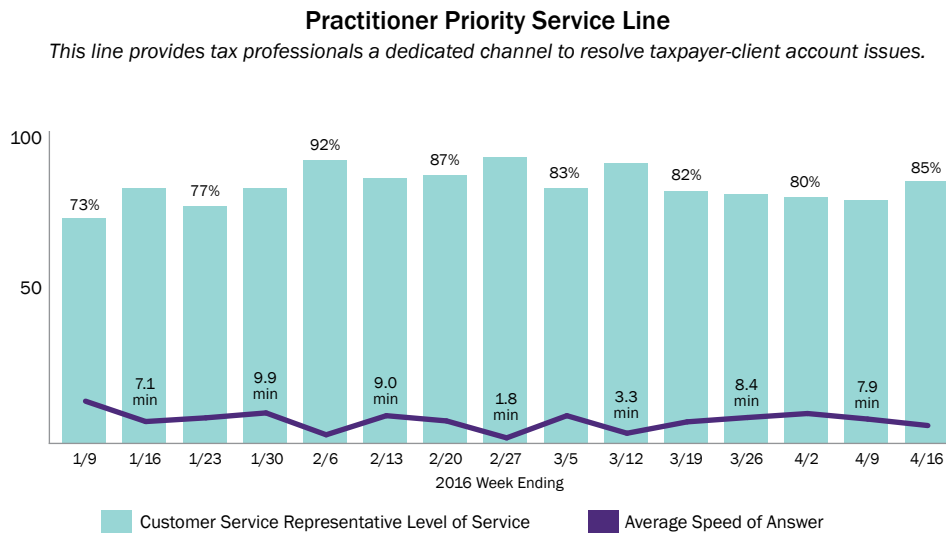
FIGURE 2.1.9<sup>21</sup>



### Practitioner Priority Service (PPS)

The PPS phone line is used by tax professionals who are trying to reach the IRS to assist their clients. During the 2015 filing season, this line had an LOS of 45 percent and an average wait time of 45 minutes, with reports of some practitioners waiting on hold for several hours.<sup>22</sup> The situation was much improved in 2016, with the LOS ranging from 73 to 93 percent, and wait times averaging 7.3 minutes over the course of the filing season.

FIGURE 2.1.10<sup>23</sup>



21 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

22 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 16.

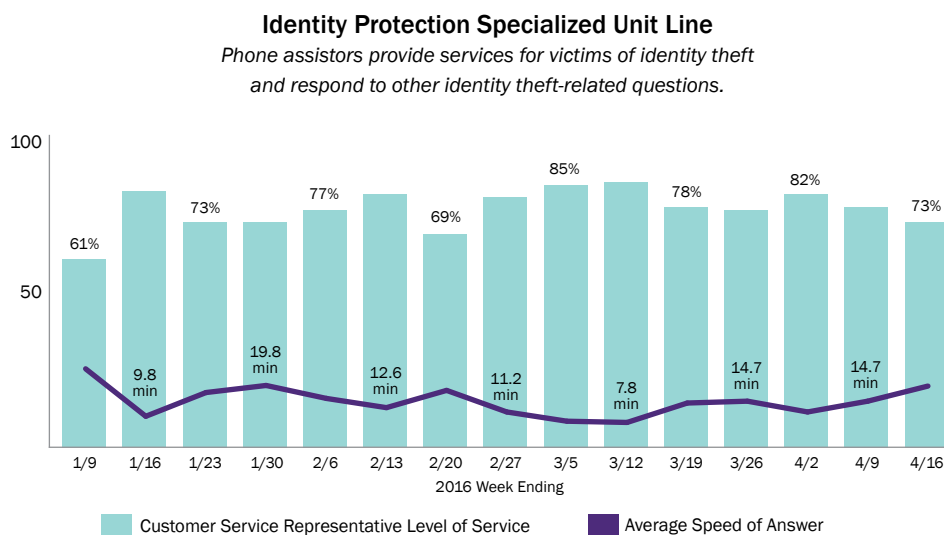
23 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

Despite the improvement in performance metrics, tax professionals were not necessarily satisfied with the quality of the service they received. An April 2016 survey conducted by the American Institute of Certified Public Accountants of its members found only one-third reported they could get an answer to their questions on the PPS line at least “most of the time” without being transferred to another agent.<sup>24</sup>

### Identity Protection Specialized Unit (IPSU)

IRS telephone assistors provide assistance and resource information to victims of identity theft and refund fraud. The LOS ranged from 61 to 86 percent, with wait times averaging between 8 and 25 minutes.

FIGURE 2.1.11<sup>25</sup>



### Taxpayer Protection Program (TPP)

The TPP line is designed to help taxpayers whose returns the IRS has suspended because of suspected but unconfirmed identity theft. When an IRS filter stops a return, the IRS sends the taxpayer a letter asking him or her to call the TPP phone number to verify his or her identity.<sup>26</sup> For legitimate taxpayers calling the TPP line, service levels have a direct impact on the timing of refund delivery, as the IRS will not release a refund until the verification process is complete.

During the 2016 filing season, the IRS received more than 4.4 million calls on this line, yet the average LOS was just 22.7 percent. Put differently, nearly four out of every five calls was not answered — by far the worst performance on any high-volume line. However, the service levels varied considerably from week to week due to the greater number of notices the IRS issued this year and the timing of when the notices were mailed. In 2015, the IRS mailed these notices to taxpayers on a daily basis.<sup>27</sup> In 2016, the

24 Ann Marie Maloney, *AICPA members weigh in on IRS service levels*, JOURNAL OF ACCOUNTANCY, May 26, 2016, <http://www.journalofaccountancy.com/news/2016/may/aicpa-members-weigh-in-irs-service--levels-201614539.html>.

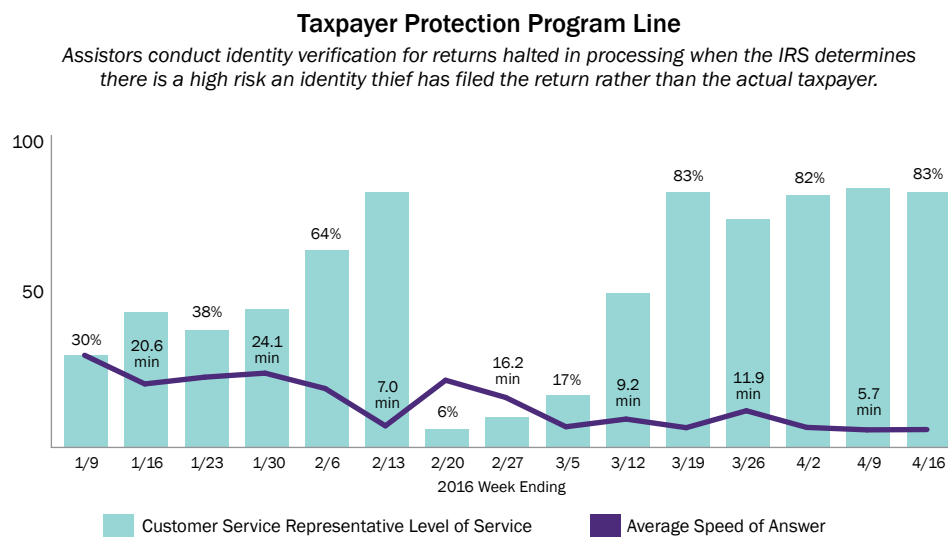
25 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

26 Taxpayers may also be offered the option to verify their identity online. Other taxpayers may be required to verify in person at a TAC.

27 Discussion between TAS Systemic Advocacy and IRS Return Integrity & Compliance Services (RICS) (Feb. 24, 2016).

IRS began to mail these notices on a weekly basis — usually on a Thursday.<sup>28</sup> This resulted in taxpayers receiving notices on or about the same day of the week, which generated a spike in calls on that day that overwhelmed the IRS’s calls centers. During the week ending February 20, the LOS on the TPP line dropped from 83 percent in the prior week to just six percent, and the wait time tripled from seven minutes to 22 minutes.<sup>29</sup> Poor service can be iterative, as frustrated taxpayers make repeat calls to try to get through. The IRS responded by striving for better communication between the IRS units responsible for mailing notices and those that provide staffing for phone lines and by returning to its prior practice of mailing these notices on a daily basis to spread out calls throughout the week.<sup>30</sup>

FIGURE 2.1.12<sup>31</sup>



As shown in Figure 2.1.13, the number of attempted calls to the TPP line increased from 82,900 during the week ending February 13, to over 1.45 million the following week. Despite a net increase of 1,386,401 calls, the IRS answered only 25,066 additional calls as compared with the prior week. Indeed, the number of call attempts during the period from February 15 to February 26 accounted for 60 percent of all calls on the TPP line during the filing season, presumably because the TPP suspended the largest number of returns at that time.

28 Discussion between TAS Systemic Advocacy and RICS (Feb. 24, 2016).

29 IRS, JOC, *Weekly TPP Snapshot Report* (weeks ending Feb. 13, 2016 and Feb. 20, 2016).

30 For additional information on the TPP, see *Identity Theft and Refund Fraud*, *infra*.

31 IRS, JOC, *Weekly TPP Report* (weeks ending Jan. 9, 2016–Apr. 16, 2016).

**FIGURE 2.1.13, Taxpayer Protection Program Line Demand, Selected Weeks February-March 2016<sup>32</sup>**

Week Ending	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service
Feb. 6	28,841	16,928	19.1	63.7%
Feb. 13	82,900	63,585	7.0	83.1%
Feb. 20	1,451,301	88,651	21.8	6.1%
Feb. 27	1,195,826	123,639	16.2	10.4%
Mar. 5	832,505	136,916	6.6	16.6%
Mar. 12	243,295	115,387	9.2	49.9%
Mar. 19	112,870	86,228	6.4	83.3%

TAS received the following submission from a taxpayer on February 19 that reflects the level of frustration some taxpayers experience:<sup>33</sup>

Received this letter to verify my identity. Online verification tells me I must call to verify. I have been trying to get through for days now! Got through once, and the representative tells me the system is down for the next three to five hours. Have tried to call at exactly 7:00 am. Recording still reflects due to high call volume, we cannot take your call. This is absurd! The government sends me a letter to resolve my identity (which I appreciate) but they are so understaffed they cannot handle the call volume, which they know in advance is going to be heavy at this time of year. This affects any and all taxpayers needing assistance or notice with time frame limit to contact them to complete my federal return.

We recommend the IRS place priority emphasis on improving its handling of TPP calls next year. Taxpayers who receive TPP notices do not receive their refunds until they can substantiate their identities. As a result, the IRS's inability to handle TPP call volumes can have an adverse financial impact on taxpayers who are dependent on the timely receipt of their refunds.

## CORRESPONDENCE

There is a large pool of AM employees that the IRS shifts back and forth between answering the phones and responding to taxpayer correspondence. 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. Since 2008, the IRS has received an average of about ten 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>34</sup> and the failure to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer.

<sup>32</sup> IRS, JOC, *Weekly TPP Report* (weeks ending Feb. 6, 2016–Mar. 19, 2016).

<sup>33</sup> Systemic Advocacy Management System (SAMS) Issue 34114. SAMS is an online tool through which IRS employees and the public may report systemic problems to TAS, <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>.

<sup>34</sup> Over the past decade, annual taxpayer correspondence in response to proposed adjustments has ranged from a low of 7.9 million letters to a high of 11.8 million letters and has averaged just over ten million per year. See IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2006 through FY 2015).

Examples of key AM correspondence categories are shown in Figure 2.1.14. The “IMF Overall” category includes all taxpayer correspondence that is not handled by another function within the IRS, and the “Amended Return/Duplicate Filing” category includes correspondence in which taxpayers are seeking to file amended returns.<sup>35</sup> Inventory levels have been successively higher at the end of the past three filing seasons, with the “IMF Overall” category experiencing a 30 percent increase over 2015. The inventory of “Injured Spouse” correspondence similarly grew by about 30 percent over 2015, and the percentage of overage cases more than doubled.<sup>36</sup>

**FIGURE 2.1.14, Selected Correspondence Inventory Levels<sup>37</sup>**

	2014	2015	2016	% Change 2015–2016
IMF Overall	145,023	170,622	221,990	30.1%
Overage	22.6%	34.8%	42.0%	20.7%
Amended Return/Duplicate Filing	210,151	211,453	222,168	5.1%
Overage	25.7%	28.7%	40.4%	40.8%
Injured Spouse	123,321	80,620	104,755	29.9%
Overage	29.1%	14.5%	33.2%	129.0%

The increase in overage correspondence in 2016 indicates the IRS decided to prioritize staffing the telephone lines during the filing season, which meant that fewer employees were available to process taxpayer correspondence.

## WALK-IN SERVICE AT TAXPAYER ASSISTANCE CENTERS

The IRS operates 376 TACs.<sup>38</sup> More than five million taxpayers seek in-person assistance at the TACs each year.<sup>39</sup> Historically, the TACs were known as “walk-in sites.” However, the IRS plans to eliminate virtually all walk-in service and require that taxpayers schedule advance appointments in all TAC locations by the end of the year.<sup>40</sup>

On the positive side, we understand that telephone assistors generally ask taxpayers calling to schedule appointments to describe the problem they are trying to resolve. In some instances, the assistor can provide the answer or direct the taxpayer to another option, thereby eliminating the need to visit a TAC.

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

36 Injured Spouse correspondence Forms 8379, *Injured Spouse Allocation*, received from taxpayers. 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.

37 IRS, JOC, Customer Account Services, Accounts Management Paper Inventory Reports, *National Inventory Age Report* (weeks ending Apr. 19, 2014; Apr. 18, 2015; and Apr. 16, 2016). 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, and the like.

38 Email from IRS Field Assistance analyst (Jun. 16, 2016).

39 IRS W&I, *Business Performance Review 7* (4th Quarter – FY 2015, Nov. 2, 2015); Government Accountability Office, GAO-15-163, *Tax Filing Season: 2014 Performance Highlights the Need to Better Manage Taxpayer Service and Future Risks* 21 (Dec. 2014) (showing the number of TAC visits in each year from FY 2009 through FY 2014). We have not determined the number of TAC visits that took place during the 2016 filing season, although the IRS has reported there were about 2.4 million visits during FY 2016 through Mar. 31, 2016. See IRS W&I, *Business Performance Review 7* (2nd Quarter – FY 2016, May 10, 2016).

40 IRS W&I, *Business Performance Review 19* (2nd Quarter – FY 2016, May 10, 2016).

For example, a taxpayer who is looking for forms or publications and is told how to download them from IRS.gov or given a centralized number to call to request mailed copies may be saved the trip to an IRS office, and IRS staff is freed up to assist taxpayers who require face-to-face assistance.

The National Taxpayer Advocate had previously recommended the IRS give taxpayers the option of scheduling appointments, but we are concerned the elimination of most walk-in services will cause considerable inconvenience for (i) taxpayers who do not know the TACs have shifted to appointment-only scheduling and travel sometimes considerable distances to seek personal assistance and (ii) taxpayers who need assistance urgently and cannot wait to obtain an appointment. Under a 2015 pilot program testing appointment-only service, 20 percent of taxpayers had to wait between 13 and 41 days to obtain an appointment and five percent had to wait more than 41 days for an appointment.<sup>41</sup> Those are not encouraging results, particularly for taxpayers with urgent needs.

While the IRS generally allows taxpayers to make tax payments or drop off returns without appointments, it went so far as to test a pilot at five TACs this filing season under which taxpayers needed appointments to complete even these basic tasks.<sup>42</sup>

The virtual elimination of walk-in service exacerbates other significant service reductions at the TACs in recent years (some of which also apply to the toll-free telephone lines, as discussed above):

- During the filing season, the IRS is answering only tax-law questions that it deems “basic,” with more complex questions designated “out of scope.”<sup>43</sup>
- After the filing season, the IRS is not answering any tax-law questions at all, even though many taxpayers obtain legally authorized extensions of time to file. Last year, nearly 15 million returns were submitted later in the year.<sup>44</sup>
- The IRS is no longer preparing tax returns in the TACs for low income, disabled, and elderly taxpayers who seek help.<sup>45</sup>

There is limited reliable data on the performance of the TACs during the filing season. For example, the IRS cites positive results in response to its satisfaction surveys of taxpayers who completed their visit after a scheduled appointment. However, the survey covers only taxpayers who showed up for a scheduled appointment. The results do not reflect the experience of taxpayers who failed to show up for an appointment or who were turned away when visiting a TAC without an appointment. This highlights a broader concern that IRS performance metrics do not fully capture the taxpayer experience. If measures do not include taxpayers who were denied service, or who no longer seek service because they were deterred by

41 IRS, *Field Assistance Appointment Test Report-Executive Briefing 7* (Jan. 13, 2016). In addition, 11,496 taxpayers did not show up for their appointments.

42 IRM 21.3.4.7, *Receipt of Payments* (Oct. 1, 2015). The five sites involved in the pilot were Fresno, CA; Austin, TX; Hyannis, MA; Louisville, KY; and Nashville, TN. Email from IRS Field Assistance analyst (Mar. 7, 2016).

43 This policy was adopted initially for the 2014 filing season. See IRS, e-News for Tax Professionals - Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013). Item no longer available on IRS.gov.

44 See *id.* In 2015, about 14.7 million returns were received after May 1st. See IRS *2015 Filing Season Statistics*, <https://www.irs.gov/uac/2016-and-prior-year-filing-season-statistics> (showing 136.2 million returns received by May 1, 2015 and 150.9 million returns received by Dec. 25, 2015). For this computation, we use May 1st as a proxy for filing-season returns because the IRS receives a large number of returns close to the filing deadline that it takes a few weeks to process.

45 See IRS, e-News for Tax Professionals - Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013). Item no longer available on IRS.gov.

IRS-erected barriers, the flawed results may be used as justification to support the business decisions that scaled back walk-in service in the first place and to extend them further.<sup>46</sup>

Despite the absence of useful quantitative data, we have received many anecdotal reports from taxpayers, practitioners, and our local TAS offices. Of course, anecdotal data also cannot be used as a basis for drawing reliable conclusions, but it does serve to highlight issues that merit further analysis.

For example, we have heard anecdotally about challenges taxpayers have faced in trying to obtain TAC assistance, often because IRS managers and employees follow general procedures and do not make common-sense exceptions authorized in those same procedures.

In some instances, poor communication between IRS offices or organizations created problems. TAC employees in one appointment-only location suggested taxpayers drive to another TAC, only to learn they could not be served at that location either. According to one account:

Fifty-eight taxpayers who visited the San Jose, CA, TAC seeking services learned they needed an appointment. IRS staff offered them the option of visiting the Oakland, CA, TAC, which provides walk-in service. (The San Jose and Oakland TACs are about 42 miles apart.) Due to an unexpected staff shortage, these taxpayers were greeted with a sign saying that the only service the Oakland TAC was offering that day was making a payment.<sup>47</sup>

In other instances, TAC staff did not serve taxpayers whose walk-in needs should have been addressed, even at an appointment-only location. We received the following accounts:

A taxpayer in Florida went to a TAC office to drop off delinquent tax returns and was turned away because she did not have an appointment.<sup>48</sup>

Multiple people came into the lobby looking to visit the TAC. The sign on the front door indicated that as of February 29, 2016, the TAC office was appointment only. One woman explained to the Federal Protection Service (FPS) guard she wanted to make a payment. The guard informed her that the TAC was appointment only and pointed her to online payment options per a paper on the desk. She stated that she only had two payments left and did not want to pay online because they charge a service fee. She then left with the number to call for an appointment. The FPS guard was helpful, but was basically pre-screening taxpayers and directing them to self-help options even though IRS procedures allow for making payments even at appointment-only TACs.<sup>49</sup>

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46 *The National Taxpayer Advocate's 2015 Annual Report to Congress: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Government Reform, 114th Cong. 14 (Apr. 15, 2016)* (statement of Nina E. Olson, National Taxpayer Advocate).

47 SAMS Issue 34435. Edited for clarity.

48 SAMS Issue 34240. Edited for clarity.

49 Observed by TAS employee visiting the Albuquerque, NM, IRS office on Feb. 29, 2016.



In the second example, this taxpayer was not properly screened, and further, she was directed to a service channel that charges a fee for a service the IRS provides for free.<sup>50</sup> Moreover, from the government perspective, it is unclear why the IRS — the nation’s tax collector — would turn away a taxpayer seeking to make a payment.

Taxpayers served by TACs in small cities or more rural locations face other challenges. Some TAC locations are staffed by only one or two employees, so service may be disrupted by unexpected absences. TAS learned of multiple instances during the filing season where a TAC was closed with no advance notice to the public due to lack of staff. The TAC in Jefferson City, Missouri, was closed for three weeks during the filing season because the employee was away for training.<sup>51</sup>

Other anecdotes highlighted overly strict adherence to procedures — or ignoring exceptions to procedures — that resulted in overly bureaucratic responses to serving the taxpayer. TAS is aware of multiple examples where taxpayers were asked to leave the IRS office, call the 800 number to schedule an appointment and, if they were fortunate, avoid a return trip to that same IRS office on a later date.

I witnessed a taxpayer at the Brooklyn TAC who did not have an appointment. There were no other taxpayers in the TAC, yet she was turned away. She was instructed to go outside and call the posted number and she could probably get an appointment the same day.<sup>52</sup>

IRS guidance for TAC operations provides TAC managers with the discretion to deviate from procedures to address hardships or other situations where there would be an unreasonable inconvenience for the taxpayer.<sup>53</sup> For example, TACs will accept tax returns from individual taxpayers but will not accept returns from tax return preparers.<sup>54</sup> The rationale for this policy is that the IRS prefers returns to be filed electronically, or if submitted on paper, mailed to one of the IRS locations set up to handle paper returns, and this is especially true for a preparer who may be submitting multiple returns. However, the IRM provides for exceptions:

Managers have full authority to accept returns from preparers, on a case by case basis in their individual TACs, when it is in the best interest of the Service or [there is] taxpayer hardship.<sup>55</sup>

In one case, TAS learned of a situation where a Low Income Taxpayer Clinic (LITC) volunteer attempting to submit a tax return on behalf of a taxpayer was turned away. LITCs serve vulnerable low income taxpayers who require assistance or representation in dealing with a tax matter and are partially funded through a federal grant program. It is difficult to see how it could be “in the best interest of the Service” to turn away a tax return in this situation. Further, the IRM emphasizes that TAC employees should apply discretion rather than summarily deny service. The IRM states:

50 During the 2016 filing season, the IRS announced a new partnership with PayNearMe, a private company, through which taxpayers wishing to use cash can visit a participating 7-Eleven and make a payment to the IRS. IRS News Release IR-2016-56, *IRS Offers New Cash Payment Option* (Apr. 6, 2016), <https://www.irs.gov/uac/Newsroom/IRS-Offers-New-Cash-Payment-Option>. Taxpayers first visit the [irs.gov](http://irs.gov) web site to set up the payment, and the IRS then emails a barcode to the taxpayer. The barcode is scanned at 7-Eleven and the payment “usually posts to the taxpayer’s account within two business days.” Taxpayers pay a \$3.99 fee for this service.

51 Minutes of meeting between TAS, Systemic Advocacy and IRS, *Field Assistance* (Mar. 3, 2016).

52 Reported by Brooklyn, NY Local Taxpayer Advocate, Mar. 2, 2016.

53 For example, IRM 21.3.4.9, *Forms, Instructions, and Publications* (Oct. 1, 2015), provides an exception for TAC staff to print forms, instructions, and publications for taxpayers to minimize inconvenience.

54 IRM 21.3.4.8(1), *Taxpayer Contacts, Field Assistance* (Feb. 18, 2015).

55 IRM 21.3.4.8(5)(i), *Taxpayer Contacts, Field Assistance* (Feb. 18, 2015).

**Note:** The policy of not accepting tax returns from tax return preparers is not intended to limit assistance to taxpayers or their authorized representatives, particularly in situations where the taxpayer is facing financial harm or undue hardship (*e.g.*, delinquent returns or to start or stop an installment agreement). The intent is, primarily, to stop the practice of solely dropping off returns when they can be mailed directly to the IRS processing campus.<sup>56</sup>

In another case, a taxpayer who received a letter from the IRS advising him that he had to verify his identity was inconvenienced by two TACs. The report we received stated:

A taxpayer received a notice that he needed to verify his identity in person at a TAC. Upon learning he would be required to make an appointment and wait several weeks if using the nearest TAC in Detroit, he chose to drive to the TAC 70 miles away in Flint, MI, which accepts walk-ins. Once there, he was turned away because he failed to bring the letter instructing him to visit a TAC. This, despite the fact that indicators on his accounts showed he needed to complete in-person identity verification.<sup>57</sup>

While these anecdotes reflect only a tiny portion of taxpayer contacts with the TACs, they share a common thread. IRS managers and employees assigned to assist taxpayers sometimes seem to follow procedures slavishly rather than go the extra mile to assist taxpayers. There is no doubt that serving millions of taxpayers can be challenging and some mistakes will be made. But it appears managers can do more to convey that the procedures are a means to the end of helping the taxpaying public, and employees should be empowered and encouraged to make exceptions in appropriate cases with that overriding purpose in mind.

## AVAILABILITY OF TAX FORMS AND PUBLICATIONS

In 2016, the IRS again scaled back the forms and publications stocked in TACs and continued its recent practice of not replenishing forms once the supply on hand was exhausted.<sup>58</sup>

In 2016, for example, the IRS discontinued stocking Form 1040A and the related instructions. TAS received a SAMS submission from one taxpayer directly related to this decision:

Who [in] bureaucrat's name decided that the Instructions for the 1040A would no longer be printed and furnished to the public at the Federal Building in Albuquerque, NM. This publication is the one most used by tax payers [sic]. [It] is the publication most desired by the older, non-computer literate, tax filers. This policy hurts the poor and elderly. At least make it possible to get a mail hard copy. How much does it save, and where does the money go that is supposedly saved?<sup>59</sup>

The Treasury Inspector General for Tax Administration (TIGTA) assessed the performance of the TACs for the 2015 filing season.<sup>60</sup> As part of its assessment, TIGTA identified 16 tax forms and publications from the IRS's stock list and examined the availability of those forms and publications during visits to 34

56 IRM 21.3.4.8(5), *Receipt of Tax Returns*, (Feb. 18, 2015).

57 SAMS Issue 34267. Edited for clarity. See related discussion, *Identity Theft and Refund Fraud*, *infra*.

58 The IRS discontinued stocking Form 1040-EZ for the 2015 filing season and Form 1040-A for the 2016 filing season.

59 SAMS Issue 34017, submitted Feb. 4, 2016. The IRS offers tax forms and publications by mail from its Forms Distribution Center.

60 TIGTA, Ref. No. 2016-IE-R001, *Selected Taxpayer Assistance Centers Were Professional and Organized, and Sensitive Information and Equipment Were Properly Secured* (Oct. 2, 2015). TIGTA visited a judgmental sample of 34 TAC sites.

TACs. Only 11 of the 34 TACs had all 16 items available on the day of the visit. Six of the 34 TACs had no Forms 1040 available.<sup>61</sup> During the 2016 filing season, forms generally were even harder to come by.

The difficulty in obtaining copies of IRS Publication 17, *Your Federal Income Tax (For Individuals)*, has been particularly challenging for taxpayers and practitioners. Publication 17 — or “Pub. 17,” as it is commonly known — is larger than most IRS publications and covers topics such as income, gains and losses, and deductions in more detail than the Form 1040 instructions. Pub. 17 is popular with taxpayers, practitioners, and IRS employees because it covers many common tax situations and provides cross references to other publications for readers seeking more detail.<sup>62</sup>

Beginning with the 2015 filing season, the IRS stopped providing free printed copies of Pub. 17 because of the cost of printing and because the content of topics could be found in other IRS publications that were still available.<sup>63</sup> Individuals seeking a copy of Pub. 17 were left with the options of downloading a digital copy from [irs.gov](http://irs.gov) or ordering a printed copy from the Government Publishing Office (GPO) at a cost of \$23.<sup>64</sup> For the 2016 filing season, the IRS website makes clear that Pub. 17 is no longer available. In all bold, red lettering, it says: **“NOTE: Publication 17 is not available in paper format. Please download Publication 17 at [IRS.gov/pub17](http://IRS.gov/pub17) if you need a copy.”**<sup>65</sup> However, TAS has learned that the IRS printed nearly 117,000 copies of Pub. 17.<sup>66</sup> The printed publications were given largely to organizations participating in the Tax Forms Outlet Program (one per TFOP) and IRS employees who staff the TACs.<sup>67</sup>

The National Taxpayer Advocate continues to be concerned about the IRS’s decision to curtail the availability of tax forms and publications. While it is true that most taxpayers have access to online forms, the IRS receives about 150 million individual income tax returns each year. Millions of taxpayers do not have internet access and require paper products to complete their returns.

In a report accompanying the Senate Appropriations Committee’s version of the FY 2017 Financial Services and General Government Appropriations bill, the committee wrote:

[T]he IRS ... made abrupt and significant changes to the TFOP, and the forms and instructions available in participating libraries, post offices and some congressional offices. Citing the need for further cost savings, the IRS reduced by more than half the number of forms and instructions sent through the TFOP program and with little notice prior to tax season. For underserved taxpayers including rural, elderly, minority, disabled and low-income populations, these programs and services are often their only options to receive assistance or guidance from the IRS. The IRS, like all Federal agencies, face[s] difficult decisions while operating in an austere fiscal environment. However, the IRS’s decision to reduce taxpayer services has

61 TIGTA, Ref. No. 2016-IE-R001, *Selected Taxpayer Assistance Centers Were Professional and Organized, and Sensitive Information and Equipment Were Properly Secured* 19 (Oct. 2, 2015).

62 We note that Pub. 17 is one of only a handful of forms and publications that taxpayers can access with one click from the main IRS web page (as of June 4, 2016). The IRS also continues to promote Pub. 17 as a useful resource. See IRS, *Tax Time Guide: Updated Tax Guide Helps People with Their 2015 Taxes*, <https://www.irs.gov/uac/newsroom/tax-time-guide-updated-tax-guide-helps-people-with-their-2015-taxes>, (last visited June 4, 2016).

63 IRS, SERP Alert 15A0029, *Availability of Publication 17, Your Federal Income Tax (For Individuals)* (revised Jan. 13, 2015).

64 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 21.

65 See <https://www.irs.gov/uac/forms-and-publications-by-u-s-mail> (last visited June 21, 2016).

66 Email from IRS Media & Publications analyst (Feb. 1, 2016).

67 IRS, *TFOP News and Updates* (revised Feb. 3, 2016), <https://www.irs.gov/uac/tfop-news-and-updates> (last visited June 29, 2016); Email from IRS Media & Publications analyst (Feb. 1, 2016).

disproportionally impacted underserved taxpayers making it difficult for them to efficiently and accurately pay their annual taxes. ... The Committee notes that there is a cost associated with printing and mailing publications for every paper filer but does not agree with the IRS's decision to discontinue access to taxpayers that rely on Publication 17. Therefore, the Committee directs the IRS to maintain a stock of Publication 17 in TACs, [and] participating libraries and post offices and provide the publication free of charge to taxpayers who request it by phone.<sup>68</sup>

We appreciate the committee's focus on the availability of tax forms and publications, particularly for underserved populations, and we share its view that, even taking account of the costs, the IRS should continue to make paper forms and publications readily available for taxpayers who rely on them.

### SELF-SERVICE TOOLS: GET TRANSCRIPT

One year ago in the National Taxpayer Advocate's FY 2016 Objectives Report to Congress, we noted the IRS had shut down its online "Get Transcript" application after cybercriminals had accessed taxpayer records.<sup>69</sup> A year later, on June 7, 2016, the IRS reinstated this application, noting that an "enhanced authentication process will also provide a foundation for additional IRS self-help services in the future."<sup>70</sup> To use the online option, taxpayers must verify their identities through a multi-factor process that generally includes having a credit card or account number from an auto loan or mortgage, and a mobile phone account in a taxpayer's name.<sup>71</sup>

During the testing phase for the "Get Transcript" tool, only 29 percent of taxpayers seeking to obtain online transcripts as new users were able to pass the requisite security screens.<sup>72</sup> That is not surprising. There is an unavoidable trade-off between providing enough security to prevent cybercriminals from accessing taxpayer accounts and allowing legitimate taxpayers to gain access.

But the result of this trade-off has broader implications for the IRS's "Future State" vision. While the National Taxpayer Advocate has advocated for online accounts and convenient options for taxpayers, we have also argued taxpayers will continue to require personal service options (telephone and face-to-face) to resolve complex issues.<sup>73</sup> Furthermore, the determination of which issues are "complex" should be made

68 S. REP. NO. 114-280, at 33 (2016).

69 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 26-27.

70 IRS News Release, IR-2016-85, *IRS Launches More Rigorous e-Authentication Process and Get Transcript Online* (June 7, 2016). The IRS offered the online Get Transcript option to randomly selected taxpayers visiting the site beginning May 23, 2016, which allowed the IRS to monitor the site for a controlled number of taxpayers. Prior to June 7, visitors to the site would see the following message: "In keeping with standard industry practices, we are evaluating our new secure access process for Get Transcript Online. Randomly selected page visitors are offered a Get Transcript Online option. All page visitors may use the Get Transcript by Mail option." IRS, *Welcome to Get Transcript*, <https://www.irs.gov/individuals/get-transcript> (visited May 25, 2016).

71 For a more complete list of authentication requirements, see IRS Fact Sheet FS-2016-20, *How to Register for Get Transcript Online Using New Authentication Process* (Jun. 2016), <https://www.irs.gov/pub/irs-news/fs-16-20.pdf>. Taxpayer requests for transcripts are not limited to the filing season. Transcripts are requested for many purposes year-round. But taxpayers who did not keep copies of prior-year returns often request transcripts during the filing season to assist them in preparing current returns.

72 Email from Rene Schwartzman, IRS Identity Assurance Executive (June 3, 2016). The 29 percent success rate reflected the taxpayer experience during the "soft launch" phase when IRS restricted and gradually increased the number of users offered the option of online authentication.

73 National Taxpayer Advocate 2015 Annual Report to Congress 3-13 (Most Serious Problem: *Taxpayer Service: The IRS Has Developed a Comprehensive "Future State" Plan That Aims to Transform the Way It Interacts with Taxpayers, But Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet*).

from the perspective of the taxpayer, not the IRS. The challenges the IRS has encountered in attempting to balance accessibility and data security in reinstating its “Get Transcript” application suggests some taxpayers — potentially the majority of taxpayers — simply will not be able to pass the security screens required to create and utilize an online account. While the IRS may be able to refine its screens over time to increase the percentage of taxpayers who are successful, it is likely that cybercriminals will continue to impersonate legitimate taxpayers, so rigorous screening cannot be watered down.<sup>74</sup>

## IDENTITY THEFT AND REFUND FRAUD

The nature of stolen identity refund fraud, also referred to as tax-related identity theft, continues to evolve as the IRS implements more methods to identify fraudulent filers and thieves become more sophisticated. For purposes of analyzing the taxpayer experience, it is useful to divide taxpayers into three broad categories: (i) taxpayers whose returns are flagged on suspicion of refund fraud unrelated to identity theft; (ii) taxpayers whose returns are flagged on suspicion of refund fraud related to identity theft; and (iii) taxpayers who were previously victimized by tax-related identity theft and whose cases were resolved by the IRS.

### Suspicious Returns

#### *Pre-Refund Wage Verification*

The IRS passes all tax returns claiming refunds through a variety of validation screens. One set looks for false reporting of income or tax withholding. For example, a taxpayer may file a return that understates income or overstates the amount of tax withheld by the employer to generate an inflated refund. Under the IRS’s Pre-Refund Wage Verification Program, a claimed refund will be frozen if electronic filters and rules flag the income and/or withholding as suspicious until the amounts can be verified. While these screens are essential to combat the epidemic of refund fraud, they delay the processing of legitimate returns as well. Taxpayers whose legitimate refund claims have been frozen by these filters face particular challenges, because the Pre-Refund Wage Verification function does not provide a mechanism for direct taxpayer contact.<sup>75</sup> Estimating the number of impacted taxpayers with precision is difficult, because until recently, the IRS did not track false positive rates for this program.<sup>76</sup>

#### *Identity Verification*

The IRS’s filters and rules also look specifically for identity theft. Under the TPP, returns that the IRS flags as suspicious for identity theft are frozen until the taxpayer filing the return is able to verify his identity to the IRS’s satisfaction. The TPP helps to protect taxpayers from identity thieves and prevent fraud, but in so doing, it also ensnares hundreds of thousands of legitimate taxpayers. When that happens, the legitimate taxpayers may experience protracted refund delays as they navigate the authentication processes to prove they are the true tax return filers. During the 2016 filing season, 75 percent of taxpayers received

74 For additional discussion of the Get Transcript tool, see Area of Focus: *As the IRS Develops an Online Account System, It Risks Imposing Undue Burden on Taxpayers Who Require More Personalized Services*, *infra*.

75 For a more thorough discussion of the Pre-Refund Wage Verification Program, see Area of Focus: *The IRS’s Pre-Refund Wage Verification Program Continues to Incorrectly Flag and Substantially Delay Legitimate Refunds for Hundreds of Thousands of Taxpayers*, *infra*.

76 The IRS has changed its terminology from “false positive rate” to “false detection rate.” A false detection occurs when a system selects a legitimate return as potentially fraudulent and delays the refund past the prescribed review period. We will continue to use the term “false positive” in this discussion.

refunds, and the average refund amount was more than \$2,700.<sup>77</sup> Many taxpayers, particularly the low income, depend on timely receipt of their refunds, so the impact of refund delays can range from mere inconvenience to extreme financial hardship.

In 2015, the “false positive” rate of the IRS’s identity theft filters was 36.6 percent — nearly double the false positive rate of 19.8 percent in 2014.<sup>78</sup> The TPP filters stopped 2,081,418 returns in 2015.<sup>79</sup> A false positive rate of 36.6 percent means more than 760,000 legitimate taxpayers had to verify their identities before they could receive their refunds. We have expressed concern about the large number of legitimate taxpayers who are inconvenienced by this high false positive rate and urged the IRS to refine its filters, yet the IRS is projecting a similar false positive rate of 36 percent again in 2016.<sup>80</sup> During the first five months of 2016, the TPP filters had stopped 1,798,402 returns.<sup>81</sup> The number will surely rise during the remainder of the year and may exceed the 2015 total. If the projected false positive rate of 36 percent proves accurate, that means a comparable or greater number of taxpayers will experience administrative burden and refund delays this year — and the IRS will have worked many cases it might have avoided had it updated its filters.

When the IRS receives a suspicious return, it generally sends a letter to the taxpayer asking him to verify his identity to ensure he is the legitimate taxpayer before the return is processed. The letter instructs the taxpayer to verify his identity by either:<sup>82</sup>

- Verifying online at [idverify.irs.gov](http://idverify.irs.gov), where eligible; or
- Calling the TPP.

Under both options, taxpayers must provide information that was included on the prior-year return and successfully answer certain “out of wallet” questions.<sup>83</sup> Similar to the experience discussed above with “Get Transcript,” not every legitimate taxpayer will pass the authentication process.

As described earlier in this section, taxpayers had a very difficult time contacting the TPP telephone line in mid-February when the LOS was ten percent or less. As taxpayers waited on hold, they would hear the following message:

Please note, we will continue processing your tax return once we verify your identity. It should take approximately nine additional weeks to receive your refund or notice. If you have not received a notice or refund by that time, please call our individual income tax line at 1-800-829-1040 for further information.<sup>84</sup>

77 IRS, *Filing Season Statistics for Week Ending April 22, 2016*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-22-2016>.

78 IRS W&I, *Business Performance Review 9* (2nd Quarter – FY 2016, May 10, 2016).

79 *Id.* at 10.

80 *Id.* at 9.

81 IRS, RICS, *Update of the Taxpayer Protection Program (TPP) 2* (June 8, 2016).

82 As of June 2, 2016, the IRS had mailed, or was about to mail, a total of 1,548,726 such letters to taxpayers since the beginning of the filing season. IRS, RICS, *Update of the Taxpayer Protection Program (TPP)* (June 8, 2016). The letters include Letter 5071C, *Potential Identity Theft during Original Processing with Online Option*; Letter 4883C, *Potential Identity Theft during Original Processing*; and Letter 5447C, *Potential Identity Theft during Original Processing*; Foreign Address. Only Letter 5071C offers the online verification option.

83 “Out of wallet” refers to knowledge-based questions that only the legitimate taxpayer him or herself is likely to be able to answer.

84 TPP toll-free line script deployed on Mar. 24, 2016.

For taxpayers failing oral authentication with a phone assistor or for taxpayers deemed at high risk for identity impersonation (*i.e.*, data breach victims), the only option is to visit a TAC. As a result, taxpayers desperate to complete this process in order to receive their refunds faced inadequate staffing levels and other administrative problems at the TACs, as discussed above.<sup>85</sup> TAS also learned about phone assistants directing taxpayers to visit a TAC to complete the verification process without explaining that some TACs required appointments.<sup>86</sup>

### Prior Victims of Identity Theft

Taxpayers who were previously victims of identity theft and whose cases were conclusively resolved by the IRS may be assigned an Identity Protection Personal Identification Number (IP PIN) for use when filing future returns.<sup>87</sup> IP PINs were implemented so the IRS would know a tax return was submitted by the correct Social Security number owner and allow it to pass through its identity theft filters. More specifically, the IRS marks the taxpayer's account with an identity theft indicator and thereafter the taxpayer provides the IP PIN when filing. IRS computers look for the IP PIN, and if it is provided, the return should be processed without delay. If the tax account contains an identity theft indicator and the tax return lacks an IP PIN or contains an inaccurate IP PIN, the return will be rejected if filed electronically.

While IP PINs are generally beneficial for taxpayers who have been victimized by identity theft, they occasionally cause problems. In late December 2015, the IRS mailed notices to approximately 2.7 million taxpayers assigning them an IP PIN and reminding them to use it when filing their TY 2014 return (instead of their TY 2015 return).<sup>88</sup> Many recipients probably did not notice the error, but others did and were confused about what was intended. TAS learned of the mistake from a submission on the SAMS system and immediately elevated the issue to the IRS.<sup>89</sup> The IRS acknowledged the error and promptly issued guidance to telephone assistants who might receive inquiries.<sup>90</sup> Initially, the IRS did not intend to reissue the notices, but on January 13, 2016, it began mailing "apology" notices that told taxpayers to use the IP PIN when filing their TY 2015 return.<sup>91</sup> The new notice did not list the IP PIN, however, so any taxpayers who discarded the initial notice as irrelevant would have needed to contact the IRS to request a replacement IP PIN.<sup>92</sup>

The IRS had an online tool for taxpayers seeking their original IP PIN. After a taxpayer answered a series of authentication questions, the original IP PIN would be revealed. On March 7, 2016, however, the IRS

85 See *Walk-In Service at Taxpayer Assistance Centers*, *supra*.

86 TAS elevated this concern to IRS executives. In response, the IRS revised the relevant phone scripts.

87 Selected other taxpayers have been allowed to "opt in" to receive an IP PIN. These include taxpayers who live in Georgia, Florida, and the District of Columbia. IRS.gov, *IP PIN pilot continues in Georgia, Florida and the District of Columbia*, <https://www.irs.gov/individuals/identity-protection-pin-pilot-program> (last visited June 13, 2016). Other taxpayers have been allowed to opt in when their personal information may have been compromised through a breach of government or private sector data.

88 IRS, *Statement on IP PIN* (Mar. 7, 2016), <https://www.irs.gov/uac/newsroom/irs-statement-on-ip-pin> (last visited Jun. 22, 2016). The notices were Notice CP 01A, *We assigned you an Identity Protection Personal Identification Number*. These notices are a proactive attempt to assist taxpayers and minimize the need for IRS staff to assist taxpayers during the filing season. Taxpayers are provided the IP PIN at the time it is assigned, but some taxpayers misplace it or forget they need it to file their return. The notices were dated Jan. 4, 2016, but were mailed in December 2015. Subsequently, the IRS determined 31,000 taxpayers did not receive this notice due to a programming error. The IRS mailed notices to these taxpayers dated February 15, 2016. SERP Alert 16A0060, *Additional Issues with the CP 01A* (Feb 3, 2016).

89 SAMS Issue 33878 (Jan. 4, 2016). TAS subsequently received other submissions as well.

90 SERP Alert 16A0015, *CP 01A Tax Period Error* (Jan. 5, 2016).

91 SERP Alert 16A0028, *Apology Letters Being Sent to CP 01A Recipients* (Jan. 14, 2016).

92 *Id.*

disabled the IP PIN tool due to security concerns. A taxpayer seeking his original IP PIN could request that it be mailed to the address of record, but only if he had not moved since January 1, 2016.<sup>93</sup>

Another option for taxpayers who lost or misplaced their original IP PIN was to request a replacement IP PIN by completing oral verification with a phone assistor. This replacement IP PIN allowed a taxpayer to file electronically, but the return would be subject to additional checks and possibly a delayed refund. The IRS stopped issuing replacement IP PINs at the time the online tool was disabled.<sup>94</sup> Lacking either the original IP PIN or a replacement IP PIN, the only remaining option for the taxpayer was to file a paper return.

TAS understands and supports the need for a variety of revenue protection strategies. But the IRS must recognize the need for approaches that minimize the burden on legitimate taxpayers. We recommend the IRS devote more resources to re-calibrating its filters during the filing season and establish a maximum target false-positive rate. By so doing, it could simultaneously block more fraudulent returns and reduce the number of legitimate returns it flags, thereby reducing inconvenience to taxpayers and its own unnecessary re-work.

## AFFORDABLE CARE ACT

During the 2016 filing season, taxpayers for the second time filed returns that reflected two provisions of the Affordable Care Act (ACA)<sup>95</sup> — the Premium Tax Credit (PTC)<sup>96</sup> and the Individual Shared Responsibility Payment (ISRP).<sup>97</sup> Overall, the administration of these provisions went relatively smoothly, despite glitches that affected some taxpayers. Examples of those situations are summarized below, and other ACA issues are discussed in the ACA Area of Focus later in this report.<sup>98</sup>

- **IRS Receipt of Bad Third Party Data** – The IRS received data from the Marketplace that incorrectly listed taxpayers as enrolled in Marketplace coverage and showed that Advanced Premium Tax Credit (APTC) had been paid on their behalf. This resulted in taxpayers receiving notices instructing them to file Form 8962, *Premium Tax Credit*, to reconcile advance payment of the PTC with the amount of PTC to which they were entitled despite the fact that they had not actually received APTC.
- **Change in Circumstances Not Updated** – Similar to the 2015 filing season, some taxpayers who expected refunds found them lower than expected, or even owed a balance. This occurred in some instances when a taxpayer signed up for coverage through the Marketplace, received APTC subsidies, and experienced changes in her financial situation during the year that reduced the amount of the subsidy to which she was entitled, but she neglected to timely update her profile information with the marketplace.
- **Delays in Processing Returns with PTC** – The returns of taxpayers claiming the PTC or APTC that do not include the required attachments are held in the Error Resolution/Rejects function

93 SERP Alert 16A0116, *Get an IP-PIN Application* (Mar. 7, 2016).

94 *Id.*

95 Patient Protection and Affordable Care Act of 2010 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

96 The PTC is a refundable tax credit paid either in advance or at return filing to help taxpayers with low to moderate incomes purchase health insurance through the Marketplace. IRC § 36B.

97 IRC § 5000A. Taxpayers are required to report that they have “minimum essential coverage” or were exempt from the responsibility to have the required coverage. If the taxpayer did not have coverage and was not exempt, he or she was required to make an ISRP when filing a return.

98 See Area of Focus: *The IRS’s Pre-Refund Wage Verification Program Continues to Incorrectly Flag and Substantially Delay Legitimate Refunds for Hundreds of Thousands of Taxpayers*, *infra*.



until the missing information is provided.<sup>99</sup> This created a backlog of cases. After the end of the filing season, the IRS reassigned employees from other units to help process these returns.

- **Lump Sum Payments Requiring Repayment of APTC** – Lower income taxpayers are eligible to receive APTC subsidies during the year to help them pay the cost of insurance premiums. If those taxpayers receive a lump-sum payment such as a retirement distribution or Social Security Disability Insurance (SSDI), the additional income may push their household income above 400 percent of the federal poverty level for the applicable family size, rendering them ineligible for the PTC. Those taxpayers must repay the full amount of APTC received. This could also result in the assessment of penalties or interest.

For taxpayers encountering problems, the ACA telephone hotline service levels were consistent with the AM phone lines overall, with a LOS of 72 percent and an average wait time of 13 minutes.<sup>100</sup> Notably, taxpayer calls to this hotline nearly doubled to about 1,109,000 as compared with 2015.<sup>101</sup>

### General ACA Tax Return Data

Eligible individual taxpayers claimed the PTC on their TY 2015 returns filed during the 2016 filing season. The following figure provides information regarding the extent to which individual taxpayers claimed the PTC on their TY 2015 returns.

**FIGURE 2.1.15, Reporting of the Premium Tax Credit on Forms 8962 for TY 2015 Returns Through April 30, 2016<sup>102</sup>**

Returns Filed with Forms 8962, <i>Premium Tax Credit (PTC)</i>	4.8 million
Total PTC Amount Claimed	\$14.3 billion
Average PTC Amount Claimed Per Return	\$2,987
Returns Reporting Advanced PTC	4.5 million (94% of returns with Forms 8962)
Total Advanced PTC Reported	\$15.8 billion
Prepared Returns Filed with Forms 8962 (Paid or Volunteer)	3.0 million (63% of returns with Forms 8962)

99 The IRS mails Letter 12C, *Individual Return Incomplete for Processing: Forms 1040, 1040A & 1040EZ*, to taxpayers in this situation. Required attachments include Form 1095-A, *Health Insurance Marketplace Statement*, and Form 8962, *Premium Tax Credit (PTC)*.

100 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 16, 2016).

101 *Id.* Attempted calls rose from 566,967 in 2015 to 1,108,872 in 2016.

102 Wage and Investment Strategies and Solutions (WISS, formerly Wage and Investment Research and Analysis (WIRA)), ACA Fact Sheet 05-31-2016 (returns processed through Apr. 28, 2016). This data is based on returns that had posted as of Apr. 28, 2016 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2015 returns, and conducts compliance activities. Note that the number of “Returns Reporting Advanced PTC” is a subset of the number of “Returns Filed with Form 8962, Premium Tax Credit (PTC).” All taxpayers claiming the PTC were required to file a Form 8962. Of those taxpayers whose returns were processed through Apr. 28, 2016, about 94 percent claimed the Advanced Premium Tax Credit (APTC), while about six percent waited to claim the PTC until they filed their returns. However, not all APTC recipients have filed returns and reconciled their credit amounts. Therefore, it is difficult to compare the “Total Advanced PTC Reported” (about \$15.8 billion) to the “Total PTC Amount Claimed” (about \$14.3 billion). The difference of roughly \$1.5 billion is probably attributable, at least in part, to some taxpayers having reported receiving more in APTC during the year than they ultimately claimed. Of the 4.8 million returns filed with Form 8962, over three million returns were prepared by a paid or volunteer preparer, and over 1.7 million were deemed self-prepared (total rounds to 4.8 million).

Individual taxpayers who do not have minimum essential coverage or qualify for an exemption are required to report an ISRP on their tax returns. The following figure provides data on the reporting of ISRPs on TY 2015 returns.

**FIGURE 2.1.16, Reporting of the Individual Shared Responsibility Payment on Forms 8962 for TY 2015 Returns Through April 30, 2016<sup>103</sup>**

Returns Claiming Coverage	103.6 million
Returns with ISRP	5.6 million
Average ISRP	\$442
Prepared Returns Reporting ISRP (Paid or Volunteer)	3.6 million
Returns Filed with Forms 8965, <i>Health Coverage Exemptions</i>	11 million
Returns Filed with Forms 8965 Claiming the Household Coverage Exemption (checked yes in Form 8965 Part II 7a or 7b or both)	3.2 million
Returns Filed with Forms 8965 Claiming Coverage Exemption (Part III)	7.8 million
Prepared Returns Filed with Forms 8965 (Paid or Volunteer)	6.0 million (54% of returns with Form 8965)

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

The number of U.S. citizens living abroad continues to grow, while the number of other international taxpayers remains steady. In mid-2016, approximately nine million U.S. citizens lived abroad, compared with about 7.6 million in mid-2014.<sup>104</sup> There are also many international U.S. taxpayers who are neither residents nor citizens of the United States, as evidenced by the nearly 642,000 U.S. individual tax returns filed by nonresident aliens in TY 2014.<sup>105</sup>

Yet taxpayer service options for these taxpayers are limited and continue to be reduced. Taxpayers located overseas generally cannot call U.S. toll-free telephone lines. The IRS recently eliminated the last four tax attaché posts abroad, so face-to-face service is no longer an option.<sup>106</sup>

103 WISS, *ACA Fact Sheet* (May 31, 2016) (returns processed through April 28, 2016). This data is based on returns that had posted as of Apr. 28, 2016 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2015 returns, and conducts compliance activities. Note that there were about 5.6 million returns reporting an ISRP. Of those, about 3.6 million were submitted on returns prepared by a paid or volunteer preparer, and about two million were deemed self-prepared. Taxpayers also filed about 11 million returns claiming an exemption from the ISRP using Form 8965, *Health Coverage Exemptions*. Of the Forms 8965 submitted, about 54 percent were prepared by a paid or volunteer preparer, and about 46 percent were deemed self-prepared. Taxpayers who report an ISRP may or may not file Form 8965. The roughly 11 million returns claiming an exemption on Form 8965 were divided between about 7.8 million claiming a Part III coverage exemption for individuals and about 3.2 million claiming a Part II coverage exemption for households (although some taxpayers claimed an exemption on both Part II and Part III).

104 See U.S. Department of State, Bureau of Consular Affairs, *Who We Are and What We Do: Consular Affairs by the Numbers* (May 2014), <https://travel.state.gov/content/dam/travel/CA%20Fact%20Sheet%202014.pdf>; U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (June 2016), [https://travel.state.gov/content/dam/travel/CA\\_By\\_the\\_Numbers.pdf](https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf).

105 Individual Returns Transaction File (IRTF) on the IRS Compliance Data Warehouse (CDW) for TY 2014 Form 1040NR returns processed as of May 26, 2016.

106 For a discussion of the reductions international taxpayer service options, 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*).

For the 2016 filing season, the IRS eliminated a valuable online tool. Previously, the IRS maintained an Electronic Tax Law Assistance program known as “ETLA”. Through ETLA, taxpayers could submit tax-law questions to the IRS through its website and receive a response via email. U.S. taxpayers living overseas, who generally cannot call the IRS toll-free or visit an IRS office, often found ETLA particularly helpful. On October 1, 2015, the IRS terminated the ETLA program. The National Taxpayer Advocate is concerned the IRS is providing fewer options for international taxpayers even as the population of U.S. citizens abroad grows, and these taxpayers are facing greater challenges in meeting their tax obligations, partly as a result of the Foreign Account Tax Compliance Act (FATCA),<sup>107</sup> Foreign Bank and Financial Accounts (FBAR) reporting rules,<sup>108</sup> and the ACA.<sup>109</sup>

## CONCLUSION

Overall, the IRS delivered a generally successful 2016 filing season. Its significant improvement in answering taxpayer telephone calls and reducing wait times as compared with the 2015 filing season was particularly notable. However, we remain concerned the IRS is shrinking service options for taxpayers who require assistance, including by declining to answer all but basic tax-law questions, eliminating walk-in service at the TACs, sharply curtailing the availability of paper tax forms and publications, and eliminating the ability of taxpayers to ask questions of the IRS online. The failure to meet the needs of taxpayers who rely on these services causes added stress for them and may reduce their willingness or ability to comply. To a significant degree, the IRS’s shortcomings are budget-driven. The additional \$290 million in funding Congress provided this year was very helpful to the IRS in improving its phone service, but the fact that the agency’s budget has been reduced by some 19 percent in inflation-adjusted terms since FY 2010 continues to require it to cut corners in providing a full range of taxpayer services.

107 FATCA was enacted as a part of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) (adding IRC §§ 1471-1474 & 6038D).

108 See 31 U.S.C. §§ 5314 & 5321; 31 C.F.R. §§ 1010.350 & 1010.306(c); FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR), [http://www.fincen.gov/forms/bsa\\_forms](http://www.fincen.gov/forms/bsa_forms).

109 ACA, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

**Area of  
Focus #1**

## **IRS Implementation and Enforcement of Withholding on Certain Payments to Foreign Persons Is Burdensome, Error-Ridden, and Fails to Protect the Rights of Affected Taxpayers**

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

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

The National Taxpayer Advocate has previously raised a number of concerns regarding implementation of the Foreign Account Tax Compliance Act (FATCA) and related offshore enforcement measures.<sup>2</sup> Taxpayers have been increasingly burdened by the foundational shift from a service/compliance-based to an enforcement-based regime that has been steadily occurring in this area. The National Taxpayer Advocate is troubled that, without statistically valid evidence or analytical justification, the IRS has adopted a coercive approach to international taxpayers, reflecting an assumption that all such taxpayers are suspect of fraudulent activity.

Specifically, the National Taxpayer Advocate is concerned that:

- The IRS's processes for reviewing and validating Chapter 3 and Chapter 4 refund requests have unnecessarily burdened taxpayers;<sup>3</sup>
- The IRS's unsuccessful systemic matching program has caused particular hardships for international students; and
- The IRS's enforcement-oriented approach to international taxpayers creates problems for taxpayers, representatives, and other stakeholders, and wastes precious IRS resources.

### **The IRS's Processes for Reviewing and Validating Chapter 3 and Chapter 4 Refund Requests Have Unnecessarily Burdened Taxpayers**

With the advent of the FATCA reporting and withholding requirements, the IRS became preoccupied with potentially fraudulent activity on the part of taxpayers and withholding agents in the context of both Chapter 3 and Chapter 4 requests for refunds. TAS analysis, however, indicates that the vast majority of taxpayers requesting a refund of tax shown as withheld on a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, by filing a Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, actually appear to be substantially more compliant than a comparable portion of the overall U.S.

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 National Taxpayer Advocate 2015 Annual Report to Congress 346-52; National Taxpayer Advocate 2013 Annual Report to Congress 238-48. FATCA was passed by the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (2010).

3 Under IRC §§ 1441-1443 (Chapter 3), the IRS imposes withholding on payments made to non-resident aliens and foreign corporations and allows credits and refunds of the amounts to which these taxpayers are entitled. Likewise, IRC §§ 1471-1474 (Chapter 4) mandates withholding under FATCA on payments to foreign financial institutions (FFIs) or similar institutions in specified circumstances and refers taxpayers to Chapter 3 for rules governing the credit or refund of those withheld amounts.

taxpayer population.<sup>4</sup> Nevertheless, the IRS has frozen Chapter 3 and Chapter 4 refunds for up to one year or longer, while attempting to match the documentation provided by taxpayers with the documentation provided by withholding agents.<sup>5</sup> Specifically, the IRS adopted a program under which it compared each of 18 fields on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed electronically by the withholding agent with those fields on the Form 1042-S furnished as part of the taxpayer's paper return.<sup>6</sup> Any discrepancy, no matter how small, was grounds for rejection of the refund claim.<sup>7</sup>

This verification process, however, was ill-conceived and the applied technology inadequate. The technology flaws were exacerbated by the fact that non-residents are required to file Forms 1040NR on paper.<sup>8</sup> As a result, international taxpayers have been subjected to onerous and unnecessary burdens.

As of March 2016, Form 1040NR returns with refund claims based on Form 1042-S withholding for the calendar year (CY) 2014, which generally were due by April 15, 2015, were treated by the IRS as follows:<sup>9</sup>

- 17,004 refund claims initially frozen, with those refunds eventually released to taxpayers after an average delay of 26 weeks;
- Another 27,670 refund claims in freeze status with an average delay of 33 weeks and counting; and
- An additional 15,257 refund claims disallowed after first having been frozen for an average period of 36 weeks.<sup>10</sup>

Even the refunds that ultimately have been allowed were long delayed and caused significant burden to taxpayers. This approach has not only been costly for taxpayers, but for the IRS, which has

4 TAS bases this determination on the fact that Form 1040NR taxpayers claiming Form 1042-S refunds have a lower percentage of high-scoring Discriminant Index Function (DIF) returns in comparison to filers overall — see particularly Total Positive Income (TPI) Class 72, which encompassed most taxpayers in this group. Data drawn Mar. 25, 2016 for tax year (TY) 2014 from IRS Compliance Data Warehouse (CDW), Individual Return Transaction File (IRTF) and Individual Master File (IMF). High-scoring DIF returns were defined as those with a DIF value that exceeded 80 percent of DIF scores in the general population for a particular TPI class. TAS calculated a cutoff point for DIF scores at the 80th percentile for each TPI class for TY 2014, and derived the percentage of Form 1040NR taxpayers claiming Form 1042-S refunds in each TPI class that exceeded the DIF cutoff point. Overall, only approximately three percent of Form 1040NR taxpayers claiming Form 1042-S refunds exceeded their respective DIF cutoff points, compared to 20 percent for individual filers in the general population (especially TPI Class 72). Accordingly, Form 1040NR taxpayers claiming Form 1042-S refunds showed a lower percentage of “high-scoring” DIF returns, and thus more compliant behavior, than the overall population. We did, however, identify certain small groups of taxpayers within the overall group who appear to have considerable compliance issues (see TPI Classes 75 and 80).

5 Internal Revenue Manual (IRM) 21.8.1.11.14.2, *FATCA - Programming Beginning January 2015 Affecting Certain Forms 1040NR (TC 810-3 -E Freeze)* (May 1, 2015).

6 IRM 21.8.1.11.14.3 (2) (Jun. 2, 2016) (see SERP: <https://serp.enterprise.irs.gov/databases/irm.dr/current/21.dr/21.8.dr/21.8.1.dr/21.8.1.11.14.3.htm>). Notes from TAS conference call with Large Business and International (LB&I) (Apr. 29, 2016) (on file in TAS archives). A few withholding agents file their Forms 1042 on paper, but the vast majority of withholding agents now do so electronically.

7 IRM 21.8.1.11.14.3 (4) (Jun. 2, 2016) (see SERP: <https://serp.enterprise.irs.gov/databases/irm.dr/current/21.dr/21.8.dr/21.8.1.dr/21.8.1.11.14.3.htm>). Notes from TAS conference call with LB&I (Apr. 29, 2016) (on file in TAS archives).

8 See National Taxpayer Advocate 2013 Annual Report to Congress 205-13.

9 Taxpayers who did not receive wages as an employee subject to U.S. income tax withholding had until June 15, 2015 to file their 2014 Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. See instructions for 2014 Form 1040NR, 6, <https://www.irs.gov/pub/irs-prior/i1040nr-2014.pdf>.

10 CDW, IMF and IRTF Extract Cycle as of 201612 (Mar. 2016). This data excludes the less than 100 Form 1040NR returns accompanied by Form 1042-S refund claims that have been released but were partially disallowed.

estimated that an extension of the freezes through early 2016 would generate an interest expense of over \$4 million.<sup>11</sup>

Some of these taxpayers have been subject to significant hardship on account of the refund freezes and contacted TAS in hopes of obtaining assistance in expediting and resolving their cases.<sup>12</sup> TAS opened an information gathering project regarding the Form 1042-S issues, and has undertaken substantial casework and advocacy in this context. The IRS, however, has moved slowly on these cases, with many operations assistance requests (OARs) remaining unworked for extended periods.<sup>13</sup> TAS is developing Taxpayer Assistance Orders (TAOs) and mass OARs to address the most commonly arising Form 1042-S scenarios. The National Taxpayer Advocate will issue these orders as necessary to protect taxpayer rights and preserve the systemic integrity of the tax system.

TAS has also observed that the IRS has been disallowing claims that are not quickly verified by its systemic matching program, which is based on the use of an automated matching tool supplemented by high-level manual review. These disallowances occurred for reasons that often were beyond taxpayers' control, such as transcription errors within the IRS and poor data quality.<sup>14</sup> The IRS's solution, however, has been to require that taxpayers experiencing a mismatch contact their withholding agents and persuade them to amend the inconsistent Form 1042-S submissions.<sup>15</sup> These efforts were made even more difficult because the IRS Letters 5532C, *Notification of Preliminary Action Regarding Chapter 3 or Chapter 4 Withholdings Shown as Payments on Your Tax Return*, issued to affected taxpayers did not state the specific reasons for the mismatches between their Forms 1042-S and those filed by the withholding agent.<sup>16</sup> Thus, taxpayers often found it difficult to tell what information they should ask their withholding agents to correct.

### The IRS's Unsuccessful Systemic Matching Program Has Caused Particular Hardships for International Students

As an example of the problems caused by the IRS's approach to the processing of Form 1042-S refund claims, several months ago TAS became aware of tens of thousands of foreign university students whose Form 1042-S refunds were disallowed by the IRS on account of alleged mismatches in withholding information filed by the students and their colleges and universities.<sup>17</sup> The National Taxpayer Advocate and her staff raised concerns about the matching program and the student Form 1042-S issue.<sup>18</sup> These concerns, however, were repeatedly dismissed by the IRS officials charged with operating the program.<sup>19</sup>

11 *The National Taxpayer Advocate's 2015 Annual Report to Congress: Hearing Before the H. Subcomm. on Government Operations and the H. Comm. on Oversight and Government Reform, 114th Cong.* (2016) (statement of Nina E. Olson, National Taxpayer Advocate).

12 IRM 21.8.1.11.14.2(9), *FATCA - Programming Beginning January 2015 Affecting Certain Forms 1040NR (TC 810-3 -E Freeze)* (Feb. 18, 2016).

13 Notes from TAS conference calls with LB&I (Mar. 13, 2016 and Apr. 29, 2016) (on file in TAS archives).

14 Notes from TAS conference call with LB&I (Apr. 29, 2016) (on file in TAS archives).

15 See IRM 21.8.1.11.14.3, June 2, 2016 (see SERP: <https://serp.enterprise.irs.gov/databases/irm.dr/current/21.dr/21.8.dr/21.8.1.dr/21.8.1.11.14.3.htm>).

16 See IRM 21.8.1.11.14.3(5), June 2, 2016 (see SERP: <https://serp.enterprise.irs.gov/databases/irm.dr/current/21.dr/21.8.dr/21.8.1.dr/21.8.1.11.14.3.htm>).

17 TAS General Project 34152. See also SERP Alert 16A0135 (Mar. 24, 2016), revised on Apr. 7, 2016, rescinded on Apr. 26, 2016.

18 TAS General Project 34152. TAS expressed concerns about the Form 1042-S matching program to ensure there is no undue hardship on taxpayers since at least February 2015. See, e.g., FATCA Executive Steering Committee Meeting Notes (Feb. 4, 2015; June 10, 2015; Oct. 14, 2015; Mar. 2, 2016; Mar. 16, 2016; Apr. 27, 2016; May 25, 2016) (on file with TAS).

19 TAS General Project 34152. On March 2, the National Taxpayer Advocate brought forth an issue involving 1042-S matching problems to LB&I leadership. FATCA Executive Steering Committee Meeting Notes (Mar. 2 and 16, 2015) (on file with TAS).

When questioned about this specific issue, the IRS represented both to TAS, and to other parties, that the mismatches were attributable to a glitch in the third-party software used by the colleges and universities in their capacity as withholding agents.<sup>20</sup> The providers of this software contacted the IRS in an attempt to learn more about the alleged errors, to obtain assistance in identifying and repairing systemic problems, and to seek solutions for the impacted students. According to the National Association of College and University Business Officers (NACUBO) and at least one of the software providers, the IRS was extremely reluctant to communicate with the impacted parties and explain its rationale for the existing problems. “IRS officials have not reached back out to NACUBO or to two of the three institutions and one of the two software providers that furnished student tax returns to the IRS ... Repeated requests to the IRS for follow up ... go unanswered.”<sup>21</sup>

As stated by one of the software providers, “We are four companies that don’t usually communicate, yet we miraculously made the same mistake after doing this for many years? That is highly improbable from a software standpoint, and it is much more logical to look at their whole set of new code in the matching software.”<sup>22</sup>

Only when congressional inquiries were received did the IRS take these student Form 1042-S problems, raised by the National Taxpayer Advocate and other stakeholders, seriously.<sup>23</sup> TAS understands that an investigation of the process ultimately was undertaken and a determination reached that IRS transcription errors and rigid processes were primarily responsible for the mismatches.<sup>24</sup> Finally, the IRS publicly acknowledged that its matching program was generating excessive false-positives and that the IRS was at fault, not the software companies serving the educational institutions and their students.<sup>25</sup>

### The IRS’s Enforcement-Oriented Approach to International Taxpayers Creates Problems for Taxpayers, Representatives, and Other Stakeholders, and Wastes Precious IRS Resources

This problem for foreign students, third-party service providers, and all foreign taxpayers filing Form 1040NR and Form 1120-F refund claims based on withholding of tax reported on Forms 1042-S, could largely have been avoided, and resources maximized, had the IRS simply used technology already developed and pre-tested in the domestic withholding context.<sup>26</sup> Likewise, the hardships to taxpayers could have been mitigated if the IRS had listened when it was originally contacted regarding the concerns of third parties. From a broader perspective, this entire chain of events, both for foreign students and

20 Notes from TAS conference call with LB&I (Mar. 13, 2016) (on file in TAS archives); Sabrina Rodriguez, *Tax Software Glitch Leaves International Students in Panic*, POLITICO PRO (Apr. 14, 2016).

21 Briefing paper, NACUBO, *Widespread Tax Problems for International Students* (Apr. 21, 2016) (on file in TAS archives); Letter from Donna Kepley, President, Arctic International LLC, to Nina E. Olson, National Taxpayer Advocate (Apr. 18, 2016) (on file with TAS).

22 Sabrina Rodriguez, *Tax Software Glitch Leaves International Students in Panic*, POLITICO PRO (Apr. 14, 2016).

23 Letter from Rep. Lloyd Doggett to John Koskinen, Comm’r, IRS (Apr. 22, 2016) (on file in TAS archives); Letter from John Koskinen, Comm’r, IRS to Rep. Lloyd Doggett (Jun. 6, 2016) (on file in TAS archives).

24 TAS General Project 34152.

25 IRS, *IRS Takes Steps to Help Students; Outlines Interim Process for Obtaining Refunds of Withholding Tax Reported on Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding* (June 6, 2016), <https://www.irs.gov/uac/irs-takes-steps-to-help-students-and-others-outlines-interim-process-for-obtaining-refunds-of-withholding-tax-reported-on-form-1042s-foreign-persons-us-source-income-subject-to-withholding>.

26 The Return Integrity & Compliance Services (RICS) Integrity & Verification Operation (IVO) — a part of the Wage & Investment (W&I) Division — uses filters, rules, data mining models, and manual reviews to identify potentially false returns, usually through reported wages or withholding, to stop fraudulent refunds before the IRS issues them. See, e.g., IRM 25.25.2.1(1) (Aug. 20, 2015). See also Area of Focus: *The IRS’s Pre-Refund Wage Verification Program Continues to Incorrectly Flag and Substantially Delay Legitimate Refunds for Hundreds of Thousands of Taxpayers*, *infra*.

for all taxpayers whose withheld tax is reflected on Form 1042-S, was rooted in the IRS's increasingly enforcement-oriented culture, was perpetuated by the poorly-conceived and executed systemic matching program, and was exacerbated by the IRS's unwillingness to effectively engage with taxpayers and other stakeholders, including TAS.

The IRS has announced the intention of lifting the freezes currently placed on refunds of withholding tax reported on Form 1042-S and discontinuing its policy of instituting future freezes until it has redesigned the process for examining such claims.<sup>27</sup> The IRS should move quickly and decisively to provide this relief, and, insofar as possible, to undo the hardships that it has needlessly caused impacted taxpayers.

TAS has requested to be a part of the cross-functional team charged with future process redesign. To this point, however, the IRS has not committed to include TAS in this effort. In order for this process redesign to be successful, the IRS must abandon its enforcement-only bias against international taxpayers, become less insular in its approach, and listen to the observations and recommendations of the National Taxpayer Advocate and stakeholders who have valuable perspectives to contribute.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Monitor IRS's redesign of the Form 1042-S withholding program;
- Work with the IRS to improve the policies and procedures associated with the redesigned Form 1042-S withholding program;
- Advocate for U.S. taxpayers experiencing any remaining significant hardships as a result of systemic Chapter 3 and Chapter 4 refund freezes and issue TAOs as necessary;
- Provide TAS employees working these Form 1042-S cases with enhanced training and guidance, including TAOs covering the most commonly arising situations; and
- Explore potential regulatory and legislative avenues for improving the Chapter 3 and Chapter 4 withholding regime in ways that are less intrusive, only gather the information actually needed by the IRS, and limit the burden on all impacted parties.

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27 IRS, *IRS Takes Steps to Help Students; Outlines Interim Process for Obtaining Refunds of Withholding Tax Reported on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding* (June 6, 2016), <https://www.irs.gov/uac/irs-takes-steps-to-help-students-and-others-outlines-interim-process-for-obtaining-refunds-of-withholding-tax-reported-on-form-1042s-foreign-persons-us-source-income-subject-to-withholding>.



Area of  
Focus #2

## The IRS Plan for Implementing the Private Debt Collection Program Includes Practices That Will Harm Taxpayers and Tax Administration

### 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 Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

### Background

In 2005, when the IRS prepared to launch a program allowing private collection agencies (PCAs) to collect delinquent tax debt, the National Taxpayer Advocate identified the initiative as a serious threat to taxpayer rights, questioned the program's revenue projections, and in 2006 called for repeal of the legislative provisions that authorized it.<sup>2</sup> As we predicted, the private debt collection (PDC) program did not meet IRS expectations or those of Congress, and the IRS discontinued the program in 2009.<sup>3</sup> Despite the proven inefficiencies of the prior PDC program, Congress enacted legislation in 2015 that requires the IRS to assign certain delinquent taxpayer accounts to PCAs.<sup>4</sup>

The PDC program raises serious concerns about how the accounts of taxpayers who are experiencing economic hardship will be handled. Under statutory and administrative rules, the IRS itself generally must refrain from seeking to collect money from taxpayers who are experiencing economic hardship. Yet the new law does not explicitly require, or even allow, the IRS to withhold economic hardship cases from assignment to PCAs. Thus, PCAs may end up pursuing taxpayers in financial hardship for tax debts the IRS itself could not collect.<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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 See National Taxpayer Advocate 2005 Annual Report to Congress 76-93 (Most Serious Problem: *Training of Private Debt Collection Employees*); National Taxpayer Advocate 2006 Annual Report to Congress 34-61, 458-462 (Most Serious Problem: *True Costs and Benefits of Private Debt Collection and Legislative Recommendation: Repeal Private Debt Collection Provisions*).
- 3 See National Taxpayer Advocate 2008 Annual Report to Congress 328-336 (Status Update: *The IRS's Private Debt Collection Initiative is Failing in Most Respects*); National Taxpayer Advocate 2007 Annual Report to Congress 411-431 (Status Update: *Private Debt Collection*); IR-2009-19, *IRS Employees More Flexible, More Cost Efficient* (Mar. 5, 2009); The Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, Div. D, Title I, § 106, 123 Stat. 524, 636 (providing that none of the funds made available in the Act could be used to fund or administer IRC § 6306 debt collection activities by PCAs).
- 4 Fixing America's Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act).
- 5 IRC § 6306(c) generally requires the IRS to assign to PCAs all "inactive tax receivables" (except those specifically excluded in subsection (d)). A "tax receivable" is defined as "any outstanding assessment which the [IRS] includes in potentially collectible inventory." The statute provides no definition of "potentially collectible inventory."

From discussions with the IRS PDC Program Office and IRS Chief Counsel for Procedure & Administration, it is our understanding that accounts in Currently Not Collectible (CNC) hardship status are not “tax receivables” within the meaning of IRC § 6306(c)(2)(B), are therefore not required to be assigned to PCAs, and will not be assigned. However, there are populations who also meet all the requirements for CNC hardship status because they are experiencing economic hardship, but whose accounts do not have that designation. To the extent the accounts of taxpayers in economic hardship are assigned to PCAs, the new PDC program will disproportionately affect this vulnerable taxpayer population.<sup>6</sup>

### Taxpayers in Economic Hardship Require Assistance and Debt Resolution Tools That PCAs Cannot Provide

Congress and the IRS have long recognized that specific procedures are required to work with and manage the accounts of taxpayers who are in economic hardship. For example:

- The IRS is statutorily required to release a levy where it has determined the levy is creating an economic hardship due to the financial condition of the taxpayer;<sup>7</sup>
- The IRS has authority to enter into offers in compromise (OICs) based on doubt as to collectability;<sup>8</sup> and
- The IRS designates some taxpayers’ accounts as CNC and removes them from active collection inventory when it determines the taxpayer is in economic hardship.<sup>9</sup>

PCAs, in contrast, have no authority to enter into OICs or designate accounts as CNC hardship status, and as discussed below, have no incentive to return the accounts of taxpayers in economic hardship to the IRS, where they can obtain relief.

Another example of how the accounts of taxpayers in economic hardship are handled concerns the Federal Payment Levy Program (FPLP). The IRS presumes recipients of Social Security (*i.e.*, Old Age, Survivors, and Disability Insurance (OASDI) benefits) or Railroad Retirement Board (RRB) benefits whose incomes are less than 250 percent of the FPL are in economic hardship, and excludes their accounts from this automatic levy program.<sup>10</sup> The IRS adopted the 250 percent measure after TAS developed a model to estimate the income and expenses of taxpayers whose Social Security income had been subject to FPLP

<sup>6</sup> For example, as the National Taxpayer Advocate noted, “[a]fter analyzing Collection data for FY 2013, the IRS found that 79 percent of the cases that fall into the “inactive tax receivables” category involve taxpayers with incomes below this low income threshold [*i.e.*, 250 percent of the federal poverty level (FPL)].” Letter from Nina E. Olson, National Taxpayer Advocate, to Sen. Ron Wyden, Chairman, Committee on Finance; Sen. Orrin G. Hatch, Ranking Member, Committee on Finance; Rep. Dave Camp, Chairman, Committee on Ways and Means; Rep. Sander Levin, Ranking Member, Committee on Ways and Means; Rep. Charles W. Boustany, Jr., Chairman, Subcommittee on Oversight, Committee on Ways and Means; Rep. John Lewis, Ranking Member, Subcommittee on Oversight, Committee on Ways and Means 8 (May 13, 2014).

<sup>7</sup> IRC § 6343(a)(1)(D).

<sup>8</sup> See IRC § 7122; Treas. § Reg. 301.7122-1(b)(2), authorizing compromises where there is doubt as to collectability, which “exists in any case where the taxpayer’s assets and income are less than the full amount of the liability.”

<sup>9</sup> See Internal Revenue Manual (IRM) 5.16.1.1, *Currently Not Collectible Overview* (Aug. 25, 2014); IRM 5.16.1.2.9, *Hardship* (Aug. 25, 2014). IRM 5.15.1.16, *Making the Collection Decision* (Nov. 17, 2014), (including among acceptable collection decisions the designation of accounts as CNC due to economic hardship).

<sup>10</sup> IRC § 6331(h)(2) gives the IRS the authority to issue a continuous levy on a variety of federal sources of income, including Social Security and RRB benefits. The IRS carries out automatic levies on these sources pursuant to the FPLP. IRM 5.11.7.2.1(2), *Levy Authority and Background* (Aug. 28, 2012). IRM 5.11.7.2.2.3, *Low Income Filter (LIF) Exclusion* (Aug. 28, 2012) describes exclusions from the program for recipients of Social Security and RRB benefits. Whether or not taxpayers’ accounts are excluded from FPLP levies, other income they receive, or assets they own, may be subject to non-FPLP levies. The IRS, at the urging of the National Taxpayer Advocate, revised the IRM to require revenue officers to consider whether a taxpayer is in economic hardship before imposing a levy. IRM 5.11.1.3.1, *Pre-Levy Considerations* (Aug. 1, 2014).

levies.<sup>11</sup> The study showed that a significant number of taxpayers were subject to a levy on their Social Security income even though they could not afford the levy.<sup>12</sup>

Also troubling was the finding that a significant portion of taxpayers paid, or attempted to pay, their tax liability even though they could not afford to do so. The study also found that more than one-quarter of FPLP taxpayers who had incomes at or below the poverty level also:

- Paid their tax liability;
- Entered into an installment agreement with the IRS; or
- Were subject to an ongoing FPLP levy.<sup>13</sup>

The IRS accepted the results of the TAS study, but because the algorithm TAS used in its study to determine economic hardship could not readily be automated, the IRS asked TAS to identify a more administrable measure, such as a minimum dollar amount of income, or income as a percentage of the FPL, as a proxy for economic hardship. By October 6, 2009, the Deputy Commissioner for Services and Enforcement, the Commissioner of the Wage and Investment Division, and the National Taxpayer Advocate had collectively determined that that proxy would be 250 percent of the FPL.<sup>14</sup> Thus, FPLP levies will generally not reach federal payments to taxpayers whose incomes are below this threshold.<sup>15</sup>

More recently, the Commissioner of Internal Revenue, at the urging of the National Taxpayer Advocate, agreed to exclude from the FPLP program accounts of taxpayers receiving Social Security Disability Income (SSDI).<sup>16</sup> Taxpayers receiving SSDI by definition generally cannot earn over \$1,130 per month without having their SSDI payments reduced.<sup>17</sup>

Accounts that qualify for exclusion from FPLP levies may nevertheless be “inactive tax receivables” required to be assigned to PCAs. This outcome is particularly inappropriate for disabled taxpayers who receive SSDI. As noted above, in order to receive SSDI in 2016, a recipient’s monthly income cannot exceed \$1,130 (\$1,820 if he or she is blind).<sup>18</sup> Considering that the 2016 FPL for a single person was \$11,880, or \$990 per month, a taxpayer must essentially have earnings *below 114 percent of the FPL* as a precondition to receiving SSDI payments.<sup>19</sup> At a minimum, the IRS should use its discretion to

11 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*).

12 *Id.* at 57.

13 *Id.* at 49, 57.

14 Notes of Oct. 6, 2009 meeting, on file with National Taxpayer Advocate.

15 The filter does not protect all low income taxpayers, however, such as those with unfiled returns. See IRM 5.11.7.2.2.3, *Low Income Filter (LIF) Exclusion* (Aug. 28, 2012).

16 IRS response to Recommendation 19-2, National Taxpayer Advocate 2014 Annual Report to Congress (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*) reported in National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress, vol. 2, 70 (June 30, 2015).

17 See Social Security Administration (SSA), *Update 2016*, <https://www.ssa.gov/pubs/EN-05-10003.pdf>.

18 *Id.*

19 U.S. Dept. of Health and Human Resources, *Poverty Guidelines* (2016), <https://aspe.hhs.gov/poverty-guidelines>. The amount of disability benefits the taxpayer can receive depends on a number of factors, including his or her earnings history. A monthly payment of \$1,130 is 114 percent of the \$990 FPL.

categorize these accounts as a low priority for assignment.<sup>20</sup> The IRS should also explore whether they do not meet the statutory definition of “potentially collectible inventory” and thus are not required to be assigned to PCAs.

Yet another example of how the accounts of taxpayers in economic hardship are handled concerns elderly, blind, or disabled persons who receive public assistance in the form of Supplemental Security Income (SSI) and taxpayers who receive state or local government public assistance or welfare programs based on a needs or income test. In order to receive SSI in 2016, a person with income and assets (if any) cannot have:

- Earned income of more than \$1,551 per month (\$2,285 for a couple);
- Unearned income of more than \$753 per month of unearned income (\$1,120 for a couple); and
- Assets worth more than \$2,000 (\$3,000 for a couple).<sup>21</sup>

The highest federal SSI payment in 2016 is \$733 per month (\$1,100 for a couple).<sup>22</sup> These taxpayers’ public assistance income is statutorily exempt from levy.<sup>23</sup> It is inappropriate to assign these taxpayers’ accounts to PCAs.

### The IRS Has Not Required PCAs to Be Transparent About Their Procedures

In the 2006 PDC program, the IRS appeared to retain meaningful oversight of PCAs’ interactions with taxpayers on the telephone because PCAs were required to submit their telephone scripts for IRS approval.<sup>24</sup> However, PCAs were very reluctant to share their operational plans, which included telephone calling scripts, with the National Taxpayer Advocate.<sup>25</sup> They claimed their procedures were “proprietary information,” and the IRS did not challenge that designation.<sup>26</sup> The National Taxpayer Advocate was thereby impeded from effectively protecting taxpayers’ rights. When the scripts were finally made available, it became apparent that the PCAs used tactics inconsistent with IRS collection practices.<sup>27</sup> Despite urging from TAS, neither the contract the IRS now intends to use nor the PCA Policy and Procedures

20 Counsel Memorandum POSTS-137847-15, *New IRC 6306(c): IRS Discretion to Prioritize Cases For Immediate Assignment 2–3* (Mar. 18, 2016), <https://www.irs.gov/pub/lanoa/pmta-2016-02.pdf>. The IRS would presumably have discretion to prioritize in the same manner accounts that would have been excluded from the FPLP program but for e.g., unfiled returns. It is our understanding that accounts actually subject to FPLP levies will not be assigned to PCAs because they are “currently under examination, litigation, criminal investigation, or levy” as described in IRC § 6306(d)(4), and thus not eligible for assignment to PCAs.

21 SSA, *Social Security, A Guide to Supplemental Security Income (SSI) for Groups and Organizations* 11, 12, 16 (2016), <https://www.ssa.gov/pubs/EN-05-11015.pdf>.

22 *Id.* at 7. As the guide notes, some states provide supplemental benefits and “[i]f Social Security runs the state’s supplemental payment, one check is paid to the beneficiary each month that combines the federal and state SSI benefits. States may change the payment amounts based on where, and with whom, people live. Also, some states might not count other income.”

23 IRC § 6334(a)(11).

24 Section 6.3.9, *Telephone Scripts*, PCA Policies and Procedures Guide (2008 version), provided in part: “All scripts used by the PCAs for telephone calls must be approved by the IRS prior to making any phone contacts.”

25 National Taxpayer Advocate 2007 Annual Report to Congress 411, 418 (Status Update: *Private Debt Collection*).

26 *Id.*

27 Letter from Nina E. Olson, National Taxpayer Advocate, to Sen. Ron Wyden, Chairman, Committee on Finance; Sen. Orrin G. Hatch, Ranking Member, Committee on Finance; Rep. Dave Camp, Chairman, Committee on Ways and Means; Rep. Sander Levin, Ranking Member, Committee on Ways and Means; Rep. Charles W. Boustany, Jr., Chairman, Subcommittee on Oversight, Committee on Ways and Means; Rep. John Lewis, Ranking Member, Subcommittee on Oversight, Committee on Ways and Means 10–11 (May 13, 2014).

Guide that implements the contract made needed changes. The IRS retained the same (ineffective) provision requiring IRS approval of “scripts used by the PCAs for telephone calls.”<sup>28</sup>

### The IRS Proposes to Pay Commissions to PCAs on Taxpayer Remittances Prompted by IRS Action Rather Than PCA Action

Under the current PDC program, the IRS proposes to compensate PCAs for taxpayer payments when the PCA has not taken any action, but rather the payment was triggered by an IRS action. The current PCA Policy and Procedures Guide, like the one used in the previous PDC program, directs the PCA to “mail an IRS approved initial contact letter to the taxpayer(s) and POA [power of attorney] no sooner than the 11th calendar day after the PCA receives the case.”<sup>29</sup> The current PCA contract, like the one used in the previous PDC program, specifies that PCAs may receive commissions on taxpayer payments received 11 days or more after the assignment of the account to the PCA.<sup>30</sup> These arrangements overlook the fact that before the PCA sends its initial contact letter, the IRS notifies the taxpayer that it assigned the account to a PCA, and this letter from the IRS may also result in payments by taxpayers.

**Example:** Assume the IRS assigns an account to a PCA on Day 1 and mails the letter notifying the taxpayer of the assignment on Day 2, which the taxpayer receives on Day 6. Even if the taxpayer takes only until Day 8 to review the letter, locate old records, and decide how to proceed, and on Day 9 sends payment to the IRS by certified mail, the payment would arrive at the IRS around Day 12. The PCA will receive a commission on that payment even though it played no part in collecting the tax.

In fact, the IRS routinely allows 15 days from the due date for a response for mailing and processing time.<sup>31</sup> If the IRS allowed time for mailing and handling taxpayers’ responses to its initial contact letter before assigning the case, it would retain more dollars for the public fisc and not be found to pay commissions on payments the PCAs have done nothing to collect.

A related concern is that the IRS may assign cases to PCAs even though taxpayers are trying to resolve the liability with the IRS. This is demonstrated by the fact that during the first month of the 2006 PCA initiative, the IRS received about \$600,000, presumably in response to the letter it sent to the taxpayer, rather than any action on the part of the PCA.<sup>32</sup>

TAS recommended that the IRS, in its first contact letter, notify taxpayers of its *intention* to assign accounts to PCAs (rather than announcing that it had already done so) and wait at least 14 days after sending the letter before actually transferring the account to the PCA. This would more reasonably identify

28 Section 6.3.9, *Telephone Reviews*, PCA Policies and Procedures Guide; Section 18.1 requires PCAs to record all conversations with taxpayers and to allow the IRS to listen to “live” or recorded calls. The IRS has agreed to allow TAS access to these calls. However, without the underlying instructions or scripts, it may be more difficult to identify inappropriate call tactics and gauge whether they are widespread.

29 Section 5.3, *Initial Contact Letters*, PCA Policy and Procedures Guide.

30 Section 4.1 of the current PCA contract provides that “[t]he Contractor shall receive commission on any payment received 11 calendar days or more after the date the account is transferred to the Contractor.”

31 See, e.g., IRM 5.11.1.3.2, *Required Notices* (Aug. 1, 2014), instructing “[t]he taxpayer has 30 days in which to request a CDP hearing. Allow 15 days after the 30 day period for receipt of a timely mailed request for CDP hearing.”

32 IRS, *Filing and Payment Compliance Briefing Document 23* (Nov. 1, 2006). Of the \$1.1 million of revenue collected on accounts after assignment to PCAs from September 8–22, 2006, commissions were payable on only \$500,000. Through June of FY 2007, nearly a quarter of the revenue collected on accounts after assignment to PCAs was not commissionable. IRS, *Filing and Payment Compliance Advisory Council Briefing Document 5* (Aug. 1, 2007).

payments that are made as a result of the IRS letter and not PCA action, and would prevent unnecessary transfers of cases to PCAs.

### The Training and Guidance the IRS Proposes to Provide to PCAs Is Insufficient

The current PCA Policy and Procedures Guide contemplates the possibility that some taxpayers may be unable to pay their liabilities because they are facing financial hardship and allows, but does not require, PCAs to return those accounts to the IRS. Thus, although an account designated as CNC hardship would not be assigned to PCAs, once an account is assigned, there is no mechanism to ensure it will be properly managed to reflect a change in the taxpayer's circumstances. A PCA may continue to extract payments from a taxpayer who is in economic hardship rather than return the account to the IRS, where it can be designated as CNC hardship. Thus, similarly-situated taxpayers may be treated differently depending on when their economic hardship arises. Those "fortunate" enough to have been determined to be in economic hardship by the IRS will not be forced to deal with PCAs. Those whose economic hardship arises after assignment of their account may never be free of the PCA.

Moreover, the PCA Policy and Procedures Guide does not specify what, if any, additional information a PCA employee should consider before designating an account "unable to pay."<sup>33</sup> Different PCAs may interpret the "unable to pay" provisions as requiring varying forms of documentation, also resulting in inconsistent treatment of similarly-situated taxpayers. Because of these inconsistencies, TAS suggested the IRS require PCAs to instruct taxpayers who indicate they cannot pay to complete IRS Form 433-F, *Collection Information Statement*, and submit it to the IRS. The IRS could then review the taxpayer's economic situation and assist the taxpayer with collection alternatives, as appropriate. The IRS rejected TAS's suggestion for a reason that raises yet another concern — the IRS does not intend to work accounts PCAs return to it, but rather to restore them to inactive inventory.

The most significant change in the current PDC initiative is the lack of a "Referral Unit," which existed in the 2006 PDC program.<sup>34</sup> Referral Unit employees, who essentially had the same authorities as Automated Collection System (ACS) employees, worked cases returned to the IRS by the PCAs. At the conclusion of the prior initiative, PCA cases were recalled by the IRS. IRS employees who worked those cases collected more dollars than had the PCAs. PCA employees collected 5.4 percent of the dollars available for collection, while IRS employees collected 9.2 percent of the dollars available for collection — nearly double.<sup>35</sup> In fact, the comparison understates the extent to which IRS employees are more effective in working cases, because the IRS only worked cases on which PCAs failed to collect. Thus, the PCAs had an opportunity to close the easy cases, and by the time the IRS received the cases, the debts were older.<sup>36</sup>

In the absence of a Referral Unit, accounts the PCAs return to the IRS will not be placed in active inventory. As the National Taxpayer Advocate has noted:

Once the IRS selects a case for collection action, IRS Collection policy has generally been to work the case to completion. If the IRS did not work cases to completion, more taxpayers

33 However, the PCA Policy and Procedures Guide, Section 6.3.6, *Telephone Contacts*, instructs PCA employees they may tell the taxpayer that the PCA will "provide financial information it obtains from the taxpayer to the IRS."

34 For a complete description of the structure of the 2006 PDC initiative, see National Taxpayer Advocate 2005 Annual Report to Congress 76, 79 (Most Serious Problem: *Training of Private Debt Collection Employees*).

35 See National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2, 97, 106 (Research Study: *The IRS Private Debt Collection Program: A Comparison of Private Sector and IRS Collections While Working the Private Collection Agency Inventory*).

36 *Id.* at 101.

would choose to ignore IRS Collection attempts, hoping that the IRS would eventually give up. The impression that collection cases will be worked to completion will be undermined if the IRS assigns a case to a PCA and then shelves the case if the PCA is unsuccessful in collecting the debt, potentially contributing to a perception that ignoring tax collection may be a successful strategy.<sup>37</sup>

The IRS also does not intend to provide any training to PCA employees on basic issues such as:

- IRS audit and collection procedures;
- The effect of IRS collection action taken after the account has been assigned to a PCA;<sup>38</sup>
- The role of IRS Appeals;<sup>39</sup>
- The meaning of CNC status and how it is determined; or
- Collection alternatives such as OIC and partial payment installment agreements.

TAS has undertaken to provide this training, together with training on TAS procedures, as part of its training on the Taxpayer Bill of Rights.

Additional concerns about how the IRS is implementing the PDC program, and the latitude of PCAs to collect debts, may arise as the effect of other legislation or judicial decisions becomes clear. In 2015, for example, Congress passed the Bipartisan Budget Act that gives the Federal Communications Commission (FCC) the authority to limit the number and duration of calls private debt collectors may make to a cellphone to collect a federal debt.<sup>40</sup>

Many of the concerns discussed above were articulated during the Bronx, New York, National Taxpayer Advocate Public Forum during an exchange between the National Taxpayer Advocate, Congressman José E. Serrano,<sup>41</sup> Mr. Erik Schryver,<sup>42</sup> and Mr. Elliot Quinones:<sup>43</sup>

**CONGRESSMAN SERRANO:** I have a question for you.

**MS. OLSON:** Okay.

**CONGRESSMAN SERRANO:** My question is: The IRS was recently required to start hiring private debt collectors despite significant evidence that they cost more than they bring in...

37 National Taxpayer Advocate 2008 Annual Report to Congress 328, 331 (Status Update: *The IRS's Private Debt Collection Initiative is Failing in Most Respects*).

38 Although the IRS ceases most collection action once it assigns an account to a PCA, it continues to offset taxpayers' refunds, and some automated levy programs continue, such as the State Income Tax Levy Program and the Municipal Tax Levy Program.

39 Taxpayers may request assistance from the IRS Office of Appeals while the case is with private collectors, for example to challenge an automatic levy.

40 Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(2)(C), 129 Stat. 584, 588 (the Budget Act), (amending 47 U.S.C. § 227(b)(1)(A), part of The Telephone Consumer Protection Act, which generally requires a caller to obtain the prior express consent of the called party when making any non-emergency call using an automatic telephone dialing system or an artificial or prerecorded voice (sometimes collectively referred to as "robocalls") to a wireless telephone number. As amended, the FCC is authorized to "restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.").

41 Member, U.S. House of Representatives.

42 Senior Staff Attorney, Legal Services NYC and Qualifying Tax Expert, Bronx Low Income Taxpayer Clinic.

43 Founder, Elliot Quinones and Associates, Bronx, NY.

[O]ne of the fears I have, and my question is, what do you have in place or what do we have in place to monitor this? One of the fears I have is that when you have a government employee going out to do his or her job, it is up to the supervisor to find out if that person is doing a good job... But when you have somebody who, basically, is going to make money based on how many people they get, I wonder what style they are going to use when they knock on the door and [the] fear factor involved in “If you don’t talk to me now, you are going to go to jail” and so on. There are so many people in our community that think they are a step away from jail by just talking to a government person. So, how would you monitor this in the future?

**MS. OLSON:** Well, we are working on this right now and this is the third time that the IRS has been told or tried private debt collectors and the first two times, in my opinion, were dismal failures just from a business case, that didn’t bring in the money that we wanted [them] to and [as it] turned out they weren’t any better and, in fact, the IRS was better at collecting the money from the taxpayers and was, in fact, able to talk with the taxpayers about issues other than just how much money can you pay. I mean that’s sort of the point about having the tax agency and what all this is about, is that really the job of the tax agency is to increase voluntary compliance, that we want people to comply with the law voluntarily. So, as you are trying to collect the back taxes that are owed, the primary worry should be, “[I]s the person paying [her] current taxes?” What are they doing to be in compliance going forward so we can stop the hemorrhaging and then we will figure out the problem behind it. The private debt collectors aren’t interested in any of that. They have no authority about that. So, they are not going to educate taxpayers about the tax laws, about [where] they made a mistake, what they can do going forward. They are not going to be able to help taxpayers get offers in compromise or more complicated, more favorable terms of installment agreements. And, so, there is just pressure to get as much money up front from the taxpayer.

Private debt collectors have the highest number of complaints to the Federal Trade Commission [FTC] [of any] industry whatsoever.

**CONGRESSMAN SERRANO:** Really?

**MS. OLSON:** Yes... they have one of the highest turn-over rates, the employees in that industry, of any industry operating in the United States. So people are just constantly in and out as opposed to IRS employees who have years of working with taxpayers and understanding their life circumstances. And, I’m very critical of the IRS collection function. I have real concerns about maybe they are not doing it as well as I want them to but they are light years ahead of the private debt collectors. So, we are looking at it and the IRS is trying to build up some rules but I will say this, however, the way the legislation is written, the IRS doesn’t have a lot of discretion of the cases that are going out. So, many cases are going to be assigned to the private debt collectors this time.

I’ll tell you one little story. When we did it the second time around a few years ago we sent out — the IRS sent out a letter and it said, “In ten days, taxpayer, we are going to turn your case over to a private debt collector.” We got so much money in that ten day period from taxpayers. They called us up. So, they basically let us do anything but “Don’t send us to a private debt collector.”

**MR. SCHRYVER:** Also, we already have this wave of crooks impersonating IRS collectors and collecting fake or non-existent debts.

**MS. OLSON:** Right.



**MR. SCHRYVER:** I don't know how anyone could tell the difference between these guys and a private debt collector.

**MS. OLSON:** Well, that's the other thing, people may refuse. You will either get people agreeing to pay more than they can afford just like they do with the scammers. You know, they just give in or you will have people not talking to the private debt collectors because they have been told the IRS doesn't call out, these are scammers. So, when the private debt collector calls out the taxpayers are just not going to pick up the phone.

**MR. QUINONES:** I think it's an abusive practice because a private debt collector has no incentive to help you. That's basic. His only concern is to generate a revenue for his firm or for himself.

**CONGRESSMAN SERRANO:** Which is my fear from the beginning.<sup>44</sup>

Conduct by PCAs generates more complaints to the FTC than any other industry.<sup>45</sup> Moreover, according to the FTC, consumer complaints about abusive debt collectors have more than doubled over the past seven years.<sup>46</sup>

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Advocate for a definition of “potentially collectible inventory” that excludes the accounts of taxpayers who have been excluded from FPLP levies because their incomes are less than 250 percent of the FPL or receive SSDI or SSI benefits;
- Meet with IRS managers responsible for implementing the current PDC program and advocate for taxpayers where it appears proposed procedures may adversely affect them;
- Advocate that the IRS require PCAs to disclose their operational plans, scripts and training materials; adjust the response time for the initial contact letter from the IRS to taxpayers so that PCAs are compensated for taxpayer payments that were prompted by PCA action, but not for payments received before the PCAs took action; and work to completion cases that are returned by PCAs to the IRS or recalled from PCAs by the IRS;
- Seek Chief Counsel advice on the extent to which the FCC's proposed rule limiting calls to debtors' cellphones to three times per month applies to the IRS or to PCAs as they collect tax debt; and if the FCC's proposed rule does not apply to the IRS or to PCAs, the extent to which the IRS may prohibit PCAs from using automated or pre-recorded voices when contacting taxpayers; and
- Review PCA authorities and procedures to ensure that the IRS does not use PCAs to take collection actions that the IRS itself is prohibited from taking under taxpayer rights protections enacted by Congress.

<sup>44</sup> National Taxpayer Advocate Public Forum (Mar. 18, 2016), Question and Answer Session, pages 58-89.

<sup>45</sup> According to the FTC, only identity theft complaints, which do not involve a specific industry against which a complaint can be lodged, exceed the number of consumer complaints about abusive debt collectors. Colleen Tressler, FTC Consumer Information: *The FTC's New Hall of Shame — Banned Debt Collectors* (Feb. 2, 2015), <https://www.consumer.ftc.gov/blog/ftcs-new-hall-shame-banned-debt-collectors>.

<sup>46</sup> *Id.*

**Area of  
Focus #3**

## Despite Insufficient Internal Guidance, the IRS Continues to Levy on Retirement Accounts and Has Completed a Pilot for Levying on Thrift Savings Plan Accounts Through the Automated Collection System

### 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 Privacy*
- *The Right to a Fair and Just Tax System*

### Background

While any collection action taken by the IRS could affect a taxpayer, levies on assets in retirement accounts may have a particularly negative effect on a taxpayer's future well-being.<sup>2</sup> As a result, the IRS should issue internal guidance that balances the need for efficient collection of tax with the public policy that encourages saving for retirement.<sup>3</sup> The National Taxpayer Advocate previously raised several concerns regarding the inadequacy of IRS internal guidance related to levies on retirement accounts.<sup>4</sup>

Internal Revenue Code (IRC) § 6331 gives the IRS the right to levy on a taxpayer's property and rights to property. This power allows the IRS to levy on funds held in retirement accounts.<sup>5</sup> The IRS has established three steps that must be taken before it can issue a notice of levy on a taxpayer's retirement account:

1. Determine what property (retirement assets and non-retirement assets) is available to collect the liability;
2. Determine whether the taxpayer's conduct has been flagrant; and

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 that was adopted by the IRS are now listed in the IRC. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 One survey found that 31 percent of non-retired respondents had no retirement savings or pension. The amount of retirement savings increased with the amount of income. Eighty-two percent of the respondents making over \$100,000 per year had at least some retirement savings or pension. Meanwhile, among respondents making under \$40,000 per year, only 42 percent had any retirement savings. Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2014* 38-39 (May 2015).

3 Understanding the importance of Americans having sufficient retirement savings, Congress has formulated policies to not only provide Social Security income to retirees, but to protect the rights of individuals to pensions and to encourage retirement savings accounts. For example, the Employee Retirement Income Security Act of 1974 was enacted to provide protection for participants in pension and health plans in private industry. Pub. L. No. 93-406, 88 Stat. 829 (1974).

4 National Taxpayer Advocate 2015 Annual Report to Congress 100-11 (Most Serious Problem: *Levies on Assets in Retirement Accounts: Current IRS Guidance Regarding the Levy of Retirement Accounts Does Not Adequately Protect Taxpayer Rights and Conflicts with Retirement Security Public Policy*); National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 53-58 (Area of Focus: *IRS Procedures for Levies on Retirement Plan Assets Create Financial Harm and Undermine Taxpayer Rights*).

5 For information on what constitutes a retirement plan, see IRC § 4974(c). The IRS may also levy on retirement income or distributions once the taxpayer retires. Internal Revenue Manual (IRM) 5.11.6.1, *Retirement Income* (Jan. 22, 2010).

3. Determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.<sup>6</sup>

### IRS Guidance for Levying Assets in Retirement Accounts Is Insufficient to Protect Taxpayers' Rights

As noted above, the IRS must determine if a taxpayer engaged in flagrant conduct prior to issuing a levy on a retirement account.<sup>7</sup> The IRM does not define what constitutes flagrant conduct.<sup>8</sup> The IRS must make this determination based on examples in the IRM guidance. IRS employees are instructed to consider extenuating circumstances that mitigate otherwise flagrant behavior and to review each situation on a case-by-case basis, but examples of extenuating circumstances were not included.<sup>9</sup> As a result of TAS's negotiations with the IRS, the IRS recently updated the IRM with several examples of extenuating circumstances and flagrant conduct.<sup>10</sup>

Without clear guidance, an IRS employee's assessment of what constitutes flagrant conduct is subjective and susceptible to personal judgment. This could lead to inconsistent treatment of similarly-situated taxpayers, which could erode taxpayers' confidence in a fair tax system and decrease voluntary compliance.

#### *The IRM Guidance Regarding Flagrant Conduct Lacks Definition and Clarity*

A taxpayer cannot adequately challenge the decision to levy without a detailed analysis of the basis for levy, a situation which impacts the taxpayer's *right to privacy*, which provides that taxpayers have the right to expect any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary. Without clear guidance, taxpayers do not know what they need to do to comply with tax laws, which diminishes the *right to be informed*.

TAS casework illustrates the harm that can be caused when there is no clear guidance on what constitutes flagrancy. One case involved a 64 year-old, unemployed taxpayer.<sup>11</sup> In 2012, a revenue officer determined that the taxpayer's monthly expenses exceeded his income and placed the taxpayer's account in currently not collectible (CNC) status. At the time, the revenue officer also analyzed the ability for the IRS to levy the taxpayer's retirement account according to the procedures set forth in IRM 5.11.6.2. The revenue officer confirmed that the retirement account should not be levied because the taxpayer's behavior

<sup>6</sup> IRM 5.11.6.2(4)-(7) (Sept. 26, 2014).

<sup>7</sup> IRM 5.11.6.2(5), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014). The guidance points out if a taxpayer has not engaged in flagrant conduct, then the retirement account should not be levied. *Id.* Thus, the determination of flagrant conduct is critical for determining whether to levy on a retirement account.

<sup>8</sup> The National Taxpayer Advocate recommended a definition of flagrant conduct that includes a "willful action (or failure to act) which is voluntarily, consciously, and knowingly committed in violation of any provision of chapters 1, 61, 62, 65, 68, 70, or 75, and which appears to a reasonable person to be a gross violation of any such provision." See National Taxpayer Advocate 2015 Annual Report to Congress 341. Bills were introduced in the House and Senate in 2015 that recommended a stricter standard for defining flagrant conduct. The proposed definition of flagrant conduct includes: "(A) the filing of a fraudulent return by the taxpayer, or (B) that the taxpayer acted with the intent to evade or defeat any tax imposed by this title or the collection or payment thereof." Taxpayer Rights Act of 2015, S. 2333, 114th Cong. § 307 (2015); Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 307 (2015). For more information on the bill, see Senator Ben Cardin, *Cardin and Becerra Introduce Plan to Protect Taxpayers' Rights*, <https://www.cardin.senate.gov/newsroom/press/release/cardin-and-becerra-introduce-plan-to-protect-taxpayers-rights>. As of June 16, 2016, the House bill has been referred to the Committee on Ways and Means and to the Committee on Financial Services. The Senate bill has been referred to the Committee on Finance.

<sup>9</sup> IRM 5.11.6.2(5), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014).

<sup>10</sup> IRM 5.11.6.2(5), *Funds in Pensions or Retirement Plans* (June 14, 2016).

<sup>11</sup> In this instance, the taxpayer has provided written consent for the National Taxpayer Advocate to use facts specific to the taxpayer's case. Release signed by the taxpayer dated Apr. 5, 2016 (on file with TAS).

was not flagrant, and since the taxpayer was no longer employed and CNC, the taxpayer would need this asset in retirement.

In 2015, the case returned to the field with less than a year on the collection statute expiration date (CSED).<sup>12</sup> The new revenue officer determined that the taxpayer (67 years old at that time) could afford a modest installment agreement, a determination contested by the taxpayer's representative. The revenue officer also decided to levy on the retirement account. There is no analysis in the internal record to explain the legal or other basis for this decision until after the levy occurred. The revenue officer levied the retirement account on January 6, 2016, and the CSED expired on January 14, 2016.<sup>13</sup>

Following the levy, internal notes indicate that the decision to levy was based on flagrant conduct. The revenue officer determined that the taxpayer exhibited flagrant conduct since he continued to make contributions to his retirement account while he knew there was an outstanding balance.

Internal records do not show that the taxpayer was informed to stop making retirement account contributions while his account was in CNC status, or that failure to do so might result in his conduct being determined "flagrant" and lead to a levy on that account. From a policy perspective, taxpayers approaching retirement should not be discouraged from contributing to their retirement. In fact, in the years since the CNC determination, this taxpayer had begun to make withdrawals from his retirement account. Through TAS advocacy, the IRS released the levy on the taxpayer's retirement account. The CSED has expired and the taxpayer can now be assured that the issue is resolved.

### *A Detailed Necessary Living Expenses Calculation Should Be Documented Prior to Issuing a Levy on a Retirement Account*

The final step in deciding whether a levy on retirement assets is appropriate is to determine if the taxpayer depends on the money in the retirement account for necessary living expenses (or will in the near future).<sup>14</sup> To conduct this analysis, employees are instructed to use the standards in IRM 5.15, *Financial Analysis*, to estimate how much can be withdrawn annually from the retirement account while leaving enough for necessary living expenses over the taxpayer's remaining life expectancy.<sup>15</sup>

The guidelines for completing the financial analysis are woefully insufficient. For example, there is no requirement to document any minimum retirement age for each type of retirement plan the taxpayer is vested in (*e.g.*, Social Security, Individual Retirement Account, 401(k), Thrift Savings Plan (TSP)). A sound analysis would include simulations comparing scenarios where the taxpayer elects to take distributions at the earliest date allowable with scenarios where the taxpayer elects to take distributions at various other dates to determine the optimal age at which the taxpayer should begin taking distributions from various retirement sources. The financial analysis handbook does not take into account cost of living increases or adjustments for increased expenses due to advanced age, such as rising health care or hospice costs.

12 The CSED is the amount of time that the IRS has to collect a taxpayer's liability. Generally, the IRS has ten years to collect a debt after assessment. IRC § 6502.

13 Internal guidance provides that there must be a full analysis prior to levying on a retirement account. The imminent expiration of a CSED is not sufficient to justify the decision to levy a retirement account. IRM 5.11.6.2(3) (Sept. 26, 2014).

14 IRM 5.11.6.2(7), *Funds in Pension or Retirement Plans* (Sept. 26, 2014). Employees are instructed not to levy on the retirement account if it is determined the taxpayer depends on the money in the retirement account (or will in the near future).

15 *Id.*

Since June 2015, TAS has been holding discussions with the IRS to define flagrancy, revise the flagrant conduct examples, and revisit pre-levy considerations in the IRM on retirement accounts. Certain progress has been made, including:

- Modification of six of the seven flagrant conduct examples;
- Updated guidance on pre-levy considerations;
- Revision of the Levy Source Screen on the Integrated Collection System (ICS) to include the type of assets being selected for the levy in order to assist the revenue officer in perfecting the levy; and
- A tentative agreement to revise the IRM to require revenue officers to advise affected taxpayers to cease contributions to retirement accounts prior to making a flagrancy determination based on the fact of such contributions.

However, despite the progress over the course of several meetings, we have not obtained agreement on several key issues:<sup>16</sup>

- While the IRS has incorporated several examples of flagrant conduct in the IRM based on discussions with TAS, it refuses to provide a clear and unambiguous definition of such conduct. As a result, the decision as to whether a taxpayer is flagrant is still dependent upon the subjective judgment of individual revenue officers relying on IRM examples.
- The IRS continues to resist incorporating risk analysis in the retirement levy determination and adopting a standardized Area Director Approval Memorandum to be uploaded into the ICS history.
- The IRS has not agreed to document the taxpayer's ability to pay determination in the ICS history. The determination should be based on a calculation of whether the taxpayer depends on the money in the retirement account for necessary living expenses in retirement and provide the taxpayer an opportunity to respond to those calculations.

### *The IRS Should Adopt a “Retirement Needs” Calculator Based on a Theoretical Model Developed by TAS*

The IRS refused to adopt the National Taxpayer Advocate's recommendation to identify calculators that it can use, such as those provided by the Social Security Administration (SSA) or TSP, to determine the impact of a levy on a retirement account on the taxpayer's future well-being or, in the alternative, create its own calculator.<sup>17</sup> We remain concerned that there is inadequate instruction to employees for analyzing future retirement calculations. Collection employees are instructed to use the standards in IRM 5.15, *Financial Analysis*, to establish necessary living expenses and the life expectancy tables in Publication 590-B, *Distributions From Individual Retirement Arrangements (IRAs)*, to estimate how much can be withdrawn annually to deplete the retirement account in the taxpayer's remaining life.<sup>18</sup> However, these instructions are silent on what type of calculators to use to determine when funds will be depleted. In addition to the variety of methods that could be used by different revenue officers, the IRM is silent on

16 TAS teleconferences with Small Business/Self-Employed Collection Policy, call notes (May 16 and June 10, 2016) (on file with TAS). See also National Taxpayer Advocate 2017 Objectives Report to Congress vol. 2 (IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2015 Annual Report to Congress; anticipated publication late July 2016, [www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport](http://www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport)).

17 See also National Taxpayer Advocate 2017 Objectives Report to Congress vol. 2 (IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2015 Annual Report to Congress; anticipated publication late July 2016, [www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport](http://www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport)).

18 IRM 5.11.6.2(7) (Sept. 26, 2014). When conducting this financial analysis, employees are reminded to consider special circumstances that may be present on a case-by-case review.

factoring any growth in retirement funds or projecting future increases in necessary living expenses. TAS has created a theoretical model of a “retirement needs” calculator, which includes the following steps in determining the taxpayer’s current or near future need for retirement assets to meet necessary living expenses:

- (1) Calculate the taxpayer’s necessary living expenses using IRM 5.15, *Financial Analysis*; <sup>19</sup>
- (2) Calculate the taxpayer’s life expectancy using Publication 590-B, *Distributions From Individual Retirement Arrangements (IRAs)* and the number of months retirement income will be required;
- (3) Calculate the taxpayer’s future SSA benefits (if applicable) using SSA documentation provided by the taxpayer or the SSA Quick Calculator; <sup>20</sup>
- (4) Calculate monthly income required from taxpayer’s retirement assets to meet necessary living expenses, which equals income from all sources other than the retirement assets considered for levy minus necessary living expenses; and
- (5) Calculate the number of monthly distributions from retirement assets until they are depleted using the TSP Retirement Income Calculator. <sup>21</sup>

TAS is offering its assistance to the IRS in developing a retirement needs calculator based on this theoretical model.

### TAS Will Evaluate the Results of the TSP Levy Pilot Project the IRS Had Completed Within the Automated Collection System

The IRS started a pilot program on January 18, 2016, which allowed its Automated Collection System (ACS) to issue levies on TSP accounts. <sup>22</sup> The TSP Levy Pilot ended May 20, 2016. <sup>23</sup> Under ACS, cases are assigned to teams, functions, or units rather than individual employees. <sup>24</sup> It is a computer system that “analyzes for levy sources, undeliverable mail codes, telephone numbers, and other characteristics” in place of an employee. The computer system also “prints letters for mailing and assigns cases to the proper team, function, or units,” while a “small percentage of cases meeting specific criteria” are researched by the ACS Support function. <sup>25</sup> ACS does not routinely initiate outgoing calls to taxpayers. Correspondence submitted by a taxpayer to ACS is processed by ACS Support. <sup>26</sup>

As written, the pilot procedures provided fewer safeguards to taxpayer rights than the current IRM guidance for levying on retirement accounts generally. <sup>27</sup> For instance, the procedures treated taxpayers

19 Calculate current necessary living expenses without factoring future growth or inflation. Allow for known increases (i.e., health insurance or medical costs certain to increase upon retirement).

20 Calculate SSA income without factoring future growth or inflation. See SSA Quick Calculator, <https://www.ssa.gov/OACT/quickcalc/index.html>.

21 Calculate retirement income without factoring future growth or inflation. See TSP Retirement Income Calculator, <https://www.tsp.gov/PlanningTools/Calculators/retirementCalculator.html>. The calculator indicates annual year-end balances. If retirement funds are not fully depleted by end of life expectancy the remaining balance would be available for levy.

22 ACS is a computerized system that maintains balance-due accounts and return delinquency investigations. IRM 5.19.5.2, *What Is ACS?* (Aug. 20, 2013). TSP is a retirement plan for federal employees established under 5 U.S.C. § 8437.

23 SERP Alert 16A0178 (May 25, 2016).

24 IRM 5.19.5.3, *Research on ACS* (May 2, 2016).

25 *Id.*

26 IRM 5.19.6.1, *ACS Support Overview/What Is ACS Support* (June 17, 2014).

27 IRS, *ACS TSP Levy Pilot Procedures* (Dec. 9, 2015).

in ACS differently from taxpayers working with a revenue officer.<sup>28</sup> Under the pilot procedures, the IRS employee's financial analysis was restricted to these two elements:

- Document if there is any information that retirement is impending and that the taxpayer will be relying on funds in the TSP for necessary living expenses. The employee is instructed to use available information to apply the standards in IRM 5.19.13.1.4 and Publication 590-A. If this documentation is present, do not issue the TSP levy; and
- Consider any special circumstances in the taxpayer's situation, such as extraordinary expenses, or additional sources of income, including spousal income and assets, other retirement accounts, *etc.* that will be available to pay expenses during retirement.<sup>29</sup>

There was no mention of reviewing IRM 5.15, *Financial Analysis*, which is a requirement for revenue officers under IRM 5.11.6.2(7). These procedures introduced considerations not found in IRM 5.11.6.2(7), such as imputing spousal income into the financial analysis.<sup>30</sup>

The pilot included 244 taxpayers, none of whom received a levy.<sup>31</sup> One hundred thirty taxpayers were not considered for a TSP levy because of an ongoing Federal Payment Levy Program (FPLP) levy or because the TSP account was owned by a non-liable spouse.<sup>32</sup> A TSP levy was considered on the remaining 114 taxpayers. Most of the remaining cases had some sort of resolution, such as being placed in CNC status or entering into an installment agreement.<sup>33</sup> Several cases included non-liable spouse and identity theft issues.<sup>34</sup> The pilot results confirm the importance of the taxpayer contact and direct communications with the IRS to resolve a taxpayer's debt:

The majority of the cases where contact was made resulted in the taxpayer being granted a new installment agreement.... Making contact with the taxpayer over the phone proved to be an effective tool in eliminating the case from TSP levy consideration on 33 of the 35 cases.<sup>35</sup>

Regardless, the IRS has not yet made the decision as to whether TSP account levies will be a permanent part of ACS operations, which does not routinely initiate outgoing calls to taxpayers.<sup>36</sup>

In order to measure the success of the pilot, the IRS has prepared a data collection instrument (DCI) so that all cases can be reviewed consistently using the same criteria. The IRS did not articulate why TSP accounts were singled out from other retirement accounts or how success of the pilot would be measured.<sup>37</sup> While the National Taxpayer Advocate is pleased that the IRS did not levy on any of the taxpayers' TSP accounts, she is concerned that the IRS may consider levying TSP accounts of taxpayers who already have an FPLP levy in place if the TSP levy becomes operational in ACS.<sup>38</sup>

28 IRS, *ACS TSP Levy Pilot Procedures* (Dec. 9, 2015).

29 *Id.*

30 *Id.*

31 *TSP Levy Pilot Report* (June 8, 2016).

32 *Id.*

33 *Id.* However, only 97 of the remaining 114 cases were resolved.

34 TAS teleconference with W&I (May 23, 2016) (call notes on file with TAS). See also *TSP Levy Pilot Report* (June 8, 2016).

35 *TSP Levy Pilot Report 7* (June 8, 2016).

36 Email from Director, Collection Inventory Delivery and Selection to TAS (June 14, 2016).

37 National Taxpayer Advocate 2015 Annual Report to Congress 108–09.

38 *TSP Levy Pilot Report 3* (June 8, 2016).

The DCI used for the IRS's review included several questions that indicate the IRS was trying to determine if ACS is adequate to issue TSP levies. The adequacy of using ACS to issue retirement levies is a serious concern because ACS operates in a production environment where employees are trained to conduct simple financial analysis. This training does not include the complex collection alternatives such as offers in compromise or more sophisticated installment agreements that may be necessary to address a taxpayer's debt without relying on a TSP levy. Some pertinent questions on the DCI include:

- If a message was left for the taxpayer, did the taxpayer return the call?
- Did the ACS employee find a new address for the taxpayer?
- Does the taxpayer have other available assets?
- Is the taxpayer dependent on the TSP account for living expenses?
- Are there extenuating circumstances?
- In cases where the levy was issued, did it receive managerial approval?

TAS was not consulted in the drafting of this DCI. As stated above, from the perspective of the National Taxpayer Advocate, the IRS should devise a process to resolve the outstanding tax debt with taxpayer communication and collection alternatives, without resorting to a TSP levy. The DCI used by the IRS missed this mark of success in several ways. TAS believes that the IRS should have asked the following questions when reviewing the pilot cases:

- Does the case history indicate any notification to the taxpayer that continued contributions while owing a tax liability could be interpreted as flagrant behavior?<sup>39</sup>
- Did the taxpayer make prior attempts to contact the IRS?
- How long did the taxpayer stay in the Queue, if at all?
- In cases where the taxpayer returned a call from ACS, was the taxpayer informed of collection alternatives?
- Did the taxpayer report any obstacles trying to communicate with ACS?

Without this additional review of the pilot cases in collaboration with TAS, the IRS should not proceed with making TSP levies operational in ACS, let alone imposing TSP levies on retirement accounts of the taxpayers subjected to the FPLP levy.<sup>40</sup>

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39 ACS employees were instructed to inform taxpayers that they should not continue making TSP contributions to avoid a flagrant determination that may lead to a TSP levy. *TSP Levy Pilot Report* 11, 13 (June 8, 2016).

40 When a taxpayer is paying tax debt via an automated FPLP levy, the IRS cannot come to a determination that the taxpayer is flagrant. A reasonable taxpayer might be under the impression that the 15 percent FPLP levy was a monthly installment plan.



## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Review the TSP levy cases upon receiving TSP pilot results based on the DCI prepared by the IRS and the additional questions indicated above;
- Work with the IRS to improve the internal guidance and to resolve the remaining disagreements;
- Conduct a training for TAS employees;
- Develop a calculator that will enable Collection and TAS employees to estimate the impact of the levy on the taxpayer's ability to provide for his or her expenses in retirement; and
- Issue interim guidance to TAS employees setting forth how they should assist taxpayers in cases involving levies on retirement accounts, including evidence rebutting any flagrancy determination and the calculation of basic retirement living expenses.

**AREA OF  
FOCUS #4** **As the IRS Develops an Online Account System, It Risks  
Imposing Undue Burden on Taxpayers Who Require More  
Personalized Services**

**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 Confidentiality*

The National Taxpayer Advocate has proposed for years that the IRS develop an online account system for taxpayers.<sup>2</sup> An online account system will benefit those taxpayers who are able to access the system and navigate through various transactions. However, in developing an online account system, the IRS should not ignore the needs of taxpayers who either have no access to the online services or choose not to use an online account system for various reasons. As it develops this initiative, the Commissioner has stated that “the IRS ... has no plans to walk away from providing the assistance over the phone or in person and, in fact, we are working hard to free up resources in those areas so it is easier for people to get access to them and get the help they want.”<sup>3</sup> Yet, as the IRS hinges the agency’s future state vision on the development of an online account, it has not conducted sufficient research into taxpayer and practitioner service needs, especially with regard to access and preference for online services. Without this crucial research, it could build something few people actually want or use. Meanwhile, believing the online account is meeting taxpayer needs, the IRS may reduce the non-digital taxpayer service channels to the point that there will be completely inadequate taxpayer service options available.

As pointed out by Professor Leslie Book at the first public forum hosted by National Taxpayer Advocate Nina E. Olson:

[A] fundamental starting point in thinking about service is that the IRS needs to know whom it is serving and the characteristics and challenges associated with a particular group of taxpayer or parties it is regulating. ... An agency fixated on efficiency and delivering services at lowest possible short term costs without knowing the impact and burdens of its actions may find itself pushing more serious problems down the road while at the same time jeopardizing taxpayer rights.<sup>4</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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

3 National Taxpayer Advocate Public Forum 12 (Feb. 23, 2016).

4 Oral Statement of Professor Leslie Book, Villanova University Charles Widger School of Law, National Taxpayer Advocate Public Forum 27 (Feb. 23, 2016).

Accordingly, while it may be tempting to move taxpayer service toward superficially lower-cost self-assistance options, any efforts to significantly reduce personal service options may ultimately impair voluntary compliance and undermine taxpayers' *right to quality service, right to be informed, and right to pay no more than the correct amount of tax.*<sup>5</sup>

### The IRS Has Not Provided Sufficient Details of the Online Account Program's Planned Capabilities and Rollout Timeline

A key initiative to attain the IRS's envisioned Future State is the development of a taxpayer online account. According to the IRS, the online account would enable taxpayers and authorized third-parties to "securely obtain taxpayer information, make payments, resolve compliance issues, share documentation, and self-correct issues in an individualized, online account."<sup>6</sup>

To illustrate how taxpayers will interact with the IRS through the online account system, the IRS has posted on its webpage titled "Future State and IRS Activities" a "possible option for individual taxpayers," hereinafter referred to as the "individual taxpayer vignette."<sup>7</sup> The individual taxpayer vignette is summarized below:

Jane, a low income taxpayer, just rejoined the workforce as a teacher. Upon learning about the IRS online account program from her friend, Jane establishes an account. She prepares her own return by downloading her tax information from the IRS directly into a commercial tax preparation software program. After filing, Jane receives a digital notification from the IRS confirming receipt. She receives a subsequent digital notification from the IRS stating that she might not qualify for the EITC because the IRS has no record that her 19 year-old son is a full time student. The notification asks Jane to validate the information and make any necessary corrections. After confirming that she does not qualify for the EITC because her son does not take enough courses, she "updates and resubmits her return instantly." To pay the amount of taxes she owes as a result of the correction, she applies for an installment agreement online and subsequently monitors the balance online as she makes payments.

This vignette does not portray an accurate picture of how a significant percentage of individual taxpayers will be able to interact with the IRS in the future. While the IRS's general descriptions of the future online account program are helpful, the IRS needs to be much more specific about the planned capabilities of the program. For example, it is unclear whether the program will provide images of filed tax documents and correspondence or just cryptic transcript codes. How many tax years will the account include at any given time? Which IRS data collection systems will feed information into the program? Which languages will be available? The IRS has also not provided a road map detailing the timeline for the availability of each capability in the future.

### The IRS Should Not Significantly Reduce Both Face-to-Face and Telephone Services As It Focuses on Online Services Because Taxpayers Will Still Continue to Require Personal Services

To our knowledge, the IRS has not conducted adequate research into taxpayer and practitioner use and preferences for the online account program capabilities. Since February 2016, the National Taxpayer Advocate has held various Public Forums throughout the country during which this topic was covered at

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

6 IRS, *Draft IRS Future State: Overview, The Path Traveled and the Road Ahead* 11 (Feb. 2016). [https://www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey\\_R.pdf](https://www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf) (last visited June 6, 2016).

7 <https://www.irs.gov/pub/newsroom/irs-individual-vignette-version-a.pdf> (last visited June 6, 2016).

length.<sup>8</sup> Later this year, TAS will conduct a national survey of a representative sample of U.S. taxpayers to determine their taxpayer service needs. However, the IRS should commit to performing its own detailed research as well as utilizing TAS and other third-party research in this area.

Existing third-party research indicates that a significant percentage of the taxpayer population will not use the taxpayer accounts in the way envisioned by the Future State initiative. The National Taxpayer Advocate's 2015 Annual Report cites various studies showing the digital divide in this country and the preference for multiple service delivery channels.<sup>9</sup>

In a 2015 nationwide survey of American adults, Pew Research Center found that home broadband adoption has plateaued. Approximately 67 percent of adults had broadband at home in 2015, as compared to approximately 70 percent in 2013. This leveling off of broadband use has taken place at the same time there has been an increase in "smartphone-only" adults. In fact, smartphone adoption has reached a similar rate as broadband. Specifically, 68 percent of American adults own a smartphone and 13 percent are "smartphone-only." The most significant rates of increase in the smartphone-only populations can be found among African Americans, individuals with household income at or below \$75,000, adults living in rural areas, parents, and those with a high school degree or less.<sup>10</sup>

The approximately 33 percent of adults without home broadband access are at a major disadvantage when it comes to various complex tasks, such as accessing government services, getting health information, and applying for jobs.<sup>11</sup> In fact, many without broadband access have to reroute their lives in order to get to a library, school, or coffee shop to access the internet. This presents cybersecurity challenges to those who have to access confidential information off public computers or networks in public locations, potentially carrying documents with confidential information.<sup>12</sup> Accordingly, taxpayers attempting to access the online account program in such public locations are not only inconvenienced, but are at a greater risk for identity theft.

In addition, research commissioned by the Federal Reserve found that even tech-savvy mobile phone users prefer multiple service channels. Over the past several years, the Federal Reserve has surveyed banking preferences among mobile phone users. According to the most recent report, more mobile phone users who have a bank account reported visiting a branch than using any other channel in the

8 For written statements and transcripts of these Public Forums, see <http://www.taxpayeradvocate.irs.gov/public-forums> (last visited June 15, 2016).

9 National Taxpayer Advocate 2015 Annual Report to Congress 56-63 (Most Serious Problem: *Taxpayer Access to Online Account System: As the IRS Develops an Online Account System, It May Do Less to Address the Service Needs of Taxpayers Who Wish to Speak With an IRS Employee Due to Preference or Lack of Internet Access or Who Have Issues That Are Not Conducive to Resolution Online*).

10 John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015* 2–9 (Dec. 21, 2015).

11 John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015* 6 (Dec. 21, 2015); Written Statement of Aaron Smith, Pew Research Center, National Taxpayer Advocate Public Forum 154 (Feb. 23, 2016). National Taxpayer Advocate Public Forum 154 (Feb. 23, 2016).

12 National Taxpayer Advocate Public Forum 176 (Feb. 23, 2016). In fact, at a National Taxpayer Advocate Public Forum, a panelist from Pew Research Center noted that 27 percent of Americans have used a computer or wi-fi at a public library in the last year.

last 12 months. The chart below illustrates the use of the various service channels among mobile phone users within the previous 12 months (for years 2012 through 2015):

**FIGURE 3.4.1, Use of Bank Service Channels Among Mobile Phone Users Within Previous 12-Month Period (2012–2015)<sup>13</sup>**

Service Channel	2012	2013	2014	2015
Branch	85%	82%	87%	83%
ATM	74%	75%	75%	82%
Online Banking	67%	72%	74%	82%
Mobile Banking	26%	30%	35%	53%
Telephone	34%	33%	33%	29%

These results only highlight that the provision of online services should supplement rather than replace more personalized services. In fact, at the National Taxpayer Advocate February 23, 2016 Public Forum, a panelist from the Federal Reserve noted that 80 percent of banking consumers surveyed in 2015 use four or five of the service channels available and only two percent used only one or two channels.<sup>14</sup>

An online account program is extremely useful for those with access and for those who can navigate complex transactions with minimal personalized assistance. To meet taxpayer and representative needs, the online account must be more than just a digitalized version of the guidance and correspondence already in existence in paper form. Moreover, unless the IRS improves its current quality of taxpayer assistance and correspondence, the text and explanations contained within the digital account will be no less confusing than what taxpayers currently receive. Many taxpayers will require additional personalized assistance and reassurance to understand how the rules and procedures apply to their particular facts and circumstance. At the National Taxpayer Advocate February 23, 2016 Public Forum, a panelist from Pew Research Center stated that “people are happy to do online and chats or things like that to a certain level of complexity. But once things get very complicated, once things start impacting their money or their retirement, get a little more sort of at a high level they want to be able to speak to an actual person and sort all that out.”<sup>15</sup> In addition, at that same Public Forum, a panelist from the Internal Revenue Service Advisory Committee (IRSAC) stated:

Digital tools and electronic communications which are fully accessible to unrepresented taxpayers are also critically important but we cannot overestimate the need for face-to-face, voice-to-voice communications and interactions will not disappear regardless of the depth, breadth and quality of digital tools deployed by the IRS...Whether working with taxpayers or with their representatives, the range of necessary explanations, guidance and problem resolution will always require knowledgeable assisters who can advise on the best solutions to a vast array of issues particularly in the post-filing environment.<sup>16</sup>

13 Although more respondents report visiting a branch in the past 12 months, other channels may have been used more frequently during that same period. “Among those who had used each of the channels in the past month, the median number of uses in the past month was five for each of the online and mobile channels, three for ATM, and two for each of the branch and telephone channels.” Board of Governors of the Federal Reserve, *Consumer and Mobile Financial Services 2016* 14 (Mar. 2016); Board of Governors of the Federal Reserve, *Consumer and Mobile Financial Services 2015* 9 (Mar. 2015).

14 Oral Statement of Arturo Gonzales, Federal Reserve, National Taxpayer Advocate Public Forum 171 (Feb. 23, 2016).

15 Oral Statement of Aaron Smith, Pew Research Center, National Taxpayer Advocate Public Forum 171 (Feb. 23, 2016).

16 Oral statement of Jennifer MacMillan, IRSAC, National Taxpayer Advocate Public Forum 66 (Feb. 23, 2016).

Another recent survey illustrates that not all tech-savvy individuals prefer online services for certain complex transactions. For example, in an online survey commissioned by NerdWallet and conducted by Harris Poll, millennials (survey respondents in the 18 to 34 year-old age group) reported a higher rate of mailing paper tax returns than respondents in older age groups (17 percent rate among millennials versus 8 percent among respondents aged 35 and older).<sup>17</sup> Therefore, the younger tech-savvy generation may have the ability to access available online services, but they are also wise about when it is appropriate to solve problems through technology and when it is inappropriate.

In a 2015 survey conducted by Forrester Research, respondents indicated a slightly higher level of satisfaction in their interactions with various federal government administrations in person, compared to their digital interactions through mobile applications, federal websites and email.<sup>18</sup> More importantly, the survey found that only 39 percent of respondents believe that the federal government should focus on offering more digital services.<sup>19</sup>

The impact of shifting services online without providing alternatives for those without broadband or internet access is not isolated to tax administration, other government services, or commercial banking. For example, a recent *New York Times* article described the plight of low income schoolchildren attempting to complete their homework as the school district increasingly assigns more assignments requiring internet access. According to the article, seven in ten teachers now assign homework that requires internet access even though one-third of schoolchildren in the country have no home access. These children are forced to complete their homework in school buses, fast food restaurants, and libraries with free wi-fi.<sup>20</sup>

Finally, it is not surprising that taxpayers continue to demand more personalized services considering the complexity of the tax law. For those taxpayers comfortable using self-service options online, they must still struggle with understanding the substance of the tax law and how it applies to their unique circumstances. While the IRS official website is helpful and extensive, it currently has approximately 155,000 pages which can be overwhelming to taxpayers unfamiliar with the tax law.<sup>21</sup> Moreover, the website is not currently easy to navigate when using a mobile device, which could be a serious access issue for the increasing taxpayer population using smartphones.<sup>22</sup>

Accordingly, in order to assist taxpayers in complying with the tax laws, it is incumbent upon the IRS to understand the needs of the taxpayer base and provide services to the taxpayers in the way they want to be served. As a panelist representing the Electronic Tax Administration Advisory Committee (ETAAC) stated at the February 23, 2016 Public Forum: “[W]hether it is online, phone, chat, taxpayer assistance

17 *Millennials Fear Filing Taxes More Than Most Americans, NerdWallet Survey Finds*, NerdWallet (Feb. 17, 2016), <https://www.nerdwallet.com/blog/taxes/millennials-fear-filing-taxes/> (last visited June 6, 2016).

18 Rick Parrish, Forrester Research, *The Public Is Still Skeptical of Federal Digital Customer Experience 2* (Feb. 18, 2016). This report is based on Forrester’s North American Consumer Technographics® Healthcare And Government Survey, 2015. Specifically, respondents had a 72 percent satisfaction rate for in person interaction in the past 12 months with such administrations as the U.S. Post Offices, Social Security Administration locations, and Veterans Affairs regional benefits offices. The satisfaction rates were 70 percent for federal mobile applications and 69 percent for federal websites or email.

19 Rick Parrish, Forrester Research, *The Public Is Still Skeptical of Federal Digital Customer Experience 4-5* (Feb. 18, 2016).

20 Cecilia King, *Bridging a Digital Divide That Leaves Schoolchildren Behind*, N.Y. TIMES, Feb. 22, 2016. Oral statement of Prof. Leslie Book, Villanova University Charles Widger School of Law, National Taxpayer Advocate Public Forum 30–31 (Feb. 23, 2016).

21 IRS Online Services, *IRS.gov and Taxonomy: Improving Content Structure and Organization 2* (May 11, 2016).

22 Aaron Smith, Pew Research Center, *U.S. Smartphone Use in 2015 1* (Apr. 1, 2015).

center, VITA site, or through a tax professional, the IRS should provide all of these options to meet the variety of taxpayer preferences.”<sup>23</sup>

### The IRS Must Balance the Added Convenience of Expanding Online Services Against the Inherent Security Risks

For the online account to be effective, taxpayers need to feel confident that their data is protected. In a recent Forrester Research survey, approximately 32 percent of respondents agreed with the statement “I am confident that the federal government keeps secure any personal information it has on its citizens.”<sup>24</sup> The recent cybersecurity breaches pertaining to the IRS’s Identity Protection Personal Identification Number (IP PIN) program, the “Get Transcript” online application, and the Office of Personnel Management’s breach of federal employee records may undermine taxpayers’ trust in communicating with the IRS and government online.<sup>25</sup>

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To meet taxpayer and representative needs, the online account must be more than just a digitalized version of the guidance and correspondence already in existence in paper form. Moreover, unless the IRS improves its current quality of taxpayer assistance and correspondence, the text and explanations contained within the digital account will be no less confusing than what taxpayers currently receive.

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To gain taxpayers’ confidence, the IRS needs to have tighter security protocols.<sup>26</sup> For those taxpayers willing to trust the IRS’s online services, the IRS should investigate the impact that stricter authentication measures will have on taxpayers’ ability to gain access to the system. Most taxpayers are fully aware that IRS systems contain extremely confidential tax return information and may be willing to tolerate extra security measures. We believe that state of the art and secure authentication measures are absolutely crucial for the online account system. However, the IRS needs to be realistic and acknowledge that such strict measures will serve as a barrier to entry for a significant percentage of taxpayers, and not just those taxpayers we traditionally associate with internet access issues.

A concrete example of strict e-authorization procedures acting as a barrier to entry was seen in the recent launch of the multi-factor authentication procedures to gain access to the online “Get Transcript Online” program.<sup>27</sup> This program is a prototype for the online account program, which the IRS plans to initially house the Get Transcript Online, IP PIN, and Online Installment Agreement applications.<sup>28</sup> In order to

23 Oral statement of Jim Buttanow, National Taxpayer Advocate Public Forum 81 (Feb. 23, 2016).

24 Rick Parrish, Forrester Research, *The Public Is Still Skeptical of Federal Digital Customer Experience* 6 (Feb. 18, 2016).

25 IRS, Statement on IP PINs (Mar. 8, 2016); IRS, *IRS Statement on the “Get Transcript” Application* (June 2, 2015); OPM, Announcements, *Information About the Recent Cybersecurity Incidents* (June 23, 2015).

26 In a report issued in November 2015, the Treasury Inspector General for Tax Administration (TIGTA) found that the IRS had not yet established a Service-wide approach to manage authentication needs. As a result, the IRS had inconsistent levels of authentication for various online services. In addition, the report found that the IRS authentication processes and procedures for “Get Transcript” and the IP PIN application do not comply with Office of Management and Budget (OMB) standards to conduct a risk assessment for authentication error or the U.S. Department of Commerce National Institute of Standards and Technology (NIST) Special Publication 800-63 requirements for authentication processes. TIGTA, Ref. No. 2016-40-007, *Improved Tax Return Filing and Tax Account Access Authentication Processes and Procedures Are Needed* (Nov. 2015); *The 2016 Tax Filing Season: Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight*, 114th Cong. 10-13 (2016) (statement of Timothy P. Caymus, Deputy Inspector General for Investigations, TIGTA).

27 IRS, *IRS Launches More Rigorous e-Authentication Process and Get Transcript Online*, IR-2016-85 (June 7, 2016).

28 Luca Gattoni-Celli, *Olson Details IRS Online Account Requirements, Remains Skeptical*, TAX NOTES TODAY, May 18, 2016.

gain access to Get Transcript Online, taxpayers need to pass a multi-factor e-authentication by providing the following information:<sup>29</sup>

1. **Identity proofing authentication:** Provide a social security number, name, birthdate, mailing address, and filing status from the most recent tax return;
2. **Financial verification authentication:** Provide an account number from one of the following:
  - Credit card (not debit card),
  - Automobile loan, mortgage,
  - Principal home mortgage, or
  - Home equity line of credit; and
3. **Phone verification authentication:** Provide U.S.-based telephone number for text-enabled mobile phone that is on a contract plan (not a “pay-as-you-go” or prepaid plan) with the billing address matching the taxpayer’s mailing address.

From the outset, it was clear that international taxpayers cannot gain access to the online program due to the mobile phone requirements. Furthermore, taxpayers who do not have a credit card and do not own either a home or automobile are by default excluded from the program. Thus, a significant portion of taxpayers renting apartments in big cities where residents rely on mass transit cannot gain access. Finally, the phone requirements exclude those taxpayers who do not have a contract mobile phone plan or whose mailing address does not match the billing address. Therefore, anybody on a family mobile phone plan who does not live in the same household as the contract holder is also excluded. Without even testing the program, it is clear that a significant portion of the taxpayer population will, by definition, not pass e-authentication to gain access.

As expected, when the IRS launched the Get Transcript Online program on June 6, 2016, it experienced an overall pass rate of approximately 30 percent.<sup>30</sup> While the strict authentication measures are important to safeguard taxpayer data, the numbers show that the online account cannot be the main channel to provide services. Approximately 30 percent of those taxpayers interested in using the channel can access the service. How is this the vision of the future if so few can access the account?

Further, while TAS firmly believes that a high level of security is necessary for the many online services expected to be included in the online account program, it is unclear why the online installment agreement application needs such strict authentication procedures. It is unlikely that identity thieves or hackers will attempt to gain access to a system to make payments to the IRS. By placing this service on

29 IRS, *How to Register for Get Transcript Online Using New Authentication Process*, FS 2016-20 (June 2016); IRS, *Welcome to Get Transcript*, <https://www.irs.gov/individuals/get-transcript-beta> (last visited May 27, 2016); IRS, *Get Transcript FAQs*, <https://www.irs.gov/individuals/get-transcript-faqs> (last visited May 27, 2016). The IRS verifies the financial account and mobile phone information with Equifax.

30 Luca Gattoni-Celli, *IRS to Promote Sharing Economy Tax Awareness, Koskinen Says*, Tax NOTES, June 9, 2016; Email Briefing on Secure Access Authentication, Weekly Status Report June 6 to 10, 2016 from IRS Identity Assurance (June 10, 2016); IRS, *Get Transcript Soft Launch: Monitoring and Metrics Briefing* (May 25, 2016). In an IRS briefing after the first week of completely launching the program, without providing the specific overall pass rate, the IRS stated that the pass rates “continue to be in the consistent range.” The overall pass rate was 29.4 percent during its soft launch at the end of May. In addition, during the soft launch, pass rates for each individual level of verification were 86 percent for the identity proofing component of the authentication, 63 percent for financial verification, and 70 percent for phone verification. The pass rates for each individual level of authentication are higher than the overall pass rate because users could pass one level of authentication and then fail the next level of authentication, incur a technological difficulty, or choose to abandon. Email briefing on Secure Access Soft Launch from IRS Identity Assurance (May 26, 2016).



the online account, the IRS has reduced access to this service for the large percentage of taxpayers who cannot get past the IRS multifactor authentication procedures.

### Questions Remain Concerning the Legal Implications of Self-Correction Authority

The National Taxpayer Advocate remains concerned about the scope of the self-correction authority set forth in the Future State initiative. It is the National Taxpayer Advocate's understanding that the self-correction capability would enable taxpayers, preparers, and authorized third-parties to perform such functions as verifying return changes made by the IRS, updating or amending returns, and providing additional documents.<sup>31</sup> It is unclear whether the self-corrections could address adjustments made pursuant to the agency's math error authority or whether they will extend beyond math error so that they constitute an abbreviated audit. The answer to this question impacts the taxpayers' rights to appeal and challenge the adjustment in the U.S. Tax Court.<sup>32</sup>

In addition, once the taxpayer or representative addresses the proposed adjustment through self-correction, it is unclear what these corrections will constitute. If the taxpayer corrects the return, will the correction constitute an amended return or is the return still an original return that the IRS has not yet completely processed? All of these possible options have legal consequences to the taxpayer and all have potential negative impacts on taxpayer rights. It is essential that the IRS explore these issues early in the planning process so that the taxpayer's *right to challenge the IRS's position and be heard*, and the taxpayer's *right to appeal an IRS decision in an independent forum* are not undermined.

Finally, self-correction raises the issue of the application of the mailbox rule to documents submitted electronically by taxpayers or their representatives. Briefly, the statutory mailbox rule set forth in IRC § 7502 provides that, if the requirements set forth in the section are met, a document or payment is deemed to be filed or paid on the date of the postmark stamped on the envelope. The provision applies to documents sent by U.S. postal mail, private delivery services, and electronic filing through an electronic return transmitter.<sup>33</sup> If the IRS wants people to do things in an electronic environment, then it needs to deal with this rule as it applies in the digital age. Based on discussions with IRS Office of Chief Counsel, it is TAS's understanding that the IRS's position for digital transmissions of documents, such as through fax and email, do not invoke the mailbox rule. Therefore, the date the taxpayer sends it is irrelevant, even with a proof of transmittal. The IRS will only look to the date the IRS actually receives it. The rationale behind this decision is that people can modify the dates on fax machines and computers.<sup>34</sup> Therefore, if people want to invoke the mailbox rule for time-sensitive documents or payments, they must use registered mail or one of the designated private delivery services. In fact, without an electronic version of the mailbox rule, practitioners might hesitate to send any time-sensitive documents or payments electronically for fear of committing malpractice. Using a digital method could compromise taxpayer rights and protections. Therefore, it is essential for the IRS to address this issue if it is building its Future State model under the assumption that taxpayers and their representatives will interact digitally.

31 Draft IRS Compliance Concept of Operations (CONOPS) 3, 19-22 (June 8, 2014) (on file with the National Taxpayer Advocate).

32 See IRC §§ 6213(b)(1),(g)(2).

33 IRC § 7502(c).

34 Meeting with IRS Office of Chief Counsel on Mailbox Rule (Feb. 8, 2016).

### The IRS Should Restrict Preparer Access to the Online Account

The IRS currently plans to enable the taxpayer to maintain control over who can gain access to the online account.<sup>35</sup> Part of the Future State vision provides the taxpayer's representative access to the online account. Through the National Taxpayer Advocate's Public Forums, TAS has learned that most practitioners believe practitioner access to the taxpayer's account is beneficial to the taxpayer and the practitioners. Practitioners welcome access to the online account, because it will likely reduce the need to endure long wait times on the phone to merely determine the status of the taxpayer's account or deal with cookie cutter transactions. They look forward to confirming that adjustments were made to the taxpayer's accounts, and submitting documents, including Form 2848, *Power of Attorney and Declaration of Representative*, with almost instantaneous alignment to the taxpayer's account.<sup>36</sup> However, they have still indicated that the account will not completely eliminate the need to call the IRS to discuss complex substantive issues.<sup>37</sup>

While preparers will clearly benefit from some access to the account, the IRS does not have any plans currently in development to restrict preparer access by type of preparer. We are concerned that the IRS will expose taxpayers to potential harm due to preparer incompetence or misconduct if it does not restrict access to only those preparers subject to IRS oversight pursuant to Circular 230.<sup>38</sup> The IRS has the ability to monitor and enforce this requirement because it has preparer tax identification numbers (PTINs) for these individuals. If the IRS does not limit online account access to only preparers subject to Circular 230 oversight, it could harm taxpayers and, consequently, increase compliance issues.

Although the vast majority of return preparers are conscientious and ethical, the IRS has ample evidence and experience to show that there are some return preparers who are committing refund fraud<sup>39</sup> or are negligent, and that certain payroll service providers who have access to employer accounts also embezzle funds and cover their tracks by changing account information.<sup>40</sup> Without any restrictions on type of preparer, there is a greater chance that vulnerable taxpayers could be harmed by preparers who prey upon the elderly, low income, and taxpayers with disabilities. If the preparer either fraudulently or negligently prepares an inaccurate return, the IRS may have just given the preparer the ability to cover his or her tracks. Uncredentialed preparers could gain access, interact with the IRS on the taxpayer's behalf, and potentially address notices, proposed adjustments, or even proposed correctable errors without the taxpayer's consent or knowledge.<sup>41</sup> It is also possible that the taxpayer will not become aware

35 IRS, *Compliance Capabilities Initiative: Draft Blueprint for the Vision 19* (June 19, 2014); IRS, *IRS Enterprise Concept of Operations (CONOPS): Taxpayer Advocate Service Briefing 5, 10-2* (July 28, 2015) (on file with the National Taxpayer Advocate).

36 See, e.g., Oral statement of Jennifer MacMillan, IRSAC, National Taxpayer Advocate Public Forum 103 (Feb. 23, 2016).

37 See, e.g., National Taxpayer Advocate Public Forum 62, 90 (Feb. 23, 2016).

38 For a detailed discussion of this proposal, see National Taxpayer Advocate 2015 Annual Report to Congress 64–71 (Most Serious Problem: *Preparer Access to Online Accounts: Granting Uncredentialed Preparers Access to an Online Taxpayer Account System Could Create Security Risks and Harm Taxpayers*). Preparers subject to IRS oversight under Circular 230 include attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents. In addition, pursuant to Revenue Procedure 2014-42, preparers who have obtained the voluntary Annual Filing Season Program (AFSP) Record of Completion can represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared and signed after December 31, 2016. 31 U.S.C. § 10.3; Rev. Proc. 2014–42, § 4.05(2)(a), I.R.B. 2014–29 (July 14, 2014).

39 *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations, 114th Cong. 18-20* (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

40 *Id.*

41 For more detail on the National Taxpayer Advocate's position on the proposed correctable error legislation, see *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations, 114th Cong. 34-35* (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

of the problem for a long time. Moreover, the preparer's actions could severely prejudice the taxpayer's procedural rights. For example, if the preparer accepts math error adjustments without the taxpayer's knowledge, the taxpayer may lose the right to contest the change in the U.S. Tax Court.<sup>42</sup>

In order to prevent harm to vulnerable taxpayers, it is important that the IRS design the online account system with safeguards to prevent unauthorized access or actions on the system. In addition, registered tax return preparers are limited in their ability to practice before the IRS.<sup>43</sup> Therefore, if the IRS gave blanket access to all preparers, it would have to continually track preparer credentials and carefully restrict access to certain types of transactions.<sup>44</sup> More importantly, the IRS should enable the taxpayer to maintain strict and detailed control over preparer authorizations. The IRS should bring IRS Form 2848, *Power of Attorney and Declaration of Representative*, into the 21st century by building the online account system to provide specific checkboxes addressing authorizations for each type of action a preparer could take on behalf of the taxpayer on the online account system. The IRS should also develop and implement procedures to track preparer access and restrict unauthorized activities. Upon validating the preparer's PTIN information, if the system determines the preparer is not subject to Circular 230 oversight and did not take part in the voluntary Annual Filing Season Program (AFSP), then it could automatically block certain authorization checkboxes. In addition, because the taxpayer may be held responsible for the preparer's actions on the system, whether authorized or not, it is crucial that the taxpayer is aware of *all* the actions taken by the preparer on the taxpayer's online account. Therefore, whenever a preparer takes an action on the online account system, such as change of address, agreement to an addition of tax, and submitting documents, the system should send an acknowledgement of action to the taxpayer and copy the preparer, in a manner specified by the taxpayer, such as by email or text. If a preparer has taken an unauthorized action, the IRS should develop procedures to enable the taxpayer to undo any unauthorized transactions conducted by the preparer.

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42 IRC § 6213(b)(1); IRM 21.5.4.1, *General Math Error Procedures Overview* (Oct. 1, 2015).

43 Registered tax return preparers must have a record of completion pursuant to the voluntary annual filing season program to represent taxpayers in Examination matters before the IRS beginning in calendar year 2017. Rev. Proc. 2014-42, § 4.05(2)(a), I.R.B. 2014-29 (July 14, 2014). Registered tax return preparers have always been restricted in their ability to represent taxpayers before Collection, Appeals, and Counsel. 31 U.S.C. § 10.3.

44 Oral statement of Jennifer MacMillan, IRSAC, National Taxpayer Advocate Public Forum 101 (Feb. 23, 2016).

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Hold National Taxpayer Advocate Public Forums around the country and solicit suggestions from diverse taxpayer populations regarding IRS service delivery preferences;
- Advocate for low income taxpayers and other vulnerable populations who have significant offline rates, as well as for other taxpayers who need or prefer personal interaction, by working with the IRS to ensure it maintains meaningful and high-quality service options for these populations;
- Work with the IRS to ensure it incorporates strict security safeguards on preparer access to taxpayer online accounts;
- Work with the IRS to restrict preparer access to taxpayers' online accounts to those preparers who are regulated by Circular 230;
- Seek a Counsel opinion to determine the boundaries and corresponding legal implications of the self-correction authority provided to preparers; and
- Advocate for expansion of the mailbox rule under IRC § 7502 to apply to the digital environment.

**Area of  
Focus #5**

## Earned Income Tax Credit Reform Could Reduce the EITC Improper Payment Rate Without Reducing Participation by Eligible Taxpayers

### 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 Retain Representation*
- *The Right to a Fair and Just Tax System*

### Background

The Earned Income Tax Credit (EITC), enacted as a work incentive in the Tax Reduction Act of 1975, has become one of the government's largest means-tested anti-poverty programs.<sup>2</sup> 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 dramatically lowered administrative costs, since it did not require an infrastructure of case workers and local agencies to make eligibility determinations. Because the relatively easy application process eliminated administrative barriers, the EITC's participation rate is higher than many other anti-poverty programs.<sup>3</sup>

However, the EITC is associated with a high improper payment rate.<sup>4</sup> The IRS currently estimates that the EITC improper payment rate is about 24 percent (which accounts for an estimated \$15.6 billion 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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975).
- 3 When measured for tax year (TY) 2012, the EITC participation rate was 80 percent. IRS, *ACS Match-Center for Administrative Records Research and Applications*, <https://www.eitc.irs.gov/EITC-Central/Participation-Rate> (last visited June 3, 2016). The Supplemental Nutritional Assistance Program (SNAP) had a nearly as high 79 percent participation rate (measured in Fiscal Year (FY) 2011). USDA, *Supplemental Nutrition Assistance Program Participation Rates: Fiscal Years 2010 and 2011* (Feb. 2014). However, other social benefit programs have smaller participation rates. The Women, Infants, and Children Program (WIC — measured in 2010) has a participation rate of 63 percent; however the Temporary Assistance for Needy Families (TANF — measured in 2009) only has a participation rate of 32 percent. Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Eligibles and Coverage – 2010: National and State Level Estimates of the Population of Women, Infants, and Children Eligible for WIC Benefits Executive Summary (2013) and Department of Health and Human Services, Administration for Children and Families Office of Family Assistance, *Temporary Assistance for Needy Families Program 10th Ann. Rep.* (2013).
- 4 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).

improper payments).<sup>5</sup> Despite much attention to this issue, the current improper payment rate has only decreased slightly from the improper payment rate measured in 2004, when it was 25 percent.<sup>6</sup>

The National Taxpayer Advocate has dedicated significant time and resources to studying how administration of the EITC can be improved.<sup>7</sup> Most recently, the National Taxpayer Advocate made the following recommendations:

- Provide education and outreach targeted at low income taxpayers;<sup>8</sup>
- Reevaluate the selection of audited cases to improve compliance and lessen taxpayer burden;<sup>9</sup> and
- Improve the EITC Return Preparer Strategy in conjunction with an educational campaign for taxpayers.<sup>10</sup>

While adopting the National Taxpayer Advocate's specific recommendations will improve EITC compliance, more fundamental changes to EITC legislation and administration are required in order to significantly improve EITC compliance and the improper payment rate.

### EITC Eligibility Requirements and IRS Guidance No Longer Reflect the Household Arrangements of Many Low Income Taxpayers

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 constantly in flux, with approximately one-third of the eligible population changing every year.<sup>11</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>12</sup>

5 *Projected Improper Payments for Earned Income Tax Credit (EITC)*, <https://paymentaccuracy.gov/tabular-data/projected-by-program/420>.

6 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2015-40-044, *Assessment of Internal Revenue Service Compliance with the Improper Payment Reporting Requirements in Fiscal Year 2014* 9 (Apr. 27, 2015). The lowest improper payment measurement since 2004 was 23 percent, which occurred in 2012. *Id.*

7 See, e.g., National Taxpayer Advocate 2012 Annual Report to Congress 103-15; (Most Serious Problem: *Despite Some Improvement, the IRS Continues to Harm Taxpayers By Unreasonably Delaying the Processing of Valid Refund Claims That Happen to Trigger Systemic Filters*); National Taxpayer Advocate 2011 Annual Report to Congress 296-312 (Most Serious Problem: *The IRS Should Reevaluate Earned Income Tax Credit Compliance Measures and Take Steps to Improve Both Service and Compliance*); National Taxpayer Advocate 2008 Annual Report to Congress 227-42 (Most Serious Problem: *Suitability of the Examination Process*); National Taxpayer Advocate 2007 Annual Report to Congress 222-41 (Most Serious Problem: *EITC Examinations and the Impact of Taxpayer Representation*); National Taxpayer Advocate 2005 Annual Report to Congress 94-122 (Most Serious Problem: *Earned Income Tax Credit Exam Issues*); National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 8-45 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

8 National Taxpayer Advocate 2015 Annual Report to Congress 240-47 (Most Serious Problem: *The IRS Does Not Do Enough Taxpayer Education in the Pre-Filing Environment to Improve EITC Compliance and Should Establish a Telephone Helpline Dedicated to Answering Pre-Filing Questions From Low Income Taxpayers About Their EITC Eligibility*).

9 National Taxpayer Advocate 2015 Annual Report to Congress 248-60 (Most Serious Problem: *The IRS Is Not Adequately Using the EITC Examination Process As an Educational Tool and Is Not Auditing Returns With the Greatest Indirect Potential for Improving EITC Compliance*).

10 National Taxpayer Advocate 2015 Annual Report to Congress 261-83 (Most Serious Problem: *The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance*).

11 IRS, *EITC Fast Facts*, <https://www.eitc.irs.gov/Partner-Toolkit/basicmaterials/ff> (last visited Mar. 31, 2016). For more information on the changing population of taxpayers eligible for EITC, see National Taxpayer Advocate 2013 Annual Report to Congress 109-10.

12 National Taxpayer Advocate 2015 Annual Report to Congress 235-39.

For EITC purposes, any child being claimed must be a “qualifying child,” which in part requires that the child meet relationship and residency tests.<sup>13</sup> A child is considered related to the taxpayer if he or she is:

- A child of the taxpayer or a descendant of such a child;
- A brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative;
- A stepson or stepdaughter;
- An adopted child; or
- An eligible foster child<sup>14</sup>

The child is considered to meet the residency test if he or she lives with the taxpayer for more than one half of the year.<sup>15</sup>

These rules generally provide a facially reasonable, structured approach to EITC eligibility. However, they increasingly exclude taxpayers and children we might want to assist for policy reasons, because the rules do not line up with the changes taking place in U.S. family and household dynamics. Some divorced or separated couples may share custody informally regardless of what their formal custody agreement may state. Additionally, some children may spend extended periods of time in the home of another family member or a family friend.

A recent paper by the Tax Policy Center (hereinafter TPC Study) found that the number of families made up of “traditional” families (married parents with only biological children) has declined while alternative family types, such as families led by a single parent and cohabitating parents, has increased.<sup>16</sup> The TPC Study found that between 1996 and 2008, the proportion of children living with married couples dropped from 70.9 percent to 67.3 percent and the number living with cohabitating parents increased from 3.6 percent to 6.2 percent.<sup>17</sup> Furthermore, the TPC Study found that in 2008, nearly 20 percent of children living in single-parent households also lived in multigenerational households.<sup>18</sup> Neither the U.S. Tax Code nor the IRS has kept up with these changes.

Taxpayers who do not fit neatly into a set category for eligibility often will face two major obstacles: navigating the tiebreaker rules and substantiating eligibility for the EITC. The tiebreaker rules address situations where more than one taxpayer may be eligible to claim the child.<sup>19</sup> The tiebreaker rule attempts to address competing claims from potentially eligible taxpayers, but because family relationships are complex, the rule itself is very complex. First, if both parents claim the child, the child is the qualifying child of the parent with whom the child lived the longest. If residency is split equally between both parents, then the parent with the highest adjusted gross income (AGI) may claim the child. Second, when a parent and a non-parent claim the same child, the parent of the child gets priority. If the parent does not claim the child, then whoever had the highest AGI may claim the child.

13 IRC § 32(c)(3).

14 IRC § 152(c)(2),(f).

15 IRC § 152(c)(1)(B).

16 Elaine Maag, H. Elizabeth Peters, and Sara Edelstein, Tax Policy Center, *Increasing Family Complexity and Volatility: the Difficulty in Determining Child Tax Benefits* 19 (Mar. 3, 2016). The TPC Study analyzed the December panel from the 1996 and 2008 Census Bureau Survey of Income and Program Participation (SIPP) data

17 *Id.* at 10.

18 *Id.* at 18.

19 IRC § 152(c)(4).

These rules do not adapt well to family living arrangements that may change multiple times during the year. The rules may also lead to counter-intuitive results. For instance, perhaps in a multigenerational home there is a grandmother and mother caring for a granddaughter. The granddaughter is a qualifying child for both the mother and grandmother, but under the tie breaker rules, only one person may claim the granddaughter for purposes of the EITC. Further, even if the grandmother provides all of the care for the granddaughter and the mother does not claim the child, the grandmother may not claim her granddaughter for EITC purposes if her AGI is not higher than that of her daughter. Whereas, if the facts are the same except that the daughter was in and out of the household throughout the year and did not satisfy the residency test, then the grandmother could claim her granddaughter as a qualifying child, even if her AGI was not higher than her daughter's.

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**While the IRS has guidance for analyzing documentation submitted by taxpayers in EITC cases, adopting a more flexible approach to alternative documentation would help low income taxpayers.**

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Assuming that taxpayers living in nontraditional households can understand the rules for eligibility and they determine accurately that they may claim a qualifying child for EITC, they must then be able to provide substantiating documentation if the IRS questions their claim in the audit process. While the IRS has guidance for analyzing documentation submitted by taxpayers in EITC cases, adopting a more flexible approach to alternative documentation would help low income taxpayers.

Internal Revenue Manual (IRM) 4.19.14.5.4 provides IRS employees with a chart for analyzing EITC cases involving qualifying children.<sup>20</sup> However, the list provided is very narrow and does not reflect the types of documentation and methods of proof that may most likely be available or best-suited for taxpayers claiming the EITC, especially taxpayers in nontraditional households or with children who move a lot. For example, as a “traditional document,” the IRM guidance suggests that IRS employees accept school or medical records to prove residency for a qualifying child. However, this may not work easily for a taxpayer who has relocated often. Additionally, medical records may not be possible for a family member who has informally cared for the child. The current internal guidance also lacks specific instruction for tax examiners to consider alternative documentation.<sup>21</sup> Alternative documentation can include things such as letters from landlords or school officials, bills, and public assistance records.

In 2013, the National Taxpayer Advocate issued internal guidance to TAS employees related to EITC issues.<sup>22</sup> This guidance included a list of 50 alternative documents that could be used to substantiate an EITC claim.<sup>23</sup> While not exhaustive, it created a more flexible approach to analyzing documents in EITC cases.<sup>24</sup> The IRS team dedicated to improving the EITC audit process, of which TAS is a member, will address the issue of incorporating alternative documentation into internal guidance in FY 2016.

20 IRM 4.19.14.5.4, *EITC Qualifying Children* (Jan. 1, 2015). IRS employees are directed to IRM 4.19.14.5.6 for a list of acceptable documents to prove requirements for a qualifying child.

21 Memorandum from Matthew A. Weir, Deputy National Taxpayer Advocate, for all Taxpayer Advocate Service employees, *Reissuance of Interim Guidance on Advocating for Taxpayers Claiming Earned Income Tax Credit (EITC) with Respect to a Qualifying Child* (Dec. 23, 2013).

22 *Id.*

23 *Id.*

24 TAS uses the Taxpayer Assistance Order (TAO) process and provides alternative documentation while advocating for taxpayers whose EITC claims were denied by the IRS. In FY 2014, TAS issued 24 EITC TAOs, of which the IRS complied with 21. In FY 2015, ten EITC TAOs were issued and the IRS complied with all ten. In FY 2016, TAS issued one EITC-related TAO and the IRS complied with the requested actions. Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2014; Oct. 1, 2015; June 1, 2016).



### The IRS Could Look to Other Countries for Improved Implementation of the EITC

Australia offers a similar tax credit to the EITC, called the Family Tax Benefit (FTB). The eligibility rules for the FTB are more expansive than the EITC's. For instance, a child qualifies if he or she meets these general rules:

- Must be in the adult's care;
- Must meet residency standards;
- Must not meet any exceptions; and
- When more than one adult is involved, the child must be in the adult's care for at least 35 percent of the time.<sup>25</sup>

The Australian system emphasizes care of the child and it does not adhere strictly to the idea that only one person can care for a child or that the person caring for the child needs to be related in a way required in the United States. In fact, the FTB allows a child to be claimed by an adult who is not the biological parent. In guidance issued by the Australian Department of Social Services, the following example is provided as a possible "care arrangement" for a child under the age of 18:

Emily lives primarily with her parent Dave and his new partner Anthony. Emily is an FTB child of both Dave and Anthony. They agree that Anthony should receive FTB for Emily, as he is the stay-at-home parent.<sup>26</sup>

Furthermore, the act of caring for a child in Australia counts for more than just the amount of time the adult resides with the child. The "primary carer" is considered the "member of a couple" having the greater responsibility for the child. This is determined by identifying who has major daily responsibility for the child, looks after the child's needs (such as dressing and bathing), makes appointments for the child, is the primary contact for daycare or school, and transports the child to and from school.<sup>27</sup> When it is determined that more than one adult cares for a child, the percentage of FTB allocated to each individual is based on "issues of fairness and appropriateness, taking into account equity considerations and sharing and pooling within a family unit that can result in a 50:50 split in FTB."<sup>28</sup> Under this system there is an acknowledgement that many families operate on a fluid day-to-day basis, where the care of a child does not just fall on one relative.

### The IRS Could Partner With Other Agencies in Making the Eligibility Determination

Another approach is to substitute for the IRS, in whole or in part, another agency or agencies better suited for the role of making the personal inquiries into family composition. The IRS would then revert to its traditional tax collection function.<sup>29</sup> As a result of the Affordable Care Act, the federal government and many states are now operating exchanges to which millions of individuals apply for insurance and the

25 Australian Department of Social Services, *Family Assistance Guide*, 2.1.1.10, *FTB Child*, <https://guides.dss.gov.au/family-assistance-guide/2/1/1/10>.

26 Australian Department of Social Services, *Family Assistance Guide*, 2.1.1.10, *Circumstances Surrounding Legal Responsibility for an FTB Child Under 18*, <https://guides.dss.gov.au/family-assistance-guide/2/1/1/10>.

27 Australian Department of Social Services, *Family Assistance Guide*, 1.1.P.120, *Primary Carer (FTB, Baby Bonus)*, <http://guides.dss.gov.au/family-assistance-guide/1/1/p/120>.

28 Australian Department of Social Services, *Family Assistance Guide*, 2.1.1.25, *Shared Care of an FTB Child*, <http://guides.dss.gov.au/family-assistance-guide/2/1/1/25>.

29 The National Taxpayer Advocate has made this observation on previous occasions. *National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Subcomm. on Government Operations*, 114th Cong. 24-33 (2015) (written statement of Nina E. Olson, National Taxpayer Advocate).

Advanced Premium Tax Credit (APTC).<sup>30</sup> The assistors in the exchanges make the substantive determination regarding eligibility for the APTC and certain exemptions from the Individual Shared Responsibility Payment, most notably the hardship exemption. The exchanges notify the IRS about applicants' household composition, and the IRS verifies household income to the exchange. The IRS also receives the end-of-year reconciliation forms and third-party information reports regarding coverage. It also refunds any unclaimed Premium Tax Credit (PTC) due to the taxpayer and collects PTC overclaims.<sup>31</sup>

Of the 27,521,132 taxpayers who received the EITC (prior to any audit of the tax return) in tax year (TY) 2014, 1,151,789 taxpayers — or slightly over four percent — also claimed the PTC.<sup>32</sup> While this is not a large number of taxpayers, it is still a population of taxpayers who are already working with trained assistors who could be in a better position to analyze the residence and relationship aspects of EITC eligibility.

The definition of an eligible child for EITC purposes might also be revised to allow the IRS to accept the determination by another federal or state agency of a taxpayer's eligibility for Title 4 payments such as food stamps, or Title 8 housing assistance. While the definition of a household under these programs may not be identical to that determined under the EITC, and their public policy goals may differ, the former programs utilize a more intensive application process. Thus, it is worth exploring whether the EITC should be revised to accept another state or federal agency's determination of eligibility for other benefits as evidence of eligibility for the EITC.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Work with the IRS to develop flexible guidance for acceptance of alternative documentation; and
- Encourage Local Taxpayer Advocates to issue TAOs in cases where the IRS is not taking a flexible approach to determining EITC eligibility.

The National Taxpayer Advocate will make a legislative recommendation in the 2016 Annual Report to Congress to reform the structure and administration of, and eligibility requirements for, the EITC in order to minimize improper payments while maintaining its high participation rate.

30 The APTC is an advanced credit that can help consumers pay for health insurance throughout the year. In addition to a financial determination, it requires that the consumer report changes in circumstances throughout the year. 42 U.S.C. § 18082. Consumers learn if they qualify for the APTC when they apply for insurance in the Health Insurance Marketplace. U.S. Department of Health and Human Services, *Advanced Premium Tax Credits (APTC)*, <https://www.healthcare.gov/glossary/advanced-premium-tax-credit/>. In TY 2014, 3.1 million returns claimed the APTC. Wage & Investment Research and Analysis (WIRA), *ACA Fact Sheet* (Oct. 8, 2015) (returns processed through August 27, 2015, Cycle 34). This data is based on amounts claimed on returns that had posted as of August 27, 2015, and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns and conducts compliance activities. IRS Compliance Data Warehouse (CDW), *Individual Returns Transaction File (IRTF) for TY 2014 (through cycle 201534)*.

31 For information on the PTC, see IRC § 36B.

32 IRS CDW, IRTF for TY 2014 returns processed by the end of 2015.

## AREA OF FOCUS #6 **The IRS Re-Engineering of Its Identity Theft Victim Assistance Procedures Is a Step in the Right Direction But Does Not Go Far Enough**

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

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

Tax-related identity theft is an invasive crime that has significant impact on its victims and the IRS.<sup>2</sup> Apart from the time and frustration involved in dealing with the IRS to prove one's own identity, taxpayers generally do not receive their refunds until their cases are resolved.

Identity theft (IDT) cases can be complex, sometimes involving multiple issues or spanning multiple years.<sup>3</sup> To improve the victim experience and shorten its IDT case cycle time, the IRS recently reorganized its IDT victim assistance units, moving toward a more centralized approach for which TAS has long advocated.<sup>4</sup> The reorganization included the following actions:

- Centralized Accounts Management (AM) IDT caseworkers, including the Identity Protection Specialized Unit (IPSU), into a single IDT Victim Assistance (IDTVA) organization;
- Centralized Small Business/Self-Employed and Wage & Investment (W&I) Compliance specialized teams within IDTVA;
- Realigned the Office of Privacy, Governmental Liaison, and Disclosure's Identity Protection analysts to W&I; and
- Realigned Compliance headquarters analysts supporting IDT to the Customer Account Services organization.

With the AM Director now in charge of all IDT staff (including policy analysts), the IRS is poised to work IDT cases more consistently and track them more easily – something the National Taxpayer Advocate has recommended for several years.<sup>5</sup> In addition, the IRS consolidated the Internal Revenue Manual (IRM) effective October 1, 2015, so that the majority of IDT procedures now fall under a single IRM section, a recommendation first made by the National Taxpayer Advocate in the 2007 Annual Report to Congress.<sup>6</sup> We note when TAS first made these recommendations because had the IRS

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 See National Taxpayer Advocate 2015 Annual Report to Congress 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; National Taxpayer Advocate 2011 Annual Report to Congress 48-73; National Taxpayer Advocate 2009 Annual Report to Congress 307–17; 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 180-91; National Taxpayer Advocate 2004 Annual Report to Congress 133–36.

3 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 49.

4 See National Taxpayer Advocate 2007 Annual Report to Congress 115.

5 See National Taxpayer Advocate 2013 Annual Report to Congress 80-81.

6 IRM 25.23, *Identity Protection and Victim Assistance* (Oct.1, 2015). See National Taxpayer Advocate 2007 Annual Report to Congress 115.

adopted them eight years ago, it would have saved taxpayers from the prolonged trauma, not to mention IRS and TAS re-work.

However, there is a category of IDT victims that will not benefit from the reorganization. W&I's Return Integrity and Compliance Services (RICS) function has an important job in protecting the federal fisc from criminals who attempt to receive improper refunds by filing tax returns with falsified information. Taxpayers caught in various pre-refund filters designed by RICS are treated differently from IDT victims who are identified in the IDTVA inventory centralized in AM. When a taxpayer who has a fraudulent return stopped by RICS filters later learns that he or she is a victim of IDT, the taxpayer's case remains under the control of RICS and is subject to a different treatment stream than other IDT victims.<sup>7</sup>

Several IRS functions (including RICS, Submission Processing, Field Exam, and Field Collection) were not included in the IRS's reorganization of IDT functions. There are no procedures in place to allow IDT victims with account issues spanning multiple IRS functions outside of IDTVA to deal with a sole point of contact, which increases the risk of an IDT case falling through the cracks.<sup>8</sup> One way to ensure that IDT victims do not fall through the cracks is to assign a sole IRS contact person in the IPSU (and provided with a toll-free direct extension to this contact person) who would interact with them throughout and oversee the resolution of the case, no matter how many different IRS functions need to be involved behind the scenes. This sole contact person can use Identity Theft Assistance Requests (ITARs) to request actions from the various functions.

In September 2015, the IRS convened an IDT Re-engineering Team. This group of employees (from across various functions) is led by the Director of the IDTVA organization and will submit recommendations to the Director of AM. The IDT Re-engineering Team includes plans to:

- Review the current state of IDT victim assistance;
- Revisit the role and scope of the IPSU;
- Make recommendations to improve the processing of IDT cases; and
- Make suggestions to improve the layout of the IDT global report.

The National Taxpayer Advocate supports the IDT Re-engineering Team, and has been generous in providing resources to this team. The National Taxpayer Advocate is concerned, however, that the IDT Re-engineering Team, which reports to the Director of AM, will be constrained by not being able to make recommendations that extend beyond AM's reach. As discussed above, there are a significant number of IDT cases that are worked by the RICS function, outside of AM's control.<sup>9</sup> The IRS will be unable to make meaningful change to its IDT victim assistance procedures if the IDT Re-engineering Team is not empowered to make recommendations impacting functions outside of AM.

For example, the IDT Re-engineering Team will not be making recommendations to improve the Taxpayer Protection Program (TPP), which is administered by the RICS function. The TPP uses advanced analytics to select and suspend the processing of tax returns it suspects were filed by identity thieves. When a TPP filter stops a return, the IRS requests that the taxpayer verify his or her identity

7 IRM 25.25.4, *Integrity & Verification Identity Theft Return Procedures* (Aug. 20, 2015).

8 IRM 25.23.2-17, *IDTVA Work Matrix* (Sept. 8, 2015).

9 See IRS, *Global ID Theft Report* (Apr. 2016).

by calling the TPP phone number, visiting the Out-of-Wallet website, or visiting a Taxpayer Assistance Center (TAC) in person with proper photo identification.<sup>10</sup>

During the 2016 filing season, IRS phone assistors were telling taxpayers caught in the TPP filters that it would take nine weeks for the IRS to release their refunds once their identity was verified.<sup>11</sup> Taxpayers who met TAS case criteria came to TAS for assistance.<sup>12</sup> However, it was taking less than three weeks for the IRS to issue refunds (six weeks for paper checks), and in some instances the refund had already been issued by the time a TAS case advocate was assigned the case.<sup>13</sup>

In an effort to use our resources wisely, TAS provided training to its intake advocates so that they can identify indicators placed on a taxpayer's account that confirm a taxpayer has verified his or her identity either via the TPP phone line, the Identity Verification (ID Verify) website, or at a TAC.<sup>14</sup> In these instances, the intake advocate will not establish a case in TAS. Instead, the intake advocate will inform the taxpayer that he or she should receive the refund within three weeks for direct deposit refunds (six weeks for paper checks).<sup>15</sup> This is the approach the IRS should take with its customer service representatives, so resources are not squandered.

The reach of the IDT Re-engineering Team appears further limited because it is not willing or able to review the compelling empirical evidence the National Taxpayer Advocate has provided in a case analysis of a statistically significant sample of IDT cases.<sup>16</sup> TAS continues to believe that in certain instances, the IRS should assign a sole contact person with whom an IDT victim would interact from the beginning until all related issues have been addressed. In the 2014 case analysis, TAS found that two-thirds of IDT cases were transferred or reassigned to another assistor, including a few cases that were reassigned as many as eight or nine times before they were closed.<sup>17</sup>

Stolen identity cases have remained at the top of TAS case receipts for this year, and for every year since fiscal year (FY) 2011.<sup>18</sup> Until IDT case receipts decrease significantly in TAS, the IRS will not have resolved the problems with its processing of IDT cases. Toward that goal, the IRS should immediately adopt our recommendation for a sole assigned assistor in certain cases, and not make victims suffer yet another eight years until the IRS finally agrees to do so.

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10 See IRM 25.25.6, *Taxpayer Protection Program* (Aug. 20, 2015).

11 IRM 25.25.6.5.2 (Aug. 20, 2015).

12 See IRM 13.1.7.2, *TAS Case Criteria* (Feb. 4, 2015).

13 See Tax Topics, Topic 152 – Refund Information, <http://www.irs.gov/taxtopics/tc152.html>.

14 See TAS Technical Analysis and Guidance, *Case Acceptance for Taxpayer Protection Program Unpostables* (Mar. 2016).

15 See Tax Topics, Topic 152 – Refund Information, <http://www.irs.gov/taxtopics/tc152.html>.

16 See National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 49-51.

17 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 51.

18 TAS Business Performance Management System (BPMS), *FY 2016 April Cumulative Receipts* (May 1, 2016). TAS BPMS, *TAS Case Receipts by Primary Issue Code*, FY 2006–FY 2015.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Participate in the IDT Re-engineering Team;
- Advocate for the inclusion of RICS representatives on the IDT Re-engineering Team;
- Review and comment on the recommendations that are presented by the IDT Re-engineering Team;
- Advocate for recommendations made in the FY 2014 Annual Report to Congress volume two study on IRS IDT cases; and
- Participate in a TPP Re-engineering Team.

Area of  
Focus #7**The IRS's Pre-Refund Wage Verification Program Continues to Incorrectly Flag and Substantially Delay Legitimate Refunds for Hundreds of Thousands of Taxpayers****TAXPAYER RIGHTS IMPACTED<sup>1</sup>**

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

In an effort to combat refund fraud, the IRS uses the Pre-Refund Wage Verification Program (hereinafter — Income Wage Verification or IWV) to freeze a taxpayer's refund when it detects potentially false wages or withholding. The Return Integrity & Compliance Services (RICS) Integrity & Verification Operation (IVO) — a part of the Wage & Investment (W&I) Division — uses filters, rules, data mining models, and manual reviews to identify potentially false returns, usually through reported wages or withholding, to stop fraudulent refunds before the IRS issues them.<sup>2</sup> It electronically screens tax returns using three independent systems: the Dependent Database (DDb), the Return Review Program (RRP), and the Electronic Fraud Detection System (EFDS). TAS analysis has shown that the IRS's screening processes in this program are over-inclusive and harm taxpayers with legitimate returns. For example:

- Returns the EFDS selected for review in fiscal year (FY) 2015 had a nearly 35 percent “false positive” rate;<sup>3</sup>
- When the IRS moved potential identity theft returns identified by EFDS from the IWV to the Taxpayer Protection Program (TPP), the TPP's false positive rate jumped from 19.8<sup>4</sup> percent in calendar year (CY) 2014 to 36.6 in CY 2015; and<sup>5</sup>
- TAS analysis of the population of taxpayers filing in tax year (TY) 2014 whose returns EFDS selected for review in 2015 (through October), showed that nearly 180,000 taxpayers who eventually received their refunds experienced delays of nearly 18 weeks on average.

The National Taxpayer Advocate has expressed concerns with the IRS's inability to properly identify questionable returns in her 2003, 2005, 2012, and 2015 Annual Reports to Congress, and will continue

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Internal Revenue Manual (IRM) 25.25.2.1(1) (Aug. 20, 2015).

3 A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period. See IRS response to TAS information request (Oct. 20, 2015). The IRS now calls false positive rates — false detection rates.

4 IRS, RICS, *Update of the Taxpayer Protection Program (TPP)* 10 (Jan. 7, 2015).

5 IRS, RICS, *Update of the Taxpayer Protection Program (TPP)* 4 (Dec. 30, 2015).

to focus on and advocate for taxpayers whose legitimate refunds have been wrongly selected and unreasonably delayed by over-inclusive filters, rules, and models the IRS uses in the IWV program.<sup>6</sup>

In response to the National Taxpayer Advocate recommendations in the 2015 Annual Report to Congress, the IRS recently notified TAS that in April 2016 it had begun tracking each RRP and EFDS Non-Identity Theft Model False Detection Rate (FDR) separately.<sup>7</sup> We are pleased the IRS is starting to track the false detection rates for IWV; however, it would be premature to determine statistically valid false positive rates based on the limited amount of data provided, and until the end of the filing season.

The National Taxpayer Advocate understands the need for the IRS to combat refund fraud head-on and that any effective screening method will result in some false positives. However, the National Taxpayer Advocate remains concerned that:

- Until recently the IRS has been reluctant to track the false positive rates for the IWV program, and thus was unable to determine the precise filters or models necessary to exclude legitimate refunds and address the nearly 35 percent false positive rate in the EFDS until after the filing season is completed;<sup>8</sup>
- The IRS reinstated an indefinite freeze on all returns claiming refunds that are selected for IWV at the onset of the screening process. Previously, the IRS would automatically release a return selected for IWV after the 11-week hold unless, after review, the IRS finds the return questionable and takes action to freeze the refund for a longer time. However, the IRS has recently removed this 11-week limitation and all selected refunds are now subject to an indefinite freeze, which harms taxpayers with legitimate refunds that may be delayed for an extended period of time;<sup>9</sup>
- The reinstatement of the indefinite freeze is unnecessary in light of accelerated wage and income reporting, and exposes the IRS to payments of large amounts of interest on returns that are held for more than 45 days; and<sup>10</sup>
- Taxpayers whose refunds are frozen cannot directly reach a live assistor in the IVO unit, who possesses the requisite knowledge of a specific taxpayer's account. Taxpayers are left with no choice but to seek TAS assistance, placing undue stress and burden on both taxpayers and TAS employees.

These shortcomings continue to harm a myriad of taxpayers with legitimate refunds. For many, especially low income taxpayers who often rely on refunds for basic living expenses, indefinite IWV freezes

6 See National Taxpayer Advocate 2003 Annual Report to Congress 175-181 (Most Serious Problem: *Criminal Investigation Freezes*); National Taxpayer Advocate 2005 Annual Report to Congress 25-54 (Most Serious Problem: *Criminal Investigation Refund Freezes*); National Taxpayer Advocate 2012 Annual Report to Congress 95-110 (Most Serious Problem: *Despite Some Improvements, the IRS Continues to Harm Taxpayers by Unreasonably Delaying the Processing of Valid Refund Claims That Happen to Trigger Systemic Filters*); National Taxpayer Advocate 2015 Annual Report to Congress 45-55 (Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*).

7 IDT and IVO Selection Performance Reports, May 4 and June 1, 2016. The IRS defines the FDR as the number of false positives divided by the overall number selected. See National Taxpayer Advocate 2017 Objectives Report to Congress vol. 2 (IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2015 Annual Report to Congress; anticipated publication late July 2016, [www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport](http://www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport)).

8 The IRS provided TAS with a report entitled "IDT and IVO Selection Performance Report" on May 4, 2016. This report indicates that the IRS has begun tracking by model or RRP selection; however, TAS has not been briefed on how this information will be used. TAS looks forward to a discussion regarding how the IRS plans to utilize this information in the future.

9 Information received via email from W&I RICS Program Support (Jan. 11, 2016).

10 IRC § 6611(e) provides that the IRS is required to pay interest on refunds delayed for more than 45 days after the return due date or the date the return is filed, whichever is later.



create dire consequences (*i.e.*, inability to pay rent, utilities, or medical expenses). Not only does the IRS have an obligation to design a tax system that mitigates fraud, but it also has an obligation to design an efficient program that protects taxpayers' rights and promotes future compliance.

### **The IRS Is Starting to Track the False Positive Rates for the Pre-Refund Verification Program But It Is Unclear How the IRS Intends to Use This Information to Improve the Program**

As discussed in the National Taxpayer Advocate's 2015 Annual Report to Congress, the IRS only tracked the false positive rates associated with identity theft.<sup>11</sup> However, beginning in April 2016, the IRS began tracking false positive rates for a segment of returns forwarded to the IWV program.<sup>12</sup> While this is a step in the right direction, at this stage TAS is unable to determine if the IRS can properly identify the major factors that are causing one in every three legitimate returns to be caught up by the various filters and models, and the steps the IRS is taking when a problem is identified.

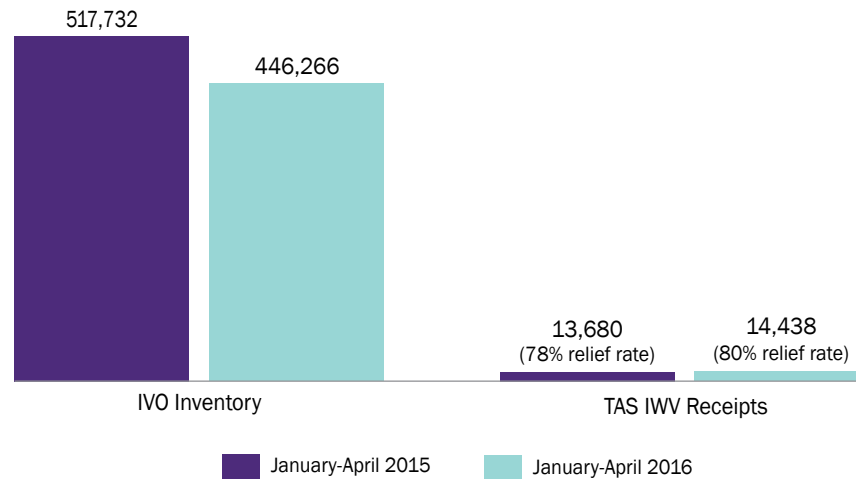
During the first four months of 2015 and 2016 (*i.e.*, January 1 through April 30), TAS provided full or partial relief in about 80 percent of cases for taxpayers who contacted TAS about delayed refunds flagged under the IWV Program. IWV cases constitute about 15 percent of TAS cases received between January 1 and April 30, 2016, which is the second most common reason that taxpayers came to TAS for assistance. During the same time period (January 1 through April 30), TAS received 14,438 IWV cases, a six percent increase compared to cases received by TAS between January 1 and April 30, 2015.<sup>13</sup> At the same time, the IRS's IWV holds have decreased over 13 percent, as shown in Figure 3.7.1.

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11 This includes programs such as the TPP, EFDS, RRP, Manual Analyst, and DDb. See National Taxpayer Advocate 2015 Annual Report to Congress 49.

12 See National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress vol. 2 (IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2015 Annual Report to Congress; anticipated publication late July 2016, [www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport](http://www.TaxpayerAdvocate.irs.gov/2017ObjectivesReport)).

13 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Jan. 1, 2015; May 1, 2015; Jan. 1, 2016; May 1, 2016). TAS received 14,438 cases in 2016 (January through April) and 13,680 cases in 2015 for the same period. The IRS identified 446,266 in 2016 (January through April) and 517,732 cases in IVO for 2015 for the same period.

**FIGURE 3.7.1**<sup>14</sup>**IVO Inventory vs. TAS IWV Case Receipts, January-April 2015 & 2016**

The increasing flow of taxpayers seeking TAS assistance with IWV holds, combined with the associated high relief rates, is a strong indicator of a serious, continuing problem within the IWV program. The IRS IWV program has significantly delayed legitimate refunds to taxpayers because of over-inclusive filters or cross-competing rules, thereby creating a significant hardship that qualifies taxpayers for TAS assistance.

Investing in the tracking of the IWV false positive rates by model or filter during the filing season, performing regular global reviews, and quickly adapting filters, rules, and models based on levels of confidence in each, would result in a more efficient use of resources and fewer delays for taxpayers with legitimate returns — thereby reducing taxpayer burden. False positive data, if monitored and analyzed in real-time, can be used by the IRS to improve its fraud prevention and IWV programs, minimize harm to taxpayers making legitimate refund claims, and preserve IRS and TAS resources.

The National Taxpayer Advocate applauds the IRS's recent efforts to revisit a series of filters known as "business rules." The IRS first implemented the business rules in January 2009 as the original system to combat identity theft. Over time, due to the creation of additional systems with more complex and productive filters, the false positive rate associated with these rules has increased considerably. RICS executives are recognizing that such a high false positive rate is not acceptable and that either a complete elimination of the rules (to allow the more complex filters and models to pull a more selective group of

<sup>14</sup> *Refund Fraud & ID Theft Global Report* (Apr. 30, 2016). This decrease in IRS IVO volume is significant because it may be an indicator that the IRS is not clearing cases in a timely manner.

returns) or an effective update is necessary to shield taxpayers with legitimate refunds from the arduous verification process.<sup>15</sup>

### The Reinstatement of the Indefinite Refund Hold Creates the Likelihood That Numerous Taxpayer Refunds Will Be Held Indefinitely

In her 2005 Annual Report to Congress, the National Taxpayer Advocate raised concerns with the Questionable Return Program (QRP), which was managed by the IRS Criminal Investigation (CI) Unit at that time.<sup>16</sup> In response to the National Taxpayer Advocate's concerns expressed in the report, the IRS created the Pre-Refund Program Executive Steering Committee (ESC) consisting of members of TAS, W&I, CI, Information Technology (IT), and the Small Business/Self Employed (SB/SE) Division. Following negotiations between the National Taxpayer Advocate and the Commissioner's staff, the committee decided that refunds would be held no longer than 11 weeks to allow the Accounts Management Taxpayer Assurance Program (AMTAP), now referred to as IVO, to review the returns and make a determination on whether a return was valid.

In October 2015, TAS learned that RICS was in the process of reinstating an indefinite freeze on all returns claiming refunds at the onset of processing. RICS executives personally assured the National Taxpayer Advocate that the process would not go forward without consulting TAS regarding possible alternatives that would not impede taxpayer rights. Despite this agreement, TAS later discovered that the change had already been implemented prior to the meeting between RICS executives and the National Taxpayer Advocate.

We strongly believe that reinstatement of the indefinite freeze will reproduce the same taxpayer rights violations that precipitated the original change to a temporary freeze, undermining taxpayers' *rights to be informed* and *to quality service*.<sup>17</sup>

### The Indefinite Freeze Is Unnecessary in the Light of Accelerated Deadline for Wage and Income Reporting, and May Result in the IRS Potentially Paying Large Amounts of Interest on Returns That Are Held for More Than 45 Days

IRC § 6611(e) provides that the IRS is not required to pay interest on held refunds for the first 45 days after the return due date or the date the return is filed, whichever is later. If refunds selected by the IWV Program are now indefinitely held, the IRS may be responsible for interest on any tax refund held for more than 45 days. TAS analysis of taxpayer data for TY 2014 showed that on average, of the nearly 180,000 taxpayers whose returns were flagged as potentially fraudulent, taxpayers were forced to wait

15 The Unpostable Code 147 "business rules" are part of the Accounts Management (AM) Identity Protection Strategic Oversight (IPSO), and were developed as an original system to combat identity theft. While there is considerable overlap, these business rules are not a pre-refund wage verification program. RICS recently approached the IDT Re-engineering team to elevate the UPC 147 process as an agenda item with the specific proposal that the TPP filters, instead of the business rules, be used to flag the returns. TPP, while under RICS, is also an identity theft program. This is a step in the right direction; however, the persistent intersection between identity theft and refund fraud models, rules, and filters is another reason to employ a committee presence to improve communication and implement real-time modifications to screening rules and filters, which will allow for a quicker resolution of systemic issues and minimization of taxpayer harm. For a more detailed discussion on the IDT Re-engineering team, see Area of Focus: *The IRS Re-Engineering of Its Identity Theft Victim Assistance Procedures Is a Step in the Right Direction But Does Not Go Far Enough*, *supra*.

16 This report addressed how CI permanently froze accounts with no notice to the taxpayer. See National Taxpayer Advocate 2005 Annual Report to Congress 25-54 (Most Serious Problem: *Criminal Investigation Refund Freezes*).

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

nearly 18 weeks (or 126 days) until they received their refund.<sup>18</sup> TAS anticipates that the hold time will substantially increase due to the IRS's decision to again impose indefinite freezes on all tax refund returns selected for IWV at the onset of the screening process. As a result, the IRS will be required to pay an increased amount in interest to affected taxpayers.

However, the recent change in law consistent with prior National Taxpayer Advocate recommendations<sup>19</sup> now requires Forms W-2 and W-3 and returns or statements that report non-employee compensation (e.g. Forms 1099-MISC) to be filed on or before January 31 of the year following the calendar year to which the returns relate.<sup>20</sup> By moving the deadline up from the end of February and the end of March for electronic filers, the IRS will have more time to match the wage and tax information reported on the taxpayer's return against the information submitted by employer. This capability should reduce the need to contact an employer for verification and suggests that the recently reinstated indefinite freeze is no longer necessary.<sup>21</sup>

The National Taxpayer Advocate is pleased the IRS is working on posting wage and tax information faster so the information can be used to verify income and withholding upfront, thereby reducing refund delays and taxpayer burden. The National Taxpayer Advocate looks forward to discussing the first year results with the IRS and collaborating in the future to discuss proposed improvements and implement additional process efficiencies.

### Taxpayers Whose Refunds Are Indefinitely Frozen by the IWV Program Still Cannot Reach a Live Assistor in IVO

Despite a decade of TAS advocating for improved telephone service for taxpayers, unlike the TPP, the IWV Program still does not have a dedicated phone number for taxpayers to call. As a result, taxpayers whose refunds are indefinitely frozen face lengthy hold times and courtesy disconnects trying to reach IRS Customer Service Representatives (CSRs) on an already over-burdened general line.<sup>22</sup>

18 See National Taxpayer Advocate 2015 Annual Report to Congress 45-55 (Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*).

19 See National Taxpayer Advocate 2015 Annual Report to Congress 45-55 (Most Serious Problem: *Revenue Protection: Hundreds of Thousands of Taxpayers File Legitimate Tax Returns That Are Incorrectly Flagged and Experience Substantial Delays in Receiving Their Refunds Because of an Increasing Rate of "False Positives" Within the IRS's Pre-Refund Wage Verification Program*); National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 86-8 (*Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*); National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-95 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*); National Taxpayer Advocate 2009 Annual Report to Congress 338-45 (Legislative Recommendation: *Direct the Treasury Department to Develop a Plan to Reverse the "Pay Refunds First, Verify Eligibility Later" Approach to Tax Return Processing*).

20 Section 201 of the PATH Act amended IRC § 6071 to require that certain information returns be filed by January 31, generally the same date as the due date for employee and payee statements, and are no longer eligible for the extended filing date for electronically filed returns under section 6071(b). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 201 (2015).

21 For a more detailed discussion on the impact of the accelerated deadline, See *Review of the 2016 Filing Season, supra*.

22 A courtesy disconnect is when the IRS phone line is overloaded and the caller is disconnected after a certain amount of time. For a full discussion of the National Taxpayer Advocate's concerns regarding taxpayer account access, see National Taxpayer Advocate 2015 Annual Report to Congress 56-63 (Most Serious Problem: *Taxpayer Access to Online Account System: As the IRS Develops an Online Account System, It May Do Less to Address the Service Needs of Taxpayers Who Wish to Speak With an IRS Employee Due to Preference or Lack of Internet Access or Who Have Issues That Are Not Conducive to Resolution Online*).

If an IWV taxpayer attempts to get information from *Where's My Refund*, he or she will receive a generic message prompting a call to the IRS, creating a vicious cycle of futility. Even if the taxpayer does reach a CSR, he or she will find the CSR does not have access to the IWV history or information, and cannot give specific responses to taxpayer inquiries.<sup>23</sup> CSRs take down information and route it to the IWV group in IVO. IVO, however, does not call back or correspond with a taxpayer based on the referral from a CSR. If the information forwarded by the CSR is not verifiable, IVO will simply close out the referral on the Account Management Services (AMS) application.<sup>24</sup> The indefinite freezes will exacerbate this situation and more taxpayers will resort to contacting TAS to resolve their issues regarding their legitimate refunds.

### TAS Acknowledges the Improvement of Collaboration With RICS on Resolving IWV Holds Through the Streamlined Operation Assistance Request (OAR) Processing

A common type of IWV cases in TAS involves taxpayers whose refunds remain frozen despite matching data from the Information Returns Program (IRP).<sup>25</sup> Often the refund remains frozen until TAS sends an Operation Assistance Request (OAR) for priority handling. In an effort to prioritize the release of legitimate refunds and to reduce taxpayer burden, IVO and TAS agreed to use a Bulk OAR process between March 21 and June 30, 2016. Under this process TAS provides IVO a weekly report of Taxpayer Identifying Numbers (TINs) that have had income and withholding verified through IRP. IVO then sends a report back to TAS reflecting the accounts that have been adjusted. By eliminating the need for individual OARs for each taxpayer, the Bulk OAR process has reduced the number of taxpayers affected by delays, allowing both TAS and IVO employees to direct more time and resources to complex cases requiring additional verification. TAS and IVO's agreement to streamline OAR processing is a step in the right direction and an indication of IVO's willingness to assist taxpayers experiencing significant hardship and to partially alleviate burden on IRS and TAS resources. TAS will continue to assist taxpayers with legitimate refunds, monitor the current conditions, and measure the effectiveness of the Bulk OAR process to determine if it should be continued in FY 2017.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Advocate for the IRS to continue tracking the false positive rates for the Pre-Refund Wage Verification Program and provide a mechanism for prompt adjustment of filters and models based on filter or model performance;
- Advocate for reinstating the Pre-Refund ESC as a servicewide forum to coordinate policy and other business results related to revenue protection and include TAS as a charter member;
- As data becomes available, quantify the impact of indefinite refund freezes on taxpayers whose refunds have been held, its impact on both IRS and TAS resources, including the potential increase in the amount of interest payments;

23 IRM 21.5.6.4.35.3 (Nov. 2, 2015).

24 IVO does not correspond with a taxpayer based on a referral from a CSR. To the contrary, if it is just a refund status inquiry not associated with any verifiable information, IVO employees will just close out the referral on AMS. IRM 25.25.5.2 (July 27, 2015); IRM 25.25.5.4 (July 27, 2015); IRM 25.25.5.4.1 (July 27, 2015).

25 The IRS can use information returns (e.g., Forms W-2 and 1099) filed by employers, banks, and other third parties to report various types of payments to individuals. These payments include wages, interest, and dividends, as well as payments to self-employed taxpayers for services rendered. The IRS collects and maintains this information through the IRP.

- In light of the new accelerated information reporting deadlines, advocate for the IRS to reform its IWW processes, eliminate the indefinite refund freeze, and reevaluate whether an 11-week freeze needs to be reinstated or the freeze duration may be shortened;
- Advocate for creating a function within the IVO unit where trained assistors will answer incoming calls from taxpayers and respond to written inquiries to provide information regarding the status of an account, to verify income and withholding, and to release incorrectly held refunds, as appropriate; and
- Review the Bulk OAR process and advocate for its continuation in FY 2017 if it is determined that the agreement effectively reduces taxpayer burden and redirects IRS and TAS resources to more complex cases.

## AREA OF FOCUS #8 The IRS Should Reevaluate How It Develops and Uses Allowable Living Expense Standards

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

- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

### The Creation of Allowable Living Expense Standards

The IRS Restructuring and Reform Act of 1998 (RRA 98) required the IRS to establish guidelines to determine whether a taxpayer's offer in compromise (OIC) is adequate, which in essence codified the IRS's use of the Allowable Living Expense (ALE) standards.<sup>2</sup>

In particular, IRC § 7122(d)(2)(A) mandates that the IRS “develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.”<sup>3</sup> Congress also instructed the IRS to analyze, on a case-by-case basis, if application of the standards to the taxpayer would be appropriate.<sup>4</sup> IRS employees are required to analyze the facts of each case to determine if application of the standards is appropriate. If application of the standards results in a taxpayer not being able to provide for basic living expenses, then the standards should not be used.<sup>5</sup>

The resulting ALE standards have come to play a major role in analyzing taxpayers' financial situations in order to determine the best resolution in IRS collection cases.<sup>6</sup> A taxpayer with a personal tax liability must prepare Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals* (CIS) in order to submit an OIC.<sup>7</sup> The section of Form 433-A used to determine monthly expenses primarily relies on the ALE standards. In addition to OICs, certain installment agreements also require a prepared CIS.<sup>8</sup> In some instances, the IRS requires a completed CIS prior to putting the taxpayer's liability into Currently Not Collectible (CNC) status.<sup>9</sup> The National Taxpayer Advocate has

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 RRA 98, Pub. L. No. 105-206, § 3462(a) (1998) (codified at IRC § 7122(d)). In certain situations, OICs allow taxpayers to pay less than the balance due in full satisfaction of what is owed to the IRS.

3 See also Treas. Reg. § 301.7122-1(c)(2)(i).

4 IRC § 7122(d)(2)(B).

5 *Id.*

6 The IRS's ALE standards have also been adopted for other purposes. For instance, debtors filing for bankruptcy are instructed to use the IRS's ALE standards to calculate income and expenses. 11 U.S.C. § 707(b)(2). Additionally, when a debtor to a federal student loan is subject to a proposed wage garnishment, that debtor may object to the proposed garnishment by arguing it would create a financial hardship. 34 C.F.R. § 34.24(a). The debtor must provide credible documentation showing, among other things, his or her basic living expenses as established by the IRS's ALE standards. 34 C.F.R. § 34.24(e)(2).

7 Internal Revenue Manual (IRM) 5.8.5.3, *Taxpayer Submitted Documents* (Sept. 30, 2013).

8 When full payment cannot be achieved by the collection statute expiration date, but the taxpayer has some ability to pay, the IRS may consider a Partial Payment Installment Agreement (PPIA). IRM 5.14.2.1(1), *Overview* (Mar. 11, 2011). A PPIA requires a CIS. IRM 5.14.2.1.1, *Partial Pay Installment Agreement Requirements* (Sept. 19, 2014).

9 IRM 5.16.1.2.9, *Hardship* (Aug. 25, 2014). A hardship exists if the taxpayer is unable to pay basic, reasonable living expenses. *Id.* Once an account is reported as CNC, it is taken out of the active inventory for most collection action. IRM 1.2.14.1.14, *Policy Statement 5-71* (Nov. 19, 1980). See also Treas. Reg. 301.6343-1(b)(4).

previously addressed concerns with the use and application of ALE standards to individual taxpayer cases.<sup>10</sup>

### The Current ALE Standards

To fulfill Congress's mandate in RRA 98, the IRS developed a system of allowable expenses, which must meet the "necessary test."<sup>11</sup> The expenses are broken down into three categories: allowable living expenses, other necessary expenses, and other conditional expenses.<sup>12</sup> This discussion will focus on ALEs.

There are standardized ALEs for items such as food and clothing, housing and utilities, and transportation.<sup>13</sup> Expenses for food, clothing, and other miscellaneous items, as well as for out-of-pocket healthcare expenses, are based on national standards. These standards come from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES).<sup>14</sup> Taxpayers are allowed the total national standard amount for their family size without analyzing the amounts they actually spend.<sup>15</sup>

On the other hand, housing and utility expenses and transportation costs are based on local standards. Housing expenses are based on Census and BLS data by county.<sup>16</sup> Transportation costs consist of nationwide figures for loan or lease payments, and additional amounts for operating costs broken down by Census Region and Metropolitan Statistical Area. Taxpayers are generally allowed the local standard or what they actually pay each month, whichever is less.<sup>17</sup> Thus, the local standards serve as a cap on what taxpayers can claim. However, a deviation from application of the standards is allowed when, based on a taxpayer's facts and circumstances, such application would create an economic hardship for the taxpayer.<sup>18</sup>

10 National Taxpayer Advocate 2006 Annual Report to Congress (Most Serious Problem: *IRS Collection Payment Alternatives* 83-109); National Taxpayer Advocate 2005 Annual Report to Congress (Most Serious Problem: *Allowable Expense Standards for Collection Decisions* 270-91).

11 An expense is considered necessary if it is "necessary to provide for a taxpayer's and his or her family's health and welfare and/or production of income." IRM 5.15.1.7, *Allowable Expense Overview* (Oct. 2, 2012).

12 "Other necessary expenses" are expenses that meet the necessary expense test, and are normally allowed. This is the category which includes childcare costs, which are allowed if they are "reasonable," making them subject to an individual IRS employee's judgment, a point discussed in more detail below. Conditional expenses are expenses which may not meet the necessary expense test, but may be allowed based on the circumstances of an individual case. IRM 5.15.1.7, *Allowable Expense Overview* (Oct. 2, 2012).

13 IRM 5.15.1.7, *Allowable Expense Overview* (Oct. 2, 2012).

14 The BLS is part of the United States Department of Labor. United States Department of Labor, *About BLS*, <http://www.bls.gov/bls/infhome.htm>. Out-of-pocket healthcare expenses are based on Medical Expenditure Panel Survey data, <http://meps.ahrq.gov/mepsweb/>, which comes from the U.S. Department of Health and Human Services. IRM 5.15.1.7 (Oct. 2, 2012).

15 IRM 5.15.1.7(3), *Allowable Expense Overview* (Oct. 2, 2012). The CES program "consists of two surveys, the Quarterly Interview Survey and the Diary Survey, that provide information on the buying habits of American consumers, including data on their expenditures, income, and consumer unit (families and single consumers) characteristics." BLS, CES, <http://www.bls.gov/cex/> (last visited Sept. 9, 2015).

16 IRM 5.15.1.7(4), *Allowable Expense Overview* (Oct. 2, 2012). In addition to mortgage or rent, housing expenses include such things as utilities (gas, electricity, water, etc.), garbage removal, cable television, internet service, telephone, and cell phone.

17 IRM 5.15.1.7(4) (Oct. 2, 2012) and IRM 5.15.1.9, *Local Standards* (Nov. 17, 2014).

18 IRM 5.15.1.1(7) (Nov. 17, 2014).



### Shortcomings of the Current ALE Standards

TAS believes the IRS should adopt ALE standards that are based on actual cost for an appropriate quality of living.<sup>19</sup> As it is now, the standards are based on the average or median expenditures derived from U.S. government data sources (e.g., U.S. Census Bureau or the BLS) representing broad segments of the population. The National Taxpayer Advocate previously expressed concerns that the application of these standards to individual taxpayer cases may lead to erroneous conclusions regarding the appropriate use of reasonable collection payment alternatives.<sup>20</sup>

In fact, the BLS, which is a primary source for the ALE data, advises caution in interpreting its consumer expenditure data when relating averages to individual circumstances. The warning reads:

Caution should be used in interpreting the expenditure data, especially when relating averages to individual circumstances. The data shown in the published tables are averages for demographic groups of consumer units. Expenditures by individual consumer units may differ from the average even if the characteristics of the group are similar to those of the individual consumer unit. Income, family size, age of family members, geographic location, and individual tastes and preferences all influence expenditures.<sup>21</sup>

Some taxpayers forego expenses in order to make ends meet. By focusing on expenditures instead of what we think is the appropriate level for sustainable living expenses, we perpetuate taxpayers living in substandard living situations. It is imperative that all taxpayers, including those who cannot afford to meet their monthly costs of living, have a sufficient and equal amount of expense attributed to them for basic needs.

TAS is concerned that the IRS's proposal to reduce ALE standards is based on a premise that costs are decreasing.<sup>22</sup> TAS is unaware of how this proposition can be tested using the current system of ALE standards, since the standards are based on averages spent by consumers.

When the IRS uses expense standards that focus on expenses paid, it can expect to resolve fewer collection cases through installment agreements or OICs, and force taxpayers to endure economic hardships. One case that demonstrates this is *Leago v. Commissioner*.<sup>23</sup> In *Leago*, the taxpayer did not contest that he owed a tax liability of approximately \$94,433. However, Mr. Leago suffered from a brain tumor which required surgery estimated to cost \$100,000. Mr. Leago had no health insurance. As part of

19 Based on concerns identified by the National Taxpayer Advocate, the IRS and TAS reached a joint agreement in 2007 whereby “the allowance amount for any ALE category cannot be decreased unless something economic changes significantly, such as a major sustained recession or depression.” IRS, SB/SE Finance, Research & Strategy, *2015 Allowable Living Expenses Project* iii (Sept. 2015). When costs associated with a specific allowance decrease below the prior year’s published allowance, the prior year’s allowance is used. IRS, SB/SE Finance, Research & Strategy, *2015 Allowable Living Expenses Project* iii (Sept. 2015). On March 28, 2016, the IRS announced that new ALE standards took effect and that “some ALE amounts reflect a decrease from last year’s standard amounts based on current data showing a decline in expenditures.” IRS, *Collection Financial Standards*, <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Collection-Financial-Standards>. The IRS implemented a deviation from normal procedures for certain Automated Collection System and Compliance Services Collection Operations cases between December 17, 2015 and September 30, 2016 that involve financial analysis for particular types of installment agreements and CNC cases. Director, Collection Policy and Director, Campus Collection, *Memorandum for SBSE Directors, Collection Policy and Campus Collection* (Dec. 17, 2015). TAS will report on the results of this deviation in the National Taxpayer Advocate 2016 Annual Report to Congress.

20 National Taxpayer Advocate 2005 Annual Report to Congress 270-91; National Taxpayer Advocate 2006 Annual Report to Congress 83-109.

21 BLS, *CES Frequently Asked Questions*, <http://www.bls.gov/cex/csxfqa.htm#q13> (last visited March 17, 2016).

22 IRS, *2015 Allowable Living Expenses Project* (Sept. 2015).

23 T.C. Memo. 2012-39.

a collection due process (CDP) hearing in response to a proposed levy, Mr. Leago requested that his liability be classified as CNC due to financial hardship and health problems.<sup>24</sup> The proposed levy was sustained and Mr. Leago petitioned the Tax Court.

The Tax Court remanded the case back to Appeals for a supplemental CDP hearing. The settlement officer excluded any expenses for health care because Mr. Leago was not currently paying these expenses and instead offered him a PPIA in the amount of \$200 per month. Mr. Leago declined to accept this payment plan. Subsequently, Mr. Leago proposed an OIC based on doubt as to collectability with special circumstances. In his CIS, he reported \$3,100 per month for future expenses related to his brain surgery. The settlement officer who reviewed this offer again denied the future medical expense because it represented an amount Mr. Leago did not have. The court again remanded the case.

The court opinion does not shed light on the outcome for Mr. Leago after the second remand. From this case, it is clear that the current ALE standards do not always address what costs should be included in basic and necessary living expenses. In *Leago*, the IRS, by not allowing the cost of a life-saving surgery for Mr. Leago because he simply could not afford it at that time, condemned Mr. Leago to never having the surgery because he would have to pay the IRS any funds he might otherwise save toward his life-saving care. However, another taxpayer with the ability to pay for the surgery could have received a different outcome in his or her financial analysis.

Not all taxpayers will face such a drastic situation as the one faced by Mr. Leago. However, many taxpayers will experience an inability to cover their basic living costs at some point in their lives.<sup>25</sup> With this in mind, the IRS should reevaluate the current ALE standards and base expenses on the costs of a sustainable life and health instead of what taxpayers are actually paying. For instance, the IRS should ask: is it appropriate to cap housing expenses for a taxpayer who can afford only substandard housing, rather than allowing an expense amount that covers safe and adequate housing?

Additionally, the IRS should consider expanding what expenses are necessary for a basic lifestyle. For example, it is not realistic (and may very well be gender-based discrimination) to consider childcare expenses to be an “other” expense for working parents, thereby leaving its inclusion open to the judgment of individual IRS employees. Similar arguments can be made for health insurance premiums, an allocation for minimal technology in the home, such as a basic personal computer, and modest retirement savings, in light of the decline of defined benefit plans.

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24 Prior to levying a taxpayer’s property, in most instances, the IRS must provide the taxpayer with an opportunity to have a hearing before Appeals. During this hearing, the taxpayer may be able to raise various issues, one of which is alternative collection options to the levy. IRC § 6330.

25 One estimate is that 59 percent of Americans will encounter a year or more of poverty by the age of 75. Mark. R. Rank, *Rethinking the Scope and Impact of Poverty in the United States*, 6 CONN. PUB. INT. L.J. 165, 171 (2007).

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Work with the IRS to address the IRS's decrease in ALE standards;
- Review how the ALE standards could be measured and implemented. This review will consider what expenses are not currently covered and will include a review of what other methods exist for determining basic needs. The results of this review will be shared with the IRS;
- Instruct Local Taxpayer Advocates to issue Taxpayer Assistance Orders in appropriate cases when IRS interpretation of the ALE standards harms a taxpayer or creates disparate treatment; and
- Encourage the IRS to develop a measurement to establish if existing guidance allowing for a deviation based on economic hardship is being followed, as provided for in IRM 5.15.1.1(7).

**Area of  
Focus #9**

## **As the IRS Has Gained Experience in Administering the Individual Provisions of the Affordable Care Act, It Has Addressed Some Previous Concerns But a Few Still Remain**

### **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*

In order to ensure that taxpayers' rights are protected, TAS has been actively involved with the IRS implementation of the Patient Protection and Affordable Care Act of 2009 (ACA).<sup>2</sup> TAS is represented on the IRS ACA Executive Steering Committee and multiple ACA Joint Implementation Teams to ensure that the provisions are implemented in a fair and equitable way.<sup>3</sup> TAS created an ACA Rapid Response Team (RRT) to quickly address any significant ACA issues elevated through our systemic and case advocacy functions. In addition, TAS Research compiled data on the Premium Tax Credit (PTC) and Individual Shared Responsibility Payment (ISRP) for tax year (TY) 2015 as set in the following section. Finally, TAS raised concerns regarding the IRS implementation of the individual provisions of the ACA in previous reports and, as the 2016 filing season unfolded, TAS identified additional issues, detailed herein.

### **General ACA Data for TY 2015 Individual Returns**

During the 2016 filing season, eligible individual taxpayers claimed the PTC on TY 2015 returns. The following table provides information regarding the extent to which individual taxpayers claimed the PTC on their TY 2015 returns.

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 ACA, 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).

3 TAS is represented on the Compliance – Business and Collection ACA Joint Implementation Teams.

**FIGURE 3.9.1, Reporting of the Premium Tax Credit on Forms 8962 for TY 2015 Returns Through April 28, 2016<sup>4</sup>**

Returns Filed with Forms 8962, <i>Premium Tax Credit (PTC)</i>	4.8 million
Total PTC Amount Claimed	\$14.3 billion
Average PTC Amount Claimed Per Return	\$2,987
Returns Reporting Advanced PTC	4.5 million (94% of returns with Forms 8962)
Total Advanced PTC Reported	\$15.8 billion
Prepared Returns Filed with Forms 8962 (Paid or Volunteer)	3.0 million (63% of returns with Forms 8962)

Individual taxpayers who did not have minimum essential coverage or qualify for an exemption were required to make an ISRP on their TY 2015 returns. The following table provides data on the reporting of ISRPs on TY 2015 returns.

**FIGURE 3.9.2, Reporting of Individual Shared Responsibility Payments on TY 2015 Returns Through April 28, 2016<sup>5</sup>**

Returns Claiming Coverage	103.6 million
Returns with ISRP	5.6 million
Average ISRP	\$442
Prepared Returns Reporting ISRP (Paid or Volunteer)	3.6 million
Returns Filed with Forms 8965, <i>Health Coverage Exemptions</i>	11 million
Returns Filed with Forms 8965 Claiming the Household Coverage Exemption (checked yes in Form 8965 Part II 7a or 7b or both)	3.2 million
Returns Filed with Forms 8965 Claiming Coverage Exemption (Part III)	7.8 million
Prepared Returns Filed with Forms 8965 (Paid or Volunteer)	6.0 million (54% of returns with Form 8965)

- <sup>4</sup> Wage and Investment Strategies and Solutions (WISS, formerly Wage and Investment Research and Analysis (WIRA)), *ACA Fact Sheet 05-31-2016 (returns processed through Apr. 28, 2016)*. This data is based on returns that had posted as of Apr. 28, 2016 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2015 returns, and conducts compliance activities. Note that the number of “Returns Reporting Advanced PTC” is a subset of the number of “Returns Filed with Form 8962, Premium Tax Credit (PTC).” All taxpayers claiming the PTC were required to file a Form 8962. Of those taxpayers whose returns were processed through Apr. 28, 2016, about 94 percent claimed the Advanced Premium Tax Credit (APTC), while about six percent waited to claim the PTC until they filed their returns. However, not all APTC recipients have filed returns and reconciled their credit amounts. Therefore, it is difficult to compare the “Total Advanced PTC Reported” (about \$15.8 billion) to the “Total PTC Amount Claimed” (about \$14.3 billion). The difference of roughly \$1.5 billion is probably attributable, at least in part, to some taxpayers having reported receiving more in APTC during the year than they ultimately claimed. Of the 4.8 million returns filed with Form 8962, over three million returns were prepared by a paid or volunteer preparer, and over 1.7 million were deemed self-prepared (total rounds to 4.8 million).
- <sup>5</sup> WISS, *ACA Fact Sheet 05-31-2016 (returns processed through April 28, 2016)*. This data is based on returns that had posted as of Apr. 28, 2016 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2015 returns, and conducts compliance activities. Note that there were about 5.6 million returns reporting an ISRP. Of those, about 3.6 million were submitted on returns prepared by a paid or volunteer preparer, and about two million were deemed self-prepared. Taxpayers also filed about 11 million returns claiming an exemption from the ISRP using Form 8965, *Health Coverage Exemptions*. Of the Forms 8965 submitted, about 54 percent were prepared by a paid or volunteer preparer, and about 46 percent were deemed self-prepared. Taxpayers who report an ISRP may or may not file Form 8965. The roughly 11 million returns claiming an exemption on Form 8965 were divided between about 7.8 million claiming a Part III coverage exemption for individuals and about 3.2 million claiming a Part II coverage exemption for households (although some taxpayers claimed an exemption in both Part II and Part III).

## TAS Experienced a Dramatic Increase in Premium Tax Credit Cases

As detailed in the case receipts section below, TAS experienced a dramatic increase (approximately 290 percent increase) in PTC cases over the past year.<sup>6</sup> In fact, at the end of May 2016, the number of PTC cases rose to become the third top issue among TAS case receipts.<sup>7</sup> In response to the rapid increase in cases, TAS's ACA RRT met to discuss potential causes based on issues elevated to the team through the Systemic Advocacy Management System (SAMS) and the TAS ACA Mailbox. The RRT identified the following PTC-related issues that were elevated to the team during the 2016 filing season:

### 1. Taxpayers Incorrectly Received Form 1095-A After Merely Contacting Marketplace.

Taxpayers received Form 1095-A, *Health Insurance Marketplace Statement*, in error simply because they contacted the Marketplace to inquire about enrollment, but never actually enrolled.

### 2. Erroneous Third-Party Data When Taxpayer Was Not Enrolled in Marketplace Coverage.

The taxpayer did not obtain coverage through the Marketplace, but the IRS received from the exchanges (also referred to as the Marketplace) third-party data containing erroneous APTC amounts. This erroneous data is stored in the IRS's Coverage Data Repository (CDR), as described below.<sup>8</sup>

### 3. Erroneous Third-Party Data When the Taxpayer Was Enrolled in Marketplace Coverage.

The taxpayer obtained coverage through the Marketplace, but never received the APTC. The IRS received third-party data containing erroneous APTC amounts from the exchanges and stored the data in the CDR.

### 4. APTC Recipients Filed Form 1040-EZ.

The taxpayer obtained coverage through the Marketplace, received APTC, and incorrectly filed Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*. When taxpayers file this form, they cannot file the required Form 8962 to reconcile any APTC amounts received.

TAS is developing guidance to assist its case advocates on advocating for impacted taxpayers.<sup>9</sup> As background, taxpayers claiming the APTC are required to file Form 8962, *Premium Tax Credit (PTC)*, to reconcile the APTC received during the year with the PTC the taxpayer is actually entitled to receive. Taxpayers use Form 1095-A, *Health Insurance Marketplace Statement*, to prepare Form 8962. When the taxpayer files the return, IRS Submission Processing checks the CDR on all individual tax returns to verify if the taxpayer received APTC and reconciled the APTC on Form 8962, *Premium Tax Credit (PTC)*.<sup>10</sup> If the CDR indicates that the taxpayer received APTC but the taxpayer does not reconcile APTC on Form

6 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (June 1, 2015; June 1, 2016). TAS received 8,887 PTC cases in Fiscal Year (FY) 2016 (through May) compared to 2,276 cases for the same period in FY 2015. TY 2014 returns (filed in 2015) were the first returns on which taxpayers could claim PTC.

7 TAS, *TAS Inventory Report 9 (Week Ending May 28, 2016)*, Table 1: *The Top Ten Receipts in FY 2016 by Volume of Receipts and Four Week Trend*.

8 The IRS receives Exchange Periodic Data (EPD) from the exchanges, stores the EPD in the CDR, and uses the EPD to verify the accuracy of the maintained data to verify PTC claimed by taxpayers. For a detailed description of the CDR, see Treasury Inspector General for Tax Administration, *Affordable Care Act - Coverage Data Repository: Risks With Systems Development and Deployment*, Ref. No. 2015-23-041 (June 2, 2016).

9 TAS, *Communications Assistance Request, Marketplace Data Discrepancies Cause PTC Issues and Return Processing Delays* (June 2016).

10 Internal Revenue Manual (IRM) 3.14.1.6.9.13(2) (Jan. 1, 2016), IRM 21.6.3.4.2.16.3 (Oct. 1, 2015).

8962, the IRS will hold the return in an Error Resolution/Rejected Returns unit as the IRS corresponds with the taxpayer by issuing Letter 12C, *Individual Return Incomplete for Processing*.

TAS has been informed that state exchanges have 90 days after the enrollment period closes to finalize its data.<sup>11</sup> Therefore, states can send corrected data to taxpayers and the IRS throughout the entire filing season.<sup>12</sup> The Marketplace data transmitted to the IRS updates monthly, so in some cases, the taxpayer's information in the CDR has been updated since the IRS sent Letter 12C.<sup>13</sup> Some cases may simply require the case advocate to access and review the CDR for updated information. If the CDR was updated since the issuance of Letter 12C and confirms that the information reported on the return is correct, the case advocate can issue an Operations Assistance Request (OAR) to the function instructing them to continue processing the return. If a review of the CDR does not show any updates and does not confirm the information reported on the tax return, the case advocate must advise the taxpayer to contact the Marketplace for a corrected Form 1095-A. For taxpayers who filed Form 1040EZ and respond to Letter 12C by providing Forms 8962 and 1095-A, the IRS has to convert the return to a Form 1040, *U.S. Individual Income Tax Return*. The timeframe for the conversion process can be lengthy, resulting in a high inventory of returns requiring conversion.<sup>14</sup>

To better understand the types of PTC issues in the TAS case inventory, the RRT reviewed a sample of ten randomly selected PTC cases. The findings from this limited review aided the development of a data collection instrument to use in a larger scale review of PTC cases received in FY 2016. TAS is still in the process of conducting this larger scale review of a random sample of PTC cases. We plan to report the findings of the review in the 2016 Annual Report to Congress.

### Unscrupulous Preparers Are Pocketing Taxpayers' Shared Responsibility Payments

In response to an elevated SAMS issue at the beginning of the 2016 filing season, TAS requested that the IRS reissue a Health Care Tax Tip (HCTT) from the 2015 filing season.<sup>15</sup> The HCTT warned taxpayers that unscrupulous preparers are inappropriately instructing their clients to make the ISRP directly to the preparer, whether or not the taxpayer actually owed the ISRP. The preparers then wrongly keep these payments instead of transmitting them to the IRS, as promised to their clients.

The preparers are providing a variety of invalid reasons to persuade the taxpayer to deposit the ISRP payment with the preparer, such as promising lower amounts if paid directly to the preparer. The preparers

11 Minutes, Monthly Conference Call - Wage & Investment (W&I) and TAS (Mar. 24, 2016). The 2016 open enrollment period closed on January 31, 2016. See Department of Health and Human Services (HHS), Dates and Deadlines for 2016 Health Insurance, <https://www.healthcare.gov/quick-guide/dates-and-deadlines/> (last visited June 3, 2016).

12 For example, in late February 2016, thousands of Blue Shield and Kaiser Permanente customers who enrolled through Covered California in 2015 received erroneous Forms 1095-A reporting that they did not have health insurance in 2015, when they were actually covered. Kathleen Pender, *Some Blue Shield Kaiser Members Get Faulty Obamacare Tax Forms*, SAN FRANCISCO CHRONICLE, Mar. 25, 2016. In addition, in Minnesota, MNSure finally issued the majority of its forms by the end of March 2016. David Montgomery, *1095-A Tax Form Issue Resolved, MNSure Says*, PIONEER PRESS, Mar. 30, 2016. For a discussion on problems in Minnesota, Hawaii, and California see *Obamacare Bureaucracy Gets in the Way of Tax Time*, FORT MEYERS NEWS PRESS, Mar. 17, 2016.

13 Servicewide Electronic Research Program (SERP), *Responding to PTC Letters, 12C – Paragraph 5, Note (Last Update Mar. 25, 2016)*. The IRS has posted information on its website for taxpayers who receive Letters 12C. See IRS, *Understanding Your Letter 0012C*, <https://www.irs.gov/individuals/understanding-your-letter-0012c> (last visited June 3, 2016). In addition, the IRS has posted information to assist impacted taxpayers who received corrected or voided Form 1095-A. See IRS, *Corrected or Voided Form 1095-A*, <https://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Corrected-or-Voided-Form-1095A> (last visited June 3, 2016).

14 Systemic Advocacy Management System (SAMS) 34625 and 34628; TAS, *Communications Assistance Request, Marketplace Data Discrepancies Cause PTC Issues and Return Processing Delays* (June 2016).

15 SAMS 33917 (Jan. 15, 2016).

are also incorrectly telling some taxpayers that their immigration status does not qualify them for an ISRP exemption. Generally, taxpayers who are not U.S. citizens or nationals, and are not lawfully present in the country, are exempt from the ISRP. An immigrant with Deferred Action for Childhood Arrivals (DACA) status is considered not lawfully present and qualifies the taxpayer for an exemption, even if he or she has a social security number.<sup>16</sup>

The IRS HCTT provides a link to the searchable public directory of tax preparers and also provides information on reporting the unscrupulous preparers to the IRS. TAS will continue to work with the IRS and external stakeholders to ensure that taxpayers receive sufficient education to prevent the perpetrators of this fraudulent activity from receiving the ISRP funds in the first place. In addition, TAS has posted an article on the TAS Tax Toolkit providing relevant guidance and directing taxpayers to the IRS's Interactive Tax Assistant tool and TAS's ISRP Estimator.<sup>17</sup>

### Updates on Overstated Shared Responsibility Payments

As the National Taxpayer Advocate initially reported in her 2015 Annual Report to Congress, a significant number of taxpayers appeared to have overstated their ISRP on their TY 2014 returns.<sup>18</sup> TAS is concerned that the same issues reoccurred on TY 2015 tax returns because the IRS could not program any changes due to late detection of the issue in 2015. TAS has requested from the IRS data on TY 2015 ISRP overpayments. At the time of drafting, we are still waiting for the data. The IRS issued an HCTT in mid-December 2015, explaining that some taxpayers might have miscalculated and overpaid ISRP on their TY 2014 returns. The HCTT provided examples illustrating when a taxpayer should amend the return due to such overpayment.<sup>19</sup> The IRS indicated in March 2016 that it is tracking those taxpayers who were issued Letter 5600-C, *ACA Letter to Individual Shared Responsibility Payment (ISRP) Taxpayers*, for TY 2014 returns.<sup>20</sup> The IRS also indicated it will put systemic corrections in place for those taxpayers who self-assess the ISRP when they are eligible for an exemption because they are below the filing threshold. If feasible, the IRS indicated it would be able to take this action in early summer 2016.<sup>21</sup> However, it is TAS's understanding that the IRS has not taken any action to program such adjustments.<sup>22</sup> TAS received several issues elevated through SAMS regarding the burden imposed on low income taxpayers resulting from the requirement to amend returns to receive a refund of ISRP overpayments.<sup>23</sup>

TAS will continue to meet with the IRS and urge it to address this issue systemically — by taking both preventative and corrective measures. In addition, until the IRS completes the programming necessary to do so, TAS will look for ways to systemically identify overpayments. Once TAS has identified impacted taxpayers, it may send a mass OAR or Taxpayer Assistance Order (TAO) to the IRS listing all of the

16 Michael Cohn, *IRS Warns of Tax Preparers Exploiting Obamacare Mandate*, ACCOUNTING TODAY (Jan. 26, 2016); IRS, *Affordable Care Act Consumer Alert: Choose Your Tax Preparer Wisely*, IRS HCTT 2016-10 (Jan. 26, 2016).

17 TAS, *Affordable Care Act Payment Scam Involving Tax Preparers* (Mar. 19, 2015), [https://taxpayeradvocate.irs.gov/news/affordable-care-act-payment-scam-involving-tax-preparers?category=Tax News&taxissue=1220](https://taxpayeradvocate.irs.gov/news/affordable-care-act-payment-scam-involving-tax-preparers?category=Tax%20News&taxissue=1220) (last visited June 1, 2016).

18 National Taxpayer Advocate 2015 Annual Report to Congress 167-179 (Most Serious Problem: *Affordable Care Act (ACA) – Individuals: The IRS Is Compromising Taxpayer Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*).

19 IRS, *The Health Care Law and You: Four Reasons You Might Choose to Amend Your Tax Return*, HCTT 2015-82 (Dec. 15, 2015).

20 Letters 5600-C informed taxpayers of the potential ISRP overpayment and instructed them to consider filing an amended return and attaching Form 8965, *Health Coverage Exemptions*, if applicable.

21 TAS, Minutes for Monthly Conference Call – W&I and TAS (March 24, 2016).

22 The IRS has indicated that it would implement systemic changes to address ISRP overpayments for the 2017 filing season. W&I response to TAS information request (Oct. 29, 2015).

23 SAMS Nos. 33857 (Dec. 24, 2015), 33862 (Dec. 29, 2015), 33903 (Jan. 12, 2016), 33955 (Jan. 25, 2016).



Taxpayer Identification Numbers (TINs) and instructing the IRS to take corrective action on the ISRP overpayments.

### Seeking Relief for Recipients of Lump Sum Social Security Disability Insurance Payments Who Are Forced to Repay the Entire Amount of APTC

When taxpayers receive lump sum Social Security Disability Insurance (SSDI) payments, the additional income may push their household income above 400 percent of the federal poverty line (FPL) for the applicable family size, which will make them ineligible for the PTC.<sup>24</sup> For those taxpayers who received APTC during the tax year, they will need to repay the entire amount because the repayment limitations do not apply if household income is above the 400 percent FPL threshold.<sup>25</sup> The National Taxpayer Advocate raised concerns about this issue in her 2015 Annual Report to Congress.<sup>26</sup> In addition, Senator Angus S. King (I-Maine) raised this issue in a letter to the Secretary of Treasury and Commissioner of Internal Revenue John Koskinen.<sup>27</sup> TAS has received cases in which lump sum SSDI recipients are required to repay large APTC amounts, in some instances the entire amount of APTC paid on their behalf, resulting in significant financial hardship.<sup>28</sup> Individuals have little control over how quickly the Social Security Administration will process their disability applications and may even wait years to receive the determination and benefits. Therefore, it is reasonable that many taxpayers did not project to receive the lump sum when applying for the APTC.<sup>29</sup>

We believe that the resulting financial hardship imposed on lump sum SSDI recipients was not intended by Congress when drafting the PTC provisions. In fact, Congress has provided relief to SSDI recipients when they report lump sum payments as income on their tax return. Lump sum SSDI recipients can elect to use an alternative calculation method to calculate taxable income for the year of distribution.<sup>30</sup> In summary, the taxpayer is allowed to allocate the lump sum payment to the corresponding tax years and add any resulting incremental taxable income to the year of distribution.<sup>31</sup> A similar optional calculation method for lump sum SSDI payments is not available to calculate modified adjusted gross income (MAGI) for PTC eligibility and repayment limitations in IRC § 36B. As a result, the IRS required the taxpayer to include the entire amount of the lump sum SSDI benefit, including any non-taxable

24 IRC § 36B(c)(1)(A).

25 IRC § 36B(f)(2).

26 National Taxpayer Advocate 2015 Annual Report to Congress 167–79 (Most Serious Problem: *Affordable Care Act (ACA) – Individuals: The IRS Is Compromising Taxpayer Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions*).

27 Letter from Senator Angus S. King to John Koskinen, Commissioner of Internal Revenue (April 7, 2016), <https://www.king.senate.gov/download/?id=E7B96C93-2D10-4B01-B8FD-31FCA4ACAA51&inline=file>.

28 For reference, in TY 2014, the average APTC was about \$3,000. WIRA, *ACA Fact Sheet* (Oct. 8, 2015) (returns processed approximately Aug. 27, 2015).

29 The IRS and HHS remind taxpayers who receive APTC to report change in circumstances, including changes in income, to the Marketplace as soon as possible to prevent instances of having to repay APTC amounts. However, the timing of the large SSDI payments may still cause taxpayers to repay large amounts even if they promptly reported it to the Marketplace. See IRS Pub. 5152, *Report Changes to the Marketplace as They Happen: Important Reminder About Advance Payments of the Premium Tax Credit*.

30 IRC § 86(e).

31 Under this method, the taxpayer recalculates the taxable part of the lump sum SSDI benefits allocable to the earlier years using the income for the earlier years. Once the taxpayer has recalculated taxable income by including the allocable portion of SSDI for each year, any incremental taxable income for each of the earlier years is added to the taxable benefits for the year of distribution (figured without the lump sum payment attributed to the earlier years). Due to personal exemptions and deductions, the incremental taxable income may be significantly less than the initial allocable benefits. The taxpayer can use the worksheets in Publication 915, *Social Security and Equivalent Railroad Retirement Benefits*, to calculate the taxable portion using this optional method. IRS Pub. 915, *Social Security and Equivalent Railroad Retirement Benefits* 11 (rev. Jan. 5, 2016).

amount, in the year of distribution.<sup>32</sup> For many individuals with disabilities, this requirement pushes their household income above the 400 percent FPL threshold for PTC eligibility in IRC § 36B(c)(1)(A) and the repayment limitations in IRC § 36B(f)(2)(B). TAS believes that SSDI recipients should have a similar option to calculate MAGI for purposes of determining PTC eligibility in IRC § 36B(c)(1)(A) and repayment limitations in IRC § 36B(f)(2)(B).

We have requested that the Office of Chief Counsel consider issuing guidance to accomplish this resolution administratively. If TAS is unsuccessful in seeking relief through administrative guidance, TAS will proceed to make a legislative recommendation to spread the SSDI payment over the corresponding tax years to which the benefits apply. In the meantime, TAS Systemic Advocacy is working on a project to better educate the public on the consequences of receiving lump sum payments, including SSDI payments.

### SAMS ACA Submissions

For January 1, 2016 through May 28, 2016, TAS received 40 ACA submissions on SAMS.<sup>33</sup> TAS created an ACA RRT to quickly address any significant ACA issues elevated through SAMS or case receipts. The issues addressed in the SAMS submissions varied but the issue with the most submissions concerned IRS letters sent in response to ISRP overpayments (Letter 5600C) and letters sent to taxpayers who received APTC but failed to reconcile their APTC on Form 8962. The submitters raised concerns that such letters create unnecessary burden on taxpayers by instructing them to file amended returns. To address the confusion surrounding this issue, TAS posted an article on the TAS Toolkit website providing information.<sup>34</sup>

### TAS ACA Case Receipts

TAS experienced a significant increase in ACA cases during the past year. During FY 2016 through May 31, 2016, TAS received 9,250 ACA cases of which 96 percent involved PTC issues. This is an increase in PTC cases of about 290 percent compared to same period in FY 2015.<sup>35</sup> The chart below provides the number of cases, by specific ACA issue, in TAS inventory through May 31 for FYs 2015 and 2016.

32 SAMS Nos. 32676 (Mar. 25, 2015); 32811 (Apr. 15, 2015); 33486 (Sept. 24, 2015); TAMIS No. 6108314.

33 SAMS, as of June 4, 2016 (Two of the submissions were submitted at the end of 2015, but not addressed until the beginning of 2016).

34 TAS, *Some Non-U.S. Citizens Are Exempt from the Individual Shared Responsibility Payment* (Oct. 5, 2015), <https://taxpayeradvocate.irs.gov/news/some-non-u-s-citizens-are-exempt-from-the-individual-shared-responsibility-payment?category=Tax> (last visited June 1, 2016).

35 Data obtained from TAMIS (June 1, 2015; June 1, 2016). TAS received 8,887 PTC cases in FY 2016 (through May) compared to 2,276 cases for the same period in FY 2015. TY 2014 returns (filed in 2015) were the first returns on which taxpayers could claim PTC.

**FIGURE 3.9.3, TAS ACA Cases by Primary Core Issue Code (PCIC), Cumulative through May 31 for FYs 2016 and 2015<sup>36</sup>**

PCIC	Description	FY 2016 Cumulative Through May	FY 2015 Cumulative Through May
920	ACA Health Insurance Premium Tax Credit for Individuals	8,887	2,276
921	ACA Individual Shared Responsibility Payment	264	198
922	ACA Employer Shared Responsibility Payment	6	8
923	ACA Small Business Health Care Tax Credit	11	3
924	Other ACA tax provisions not included in PCIC 920 - 923	82	51
<b>Totals</b>		<b>9,250</b>	<b>2,536</b>

### FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Conduct a review of sample TAS PTC cases to determine the cause of the dramatic increase in TAS's inventory;
- Work with the IRS and external stakeholders to ensure that taxpayers receive sufficient education to prevent the unscrupulous preparers from inappropriately receiving ISRP funds;
- Urge the IRS to address ISRP overpayments systemically — by taking both preventative and corrective measures — and move forward with plans to identify impacted taxpayers and potentially issue a mass OAR or TAO ordering the IRS to systemically address through corrective actions;
- Educate the public about the consequences of receiving lump sum SSDI and other payments and seek relief for lump sum SSDI recipients through administrative guidance;
- Identify systemic issues associated with the ACA, elevate issues to the TAS ACA RRT, work with the IRS to resolve them; and
- Participate on the IRS Joint Implementation Teams and the Executive Steering Committee.

<sup>36</sup> Data obtained from TAMIS (June 1, 2016; June 1, 2015; Oct. 1, 2015). The total receipts for FY 2015 were as follows: PTC (920), 3318; ISRP (921), 352; ESRP (922), 19; SBHCTC (923), 3; Other (924), 66; and Total, 3,758.

## Area of Focus #10 Challenges Remain As the IRS Implements the Employer Provisions of the Affordable Care Act

### 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 IRS has done a commendable job of implementing the various stages of the Patient Protection and Affordable Care Act of 2009 (ACA),<sup>2</sup> including developing or updating information technology systems, issuing guidance, and collaborating with other federal agencies. The IRS's implementation of the ACA was further tested when certain provisions of the ACA impacting employers became effective in 2015. For example, the law now provides that applicable large employers (ALEs) must offer minimum essential coverage (MEC) to their full-time employees.<sup>3</sup> Employers not in compliance with this provision may be subject to an assessable payment, referred to as the employer shared responsibility payment (ESRP).

While the Treasury Regulations provided limited transition relief to ALEs, the ESRP provisions generally became effective January 1, 2015.<sup>4</sup> The Regulations acknowledged that there are certain categories of employees whose hours of service will be particularly challenging to identify and track, and gave the IRS some flexibility in allowing employers to use a “reasonable method” of crediting hours of service.<sup>5</sup>

The preamble provided a few examples of what may be considered a reasonable method in certain industries, but is far from comprehensive. The IRS has developed webinars for employers and has created an ESRP Q&A page on its website to provide further clarification.<sup>6</sup> While Q&As are helpful, they do not have the impact of formal guidance (which undergoes a notice and comment period), nor may taxpayers rely on them for penalty defense purposes.

Because there is no “reasonable cause” exception to the ESRP, it is important that ALEs be given an opportunity to directly engage with the IRS and walk through various scenarios. Throughout the year, employers need the ability to explain to the IRS how it determined MEC or how it calculated full-time equivalents (FTEs), and receive a response from the IRS. The ESRP should not be a “gotcha” tax. Taxpayers have the right to be informed and ALEs should be given every opportunity to comply with the business provisions of the ACA.

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

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

3 See IRC § 4980H.

4 Treas. Reg. 54.4890H, T.D. 9655, 79 Fed. Reg. 8544-01 (Feb. 12, 2014).

5 *Id.*

6 See IRS, *Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act*, [www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act](http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act) (last visited June 24, 2016); IRS, *ACA Information Center for Applicable Large Employers (ALEs)*, [www.irs.gov/Affordable-Care-Act/Employers/ACA-Information-Center-for-Applicable-Large-Employers-ALEs](http://www.irs.gov/Affordable-Care-Act/Employers/ACA-Information-Center-for-Applicable-Large-Employers-ALEs) (last visited June 24, 2016).

The IRS has designated that ESRP cases will be worked by a specialized unit under the Small Business/Self-Employed division.<sup>7</sup> TAS will review the procedures and instructional materials developed by the IRS for this new group of employees, to ensure that these employees are specially trained on the aspects of the ACA that impact business taxpayers. We believe that it would be beneficial for the IRS to assign a single employee to work an ACA case, which would allow an ALE to interact with someone familiar with its particular set of circumstances.

### Challenges Remain As the IRS Processes New Information Reports

Starting in the 2016 filing season, employers and health insurers are subject to expanded information reporting requirements. IRC § 6055 requires annual information reporting by health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage. IRC § 6056 requires annual information reporting by ALEs relating to the health insurance that the employer offers (or does not offer) to its full-time employees. Below is a list of information returns the IRS created to meet these reporting requirements:

- Form 1095-B, *Health Coverage* (used by health insurance issuers and carriers to report information about individuals who are covered by MEC and therefore aren't liable for the individual shared responsibility payment);<sup>8</sup>
- Form 1094-B, *Transmittal of Health Coverage* (used by health insurance issuers and carriers to submit Forms 1095-B);
- Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage Insurance* (furnished by ALEs to any full-time employee for one or more months of the year);<sup>9</sup> and
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns* (used by ALEs to submit Forms 1095-C).

On December 28, 2015, the IRS extended the due dates for furnishing Forms 1095-B and 1095-C to individuals from January 31 to March 31, 2016.<sup>10</sup> Furthermore, the IRS extended the due dates for filing these forms with the IRS from February 29 to May 31, 2016 (for paper delivery) and from March 31 to June 30 (for electronic delivery).<sup>11</sup> Thus, TAS does not know at this time how many new information returns the IRS will process in the 2016 filing season due to the employer provisions of the ACA becoming effective. The IRS relies on these information reports to verify data relevant to the ESRP liability.<sup>12</sup>

If the IRS receives incomplete or inaccurate data, individual taxpayers and employers may be harmed. For example, if the IRS receives inaccurate data regarding coverage, it may erroneously assess ESRPs on ALEs, which can be costly and time-consuming for both employers and the IRS to rectify. In addition, if the IRS cannot accurately verify coverage information, it will inhibit the IRS's ability to verify eligibility for the small business health care tax credit.

<sup>7</sup> IRS response to TAS information request (Oct. 22, 2015).

<sup>8</sup> IRS, *Instructions for Forms 1094-B and 1095-B* (2015), <https://www.irs.gov/pub/irs-pdf/i109495b.pdf>.

<sup>9</sup> IRS, *Instructions for Forms 1094-C and 1095-C* (2015), <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>.

<sup>10</sup> IRS Notice 2016-4, *Extension of the Due Dates for 2015 Information Reporting Under IRC §§ 6055 and 6056*, <https://www.irs.gov/pub/irs-drop/n-16-04.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> Furthermore, the IRS will rely on these information reports to assess the individual shared responsibility payment. See *Area of Focus: As the IRS Has Gained Experience in Administering the Individual Provisions of the Affordable Care Act, It Has Addressed Some Previous Concerns But a Few Still Remain*, *supra*.

For ACA-related information returns that are filed by employers and health insurance providers, the IRS is unable to verify the data using the taxpayer identification number (TIN) matching program, which may lead to mismatches and unnecessary notices. The TIN matching program is limited to information returns that report payments subject to backup withholding, such as dividends or other income.<sup>13</sup> In the National Taxpayer Advocate's 2015 Annual Report to Congress, TAS recommended that Congress amend the tax law to allow entities required to file information returns under the ACA to verify TINs with the IRS prior to filing annual information returns.<sup>14</sup>

### The IRC § 4980D Excise Tax May Ensnare Unwitting Employers

IRC § 4980D imposes an excise tax on employers who maintain a group health plan that fails to meet certain requirements. Notice 2013-54 clarified that employer payment plans (EPPs) and health reimbursement arrangements (HRAs), by their nature, fail to comply with the ACA market reforms that prohibit annual dollar limits (Public Health Service Act § 2711) and require plans to provide cost-free preventive services (Public Health Service Act § 2713). Such prohibited arrangements are subject to an excise tax of \$100 per affected individual, per day, under IRC § 4980D as plans that fail to satisfy ACA market reforms.<sup>15</sup>

The 2013 guidance further clarified that employer health care arrangements will not violate the ACA market reform provisions when integrated with a group health plan that otherwise complies with those provisions. Importantly, however, the 2013 guidance provided that these employer health care arrangements cannot be integrated with individual market policies without being subject to the IRC § 4980D excise tax.

Many colleges and universities offer a health care premium reduction arrangement to their students that does not constitute an EPP under the 2013 guidance. In other cases, however, such arrangements may violate ACA market reform provisions if they are not integrated with group health plan coverage. Recognizing that schools may need additional time to adopt a suitable alternative or make other arrangements to come into compliance, the IRS issued Notice 2016-17 stating that it will not assess the IRC § 4980 excise tax on student health coverage for a plan year or policy year beginning before January 1, 2017.<sup>16</sup>

These rules are complex, yet the consequences of running afoul of the ACA market reform provisions are severe. Offering temporary relief is a necessary step, but the IRS should conduct outreach to ensure that colleges and universities are not ensnared by the IRC § 4980D excise tax, which applies at a rate of \$100 per day per employee, if a school's group health care plan offered to students fails to satisfy ACA market reforms.

13 See IRC § 3406; Treas. Reg. § 31.3406(j)-1 (2004); Rev. Proc. 2003-9, 2003-8 I.R.B. 516.

14 National Taxpayer Advocate 2015 Annual Report to Congress 383-88 (Legislative Recommendation: *Affordable Care Act Information Reporting: Allow Taxpayer Identification Number Matching for Filers of Information Returns Under IRC §§ 6055 and 6056*).

15 See IRS Notice 2013-54, <https://www.irs.gov/pub/irs-drop/n-13-54.pdf>.

16 See IRS Notice 2016-17, <https://www.irs.gov/pub/irs-drop/n-16-17.pdf>.

## Conclusion

As the IRS implements several ACA provisions that impact employers against the backdrop of historically low levels of taxpayer service, the IRS faces new challenges, including processing millions of new information returns from insurers and employers.<sup>17</sup> We acknowledge the tremendous efforts made by the IRS to implement the health care provisions given their interdependency on decisions made by other federal agencies. While the IRS has little control over some of the anticipated risks, such as delayed or inaccurate data reporting, it will be held publicly responsible when the associated problems surface during the tax return filing process.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Address ACA-related issues as they arise and identify systemic problems, particularly in the areas of data quality and assessments of the ESRP;
- Review the IRS's training materials on the parts of ACA implementation that impact businesses, including concepts such as ALE, MEC, and ESRP;
- Conduct a webinar on how colleges and universities may be impacted by the IRC § 4980D excise tax;
- Consult with external stakeholders to get their perspective on how the filing season went and what additional guidance is necessary from the IRS;
- Assign ACA Rapid Response team members to immediately address any potential ACA systemic issues that arise;
- Encourage both internal and external stakeholders to report any suspected ACA systemic issues on TAS's Systemic Advocacy Management System;<sup>18</sup> and
- Reiterate our recommendation that Congress amend the tax law to allow entities required to file information returns under the ACA to verify TINs with the IRS prior to filing annual information returns.<sup>19</sup>

17 Beginning in the 2016 filing season, the IRS will receive and process an estimated 77 million new information returns from employers. IRS response to TAS information request (Oct. 22, 2015).

18 Stakeholders can report suspected systemic issues at <https://www.irs.gov/sams>.

19 National Taxpayer Advocate 2015 Annual Report to Congress 383-88 (Legislative Recommendation: *Allow Taxpayer Identification Number Matching for Filers of Information Returns Under IRC §§ 6055 and 6056*).

**Area of Focus #11** **Implementation of Congress's Recent, Sweeping Changes to the Individual Taxpayer Identification Number (ITIN) Program Present Significant Challenges to Both Taxpayers and the IRS**

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

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

ITINs are needed by taxpayers who have a tax return filing requirement but are not eligible for a Social Security number (SSN).<sup>2</sup> In recent years, an average of 4.6 million taxpayers filed returns that included an ITIN.<sup>3</sup> During the calendar year (CY) 2015, the IRS received approximately 870,000 Forms W-7, *Application for IRS Individual Taxpayer Identification Number*.<sup>4</sup> When taxpayers cannot obtain ITINs, they may experience financial hardship, miss out on tax benefits, and face business limitations.

Since 2003, the National Taxpayer Advocate has drawn attention to systemic problems in the IRS's ITIN application procedures.<sup>5</sup> In late 2015, Congress passed the Consolidated Appropriations Act, 2016 (hereinafter 2016 Act), which made some significant changes to the ITIN application procedures, as well as codified some previous requirements.<sup>6</sup> The 2016 Act creates some limitations and restrictions that will likely make it more difficult for taxpayers to receive ITINs and claim certain tax benefits. However, the impact of the legislation largely depends on how the IRS interprets and implements the law through formal and informal guidance.

To date, the IRS has provided little information to the public regarding how it will interpret and implement the new requirements that are sweeping in their reach.<sup>7</sup> Notwithstanding the IRS's commitment to the National Taxpayer Advocate that TAS would be included on IRS teams and be involved in the effort to evaluate and implement the legislative changes, it was only after personal intervention by the National Taxpayer Advocate that TAS was provided a briefing on June 9, 2016. The National Taxpayer Advocate hopes the IRS will follow through with its commitment to provide more regular briefings to TAS as it takes steps to implement the legislation. Furthermore, TAS should not merely be briefed on

- 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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 IRC § 6109 specifies that any person required to make a return, statement, or other document must use a taxpayer identifying number in accordance with forms and instructions. An ITIN is the taxpayer identifying number issued by the IRS to anyone who is not eligible for an SSN. Treas. Reg. § 301.6109-1(d)(3)(ii). In general, an individual required to furnish a taxpayer identifying number but who isn't eligible for an SSN must use an ITIN. Treas. Reg. § 301.6109-1(a)(1)(ii)(B).
- 3 During processing years (PYs) 2012-2014, an average of 4.6 million Form 1040 returns were filed having an ITIN for either the primary or secondary (e.g., spouse) filers or a dependent. IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) and Form W-7 Databases (Dec. 15, 2015).
- 4 IRS, *ITIN Production Yearly Comparative Reports* (Dec. 30, 2015).
- 5 See, e.g., National Taxpayer Advocate 2015 Annual Report to Congress 196-212 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers*); National Taxpayer Advocate 2003 Annual Report to Congress 60-86 (Most Serious Problem: *Individual Taxpayer Identification Number (ITIN) Program and Application Process*).
- 6 See 2016 Act, Pub. L. No. 114-113, Division Q, Title II, § 203 (2015).
- 7 IRS, *Individual Taxpayer Identification Number (ITIN)*, <https://www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-ITIN> (last updated May 2, 2016).



already formulated decisions and proposals, but should be included as an active member of the major implementation teams and efforts.

TAS is statutorily required to assist taxpayers in resolving problems with the IRS,<sup>8</sup> and works hundreds of cases related to ITINs each year.<sup>9</sup> TAS also oversees the Low Income Taxpayer Clinics (LITCs), which are statutorily required to conduct outreach and education to taxpayers for whom English is a second language.<sup>10</sup> LITCs are also expected to identify systemic issues and advocate for change to help low income taxpayers.<sup>11</sup> Thus, LITCs are a valuable source of information and assistance for a vulnerable ITIN population and by excluding TAS in the ITIN discussion, the IRS excludes LITCs as an important resource.

Despite its failure to include TAS in its initial deliberations, the IRS has stated it is actively reviewing the legislation. On February 22, 2016, the IRS updated its ITIN web page for the general public and simultaneously issued an internal alert to employees regarding the 2016 Act, stating: “We are still evaluating the changes required to implement the new legislation. Further details will be posted on [irs.gov](http://irs.gov) in the coming months. Until then, ITINs will continue to be issued using existing policies and procedures.”<sup>12</sup>

Although the National Taxpayer Advocate understands the IRS is wrestling with some substantial barriers in terms of implementing the legislation as written and under the set timeframe, she has also heard from stakeholders at the Public Forums who are gravely concerned with the potential consequences of the legislation and the current lack of answers provided by the IRS.<sup>13</sup> The National Taxpayer Advocate is concerned that the IRS has failed to share information regarding:

- How it will change application procedures to provide additional options and flexibility for ITIN applicants in light of the legislation’s new restrictions (such as the limitation on Certifying Acceptance Agents (CAAs) to only assist taxpayers in the United States,<sup>14</sup> and the new time pressure to receive an ITIN before the tax return due date if claiming the Child Tax Credit (CTC) or American Opportunity Tax Credit (AOTC)<sup>15</sup>) and to address pre-existing problems with the application process such as the need to mail original documents;

8 IRC § 7803(c)(2)(A)(i).

9 As of the week ending May 21, 2016, TAS had already received 598 cases related to ITINs for fiscal year (FY) 2016. During FY 2015, TAS received 775 cases. Cases were identified by the primary issue code “Form W-7/ITIN/ATIN.” TAS Weekly Inventory Report (May 15, 2016–May 21, 2016). An ATIN is an Adoption Taxpayer Identification Number, which is used temporarily in connection with tax return filing requirements until the adoptive child receives an SSN. See Treas. Reg. § 301.6109-3(a)(1). See also Internal Revenue Manual (IRM) 3.13.40.1.1, *Characteristics of an ATIN* (Jan. 1, 2015).

10 See IRC § 7526(b)(1)(A)(ii)(II).

11 See IRS Pub. 3319, *2017 LITC Grant Application Package and Guidelines* (Rev. 4-2016).

12 IRS, *Individual Taxpayer Identification Number (ITIN)*, <https://www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-ITIN> (updated May 2, 2016); IRS, SERP Alert 16A0090, *Standard Language to Use for Inquiries About PATH Legislation and ITINs* (Feb. 22, 2016). At a conference of the American Bar Association on May 6, 2016, an IRS official did not provide many details, but stated that the IRS was still considering the best ways to implement the legislative changes from the 2016 Act. David van den Berg, *IRS Working to Implement Legislative ITIN Changes*, 2016 TAX NOTES TODAY 90–12 (May 10, 2016).

13 See, e.g., Oral Statement of Cheryl Reidlinger, National Taxpayer Advocate Public Forum (Apr. 4, 2016).

14 See 2016 Act, § 203(a). Congress has introduced legislation to clarify that CAAs are available for ITIN applicants outside the United States. See Technical Corrections Act of 2016, S. 2775, 114th Cong. § 2(e) (2016); H.R. 4891, 114th Cong. § 2(e) (2016). However, geographic coverage of CAAs abroad has been deficient in the past. See National Taxpayer Advocate 2015 Annual Report to Congress 208–09.

15 See 2016 Act, §§ 205, 206 (disallowing claims for the CTC and AOTC where the ITIN is not issued until after the due date for filing the tax return for that year).

- How will it define the return due date for the purposes of the provisions disallowing the CTC and AOTC for otherwise eligible taxpayers if their ITINs are not processed by the due date,<sup>16</sup> and how it will ensure that ITIN applications are processed more quickly and efficiently so all eligible applicants can receive the CTC and AOTC for the year in which they apply for an ITIN;
- How it will define “certified copies” and expand the CAA program; and
- How it will notify ITIN holders that their ITINs will be deactivated, how it will handle ITINs that have been deactivated but are still being used on third-party information returns, and whether ITIN holders will have to go through the full application process to reactivate a deactivated ITIN or apply for a new one.

Additionally, the IRS has not identified a definitive time period within which it will provide further information to taxpayers and employees. Although TAS is aware the IRS has met with some external stakeholders regarding its future ITIN plans, the process of soliciting the perspectives of stakeholders seems to be taking place behind closed doors, with the IRS choosing with whom it wants to meet and offering no publicized opportunity for taxpayers, practitioners, and other stakeholders to voice their concerns.

TAS will be actively monitoring changes to the ITIN program and will continue to seek answers to the above questions, while advocating for changes that protect taxpayer rights and allow taxpayers to meet their tax obligations.

### **The New Law Provides the IRS With the Opportunity to Develop Additional Options for ITIN Applicants, But the IRS Has Not Announced Any Changes to the Application Procedures to Further the Ability of Applicants to Apply for ITINs**

Under the 2016 Act, ITIN applicants in the United States must apply either in person to an IRS employee, in person to a CAA, or by mail.<sup>17</sup> In essence, this requirement codifies the IRS’s prior administrative policy, while allowing the IRS the flexibility to enhance any of the existing options. For example, the IRS could increase locations in which IRS employees can certify ITIN applications or expand the CAA program. However, the IRS has historically declined to make any of these options more accessible.<sup>18</sup>

#### *Applicants Face Barriers to Applying for ITINs at Taxpayer Assistance Centers (TACs)*

Applying in person to an IRS employee is a poor option due to the limitations of TACs. During the 2016 filing season, the IRS declined to add any additional TACs providing ITIN certification services beyond the 186 TACs that provided these services in 2015.<sup>19</sup> Furthermore, taxpayers seeking assistance at TACs have faced a multitude of barriers this filing season, including being turned away from appointment-only TACs and not receiving service or being forced to wait hours to receive service at a non-appointment TAC.<sup>20</sup> Of those taxpayers who successfully made an appointment at a TAC during the 2015 filing season, half had to wait between six days and six weeks (or more for the top five percent)

16 See 2016 Act, §§ 205, 206.

17 2016 Act, § 203(a) (codified at IRC § 6109(i)).

18 See National Taxpayer Advocate 2015 Annual Report to Congress 196-212 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers*).

19 See IRS, *Taxpayer Assistance Center Locations Where In-Person Document Review is Provided*, <https://www.irs.gov/uac/TAC-Locations-Where-In-Person-Document-Verification-is-Provided> (last updated Mar. 2, 2016).

20 See Review of the 2016 Filing Season, *supra*.

for an appointment.<sup>21</sup> In addition, TACs can only certify two of the 13 types of required documents — passports and national identification cards.<sup>22</sup> The 2016 Act suggests the IRS may move in the direction of requiring in-person interviews for ITIN applications;<sup>23</sup> however, the IRS has been silent on whether it will be expanding the number of TACs that offer ITIN certification services and the types of ITIN supporting documents that TACs can certify.

### *CAAs Cannot Certify Documents for Dependent Applicants*

CAAs are not a viable alternative for many taxpayers because there are only a limited number of CAAs and they cannot certify ITIN identification documents for dependents,<sup>24</sup> which make up approximately 44 percent of all ITIN applicants.<sup>25</sup> TAS understands the IRS may consider expanding the ability of CAAs to review certain documents for dependents.<sup>26</sup> It is crucial for the IRS to solicit comments regarding any such proposal from stakeholders, such as LITCs and CAAs, who have direct knowledge of the types of documents commonly submitted by dependents, the barriers to gathering different types of documents, and the difficulties with validating identity and identifying fraud based on certain documents. Without considering these needs, any benefits may be limited. As an example, the IRS recently finished a pilot program, which allowed a select number of Volunteer Income Tax Assistance and Tax Counseling for the Elderly (VITA/TCE) sites to certify passports and national I.D. cards for dependents.<sup>27</sup> The pilot may not have a substantial impact on the number of dependents mailing original documents because these applicants are likely to do so either because they live in a location where there is not an accessible TAC (making it unlikely there is an accessible VITA/TCE site), or they need to use documents other than a passport or national I.D. card to prove their identities. Thus, it is vital for the IRS to provide notice and an opportunity for public comment regarding the expanded abilities of CAAs.

Although the pilot suggests a possible expansion of the VITA CAA program, VITA sites are currently limited by seemingly contradictory restrictions — for a VITA site to become a CAA, the responsible officer on the CAA application must be a permanent employee of the VITA site (not a volunteer),<sup>28</sup> yet CAAs are not included in the list of employees who can be provided compensation under the IRS VITA

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- 21 See IRS, *Field Assistance Appointment Test Report-Executive Briefing*, at 7 (Jan. 13, 2016) (on file with TAS). Fifty percent of taxpayers received appointments in about six days, but 20 percent had to wait between 13 and 41 days, and five percent had to wait 41 or more days. These numbers did not include taxpayers who did not show up for their appointments, which may have increased the average wait times for an appointment.
- 22 IRM 3.21.263.6.1.5, *Supporting Identification Documentation and Other Required Documentation* (Jan. 1, 2016). The 13 types of supporting documentation are listed in the instructions to Form W-7.
- 23 See 2016 Act, § 203(d)(2)(B), which requires the IRS to conduct a study on the characteristics of ITIN applicants, and states: “If data supports an in-person initial review of ITIN applications to reduce fraud and improper payments, the administrative and legislative steps needed to implement such an in-person initial review of ITIN applications, in conjunction with an expansion of the community-based certified acceptance agent program under subsection (c), with a goal of transitioning to such a program by 2020.”
- 24 See IRM 3.21.264.2, *General Information* (Oct. 21, 2015).
- 25 In CY 2014, dependents comprised approximately 44 percent of ITIN applicants. IRS, CDW, Form W-7 Database (Dec. 15, 2015). Dependents may face difficulty in meeting the ITIN application requirements, as evidenced by the fact that of the approximately 633,000 ITINs assigned in CY 2014, only 29 percent were claimed on returns as dependents. ITIN application information for CYs 2015 and 2016 are not available due to a programming error that caused only about half of Form W-7 records being transferred to the IRS’s CDW from the ITIN Real Time System (RTS). The IRS informed TAS that the corrected data for 2015 would not be available until early/mid 2016 and suggested that TAS exclude characteristics of 2015 Form W-7 applicants from this report.
- 26 Conference call between Wage and Investment Operating Division (W&I) and TAS (June 9, 2016).
- 27 See IRS, *Authenticating Identification Documents for Dependents at Stakeholder Partnership, Education & Communication (SPEC) CAA VITA Sites* (Oct. 29, 2015) (on file with TAS); IRS response to TAS information request (June 10, 2016). The pilot was conducted September 21, 2015 through April 18, 2016, and the result will be issued on July 29, 2016.
- 28 IRS Fact Sheet for SPEC Partners, SPEC CAA Initiative (Dec. 2015).

grant program.<sup>29</sup> To boost participation from VITA CAAs, the IRS should clarify that CAAs can either be volunteers or are eligible to receive compensation under the VITA grant program.

### *IRS Policies Limit Participation in the CAA Program*

Although the 2016 Act envisions an overall expansion of the CAA program,<sup>30</sup> the IRS has not communicated what actions it will take to encourage participation in the CAA program. As of June 10, 2016, the IRS had not updated the instructions for Form 13551, *Application to Participate in the IRS Acceptance Agent Program*, to reflect the expanded list of persons eligible to become CAAs.<sup>31</sup> Furthermore, the IRS has not expanded the timeframe for CAAs to apply, which remains May 1–August 31 of each year.<sup>32</sup>

The IRS has not revised its procedures regarding rejecting CAA applications, which provide that if an application is returned to an applicant for missing or incomplete information, and the applicant fails to provide the missing information to the IRS's satisfaction within 30 days, the application is rejected and the applicant cannot reapply until the next open season, which may be up to a year later.<sup>33</sup> Even worse, if an application is returned for a problem with a signature, a recent draft of Letter 5612 indicates applicants only have 15 days from the date of the letter for the IRS to receive their response.<sup>34</sup> The limited timeframe for applying, paired with the inability for CAAs to appeal a rejected application and reapply before the next open season, unnecessarily restricts participation in the CAA program, despite Congress's intent for the IRS to expand the program.

### *Most ITIN Applicants Mail Original Documents Despite Problems With This Method*

Mailing original documents or copies certified by the issuing agency remains the only alternative to applying at a TAC or through a CAA. TAS continues to see problems with applicants whose original ID documents are lost or who face a hardship due to the amount of time they must go without their original documents. In 2015, TAS issued 132 Operations Assistance Requests (OARs)<sup>35</sup> to the IRS, requesting the IRS locate a taxpayer's passport and return it by expedited mail due to an urgent need.<sup>36</sup> Examples from these cases include taxpayers needing their original passports back in order to:

- Cash an employment check with the passport needed as a valid identification document;
- Travel abroad for business or a family emergency;
- Present the passport during a meeting with immigration officials or to renew a visa; and

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

30 The law expands the list of persons eligible to be CAAs, which includes among others, state and local governments, federal agencies, and other persons or categories authorized by regulations or IRS guidance. See 2016 Act, § 203(c). As part of a required study on the effectiveness of the application process for ITINs, the IRS must evaluate ways to expand the geographic availability of CAAs and strategies to work with other federal agencies, state and local governments, and other organizations to encourage participation in the CAA program. *Id.* at § 203(d).

31 See IRS Form 13551, *Application to Participate in the IRS Acceptance Agent Program* (Aug. 2014).

32 *Id.*

33 See IRM 3.21.264.4.6.2, *Failure to Respond Within 30 Days or Provide Missing Information* (May 9, 2016).

34 See IRS Letter 5612 (X-2016) (on file with TAS). A copy of this draft letter was shared with TAS on May 9, 2016. Should Congress pass the Technical Corrections Act of 2016 (which would allow CAAs to assist taxpayers abroad), the result of this policy will be especially harsh considering the infeasibility for CAAs abroad to receive and return international mail within 15 days. See Technical Corrections Act of 2016, S. 2775, 114th Cong. § 2(e) (2016); H.R. 4891, 114th Cong. § 2(e) (2016).

35 IRS Form 12183, *Operations Assistance Request (OAR)* (Rev.3-2003) is the form TAS uses to request the IRS take an action on a case when TAS lacks the statutory or delegated authority to take such action.

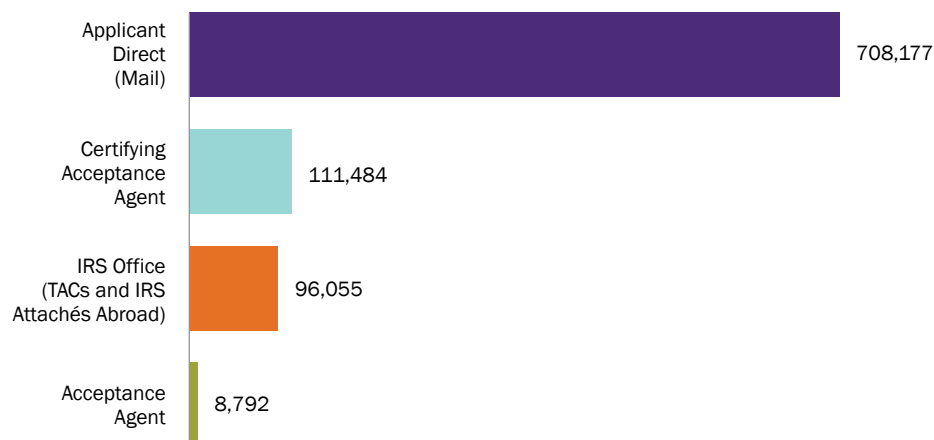
36 During 2015, another 66 OARs asked for assistance locating and returning missing passports, but did not specify expedited mail service. Cases were identified by the primary issue code "Form W-7/ITIN/ATIN" and by an analysis of the recommended actions in each case.

- Close on a home with the requirement of providing the passport.

A significant majority of applicants mail in their ITIN applications as shown in the chart below.

**FIGURE 3.11.1**<sup>37</sup>

#### Submission Sources for the Number of ITIN Applications in CY 2014



#### *Applicants Abroad Have More Limited Options for Applying for ITINs*

For applicants outside the United States, the 2016 Act provides further restrictions by ending their use of CAAs.<sup>38</sup> In 2014, approximately 70,200 ITIN applications were filed from abroad.<sup>39</sup> Although applicants abroad may still apply to an IRS employee under the new law, this option has been effectively taken off the table because during late 2014 and 2015 the IRS eliminated the last four tax attaché posts abroad,<sup>40</sup> and the IRS has not identified other IRS offices abroad where an ITIN applicant can apply. The legislation has codified the IRS's policy allowing certification of foreign documents by U.S. consular or diplomatic posts and expanded it so applicants can now apply in person at a U.S. diplomatic

37 IRS, CDW Form W-7 Database (Mar. 22, 2016). Detailed information from ITIN applications (Form W-7) for PY 2015 are not reported here due to a programming error that caused only about half of Form W-7 records being transferred to the IRS's CDW from the ITIN RTS. The IRS informed TAS that the corrected data for 2015 would not be available until early/mid 2016 and suggested that TAS exclude characteristics of 2015 Form W-7 applicants from this report. Form W-7 data for PY 2014 and prior years have been corrected. As discussed below, applying at an IRS attaché is no longer an option following the closure of the last one in late 2015.

38 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(1)(B)); see also § 203(c).

39 This number represents 7.6 percent of all ITIN applications submitted during 2014. Applications were considered to be filed from abroad if the applicant's mailing address listed on line 2 of Form W-7 included a country code that was not "U.S." or a U.S. territory.

40 See Memorandum from Acting Deputy Commissioner, Large Business and International (LB&I), Post Closures of Frankfurt, London and Paris (Feb. 18, 2015). Although the exact number of ITIN applications received at the attachés is unknown, in 2014, the London attaché reported 4,379 issues related to ITINs. See IRS response to TAS information request (July 22, 2015).

or consular post.<sup>41</sup> To our knowledge, the IRS has not provided any information to the public regarding which diplomatic or consular posts can now receive ITIN applications, in addition to just certifying the supporting documentation. The Texas Society of Certified Public Accountants recently expressed its concerns to the Commissioner of Internal Revenue that only few consular or diplomatic posts can process ITINs.<sup>42</sup> Furthermore, the IRS has not updated its internal guidance to reflect whether a U.S. diplomatic or consular office abroad may certify U.S. documents in addition to foreign documents, which would fill a vital need for applicants with U.S. documents who previously relied on CAAs.<sup>43</sup> As of June 10, 2016, the IRS's web pages "Obtaining an ITIN from Abroad"<sup>44</sup> and "Acceptance Agent Program"<sup>45</sup> failed to even inform taxpayers abroad that using a CAA is no longer an option for them.<sup>46</sup>

### The Law Allows the IRS Flexibility to Determine What Constitutes a Certified Copy for ITIN Applications and Who Can Certify Documents, But the IRS Has Not Used This Opportunity to Provide Additional Guidance

Under the 2016 Act, the IRS may only accept original documents or "certified copies meeting the requirements of the Secretary."<sup>47</sup> The IRS continues to require original documents, copies certified by the issuing agency, or copies certified by a CAA for most applicants.<sup>48</sup> However, the IRS has not provided updated information to TAS or on its public website regarding dependents of U.S. military personnel and certain applicants not required to apply with a tax return, who were both exempt from the requirement to provide original documents or copies certified by the issuing agency.<sup>49</sup> The current IRS Instructions for Form W-7, *Application for IRS Individual Taxpayer Identification Number*,<sup>50</sup> and the IRM<sup>51</sup> both provide that these applicants may still submit notarized copies, which appears to run contra to the 2016 Act.

Furthermore, under the IRS's current procedures, Student and Exchange Visitor Program approved institutions can certify documents under a special procedure available only to students and only if the students submit an ITIN application without a tax return.<sup>52</sup> Because the 2016 Act specifically includes colleges and universities in the list of persons eligible to be CAAs,<sup>53</sup> it is unclear whether the IRS will encourage these institutions to become CAAs in place of the current Student Exchange Visitor's Information System procedure. There will continue to be confusion among ITIN applicants and CAAs until the IRS provides clear guidance as to what constitutes a "certified copy" under the 2016 Act.

41 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(1)(B)). Prior to the legislation, U.S. diplomatic or consular posts could certify supporting documentation, but the applicant still had to send in the application to the IRS him or herself. See IRM 3.21.263.5.3.4.2.1, *Supporting Identification Documentation Certification Requirements* (Nov. 3, 2015).

42 See Letter from Kenneth M. Horwitz, Chair, Federal Tax Policy Committee, Texas Society of Certified Public Accountants, to John Koskinen, Commissioner of Internal Revenue (Apr. 5, 2016) (on file with TAS).

43 See IRM 3.21.263.5.3.4.2.1, *Supporting Identification Documentation Certification Requirements* (May 25, 2016).

44 IRS, *Obtaining an ITIN From Abroad*, <https://www.irs.gov/Individuals/International-Taxpayers/Obtaining-an-ITIN-from-Abroad> (last updated Dec. 2, 2015).

45 IRS, *Acceptance Agent Program*, <https://www.irs.gov/Individuals/Acceptance-Agent-Program> (last updated Mar. 3, 2016).

46 As discussed above, the Technical Corrections Act of 2016 would amend the Code to allow ITIN applicants abroad to use CAAs. See footnote 14, *supra*.

47 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(2)(B)).

48 See IRS Instructions for Form W-7, *Application for IRS Individual Taxpayer Identification Number* (Dec. 2014).

49 *Id.*

50 *Id.*

51 See IRM 3.21.263.5.3.4.2.1, *Supporting Identification Documentation Certification Requirements* (May 25, 2016).

52 See IRM 3.21.263.5.3.5.2, *Reason for Applying* (May 25, 2016).

53 See 2016 Act, § 203(c)(2).

### The IRS's Plans for Deactivating ITINs May Lead to Applicants Not Receiving Adequate Notice Prior to Deactivation, and to Deactivated ITINs That Are Still Being Used on Third-Party Information Returns

The 2016 Act codifies a plan for deactivating ITINs after a period of nonuse.<sup>54</sup> Under the law, all ITINs issued after 2012 will remain in effect unless the ITIN holder does not file a tax return with the ITIN or is not included on another's return as a dependent for a period of three consecutive taxable years.<sup>55</sup> The IRS is required to deactivate these ITINs on the last day of the third consecutive year.<sup>56</sup> ITINs issued before 2013 will expire at the earlier of:

- After a period of three consecutive years of nonuse (defined above), with the first deactivations required to have begun the last day of 2015;<sup>57</sup>
- Or on a staggered schedule from 2017 to 2020, whichever comes first.<sup>58</sup>

### The Law Requires the IRS to Deactivate a Substantial Number of ITINs in the Coming Years

TAS estimates there have been 23.1 million distinct ITINs issued since the IRS started issuing ITINs in 1996,<sup>59</sup> and an average of 10.3 million ITINs were used on a return annually from 2011 through 2015.<sup>60</sup>

Although these numbers suggest a sizeable portion of ITINs are still being actively used, the law requires the IRS to deactivate the vast majority of ITINs between now and the beginning of 2020. Of the 23.1 million total ITINs issued, approximately 21.2 million (92 percent) were issued prior to 2013, meaning they are required to be deactivated regardless of current use.<sup>61</sup> Furthermore, over half of the ITINs issued prior to 2013 were not used on a return during 2013, 2014, or 2015, requiring them to have been deactivated on the last day of 2015, according to the 2016 Act.<sup>62</sup>

54 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)).

55 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)(A)).

56 *Id.* The Technical Corrections Act of 2016 would change this so that ITINs issued after 2012 would not be deactivated until the day after the due date for the tax return for the third consecutive taxable year of nonuse ending after the issuance of the ITIN. S. 2775, 114th Cong. § 2(e)(2)(A) (2016); H.R. 4891, 114th Cong. § 2(e)(2)(A) (2016).

57 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)(B)). For ITINs issued before January 1, 2013, that were not used at all during a period of three consecutive years, the statute requires them to be deactivated at the earlier of the last day of the year of the third consecutive year of nonuse, or the last day of 2015. The Technical Corrections Act of 2016 would change this so that ITINs issued prior to 2013 would not be deactivated until the day after the due date for the tax return for the third consecutive taxable year of nonuse, and one of the three consecutive taxable years of nonuse must be 2015 or later. Thus, the first deactivations would not be required until the day after the due date for the 2015 tax return. S. 2775, 114th Cong. § 2(e)(2)(B) (2016); H.R. 4891, 114th Cong. § 2(e)(2)(B) (2016).

58 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)(B)).

59 IRS, CDW, IRTF (Mar. 31, 2016). The IRS estimated in 2014 that it had issued 21 million ITINs since 1996, but that only about a quarter of them were being used on returns. IRS, *Unused ITINs to Expire After Five Years; New Uniform Policy Eases Burden on Taxpayers, Protects ITIN Integrity*, IR 2014-76 (June 30, 2014), <https://www.irs.gov/uac/newsroom/unused-itins-to-expire-after-five-years-new-uniform-policy-eases-burden-on-taxpayers-protects-itin-integrity> (last updated May 13, 2016).

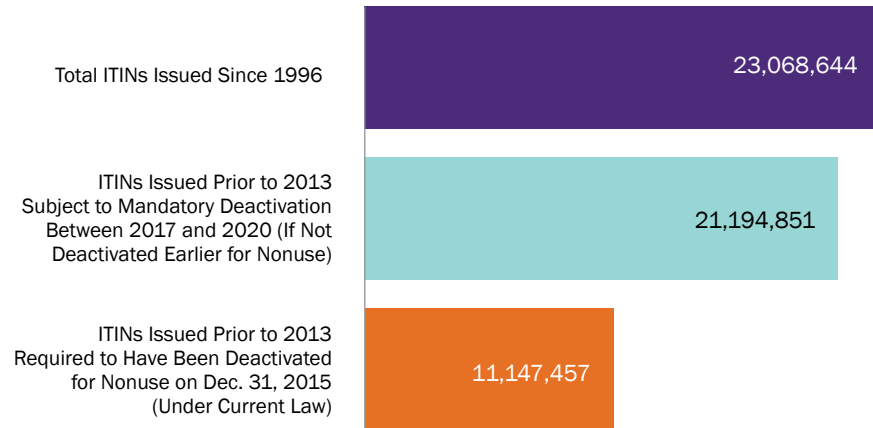
60 IRS, CDW, IRTF (Mar. 30, 2016).

61 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)(B)). ITINs issued prior to 2013 not otherwise deactivated for nonuse will be deactivated on a staggered schedule between 2017 and 2020.

62 See footnote 57, *supra*.

FIGURE 3.11.2<sup>63</sup>

### Estimated Numbers of Total ITINs Issued and ITINs Subject to Deactivation Under the 2016 Act



#### *The Deactivation Provisions of the Law Create Challenges for the IRS*

The IRS recently shared with TAS its concerns regarding the deactivation timeline established by the 2016 Act and the practical barriers to achieving the deadlines, such as the information technology restrictions and workload constraints regarding deactivating a large number of ITINs all at once.<sup>64</sup> Currently, the IRS has not systemically deactivated any ITINs following the passage of the 2016 Act.<sup>65</sup> One concern identified by the IRS is how an ITIN holder would know that his or her ITIN was issued in a certain year, such that they would know when it would be deactivated.<sup>66</sup> TAS understands the IRS is evaluating the feasibility of deactivating ITINs in phases. One potential option is to deactivate groups of ITINs based on the middle two digits of the ITIN, which are correlated with the year issued.<sup>67</sup> Such an approach, if feasible, would provide clarity to ITIN holders so long as they are sufficiently notified in advance of the deactivations.

63 IRS, CDW, IRTF, and Form W-7 (Mar. 30, 2016). ITINs issued prior to 2013 required to have been deactivated for nonuse on December 31, 2015 were determined as such based on their not being used on a Form 1040 series return at any point during 2013, 2014, or 2015. Because CDW is missing some data, TAS suspects this number may be higher. See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)).

64 Conference call between W&I and TAS (June 9, 2016).

65 IRS response to TAS information request (June 10, 2016).

66 Conference call between W&I and TAS (June 9, 2016).

67 For example, the IRS could publicize that it would be deactivating all ITINs with the two middle digits between XX and XX on a certain date.



### *Plans for Notifying ITIN Holders of Deactivations and Procedures for Reactivating ITINs Must Consider Taxpayer Needs*

Even if the IRS is not able to begin the deactivations immediately, there is an opportunity to begin notifying applicants in advance of the deactivations so they can apply to reactivate their ITINs now, as opposed to during the filing season. The IRS has stated it is working with the Office of Taxpayer Correspondence to notify taxpayers in writing of the upcoming deactivations by late August 2016.<sup>68</sup> The National Taxpayer Advocate is pleased the IRS plans to notify ITIN holders in advance and urges the IRS to allow these holders to reapply during the same time period, prior to the filing season. If such a process were successful, the IRS could extend lessons learned to enable all ITIN applicants (not just those applying for reactivation) to apply for an ITIN outside the filing season without a tax return so long as they provide other proof of a tax administration purpose.

The National Taxpayer Advocate hopes the IRS will collaborate with TAS as it develops such a process to ensure potential issues are discovered upfront. For example, if the IRS allows taxpayers to apply to reactivate their ITINs during the summer, but the ITINs will not be reactivated until the next calendar year, there may be taxpayers who have since moved, creating risks of identity theft and fraud if an ITIN number is mailed to an address where the taxpayer no longer resides. An alternative approach would be to delay the deactivation program until a point at which taxpayers could apply for reactivation and receive their reactivated ITIN at the same time, both in advance of the filing season.

Guidance is needed regarding whether the IRS will treat a return filed with a deactivated ITIN in the same manner as it treats a return filed with a rejected ITIN application. Under the IRS's current policy, if a primary taxpayer's ITIN application is rejected, the attached return will be sent for processing under an Internal Revenue Service Number (IRSN), which does not allow a refund to be paid to the taxpayer.<sup>69</sup> If a dependent's ITIN application is rejected, the attached return goes forward for processing but the dependents are systematically disallowed via math error authority.<sup>70</sup>

To date the IRS has not communicated any plans to provide special reapplication procedures for ITIN holders whose ITINs were deactivated, such that they would not have to go through the entire application process again, including submitting original or certified copies of documents.<sup>71</sup> Based on evidence that over ten million of the ITINs issued prior to 2013 were used on a return during 2013-2015, a significant number of ITIN holders subject to the automatic deactivation are likely to apply to reactivate their ITINs.<sup>72</sup> Past problems with timely and correctly processing ITIN applications as well as handling and returning original documents are likely to grow exponentially worse as the volume of applicants increases.<sup>73</sup>

68 IRS response to TAS information request (June 10, 2016).

69 See IRM 3.21.263.4.5, *Internal Revenue Service Number (IRSN)* (Jan. 1, 2015).

70 *Id.* The IRS is currently authorized to correct mathematical or clerical errors — arithmetic mistakes and the like — and assess any tax increase using summary assessment procedures that do not provide the taxpayer an opportunity to challenge the proposed deficiency in the United States Tax Court before the tax is assessed. See IRC §§ 6213(b)(1),(g)(2).

71 IRM 21.8.1.1.21, *IRS Individual Taxpayer Identification Number (ITIN)* (Jan. 19, 2016) states that once an ITIN has been deactivated, a taxpayer will have to reapply using IRS Form W-7, *Application for IRS Individual Taxpayer Identification Number*.

72 There were 21,194,851 ITINs issued prior to CY 2013. Of these, 10,047,394 ITINs were used on a Form 1040 on or after CY 2013 by either a primary, secondary, or dependent filer. CDW, IRTF and Form W-7 (Mar. 30, 2016).

73 See National Taxpayer Advocate 2015 Annual Report to Congress 196-212 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers*).

Also of major concern is the law's expansion of the IRS's math error authority to situations where a taxpayer lists on a return an ITIN that has been deactivated, revoked, or otherwise invalid.<sup>74</sup> Taxpayers unaware that their ITINs have expired may not find out until they file a return with the deactivated ITIN and receive a math error notice, depending on whether and how the IRS decides to notify taxpayers about the deactivation. A taxpayer whose ITIN was deactivated in error and was denied credits to which he or she is entitled will lose the opportunity to challenge eligibility for the credits in the U.S. Tax Court if he or she does not respond timely to the math error notice. This procedure may deprive low income or overseas taxpayers, in particular, of fundamental due process protections.

### *ITIN Holders May Face Problems If Their ITINs Are Issued Solely for Tax Treaty Purposes*

Related to deactivation, the 2016 Act also requires the IRS to distinguish ITINs issued solely for tax treaty purposes and ensure that they are only used for such purposes.<sup>75</sup> Some taxpayers may not realize their ITINs are only good for tax treaty purposes and not discover they need to apply for another ITIN until after filing a return. To TAS's knowledge, the IRS has not notified the public of this new restriction. TAS is unaware if the IRS has made a determination as to whether ITIN holders who need an ITIN for reasons other than tax treaty purposes will be required to go through the entire ITIN application process again, including again providing original or certified copies of supporting documents. To respect a taxpayer's *right to be informed*, upon issuing ITINs solely for tax treaty purposes, the IRS should notify taxpayers that their ITINs cannot be used for any other purposes and inform them of the steps they must take to obtain an ITIN that will be used for other tax-related purposes. Furthermore, where the applicant has already gone through the full ITIN application process (including providing original or certified copies of documents), the IRS should provide an abbreviated and expedited procedure for applying for a new ITIN that can be used for other purposes, so long as the applicant provides proof of a filing requirement.

### *IRS Guidance Is Needed Regarding ITINs Actively Being Used on Third-Party Information Returns*

A major shortcoming of the legislation's deactivation provision is the requirement to deactivate an ITIN unless "the individual to whom such number is issued does not file a return of tax (or is not included as a dependent on the return of tax of another taxpayer) for three consecutive taxable years," which can be interpreted to require deactivation even if the ITIN is being actively used on a return filed by a third party.<sup>76</sup> Of the 11.1 million ITINs not used on a Form 1040 series return during 2013, 2014, or 2015, over 400,000 were used on one of three common information returns filed by third parties — Form 1099-INT, Form 1099-MISC, or Form 1099-DIV.<sup>77</sup> Even more ITINs may have been used on other information returns, such as Form 8966, *FATCA Report*,<sup>78</sup> but data for this form was not available on the IRS's CDW.

TAS understands the IRS may choose to interpret this requirement as only deactivating the ITIN for the purpose of filing a Form 1040 series return. Under such a policy, the ITIN would remain active for the purposes of information returns and a reporting agent would not be penalized for including a deactivated ITIN on an information return. If the IRS adopts such a policy, it is incumbent upon the IRS to

74 See 2016 Act, § 203(e) (codified at IRC § 6213(g)(2)(O)). For a description of math error authority, see footnote 70, *supra*.

75 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(4)).

76 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)).

77 IRS, CDW, IRTF, Information Returns Master File (IRMF), and Form W-7 (Mar. 31, 2016).

78 IRS Form 8966, *FATCA Report* (2015). See Foreign Account Tax Compliance Act (FATCA), Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010).

communicate this information as soon as possible to persons filing information returns, who currently have no way of knowing whether an ITIN has been deactivated and no reassurance that they will not be penalized for filing an information return with a deactivated ITIN or failing to withhold from such an account.<sup>79</sup> In addition to a formal notice, the IRS should also provide a briefing to the Information Reporting Program Advisory Committee (IRPAC)<sup>80</sup> to ensure reporting agents receive this information. Because of the increased reporting required for FATCA, receiving clarification from the IRS on how it will treat information returns filed with deactivated ITINs, including Form 8966, *FATCA Report*, will be vital.<sup>81</sup>

Even if the ITINs are only deactivated for the purposes of filing a Form 1040 series return, the legislation could still harm taxpayers whose ITINs are being actively used on information returns and who find themselves needing to file a Form 1040 series return after three years of not having filed one. The National Taxpayer Advocate encourages the IRS to pursue a legal opinion from its Office of Chief Counsel to determine whether the ITINs from persons who have had reportable income within the relevant three year period, but who did not file a return, would still be required to be deactivated under the 2016 Act.<sup>82</sup>

### Lengthy Processing Times May Lead to Applicants Not Being Able to Receive Tax Credits to Which They Are Otherwise Legally Entitled

Under the 2016 Act, the CTC and the AOTC are disallowed if the taxpayer's ITIN was issued after the due date for filing the tax return for the taxable year.<sup>83</sup> There is an exception for timely filed 2015 tax year returns,<sup>84</sup> but the IRS did not provide any notice to ITIN applicants during the recent filing season about the need to file on time. Congress introduced legislation that would remove the exception for timely filed 2015 returns, but did so only days before the end of the filing season.<sup>85</sup>

### *IRS Guidance Is Needed Regarding the Requirement for an ITIN to Be Issued Prior to the Tax Return Due Date for Applicants to Receive the CTC and the AOTC*

The IRS has not communicated to the public how it will interpret the tax return filing due date for the purpose of sections 205 and 206 of the 2016 Act. Although TAS understands that the tax return due date will include applicable extensions, applicants may not know they need to request an extension to file because they plan on filing their returns and associated ITIN applications before the tax return due date

79 See Oral Statement of Cheryl Reidlinger, National Taxpayer Advocate Public Forum 84 (Apr. 4, 2016).

80 "The purpose of the IRPAC is to provide an organized public forum for discussion of relevant information reporting issues of mutual concern as between Internal Revenue Service ("IRS") officials and representatives of the public." IRS, *Information Reporting Program Advisory Committee (IRPAC) Facts*, <https://www.irs.gov/tax-professionals/information-reporting-program-advisory-committee-irpac-facts> (last updated Apr. 24, 2016).

81 See IRS Form 8966, *FATCA Report* (2015). Under FATCA, participating foreign financial institutions (FFIs) who have reached agreements with the IRS to avoid being subject to systematic withholding must impose withholding on any of their own customers defined as "recalcitrant account holders." IRC § 1471(b)(1)(D)(i). See IRC § 1471(d)(6) (definition of "recalcitrant account holder"). Financial customers must provide the FFI with either a Form W-9, to certify they are U.S. persons, or a Form W-8BEN, to certify they are foreign persons, both of which require an SSN or ITIN. Taxpayers without an SSN or ITIN will generally be treated as recalcitrant account holders and will be subject to withholding undertaken by the FFI. See generally Treas. Reg. § 1.1471-4.

82 See 2016 Act, § 203(a) (codified at IRC § 6109(i)(3)).

83 2016 Act §§ 205 (codified at IRC § 24(e)), 206 (codified at IRC § 25A(i)(6)).

84 *Id.*

85 See S. 2775, 114th Cong. § 2(g)(2)(A) (2016); H.R. 4891, 114th Cong. § 2(g)(2)(A) (2016). Both bills were introduced on Apr. 11, 2016.

and assume that the ITIN will be processed by this date.<sup>86</sup> To encourage applicants to request an extension, the IRS should further evaluate whether it can place a box on the ITIN application where checking the box would be deemed a request for extension. Another potential solution would be to deem an ITIN processed on the date the ITIN application and accompanying proof of tax administration purpose are received. The National Taxpayer Advocate encourages the IRS to seriously explore this possibility and if it proceeds in this way, to issue guidance to the public so that applicants understand the importance of applying before the tax return due date. Without such a policy of deeming ITINs processed when the applications are received, there will likely be problems processing ITINs in time.

### *Processing Delays and Late Filed ITIN Applications May Prevent Taxpayers From Receiving the CTC or AOTC*

Even if the IRS interprets the filing due date as October 15, the date by which taxpayers may receive an extension to file, there will likely be applicants whose ITINs will not be processed in time, and thus would be barred from receiving the CTC and the AOTC for the year in which they apply for an ITIN. During the 2016 filing season, applicants were advised to wait up to 11 weeks for the ITIN applications to be processed.<sup>87</sup> There may also be applicants whose applications are suspended for lengthy periods of time and who are unable to gather new, original documents and reapply in time for an ITIN to be issued by the due date.

The lengthy periods for processing ITIN applications and resolving suspended applications are attributable at least in part to the IRS's requirements that most ITIN applications be filed with a paper tax return during the filing season.<sup>88</sup> While the National Taxpayer Advocate recommended since 2003 that the IRS accept ITIN applications throughout the year with proof of a valid tax filing requirement, to date the IRS has failed to adopt this approach.<sup>89</sup> The resulting delays may lead to applicants not being able to receive tax credits to which they are otherwise legally entitled.

The following charts show that a significant number of ITIN applicants apply after the due date for filing a return, and many ITINs are assigned after this date as well.

86 Taxpayers do not need an SSN or ITIN to file for an extension, but they must file Form 4868 by the due date of the return. See IRS Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return* (2015).

87 See IRM 3.21.263.6.1.28, *Steps to Complete Client Contact* (Jan. 1, 2016).

88 See National Taxpayer Advocate 2015 Annual Report to Congress 196-212 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers*).

89 See National Taxpayer Advocate 2003 Annual Report to Congress 60-86 (Most Serious Problem: *Individual Taxpayer Identification Number (ITIN) Program and Application Process*); Taxpayer Advocate Directive 2009-1 (*Processing of Forms W-7/ Filing of ITIN Applications and Associated Tax Returns*) (Feb. 25, 2009). Taxpayer Advocate Directives mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers or all taxpayers. See IRM 1.2.50.4, *Delegation Order 13-3 (formerly DO-250, Rev. 1), Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001).

FIGURE 3.11.3<sup>90</sup>

### ITIN Applications Received Weekly in 2015

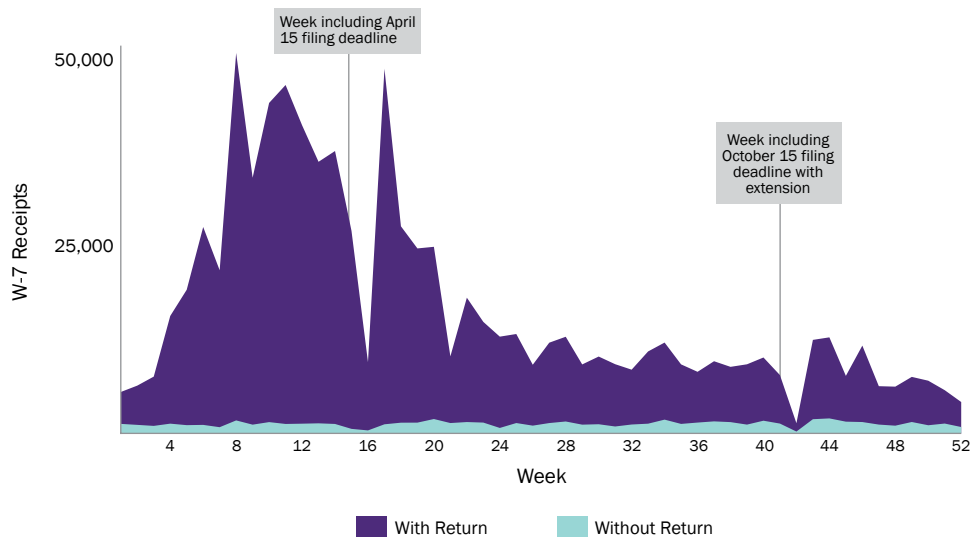
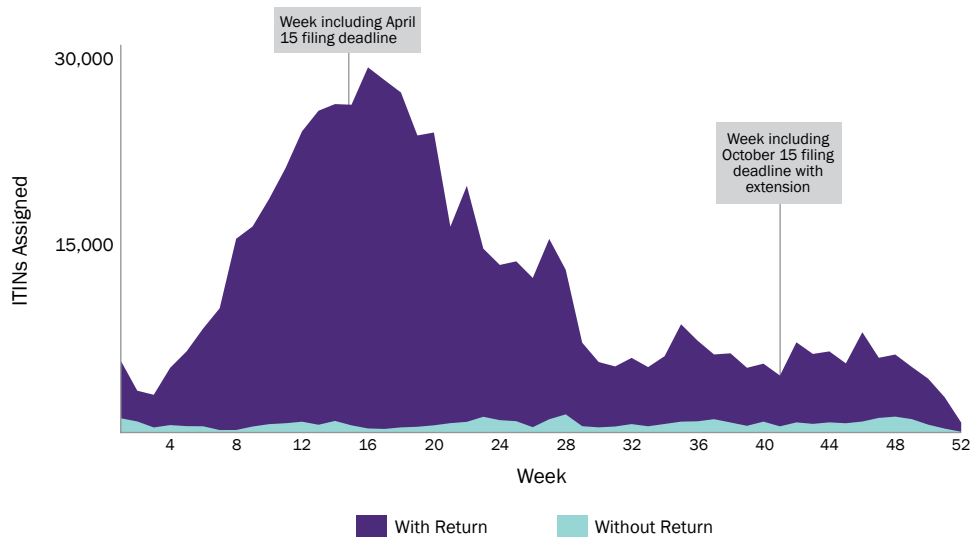


FIGURE 3.11.4<sup>91</sup>

### ITINs Assigned Weekly in 2015



90 Compiled from weekly 2015 ITIN Comparative Reports, Jan. 10, 2015 through Dec. 30, 2015.

91 *Id.*

Applicants who do not know that their ITINs will be deactivated may not find out until during or after the filing season, leaving them without enough time to apply for a new ITIN and for that ITIN to be issued by the due date. Such applicants may miss out on tax benefits to which they would otherwise be legally entitled; that is, IRS procedures as presently structured violate these taxpayers' *right to pay no more than the correct amount of tax*.

### The IRS Study on ITINs Presents an Opportunity for Better Understanding of ITIN Applicants and the Application Process

The 2016 Act requires the IRS to conduct a study on the effectiveness of the application process for ITINs before the implementation of the relevant amendments.<sup>92</sup> This study shall include (among a list of more detailed items):

- The effects of the amendments on the application process;
- The comparative effectiveness of an in-person review versus other methods of reducing fraud and improper payments; and
- Possible administrative and legislative recommendations to improve the process.

The report from the study must be submitted to Congress within one year, and any administrative steps identified shall be implemented within 180 days of submitting the report. If the report supports using an in-person initial review of ITIN applications to reduce and deter fraud, the IRS must outline the steps to achieve this, in conjunction with an expansion of the CAA program, with the goal of transitioning to such a program by 2020.<sup>93</sup>

The National Taxpayer Advocate has requested that TAS be included on the team working on this study, but to date the IRS has not included TAS employees. To ensure a comprehensive, balanced and unbiased approach, TAS plans to conduct its own study of ITIN applicants and the application process during the coming fiscal year with the goal of identifying recommendations to reduce fraud and improper payments, protect taxpayer rights, and make it less burdensome for taxpayers to comply with their filing obligations. TAS will publish and submit this report to Congress as part of one of the National Taxpayer Advocate's upcoming Annual Reports to Congress.

The vast number of unanswered questions and the lack of guidance are a cause for great concern, given the number of ITIN applications received each year, as well as the number of ITINs that will be required to be deactivated in the coming years. The IRS has an opportunity to make some significant improvements to the ITIN program in response to the 2016 Act. However, by failing to involve TAS in the planning and not providing information to the public, there is potential for taxpayers needing ITINs to face increased compliance burden and harm.

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92 2016 Act, § 203(d).

93 *Id.*

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Monitor changes to the ITIN application procedures and make recommendations for changes to reduce fraud and improper payments, protect taxpayer rights, and facilitate taxpayers in meeting their tax filing and payment obligations;
- Insist on participation on IRS teams to ensure taxpayers' perspectives and needs are taken into account as the IRS makes changes to ITIN application procedures;
- Conduct a study analyzing the composition, application characteristics, and needs of the ITIN applicant population, and provide data-driven recommendations for reducing fraud and improper payments, as well as reducing taxpayer burden and promoting taxpayer rights during the ITIN application process; and
- Advocate for the IRS to allow ITIN applications throughout the year with the proof of a legitimate tax return filing requirement.

## Area of Focus #12 **The IRS's Offshore Voluntary Disclosure (OVD)-Related Programs Have Improved, But Problems Remain**

### 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*

### The IRS's Offshore Programs Initially Imposed Disproportionate Penalties Against Unrepresented Taxpayers With the Smallest Accounts

Between 2009 and 2014, the IRS generally required “benign actors” — people who inadvertently failed to report foreign income and file one or more related information returns (*e.g.*, the *Report of Foreign Bank and Financial Accounts (FBAR)*) — to enter an OVD program and either pay an “offshore penalty” designed for “bad actors” or “opt out” and be audited, as described in prior reports (the “TAS OVD Reports”).<sup>2</sup> Uncertainty about what penalty might apply in the audit, the IRS's one-sided interpretation of the program terms, processing delays, and the cost of representation prompted some to pay a disproportionate penalty. Inside the 2009 OVD program, the median offshore penalty paid by those with the smallest accounts was nearly six times the median unreported tax, and unrepresented taxpayers generally paid even more — significantly more than represented taxpayers with the largest accounts.

- 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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 IRS, *Voluntary Disclosure: Questions and Answers*, (posted May 6, 2009), <https://www.irs.gov/uac/Voluntary-Disclosure:-Questions-and-Answers> [hereinafter “2009 OVD FAQ”]; IRS, *2011 Offshore Voluntary Disclosure Initiative Frequently Asked Questions and Answers*, [http://www.steptoe.com/publications/2011\\_200VDI\\_20FAQs.pdf](http://www.steptoe.com/publications/2011_200VDI_20FAQs.pdf) (posted to IRS.gov Feb. 8, 2011 and subsequently removed) [hereinafter “2011 OVD FAQ”]; IRS, *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers*, <https://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers> (posted June 26, 2012); IRS, *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers*, <https://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised> (first posted in the summer of 2014, and effective for submissions made on or after July 1, 2014) [hereinafter “2014 OVD FAQ,” or collectively the “OVD programs”]. For several years, the National Taxpayer Advocate and other stakeholders have expressed concerns about the OVD programs. See, *e.g.*, National Taxpayer Advocate 2014 Annual Report to Congress 79-93; National Taxpayer Advocate 2013 Annual Report to Congress 228-37; National Taxpayer Advocate 2012 Annual Report to Congress 134-53; National Taxpayer Advocate 2011 Annual Report to Congress 191-205 and 206-72; National Taxpayer Advocate 2014 Objectives Report to Congress 36-39; National Taxpayer Advocate 2013 Objectives Report to Congress 9 and 21-29 [collectively, the “TAS OVD Reports”]. See also Taxpayer Advocate Directive 2011-1 (Aug. 16, 2011).



**FIGURE 3.12.1, Comparison of Median Offshore Penalties to Unreported Tax by Median Account Size and Representation for the 2009 OVD Program<sup>3</sup>**

	Bottom 10%	Middle 80%	Top 10%
Offshore account(s) balance	\$44,855	\$607,875	\$7,259,580
2009 OVD penalty	\$8,540	\$117,803	\$1,410,517
Additional tax, tax years 2002-2011	\$1,472	\$30,894	\$452,966
Offshore penalty as a percent of tax assessed	580%	381%	311%
Unrepresented percent	31%	11%	4%
Offshore penalty as a percent of tax assessed (unrepresented taxpayers only)	772%	474%	398%

Disproportionality increased under the 2011 OVD program, as taxpayers with the smallest accounts paid over eight times the unreported tax. Moreover, the size of the participant's accounts generally became smaller with each new program.

**FIGURE 3.12.2, Comparison of Median Offshore Penalties to Unreported Tax by Median Account Size and Representation for the 2011 OVD Program<sup>4</sup>**

	Bottom 10%	Middle 80%	Top 10%
Offshore account(s) balance	\$17,368	\$183,993	\$3,833,152
2011 OVD penalty	\$2,202	\$41,238	\$888,943
Additional tax, tax years 2002-2011	\$268	\$5,845	\$190,579
Offshore penalty as a percent of tax assessed	821%	706%	466%
Unrepresented percent	53%	30%	10%
Offshore penalty as a percent of tax assessed (unrepresented taxpayers only)	788%	736%	705%

### The IRS Eventually Took Steps to Improve the Proportionality of the OVD Penalties By Giving Benign Actors Other Options

In 2012, the IRS began allowing certain “low risk,” nonresident non-filers — those with “simple” returns and owing less than \$1,500 in tax — to file the returns without triggering penalties (the

<sup>3</sup> See National Taxpayer Advocate 2014 Annual Report to Congress 79, 86. All figures in Figures 3.12.1, 3.12.2, and 3.12.4 are medians rather than averages because the data contains extreme outliers. The unreported tax includes all tax assessed over a ten-year period, even if the assessment was unrelated to the OVD program. TAS did not update the 2009 or 2011 OVD program data to add subsequent closures because doing so would misrepresent the results of the programs for the period before the IRS took the corrective actions described below. For the purposes of this analysis (and Figures 3.12.1, 3.12.2, and 3.12.4), we consider unrepresented taxpayers to be those without a Transaction Code 960 present on the Compliance Data Warehouse (CDW) Individual Master File as of October 3, 2013. If the IRS Master File database indicated that a taxpayer had a representative on any tax module for any of tax years 2003-2012, then the taxpayer was considered represented, even though he or she may have been unrepresented in connection with the OVD program. *Id.* at 86 n.39.

<sup>4</sup> See National Taxpayer Advocate 2014 Annual Report to Congress 79, 87. A slightly different methodology was used to pull the 2009 OVD program data, as discussed in the 2014 report. *Id.* at 87 n.40.

“Streamlined Nonresident Filing Initiative”).<sup>5</sup> The IRS subsequently eliminated the \$1,500 threshold and risk-based requirements.<sup>6</sup>

On June 18, 2014, the IRS modified the terms of the 2012 OVD program (sometimes called the 2014 OVD) and created two new “streamlined” programs.<sup>7</sup> Taxpayers who certified their violations were not willful, reported income from the unreported account(s), and paid any resulting taxes would be subject to a reduced penalty if they were U.S. residents (under the so-called Streamlined Domestic Offshore Procedures (SDOP)) or no penalty if they were non-residents (under the so-called Streamlined Foreign Offshore Procedures (SFOP)).<sup>8</sup> Because taxpayers were not offered a closing agreement under the 2014 streamlined programs, the IRS could examine the years in question. Applicants to an OVD program whose closing agreements were unsigned as of June 30, 2014, could apply to “transition” into a streamlined program and receive a closing agreement, but only if the IRS agreed their violations were not willful.<sup>9</sup>

In addition, on May 13, 2015, the IRS instructed its examiners “in most cases” to limit penalties for FBAR violations to 50 percent of the highest aggregate balance of the unreported account(s) during the year(s) at issue if they are willful and \$10,000 per year if they are not.<sup>10</sup> This guidance reduced the risk to benign actors of opting out of OVD programs. Although those who opted out had smaller tax underpayments with each new program, they faced even smaller Title 26 penalties, as shown below.<sup>11</sup>

5 IRS, *New Filing Compliance Procedures for Non-Resident U.S. Taxpayers* (first posted June 28, 2012), <https://www.irs.gov/Individuals/International-Taxpayers/New-Filing-Compliance-Procedures-for-Non-Resident-U.S.-Taxpayers>. The IRS did not define “low risk” or “simple” returns, but it may have included returns that it would not have selected for audit. See IRS, Form 14438, *Streamlined Filing Compliance Procedures for Non-Resident, Non-Filer Taxpayers* (Aug. 2013).

6 IRS, *Streamlined Filing Compliance Procedures*, <https://www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures> (last updated, Aug. 6, 2015).

7 *Id.* IRS, *Transition Rules: FAQs*, <https://www.irs.gov/individuals/international-taxpayers/transition-rules-frequently-asked-questions-faqs> (last updated Apr. 8, 2016).

8 *Id.*

9 *Id.* (“A taxpayer eligible for treatment under the streamlined procedures who submits, or has submitted, a voluntary disclosure letter under the OVD (or any predecessor offshore voluntary disclosure program) prior to July 1, 2014, but who does not yet have a fully executed OVD closing agreement, may request treatment under the applicable penalty terms available under the streamlined procedures.”).

10 Interim Guidance Memo (IGM), SBSE-04-0515-0025, *Interim Guidance for Report of Foreign Bank and Financial Accounts (FBAR) Penalties* (May 13, 2015), [https://www.irs.gov/pub/foia/ig/spder/SBSE-04-0515-0025\[1\].pdf](https://www.irs.gov/pub/foia/ig/spder/SBSE-04-0515-0025[1].pdf); Internal Revenue Manual (IRM) 4.26.16.6.4.1 (Nov. 6, 2015); IRM 4.26.16.6.5.3 (Nov. 6, 2015). While this guidance did not directly apply to Appeals, it addresses litigating hazards already acknowledged by the government. See, e.g., Jeremiah Coder, *Taxpayers Face Hurdles and Risks When Opting out of OVD*, 2013 TNT 12-4 (Jan. 16, 2013) (“Asked to explain why the IRS believes a non-willful FBAR penalty can be applied to each unreported account, McDougal said that the statute, 31 U.S.C. § 5321(a)(5), refers to a single account. ‘The use of the singular is the basis for the Service’s position that you look at each account in deciding if a penalty applies,’ he said. ‘But I don’t think it’s been briefed and decided in a careful way by a court yet,’ he added, citing the absence of ‘reasoned analysis’ in recent judicial decisions on the issue. Caroline D. Ciraolo of Rosenberg Martin Greenberg LLP said a reasonable argument can be made that a civil non-willful FBAR penalty applies on a per-FBAR basis rather than for each unreported account. Only one FBAR must be filed per year, so the IRS’s stacking of penalties per account conflicts with the statute’s notion of a maximum penalty cap, she said.”). Thus, Appeals should clarify that its employees should apply this guidance.

11 IRS response to TAS information request (May 13, 2015).

**FIGURE 3.12.3, Opt-Out and Removal Examination Results<sup>12</sup>**

Program	Returns Examined	Avg. Tax Assessed	Avg. FBAR Penalty	Avg. Title 26 Penalty	Penalty to Tax Assessment Ratio
2009 OVD	1,865	\$13,667	\$2,288	\$10,633	95%
2011 OVD	2,632	\$9,855	\$9,864	\$2,976	130%
2012 OVD	467	\$6,595	\$4,740	\$1,470	94%
Canadian opt-out	11,162	\$258	\$3	\$9	5%

Perhaps because this guidance and the streamlined programs have provided alternatives to the OVD for benign actors, the disproportionality of the OVD penalty appears to have declined under the 2012 OVD program.

**FIGURE 3.12.4, Comparison of Median Offshore Penalties to Unreported Tax by Median Account Size and Representation for the 2012 OVD Program<sup>13</sup>**

	Bottom 10%	Middle 80%	Top 10%
Offshore account(s) balance	\$19,480	\$287,726	\$3,354,782
2012 OVD penalty	\$2,420	\$73,004	\$914,110
Additional tax, tax years 2003-2015	\$681	\$14,009	\$220,365
Offshore penalty as a percent of tax assessed	355%	521%	415%
Unrepresented percent	26%	16%	10%
Offshore penalty as a percent of tax assessed (unrepresented taxpayers only)	454%	515%	398%

At over three times the unpaid tax in all categories, the offshore penalties applied under the 2012 OVD program are still draconian, but no longer disproportionately applied to those with the smallest accounts, at least when analyzed on an aggregate basis. Rather, the offshore penalty represents a larger percentage of the unreported tax for those with the largest accounts (415 percent) than for those with the smallest accounts (355 percent). Those in the middle still pay the largest penalty as a percentage of their unreported tax (521 percent), however. For those with the smallest accounts, the penalty to unreported tax ratio was still larger for unrepresented taxpayers. For the largest accounts, however, the penalty was relatively smaller for unrepresented taxpayers. Notwithstanding improvement to the OVD program's proportionality, TAS still receives significant and valid complaints about them.

### The Streamlined Programs Still Exclude Some Benign Actors

Some benign actors are not eligible for either of the streamlined programs. For example, so-called “accidental” citizens (*i.e.*, born in the U.S., but living abroad and sometimes unaware of their citizenship, or at least of their U.S. filing requirements) may not qualify for any streamlined program even if

12 IRS response to TAS information request (June 23, 2016). TAS received aggregate figures from the IRS and then divided them by the number of closed returns to compute averages. The penalty-to-tax assessment percentage is the sum of the average FBAR and Title 26 tax penalties divided by the average tax assessment. The IRS recorded data on Canadians who opted out separately from other taxpayers. It also combined streamlined examination results with the results of examinations of Canadians who opted out. In addition, the 2011 OVD opt out data may be skewed by extreme outliers.

13 AIMS Database (Mar. 7, 2016). TAS used the same methodology to pull this 2012 OVD program data as we did for the 2011 OVD program data (above). These figures do not include taxpayers who entered the 2012 OVD program before the IRS announced the 2014 streamlined program, but ultimately transitioned into the streamlined program.

their violations were not willful. They are ineligible for the SFOP if they are not physically outside the U.S. for at least 330 days (*e.g.*, Canadian “snowbirds” who visit the U.S. during the winter months for at least 35 or 36 days) during the year, and are also ineligible for the SDOP if they have not previously filed a U.S. tax return.<sup>14</sup>

Others are concerned they cannot timely apply to a streamlined program because if they are eligible for a Social Security number (SSN), they are required to obtain one before the IRS will process their streamlined application.<sup>15</sup> It may take anywhere from six to 15 months for a taxpayer to receive an SSN, during which time the IRS may initiate an audit, which would make the individual ineligible for the streamlined process.<sup>16</sup>

### The IRS Promulgated OVD-Related Rules by FAQ, Without Addressing Stakeholder Concerns

Another problem is the IRS’s overreliance on OVD Frequently Asked Questions (FAQs). Before the 2009 OVD program, the IRS generally published settlement initiatives in documents approved by the Treasury Department, which were incorporated in the Internal Revenue Bulletin (IRB) after considering comments from stakeholders.<sup>17</sup> Beginning March 23, 2009, however, the IRS issued an internal memo and a series of FAQs to promulgate 2009 OVD program terms, which were not vetted by internal or external stakeholders,<sup>18</sup> and all subsequent OVD programs have been governed by FAQs posted to the IRS website.<sup>19</sup>

An appropriate use of FAQs is to explain existing formal guidance to the public in plain language, to provide ministerial procedural guidance (*e.g.*, to update a mailing address), or to issue guidance in an emergency that is quickly improved and formalized.<sup>20</sup> However, the IRS has increased its use of FAQs to put out substantive guidance quickly, even when there is no emergency.<sup>21</sup> The flip side to this advantage is that the guidance is not subject to the normal review process, does not incorporate comments, and as a

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- 14 American Bar Association (ABA) Section of Taxation, *Comments on 2014 Offshore Voluntary Disclosure Program and the Streamlined Programs* (Oct. 14, 2015), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/101415comments.authcheckdam.pdf>; Paul Barba, Moodys Gartner Tax Law LLP, *Firm Analyzes IRS FAQ on Streamlined Filing for Amnesty Programs*, 2014 TNT 204-28 (Oct. 14, 2014); Amanda Athanasiou, *Confusion Over Offshore Accounts Prompts IRS Response*, 2015 TNT 207-4 (Oct. 27, 2015).
- 15 American Bar Association (ABA) Section of Taxation, *Comments on 2014 Offshore Voluntary Disclosure Program and the Streamlined Programs* 18-19 (Oct. 14, 2015).
- 16 *Id.* Individuals above the age of 12 must apply for an SSN in person and may be required to provide voluminous background information such as education, employment, and residence history. Social Security Administration, *Learn What Documents You Need to Get a Social Security Card*, <https://www.ssa.gov/ssnumber/ss5doc.htm>. (last visited June 23, 2016) Anyone age 12 or older requesting an original Social Security number must appear in person for an interview. *Id.*
- 17 See, *e.g.*, Rev. Proc. 2003-11, 2003-1 C.B. 311 (describing the terms of the Offshore Voluntary Compliance Initiative, a predecessor to the OVD programs).
- 18 Memorandum, from Deputy Commissioner for Services and Enforcement to Commissioner, Large and Mid-Size Business (LMSB) Division and Commissioner, Small Business/Self-Employed (SB/SE) Division, *Authorization to Apply Penalty Framework to Voluntary Disclosure Requests Regarding Offshore Accounts and Entities* (Mar. 23, 2009); Memorandum, from Deputy Commissioner, to SB/SE Examination Area Directors and LMSB Industry Directors, *Emphasis on and Proper Development of Offshore Examination Cases, Managerial Review, and Revocation of Last Chance Compliance Initiative* (Mar. 23, 2009).
- 19 The National Taxpayer Advocate has recommended that the IRS improve the transparency of the OVD and streamlined programs by publishing guidance that incorporates comments from the public, by formally disclosing and/or publishing interpretations of guidance, and by incorporating instructions to staff into the IRM. See, *e.g.*, National Taxpayer Advocate 2014 Annual Report to Congress 79, 93.
- 20 See, *e.g.*, IRS, *Ponzi Scheme Questions and Answers* (Feb. 3, 2006), <https://www.irs.gov/uac/Ponzi-Scheme-Questions-and-Answers> (referencing Rev. Rul. 2009-9 and Rev. Proc. 2009-20).
- 21 See, *e.g.*, Jeremiah Coder, *How Do FAQs Fit Into the Guidance Puzzle?*, 2011 TNT 64-1 (Apr. 4, 2011).

result it may not be well thought out, can violate taxpayer rights, and may produce arbitrary results that invite controversy and litigation.

Indeed, the 2009 OVD FAQs were issued in such haste and so poorly drafted that the IRS had to clarify them repeatedly. As a result, it treated similarly situated taxpayers inconsistently, as described in prior TAS OVD Reports. The OVD FAQs also drained resources, as TAS tried to advocate for taxpayers based on the plain language of FAQs, while the IRS resisted on the basis that they should be interpreted in accordance with what the drafters meant to write and how they were being applied in other cases.<sup>22</sup>

In addition, the IRS is currently being sued because of its failure to adhere to the Administrative Procedure Act (APA) in promulgating the rules governing taxpayers seeking to “transition” into a streamlined program from an OVD program.<sup>23</sup> Unlike taxpayers who apply directly to a streamlined program, these taxpayers are denied access if the IRS does not agree that their violations were not willful. The IRS does not provide taxpayers with any substantive basis or explanation for a denial or with the right to an appeal. Regardless of what the APA requires, an agency should explain why it has decided to adopt a rule — particularly one viewed as unfair — and address suggestions to improve it, as would be the case with formal guidance. It should also provide taxpayers with explanations for any adverse determinations it makes in their cases. The IRS’s failure to take these simple steps violates most of the recently-enacted taxpayer rights.<sup>24</sup>

Another problem with issuing OVD FAQs instead of more formal guidance is that the IRS can and does change them without discussion or any public record of the change, except records kept by practitioners whose firms take screen shots of the FAQs on a regular basis.<sup>25</sup> This creates a kind of secret law that is not fair to everyone else. Although the IRS may have felt an urgent need to provide OVD guidance as FAQs in 2009, there is no excuse for it to continue to run the OVD programs this way for so long.

### The IRS Recently Asked the Public for Comments on the OVD Programs, Revealing Significant Stakeholder Concerns

To its credit, the IRS recently asked stakeholders for comments on the OVD programs, though the request was limited to narrow aspects of OVD program forms.<sup>26</sup> In response, stakeholders identified broader concerns such as the unnecessary burden associated with the forms, unnecessarily burdensome passive foreign investment company (“PFICs”) computations, a lack of guidance concerning how a taxpayer may demonstrate a violation was not willful, excessively long processing times and requests for

22 See, e.g., TAS OVD Reports (discussing controversy over the IRS’s strained interpretation of its FAQs); Taxpayer Advocate Directive 2011-1 (Aug. 16, 2011) (same).

23 See, e.g., *Maze et al. v. IRS et al.*, No. 1:15-cv-01806 (D.D.C. Oct. 26, 2015) (challenging the rules governing transition to the streamlined programs as violating the APA, 5 U.S.C. §§ 553 and 706(2)(D)); *Green et al. v. IRS et al.*, No. 1:16-cv-01085 (D.D.C. June 9, 2016) (same).

24 See IRC § 7803 (a). For example, it violates the *Rights to Be Informed, Quality Service, Pay No More Than the Correct Amount of Tax, Challenge the IRS’s Position and Be Heard, Appeal an IRS Decision in an Independent Forum, Finality, Privacy, and A Fair and Just Tax System*.

25 Certain practitioners received undisclosed internal documents in response to Freedom of Information Act (FOIA) requests. See, e.g., Andrew Velarde, *FOIA Response Shows Hints of IRS Thinking on OVDP*, 2015 TNT 192-1 (Oct. 5, 2015). Obviously, other FOIA responses might not have been as well covered in the media, raising similar concerns, discussed below. Further, as of this writing the 2011 OVDP FAQs had been removed from irs.gov. See IRS, *2011 Offshore Voluntary Disclosure Initiative Documents and Forms* (updated Jan. 29, 2016), <https://www.irs.gov/uac/2011-offshore-voluntary-disclosure-initiative-documents-and-forms> (last visited May 19, 2016) (indicating the 2011 OVD FAQs are “no longer available”). As a result, the current version of the 2011 OVDP FAQs are only available on private sector websites.

26 See *Proposed Collection; Comment Request on Information Collection Tools Relating to the Offshore Voluntary Disclosure Program (OVDP)*, 80 Fed. Reg. 47998-02 (August 10), corrected, 80 Fed. Reg. 51874-01 (Aug. 26, 2015).

extension of the applicable limitations periods, an excessively broad penalty base for the streamlined program, and the one-sided requirement for OVD participants to pay taxes on income in years for which the statute of limitations period is closed without allowing them to reduce the amount by deductions that would apply to those same years.<sup>27</sup> Separately, taxpayers also raised concerns about whether and how to report foreign social security accounts.<sup>28</sup> A broader request for comments accompanied by a proposed revenue procedure and published in the IRB would likely generate even more specific and helpful comments.

### Some OVD Program Guidance Was Shrouded in Secrecy

A related problem is that some internal OVD-related guidance directly affecting taxpayers was withheld from the public.<sup>29</sup> Even information designated as “official use only” (OUO) must be vetted by and accessible to internal stakeholders, such as TAS. IRS business units are supposed to vet and distribute such information by incorporating it into the Internal Revenue Manual (IRM).<sup>30</sup> Over the last seven years, however, the IRS has avoided publishing OVD-related guidance in the IRM, instead distributing program guidance using memos designated as OUO, training materials, technical advisors, conference calls, and secret committees.<sup>31</sup> This lack of transparency and due process fosters the impression that the IRS administers the OVD programs in an arbitrary and capricious manner, without regard to taxpayer rights. Moreover, when the IRS does not provide TAS with the same access to procedural information as other IRS employees, it obstructs TAS’s statutory mission to help taxpayers and address problems under IRC §§ 7803(c) and 7811.

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- 27 American Bar Association (ABA) Section of Taxation, *Comments on 2014 Offshore Voluntary Disclosure Program and the Streamlined Programs* (Oct.14, 2015). The Treasury Inspector General for Tax Administration (TIGTA) recently found that “[I]n part due to the lengthy processes in CI and the OVD Unit, the time to complete the entire OVD process for the 20,587 voluntary disclosures averaged nearly two years.” TIGTA, Ref. No. 2016-30-030, *Improvements Are Needed in Offshore Voluntary Disclosure Compliance and Processing Efforts* 15 (June 2, 2016). TIGTA recommended among other things that the IRS establish one mailing address for taxpayer correspondence. *Id.*
- 28 See, e.g., Roy A. Berg and Marsha-laine Dungog, State Bar of California Taxation Section, *The United States Income Tax Treatment of Australian Superannuation Funds Owned By U.S. Persons* (Apr. 2016); National Taxpayer Advocate 2013 Annual Report to Congress 228, 237 (Most Serious Problem: *Offshore Voluntary Disclosure: The IRS Offshore Voluntary Disclosure Program Disproportionately Burdens Those Who Made Honest Mistakes*) (recommending the IRS issue guidance about what, if any, information reporting applies to AFOREs (*i.e.*, privatized social security accounts held by those who have worked in Mexico)).
- 29 The e-FOIA rules and IRS policy generally require the authors to clear such guidance internally and post it on the IRS website. See 5 U.S.C. § 552(a)(2)(C) (requiring the agencies to post “administrative staff manuals and instructions to staff that affect a member of the public,” unless an exemption applies); IRM 1.11.1.3 (Nov. 1, 2011) (disclosure laws). The only seemingly relevant exemption applies to instructions that “could reasonably be expected to risk circumvention of the law.” See 5 U.S.C §§ 552(b)(7)(E) and (b)(2). If an item is not properly posted and indexed, it may not be “relied on, used, or cited as precedent” by the IRS against a taxpayer unless the taxpayer has actual and timely notice of its terms. See 5 U.S.C. § 552(a)(2)(flush). As an example, the IRS was recently required to release OVD material in response to a FOIA request. See, e.g., Andrew Velarde, *FOIA Response Shows Hints of IRS Thinking on OVD*, 2015 TNT 192-1 (Oct. 5, 2015).
- 30 See generally IRM 1.11.9 (Dec. 4, 2014) (clearance process); IRM 1.11.10.6.3 (Apr. 25, 2014) (same); IRM 1.11.10.8 (Apr. 25, 2014) (“The author/originating office must incorporate permanent guidance into a published IRM by the expiration date of the interim guidance.”).
- 31 As an example, the IRS was recently required to release OVD training material in response to a FOIA request. See, e.g., Andrew Velarde, *FOIA Response Shows Hints of IRS Thinking on OVD*, 2015 TNT 192-1 (Oct. 5, 2015). See generally IRM 1.11.9 (Dec. 4, 2014) (clearance process); IRM 1.11.10.6.3 (Apr. 25, 2014) (same); IRM 1.11.10.8 (Apr. 25, 2014) (“The author/originating office must incorporate permanent guidance into a published IRM by the expiration date of the interim guidance.”).

### The Government Is Eviscerating the Statutory Requirement for It to Prove Willfulness Before Imposing the Penalty for “Willful” Failures to Report Foreign Accounts

Another problem with the IRS’s administration of the FBAR rules is that it may drive more benign actors into the OVD if they fear it can deem their violations willful and impose even more draconian penalties without really proving anything. A court may require the government to meet its burden of proof by producing evidence that supports its allegation: (1) beyond a reasonable doubt (approximately 80 percent–95 percent); (2) by clear and convincing evidence (approximately 60 percent–80 percent); or (3) by a preponderance of the evidence (approximately 50 percent).<sup>32</sup> According to a recent suit, the IRS improperly assessed a penalty against a person for “willfully” failing to file an FBAR for 2008 because the agency applied the “preponderance” standard instead of the “clear and convincing” standard.<sup>33</sup>

Mr. Bernhard Gubser, a Swiss-born naturalized U.S. citizen, reportedly opened foreign accounts while he lived and worked in Switzerland, using them to hold his savings and pay his day-to-day expenses, eventually transferring them to other foreign institutions.<sup>34</sup> He said he did not know he had an FBAR and disclosure requirement. His CPA of 20 years had not asked him about his foreign accounts when the FBAR filing was due for 2008. The CPA prepared Mr. Gubser’s return and checked “no” in the box on Schedule B, Form 1040, which asks whether the taxpayer had a financial interest in, or signature or other authority over, a foreign account. Mr. Gubser’s attorneys said he did not learn of the FBAR filing requirement until 2010, at which time he made a timely voluntary disclosure to the IRS for the 2009 tax year.

A penalty of up to \$10,000 could apply to a “non-willful” failure to report the foreign account, unless Mr. Gubser had reasonable cause.<sup>35</sup> However, the maximum value in the account during 2008 was \$2.7 million and the IRS was seeking to impose a 50 percent “willful” penalty of \$1,363,336, draining his lifetime retirement savings, according to press accounts.

The IRS’s Appeals Officer reportedly acknowledged that while the IRS would not be able to meet the burden of establishing Mr. Gubser’s failure to file was willful under the clear and convincing standard, it would probably be able to satisfy this burden under the preponderance of the evidence standard. The National Taxpayer Advocate believes the government should have to establish a taxpayer’s willfulness by clear and convincing evidence, as articulated in Chief Counsel Advice (CCA) issued in 2006, especially since the IRS automatically meets a significant portion of its burden if the taxpayer filed a return that included a Schedule B, which references the FBAR filing requirement.<sup>36</sup>

32 Although there are outlying views, these percentages are rough approximates based on a survey of judges. See John Gamino, *Tax Controversy Overburdened: A Critique of Heightened Standards of Proof*, 59 *Tax Law.* 497, 519-521 (Winter 2006).

33 All of the facts concerning this case are drawn from press reports or public filings. See William Hoke, *Suit Challenges Preponderance of Evidence Standard in FBAR Case*, 2015 *TNT* 243-9 (Dec. 17, 2015). The suit was ultimately dismissed for lack of standing because the court was not convinced that its determination concerning the burden of proof would prevent the assessment. See *Gubser v. IRS*, No. 5:15-CV-00298 (S.D. Tex., May 4, 2016).

34 *Id.*

35 See, e.g., 31 U.S.C. §§ 5314, 5321; 31 C.F.R. §§ 1010.350, 1010.306(c); FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR), [http://www.fincen.gov/forms/bsa\\_forms/](http://www.fincen.gov/forms/bsa_forms/).

36 CCA 200603026 (Jan. 20, 2006).

### *Building Circumstantial Evidence into Forms Has Already Eroded the Requirement for the Government to Prove Willfulness*

As Mr. Gubser's case shows, even seemingly inadvertent failures to file an FBAR can trigger severe civil penalties — up to the greater of \$100,000 or 50 percent of the account per violation — for *willful* violations because the government can rely on circumstantial evidence (or willful blindness) to prove willfulness.<sup>37</sup> Circumstantial evidence is nearly always available because the filing of Form 1040, Schedule B, which references the FBAR filing requirement, is circumstantial evidence that any subsequent failure to file an FBAR is willful.<sup>38</sup> The IRM provides no guidance about how taxpayers may disprove an inference of willful blindness, though it acknowledges that the mere existence of the check-box on a Schedule B filed by the taxpayer is insufficient to prove willfulness.<sup>39</sup>

### *The Mere Possibility That the Government Could Rely on Circumstantial Evidence of Willful Blindness Has Prompted Some to Agree to Pay More Than They Should*

Because the IRS has not provided any meaningful assurance that the penalty for a willful failure to file an FBAR will be treated as anything other than a strict liability penalty under a theory of willful blindness, some who inadvertently failed to file an FBAR have agreed to pay disproportionate penalties in the OVD programs, as discussed above.<sup>40</sup> These results seem to be an unintended consequence of the civil FBAR penalty regime, which was designed to address criminal conduct.<sup>41</sup>

For these reasons the National Taxpayer Advocate proposed legislation to clarify that only violations that the IRS proves are actually willful (without relying on circumstantial evidence of willful blindness represented by boilerplate language on Form 1040, Schedule B) are subject to a willful FBAR penalty. Such

37 See, e.g., *U.S. v. Williams*, 489 Fed. App'x. 655, 659 (4th Cir. 2012) (unpublished). In this context, willfulness means "a voluntary intentional violation of a known legal duty." *Ratzlaf v. U.S.*, 510 U.S. 135, 142 (1994) (citing *Cheek v. U.S.*, 498 U.S. 192, 201 (1991)); IRM 4.26.16.4.5.3 (July 1, 2008).

38 See, e.g., *U.S. v. Williams*, 489 Fed. App'x. 655, 659 (4th Cir. 2012) (unpublished) ("Evidence of acts to conceal income and financial information, combined with the defendant's failure to pursue knowledge of further reporting requirements as suggested on Schedule B, provide a sufficient basis to establish willfulness on the part of the defendant," quoting *U.S. v. Sturman*, 951 F.2d 1466, 1476 (6th Cir. 1992)); *U.S. v. McBride*, 908 F. Supp. 2d 1186 (D. Utah 2012). Under these authorities, a person might conclude that a reckless failure to read the instructions on Schedule B is akin to willfulness. In a criminal context, a person generally may be charged with knowledge of a violation by reason of willful blindness if he or she is aware of a "high probability" of its existence, unless he actually believes that it does not exist. See, e.g., Jonathan L. Marcus, *Model Penal Code Section 2.02(7) and Willful Blindness*, 102 YALE L.J. 2231 (1993) (discussing various interpretations of the willful blindness standard).

39 IRM 4.26.16.6.5.1(5) (Nov. 6, 2015) ("It is reasonable to assume that a person who has foreign bank accounts should read the information specified by the government in tax forms. The failure to act on this information and learn of the further reporting requirement, as suggested on Schedule B, may provide evidence of willful blindness on the part of the person.... The failure to learn of the filing requirements coupled with other factors, such as the efforts taken to conceal the existence of the accounts and the amounts involved, may lead to a conclusion that the violation was due to willful blindness. The mere fact that a person checked the wrong box, or no box, on a Schedule B is not sufficient, in itself, to establish that the FBAR violation was attributable to willful blindness."). The IRM's description leaves a reader with the (mis)impression that willful blindness is nearly automatic where the taxpayer has filed Schedule B and failed to report offshore income or otherwise tried to conceal the accounts. In fact, willful blindness cannot be established on the basis that a person was objectively reckless in not learning about a filing requirement, but must be based on a determination the person's actually knew that a filing requirement was highly likely to exist and that he or she deliberately avoided learning about it. See *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2070 (2011) (requiring two findings to establish willful blindness: "(1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact;" and rejecting a formulation that would apply the doctrine to merely reckless conduct). However, the concept was borrowed from criminal cases where the government must establish willfulness beyond a reasonable doubt. See, e.g., *Fiore v. Comm'r*, T.C. Memo. 2013-21. Because of the government's heavy burden of proof in criminal cases, there is less risk that a person without willful intent would need to try to prove a negative — that his or her conduct was not willful.

40 See, e.g., TAS OVD Reports.

41 See, e.g., Pub. L. No. 91-508, § 241, 242 (1970); S. REP. No. 91-1139, at 2-4, 8-9 (1970); H. REP. No. 91-975, at 12 (1970).



clarification would reduce the excessive discretion afforded the IRS. It would also support the taxpayer's *right to be informed*, which includes the right to a clear explanation of the law.<sup>42</sup>

### *The Government Is Now Arguing That Its Already-Easy-To-Establish Burden of Proof Should Be Reduced*

At least in 2006, IRS attorneys believed that the government had to prove willfulness by clear and convincing evidence (*i.e.*, the standard generally applied to civil fraud penalties) rather than a mere preponderance of the evidence (*i.e.*, the standard applied to tax deficiencies).<sup>43</sup> They reasoned that like other civil fraud penalties, the FBAR penalty is not a tax to which the IRS's general presumption of correctness applies and it would be difficult for taxpayers to prove the negative (*i.e.*, that a failure to file an FBAR was not willful).<sup>44</sup>

Subsequently, in the *Williams* and *McBride* cases where the standard of proof was not necessarily dispositive, government attorneys convinced two district courts that the lower preponderance standard was applicable.<sup>45</sup> However, the district court in *Williams* held that the government had not proven willfulness even under the preponderance standard, merely remarking without analysis that “in enforcement actions brought by the Government in other contexts ... the Government is required to prove its case by a preponderance of the evidence.”<sup>46</sup> The applicable burden of proof appears to have been similarly unimportant in *McBride* because the court found that Mr. McBride admitted he knew about the FBAR reporting requirement and intentionally concealed foreign accounts.<sup>47</sup> Thus, discussion of the burden of proof in these cases may be construed as dicta.

42 See TBOR, [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). One article acknowledged the benefits of the proposed clarification, but nonetheless supported allowing fact finders to rely on circumstantial evidence of willful blindness. See Peter Hardy and Carolyn H. Kendall, *Between the National Taxpayer Advocate and the Courts: Steering a Middle Course to Define “Willfulness” in Civil Offshore Account Enforcement Cases Part 2*, PROCEDURALLY TAXING BLOG (Mar. 24, 2015), <http://procedurallytaxing.com/between-the-national-taxpayer-advocate-and-the-courts-steering-a-middle-course-to-define-willfulness-in-civil-offshore-account-enforcement-cases-part-2/>. Legislation would need to go further than merely clarifying that (1) the IRS must prove an “intentional violation of a known legal duty” and (2) that the “fact that a person checked the wrong box, or no box, on a Schedule B is not sufficient” to establish willfulness to prevent a fact finder from, in effect, assuming willfulness when a taxpayer has filed a Schedule B unless the taxpayer can prove otherwise, as the IRM already contains those statements. See IRM 4.26.16.6.5.1 (Nov. 6, 2015) (discussed above). Because the willful FBAR penalty is especially severe, it merits special procedural protections.

43 CCA 200603026 (Jan. 20, 2006).

44 *Id.* (“Courts have traditionally applied the clear and convincing standard with respect to fraud cases in general, not just to tax fraud cases, because, just as it is difficult to show intent, it is also difficult to show a lack of intent. The higher standard of clear and convincing evidence offers some protection for an individual who may be wrongly accused of fraud. The burden of proof the Service has with respect to civil tax fraud penalties represents an exception to the general presumption of correctness that the courts have afforded to tax assessments ... Because the FBAR penalty is not a tax or a tax penalty, the presumption of correctness with respect to tax assessments would not apply to an FBAR penalty assessment for a willful violation — another reason we believe that the Service will need to meet the higher standard of clear and convincing evidence.”).

45 See *U.S. v. Williams*, 106 A.F.T.R.2d (RIA) 6150 (E.D. VA. 2010), *rev'd*, 489 Fed. App'x. 655 (4th Cir. 2012) (unpublished); *U.S. v. McBride*, 908 F. Supp. 2d 1186, 1201 (D. Utah 2012).

46 *U.S. v. Williams*, 106 A.F.T.R.2d (RIA) 6150 (E.D. VA. 2010), *rev'd*, 489 Fed. App'x. 655 (4th Cir. 2012) (unpublished). The Fourth Circuit reversed, finding that Mr. Williams willfully failed to file an FBAR, in part, because he admitted as much when pleading guilty to tax evasion, but the Fourth Circuit did not discuss the burden of proof. *U.S. v. Williams*, 489 Fed. App'x. at 657 and 660.

47 *U.S. v. McBride*, 908 F. Supp. 2d 1186, 1208-09 (“*McBride* had actual knowledge of his duty to file an FBAR for any account in which he had a financial interest prior to filing his 2000 and 2001 tax returns. *McBride* even testified that ‘the purpose of Merrill Scott’ was to avoid disclosure and reporting the existence of interests ‘because ... if you disclose the accounts on the form, then you pay tax on them, so it went against what [he] set up Merrill Scott for in the first place.’”).

### *There Is No Good Reason to Lower the Burden of Proof, Except to “Win” Cases*

The *McBride* decision explained that “[B]ecause the FBAR penalties at issue in this case only involve money, it does not involve ‘particularly important individual interests or rights.’”<sup>48</sup> While preponderance of the evidence is a default standard, courts have long required civil fraud to be proven by clear and convincing evidence.<sup>49</sup> Because all civil fraud cases involve money and *McBride* did not distinguish the FBAR penalty from them, its analysis seems incomplete, though it cited two Supreme Court cases that applied the preponderance standard in cases of fraud upon investors under securities laws and upon creditors under the bankruptcy laws.<sup>50</sup> However, those statutes may be distinguishable because they allow a person other than the government to recover for fraud.<sup>51</sup>

According to the Supreme Court,

“[O]ne typical use of the [clear and convincing] standard is in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant. The interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff’s burden of proof.”<sup>52</sup>

Under this reasoning, a higher burden should apply where the government’s allegation of fraud is a substitute for a criminal penalty, which it would have to prove “beyond a reasonable doubt.” In the context of an allegedly willful failure to file an FBAR, the government is attempting to impose a civil penalty for allegedly willful conduct as a substitute for criminal sanctions (“quasi-criminal wrongdoing”) that apply to the same conduct, essentially branding him a criminal and tarnishing his reputation. This is the type of situation where the accused should have greater procedural due process protections.<sup>53</sup> Some commentators have speculated that the willful FBAR penalty, which could reach 300 percent of any unreported account, could violate the Excessive Fines Clause of the Eighth Amendment.<sup>54</sup> Procedural protections are particularly important where willful intent is a component of the allegation because it is difficult for the accused to prove a negative — the absence of willful intent.

48 *U.S. v. McBride*, 908 F. Supp. 2d 1186, 1201 (D. Utah 2012). Of course, money is generally necessary to obtain food, shelter, clothing, transportation, medical care, counsel in a civil proceeding, and to avoid poverty in retirement.

49 See, e.g., *Woodby v. Immigration and Naturalization Service*, 385 U.S. 276, 284, 285 n.18 (1966) (the “clear, unequivocal, and convincing evidence ... standard, or an even higher one, has traditionally been imposed in cases involving allegations of civil fraud . . .” (citing 9 *Wigmore*, Evidence, § 2498 (3d ed. 1940))).

50 See *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389 (1983) (violations of Securities Exchange Act Rule 10b-5 established by preponderance); *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (fraud on bankruptcy creditors established by preponderance).

51 See *id.*

52 *Addington v. Texas*, 441 U.S. 418, 424 (1979).

53 Although Congress expressly eliminated the “clear and convincing” standard under the False Claims Act, scholars have argued that the legislation violates principles of procedural due process. See, e.g., Frank Lasalle, *Comment: The Civil False Claims Act: The Need for a Heightened Burden of Proof as a Prerequisite for Forfeiture*, 28 AKRON L. REV. 497 (Spring 1995). Fortunately, Congress has not eliminated the clear and convincing evidence standard in the context of willful FBAR violations.

54 See, e.g., Steven Toscher and Barbara Lubin, *When Penalties Are Excessive — The Excessive Fines Clause as a Limitation on the Imposition of the Willful FBAR Penalty*, J. TAX PRACTICE & PROCEDURE 69-74 (Jan. 2010). Perhaps to avoid this issue, the IRS will not assert a penalty of more than 100 percent of the unreported account. IRM 4.26.16.6.5.3 (Nov. 6, 2015) (“After May 12, 2015, in most cases, the total penalty amount for all years under examination will be limited to 50 percent of the highest aggregate balance ... In no event will the total penalty amount exceed 100 percent...”).

Indeed, the government generally has the burden to prove by clear and convincing evidence that a person engaged in tax fraud before it may impose a civil fraud penalty under IRC §§ 6663 or 6701.<sup>55</sup> For penalties under IRC § 6663, Tax Court Rule 142(b) prescribes the clear and convincing standard, but this standard is routinely applied by circuit courts that are not subject to those rules.<sup>56</sup> A majority of the circuits also require the government to meet the clear and convincing standard before applying civil fraud penalty for aiding and abetting under IRC § 6701.<sup>57</sup> Thus, there does not appear to be a good reason to retreat from the clear and convincing standard in the context of allegedly willful FBAR violations, unless the goal is to help the government “win” cases against taxpayers more likely to have made inadvertent errors.

### *Reducing the Burden of Proof Is Inconsistent With the Statutory Scheme*

More importantly for tax administration, however, the government has not explained how lowering the government’s burden of proof while nearly-assuming willful blindness for those who have filed a Schedule B is consistent with the statutory scheme. The statutory scheme provides a wide range of sanctions: civil and criminal penalties for willful FBAR violations, a lower civil penalty for non-willful violations, agency discretion to apply penalties below the statutory maximums, and also contemplates that the government will waive penalties when the violation was due to reasonable cause.<sup>58</sup> If the clear and convincing standard is eliminated and the government is still allowed to rely on circumstantial evidence, nearly any FBAR violation will be subject to what amounts to a draconian strict liability penalty that is misleadingly characterized as a penalty reserved for willful violations.<sup>59</sup>

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- 55 See, e.g., *McGraw v. Comm’r*, 384 F.3d 965, 970 (8th Cir. 2004) (taxpayer civil fraud penalty under IRC § 6663); *Carlson v. United States*, 754 F.3d 1223, 1227-28 (11th Cir. 2014) (IRC § 6701). See also IRM 25.1.1.2.2 (Jan. 23, 2014) (“In civil fraud cases, the Government must prove fraud by clear and convincing evidence.”). In the context of the civil fraud penalty under IRC § 6663, IRC § 7454(a) counters the IRS’s general presumption of correctness by providing “[I]n any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary.” However, neither IRC § 7454(a) nor Treas. Reg. § 301.7454-1 prescribe any particular burden of proof.
- 56 See e.g., Tax Court Rule 142(b) (“In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. See Code sec. 7454(a).”); *McGraw v. Comm’r*, 384 F.3d 965, 970 (8th Cir. 2004) (taxpayer civil fraud penalty under IRC § 6663); *Estate of Burton W. Kanter v. Comm’r*, 337 F.3d 833, 847 (7th Cir. 2003), *rev’d sub nom.* on other grounds, *Ballard v. Comm’r*, 544 U.S. 40 (2005) (same); *Gandy Nursery, Inc. v. United States*, 318 F.3d 631, 638 (5th Cir. 2003) (same); *Clayton v. Comm’r*, 102 T.C. 632, 646 (1994) (same).
- 57 See *Carlson v. United States*, 754 F.3d 1223, 1227-28 (11th Cir. 2014) (applying the clear and convincing standard to violations under IRC § 6701 and identifying several other circuits that apply that standard, while acknowledging that its decision was at odds with the Second and the Eighth Circuits).
- 58 See, e.g., 31 U.S.C. §§ 5314, 5321; 31 C.F.R. §§ 1010.350, 1010.306(c); FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*, [http://www.fincen.gov/forms/bsa\\_forms/](http://www.fincen.gov/forms/bsa_forms/).
- 59 Accord Caroline Ciralo, *The FBAR Penalty: What Constitutes Willfulness?*, MARYLAND BAR JOURNAL 43 (May 2013), [http://www.rosenbergmartin.com/Portals/0/PDFs/MBJ\\_May13\\_ciralo.pdf](http://www.rosenbergmartin.com/Portals/0/PDFs/MBJ_May13_ciralo.pdf) (“McBride may be a classic example of bad facts making bad law. Still, we now have a published decision essentially imposing strict liability for the willful FBAR penalty on anyone who signs a federal tax return with a Schedule B attached and fails to file a required FBAR.”).

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Advocate for taxpayers experiencing problems with the IRS's OVD and streamlined programs;
- Advocate for more transparency and common sense in the IRS's administration of the FBAR rules and OVD-related programs (including guidance concerning the treatment of foreign social security accounts in the OVD programs and the IRS's burden of proof in FBAR penalty cases);
- Advocate for the IRS to declassify and release any undisclosed OVD-related guidance; and
- Advocate for the IRS to post the annual FBAR report to Congress on its website, as the Treasury Department's Financial Crimes Enforcement Network (FinCEN) did before the IRS began administering the FBAR rules.<sup>60</sup>

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<sup>60</sup> The annual FBAR Report to Congress is required by Section 361(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. No. 107-56. The first few FBAR Reports to Congress were prepared by FinCEN and are posted on its website. See, e.g., Secretary of the Treasury, *A Report to Congress in Accordance with §361(B) of the USA Patriot Act (2004)*, [http://www.fincen.gov/news\\_room/rp/files/fbar\\_report\\_2004.pdf](http://www.fincen.gov/news_room/rp/files/fbar_report_2004.pdf) (2003 FBAR Report to Congress).

**Area of Focus #13**     **The IRS Innocent Spouse Unit, Faced With Increased Processing Times, Plans to Adopt Procedures That Will Burden Taxpayers, Resulting in Inaccurate Determinations and Downstream Errors and Rework**

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

- *The Right to Quality Service*
- *The Right to a Fair and Just Tax System*

Internal Revenue Code (IRC) §§ 6015 and 66 provide relief from the joint and several liability that arises when taxpayers file a joint return or from the liability that arises from the operation of community property law.<sup>2</sup> Taxpayers generally request relief by submitting IRS Form 8857, *Request for Innocent Spouse Relief*, and the request is usually handled by the IRS's centralized Innocent Spouse Unit (ISU).<sup>3</sup> The ISU, previously part of the Wage & Investment (W&I) Operating Division, was transferred to the Small Business/Self Employed (SB/SE) Operating Division as of November 2, 2014.<sup>4</sup>

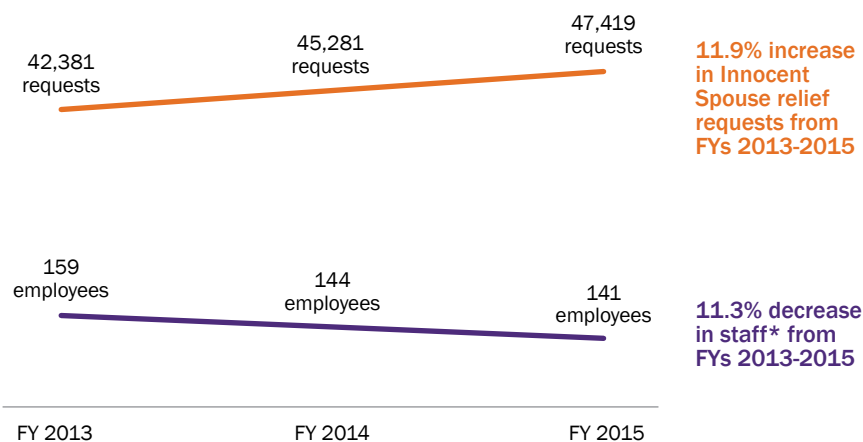
In fiscal year (FY) 2013, the ISU received about 42,400 requests for innocent spouse relief.<sup>5</sup> As of December 2012, it typically took around three to six months to make a determination about whether to grant relief.<sup>6</sup> In FY 2015, the ISU received about 47,400 requests for relief, an increase of 12 percent compared to two years earlier.<sup>7</sup> However, there were about 140 ISU employees as of the last pay period of

- 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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 IRC § 6013(d)(3) imposes joint and several liability on taxpayers who file joint returns. Taxpayers in community property states who do not file joint returns are generally required to report half of the community property on their returns. *Poe v. Seaborn*, 282 U.S. 101 (1930). Nine states have community property laws, including: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Internal Revenue Manual (IRM) Exhibit 25.18.1-1 *Comparison of State Law Differences in Community Property States* (Mar. 4, 2011).
- 3 See, e.g., SB/SE response to TAS information request (Mar. 30, 2016) showing that as of Sept. 26, 2015, there were 43,291 claims in the ISU designated as Stage 30, indicating they had been closed, compared to 4,577 claims with that designation in cases handled by other functions in the IRS, such as revenue officers. See IRM 25.15.14.4.1.30 (July 30, 2014), noting that the Stage 30 designation indicates an account is closed.
- 4 See *SB/SE and W&I Compliance Realignment*, <https://mysbse.web.irs.gov/sbsefuturevision/compliancerealignment/default.aspx>.
- 5 SB/SE response to TAS information request (May 24, 2016).
- 6 Presentation at Low Income Taxpayers Clinic Grantee Conference (Dec. 2012), on file with TAS, showing that it “typically” took around three to six months for the ISU to make a determination, although the process was “taking a little bit longer because of the time-frame where we did not disallow claims pending the changes in Notice 2011-70 and Notice 2012-8.” The ISU had suspended consideration of some claims pending the outcome of litigation on the validity of a regulation imposing a two-year deadline for requesting equitable relief. See Treas. Reg. §1.6015-5(b)(1). On July 25, 2011, the IRS announced that the regulation would be revised to remove the two-year rule. Notice 2011-70, 2011-32 I.R.B. 135, and Notice 2012-8, 2012-4 I.R.B. 309, provided transitional and interim guidance on how cases would be handled pending such revision. A notice of proposed rulemaking removing the two-year rule was published in the Federal Register (78 Fed. Reg. 49242) on Aug. 13, 2013, and the IRS adopted guidance implementing removal of the two-year rule on Sept. 13, 2013 (Rev. Proc. 2013-34, 2013-43 I.R.B. 397).
- 7 SB/SE response to TAS information request (May 24, 2016), showing that the ISU received 42,381, 45,281, and 47,419 requests for relief in FYs 2013, 2014, and 2015, respectively.

FY 2015 compared to almost 160 in FY 2013, an 11 percent staff reduction over a two-year period.<sup>8</sup> It now takes on average 240 days, or eight months, just to get a case assigned to a “full scope” examiner for a determination on the merits.<sup>9</sup> Figure 3.13.1 depicts changes in the number of full-time ISU employees and the number of requests for relief from FYs 2013–2015.

**FIGURE 3.13.1**<sup>10</sup>

### Full-Time ISU Employees and Requests for Innocent Spouse Relief



\*As of last pay period of fiscal year

In 2016, an “employee-driven” team was convened to review innocent spouse Internal Revenue Manual (IRM) provisions, update and consolidate them to better address processing issues and reflect actual practices, and propose changes.<sup>11</sup> At TAS’s request, the ISU included TAS in its February, March, April, and June face-to-face meetings, during which TAS requested data about ISU operations, such as the volume

- 8 Agency-Wide Shared Services (AWSS) Employee Support Services, Payroll/Personnel Systems, HR Reporting Section, <https://persinfo.web.irs.gov/track/workorg.asp>, showing 159 and 141 full-time ISU employees as of the last pay period of FYs 2013 and 2015, respectively. A change in the number of full-time employees from 159 to 141 (or from 160 to 140) is an 11.3 percent decrease.
- 9 SB/SE response to TAS information request (May 24, 2016); redacted IRS Letter 3659C (May 9, 2016) on file with TAS, advising the taxpayer of receipt of Form 8857 and that “we will contact you again within 240 days to let you know what actions we are taking.” Innocent spouse claims are generally first reviewed by a “first read” tax examiner who builds and perfects the claim, identifies non-qualified claims (e.g., where no joint return was filed), disallows some claims (e.g., where the claim was not timely), identifies and refers account problems, and identifies and refers rework or reconsideration cases. See IRM 25.15.7.4, *First Read at the Cincinnati Centralized Innocent Spouse Operation (CCISO) Overview* (Feb. 19, 2013). After screening by first read employees, claims determined to have merit are built and forwarded to “full scope” employees who make determinations. See IRM 25.15.7.9, *Full Scope - Overview* (Feb. 19, 2013).
- 10 Full-time ISU Employees from AWSS Employee Support Services, Payroll/Personnel Systems, HR Reporting Section for pay periods ending Oct. 5, 2013, Oct. 4, 2014, and Oct. 3, 2015; SB/SE response to TAS information request (May 24, 2016).
- 11 As part of its “Help Us Get This Right Campaign” that accompanied the realignment of SB/SE and W&I compliance activities and resulted in the transfer of the ISU to SB/SE, the IRS created several SB/SE employee-driven teams charged with considering “innovative ways to address inefficiencies, inconsistencies, compliance abuse, barriers to case resolution, and staffing and realignment challenges.” Included among these new teams was the ISU team, which according to the IRS was “updating the IRM and creating a new section about innocent spouse. They are developing more efficient work processes, addressing specific case challenges, and planning training and communications for new processes.” *Employees work to “get this right”*, <http://mysbse.web.irs.gov/sbseorg/commish/ExecutiveMessages/33335.aspx> (Jan. 29, 2016).

of receipts, average cycle time, and the length of time a claim remains in each processing phase.<sup>12</sup> Most of the data TAS requested has been forthcoming, with the notable exception of data on average cycle times, which could identify areas in ISU processes that represent bottlenecks or other inefficiencies.<sup>13</sup> We expect that the ISU will eventually provide TAS with data on cycle times but the team did not take that data into account as it revised the IRM.

An example of a problematic change in procedure is that the ISU no longer creates separate accounts for joint filers (sometimes referred to as “mirrored” accounts) upon receipt of each innocent spouse claim.<sup>14</sup> It now mirrors the accounts only after it makes a determination, and only if it determines to grant relief.<sup>15</sup> The new ISU procedures do not adequately account for the asymmetric effect that claims for innocent spouse relief have on joint filers. For example, the period of limitations on collection, or collection statute expiration date (CSED), which is normally ten years from the date a tax is assessed, is suspended when a taxpayer requests innocent spouse relief, whether or not he or she obtains it, but has no effect on the CSED that applies to the non-requesting spouse.<sup>16</sup> Enforced collection activity against the requesting spouse — but not the non-requesting spouse — is also suspended, whether or not relief is ultimately granted, while the claim is pending.<sup>17</sup>

By creating separate, or mirrored, accounts for joint filers when one of them requests innocent spouse relief, the IRS can more easily identify the extent to which a joint filer is subject to collection action. For this reason, the IRS has in the past found it preferable to mirror accounts at the beginning, rather than at the end, of the process.<sup>18</sup> Instead, the ISU now initially enters a code and cross reference on all joint accounts (whether it mirrors the account or not), which shows an extended CSED and indicates which joint filer requested innocent spouse relief. IRS automated systems, however, only identify the single, extended CSED. Detailed, manual review of the account is required to determine each joint filer’s individual CSED. While the ISU’s change in procedure will save time for the ISU because fewer accounts will be mirrored, such savings will be offset by delay and confusion arising after the innocent spouse case

12 TAS first requested this data from SB/SE on Jan. 29, 2016 in response to reports we received of increased cycle times for innocent spouse claims. We were directed to submit our data request to the ISU team and did so at the first meeting we attended on Feb. 23, 2016. Email from the Senior Advisor to the Director, Operations Support, SB/SE (Feb. 8, 2016) on file with TAS; TAS notes from meeting with ISU on Feb. 23, 2016.

13 It appears that cycle time data is routinely gathered. IRM 25.15.14.2, *Introduction* (July 30, 2014) describes the Innocent Spouse Tracking System as one that provides data “used to generate inventory reports. The information generated from the reports is used to plan, do reviews, and brief management concerning program accomplishments.”

14 The IRS creates separate accounts for joint filers in several circumstances, such as when collection action is prohibited against only one spouse; each spouse is liable for different amounts; a different penalty or interest suspension period applies to each spouse; or a different period of limitations on assessment or on collection applies to each spouse. IRM 21.6.8.1, *Split Spousal Assessments (MFT 31 / MFT 65) Overview* (Oct. 1, 2015). Examples of events that trigger the creation of separate accounts are when one spouse is discharged or dismissed from bankruptcy, submits an offer in compromise (OIC), or requests an installment agreement. See IRM 21.6.8.3, *What is MFT 31 / MFT 65* (Oct. 1, 2015).

15 TAS notes from meeting with ISU on Feb. 23, 2016.

16 IRC § 6502(a) (imposing a statutory period of limitations on collection of generally ten years after the date the tax is assessed); IRC § 6015(e)(2) (suspending the running of the period of limitations in IRC § 6502 when an innocent spouse claim is pending).

17 IRC § 6015(e)(1)(B) (prohibiting levies and judicial proceedings against the requesting spouse when an innocent spouse claim is pending). In addition, the IRS has made a business decision to not offset refunds while an innocent spouse claim is pending. IRM 25.15.3.4.5, *Prohibited Collection Actions* (Mar. 8, 2013).

18 See IRS Comments, National Taxpayer Advocate 2009 Annual Report to Congress 272, 280 (Most Serious Problem: *The IRS Mismanages Joint Filers’ Separate Accounts*, noting that “these systems changes [in 2005] enable the IRS to mirror accounts as soon as a processable Innocent Spouse request is filed, rather than after the relief request has been processed. This ensures that each new account is more timely populated with the appropriate CSEDs, adjustment actions, and other account data.”).

is closed, as other IRS functions, especially automated collection systems, administer these unmirrored accounts.<sup>19</sup>

An area of continuing concern to TAS is that the revisions to the ISU's procedures do not include requiring outbound calls in every case. The ISU has agreed such calls may be appropriate in cases involving domestic abuse in order to advise the victim of abuse that a preliminary determination, which is also sent to the other spouse, is forthcoming, but otherwise the decision of whether to call either spouse is left to the discretion of the employee handling the case.<sup>20</sup> Whether a taxpayer is contacted generally will continue to depend on whether the ISU employee believes more information is needed to make a determination.<sup>21</sup> As the National Taxpayer Advocate has noted:

The problem with this approach is that until he or she speaks to the taxpayer, the employee may not realize that the available information is insufficient or incomplete. A conversation with the taxpayer may change the preliminary analysis or confirm what the employee already knows. Either way, if the employee speaks to the taxpayer, that employee is more likely to arrive at the correct tax result, have an opportunity to educate the taxpayer, and resolve the case in a timely manner.<sup>22</sup>

A taxpayer may miss a telephone call from an ISU employee, or may decline to answer if the call is from an unrecognized number. To accommodate these situations, the ISU should add a field to Form 8857 similar to the box on Form 911, *Request for Taxpayer Advocate Service Assistance*, that would allow the ISU employee to leave a message.<sup>23</sup>

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Meet with ISU employees and managers and advocate for taxpayers where it appears proposed ISU procedures may adversely affect them; and
- Advocate that the ISU make outbound calls in every case and speak (or attempt to speak) with the taxpayer requesting relief.

<sup>19</sup> It is our understanding that IRS Appeals has objected to ISU's plan to stop mirroring accounts unless relief is granted, and has requested ISU to at least mirror cases in which relief is denied that are appealed. We note the new mirroring procedure is inconsistent with procedures in other IRS functions. For example, the IRS mirrors the accounts of joint filers to reflect bankruptcies or an OIC. While the mirroring may not take place until a determination is made, the IRS creates mirrored accounts in every case involving bankruptcy or an OIC (i.e., not only those in which there is a discharge in bankruptcy or an accepted OIC, but also where a bankruptcy petition is dismissed or an OIC is rejected). See IRM 5.9.17.21.1, *MFT 31 Mirror Modules* (Aug. 11, 2014); IRM 5.19.7.3.14.1, *Mirror Assessments* (Jan. 1, 2016).

<sup>20</sup> TAS notes from meeting with ISU on Feb. 23, 2016. Even in cases of abuse, the ISU may not telephone the requesting spouse if the ISU analyst believes that doing so would itself endanger the requesting spouse.

<sup>21</sup> See IRM 25.15.7.10(2), *Cases Assigned to Financial Technicians (FT) for Full Scope Determinations* (July 24, 2014) (providing "When information is missing or insufficient to make a determination, you must make two attempts to reach the taxpayer by telephone. These calls can't be made within 48 hours of each other.")

<sup>22</sup> National Taxpayer Advocate 2011 Annual Report to Congress 457 (Most Serious Problem: *The IRS Has Removed the Two-Year Deadline for Requesting Equitable Innocent Spouse Relief, But Further Adjustments to its Procedures in Innocent Spouse Cases are Warranted*).

<sup>23</sup> Item 9b on Form 911 contains a box and instructs the taxpayer, who has already been asked to provide his or her phone number, to "[c]heck here if you consent to have confidential information about your tax issue left on your answering machine or voice message at this number."



**AREA OF FOCUS #14** **The IRS Is Aware That a Significant Proportion of Form 1023-EZ Applications It Approves Are Submitted by Organizations That Do Not Meet the Legal Requirements for IRC § 501(c)(3) Status, But It Has Not Acted to Correct Known Errors and Has Not Revised the Form to Prevent These Erroneous Approvals**

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

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

IRS Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, introduced in July 2014, requires applicants merely to attest, rather than demonstrate, that they meet fundamental aspects of qualification as an exempt entity. Because Form 1023-EZ does not solicit any narrative of the organization's activities, financial data, substantiating documents, or explanatory material, the National Taxpayer Advocate believes the form is insufficient to allow the IRS to make a determination as to an applicant's exempt status. Because Internal Revenue Code (IRC) § 501(c)(3) organizations are generally not required to pay tax on their related income and may receive tax deductible contributions, erroneously conferring IRC § 501(c)(3) status on ineligible entities contributes to the tax gap.<sup>2</sup> The IRS has announced from the outset its intention to address possible noncompliance through post-determination audits.<sup>3</sup> This approach is a departure from principles of sound tax administration. No one would suggest the IRS stop preventing questionable Earned Income Tax Credit (EITC) refunds from being paid and instead rely solely on post-refund EITC audits to drive compliance.

As reported in the National Taxpayer Advocate's 2015 Annual Report to Congress, TAS undertook a study of a representative sample of corporations in 20 states that make articles of incorporation viewable online at no cost whose Form 1023-EZ was approved by the IRS.<sup>4</sup> TAS's analysis showed that the articles of incorporation for 37 percent of the organizations in the sample did not satisfy the organizational test, a legal requirement for exempt status as an IRC § 501(c)(3) organization.<sup>5</sup> We recommended that the IRS revise Form 1023-EZ.

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 that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 See IRC §§ 501 and 170(c)(2).

3 Tax Exempt and Government Entities (TE/GE) Business Performance Review (BPR) First Qtr 2015 Appx. B, TE/GE Risk Register (Feb. 2015) (noting that "[p]erceived 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..." will be mitigated by "[e]xpanded compliance efforts.").

4 National Taxpayer Advocate 2015 Annual Report to Congress vol. 2, 1-31 (Research Study: *Study of Taxpayers that Obtained Recognition as IRC § 501(c)(3) Organizations on the Basis of Form 1023-EZ*).

5 To satisfy the organizational test, an applicant's organizing document must contain an adequate purpose and, in general, an adequate dissolution clause. See Treas. Reg. §§ 1.501(c)(3)-1(b)(1)(i)(a), (b); 1.501(c)(3)-1(b)(4). "Articles of organization" includes "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created." Treas. Reg. § 1.501(c)(3)-1(b)(2). In some states, known as *cy pres* states, a nonprofit corporation's articles need not include a specific dissolution provision because by operation of state law the organization's assets would be distributed upon dissolution for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose. See Treas. Reg. § 1.501(c)(3)-1(b)(4).

On December 21, 2015, TAS provided Tax Exempt and Government Entities (TE/GE) with a list of 149 organizations in the TAS study whose Form 1023-EZ applications were approved even though the organizations do not qualify as IRC § 501(c)(3) organizations because their articles of incorporation lack an adequate purpose clause or required dissolution clause (or both). We recommended that TE/GE advise the organizations on the list of the deficiencies in their articles and require them to demonstrate (not simply attest) that they amended their articles to comply with the requirements for qualification as IRC § 501(c)(3) organizations.

When TAS followed up with the Exempt Organizations (EO) function in February 2016 by asking how many organizations on the list had been contacted and how many had responded, the Director of Rulings and Agreements replied “the applicable procedures do not provide for contacting these taxpayers to request books & records in this context.”<sup>6</sup> In a telephone conversation, the Director explained his view that such contact might constitute an audit. When TAS then inquired of the Acting Director, TE/GE EO, whether the 149 organizations would be included in its Form 1023-EZ post-determination audit program, the response was:

The selection of cases for the 1023-EZ post-determination compliance program in EO exam is based on a statistical sample. So if any of those organizations are selected as part of the sample, then they will be examined. We cannot just pull those cases into the sample, as that would invalidate the sample. To select a case for examination, we have to follow very specific examination procedures. These procedures provide internal controls on the selection of cases for examination to ensure that the returns selected for examination follow the examination strategy and are selected in a fair and unbiased manner. Currently, cases are selected for examination using three different methods, statistical sample, the 990 model queries, and referrals. Exam accepts both internal and external referrals. If you would like to submit a referral for these organizations, we would provide those referrals to our Referral Classification Unit for evaluation. I have attached the Form 5666 for your convenience.<sup>7</sup>

TAS then suggested that EO simply conduct compliance checks on the 149 organizations, which would not amount to an audit.<sup>8</sup> It remains to be seen whether EO will accept this suggestion.

As of May 27, 2016, all but seven of the 149 organizations continued to be listed on Select Check, an IRS-maintained public database, as those to which tax deductible contributions may be made.<sup>9</sup>

6 Email from Director, EO – Rulings & Agreements (Feb. 8, 2016), on file with TAS.

7 Email from Acting Director, TE/GE EO (Feb. 8, 2016), on file with TAS.

8 See IRS Pub. 4386, *Compliance Checks: Examination, Audit or Compliance Check?* (2006) noting “a compliance check is a review conducted to determine the following: Whether an organization is adhering to record keeping and information reporting requirements; Whether an organization’s activities are consistent with its stated tax-exempt purpose” and “[c]ompliance checks are not audits and do not directly relate to determining a tax liability for any particular period. Initial contact letters for compliance checks will include Pub 4386, Compliance Checks, explaining the distinction.”). The publication also notes that a compliance check “is a review of information and forms that we require organizations to file or maintain — for example, Forms 990, 990-T, 940, 941, W-2, 1099, or W-4. The check is a tool to help educate organizations about their reporting requirements and to increase voluntary compliance.”

9 EO Select Check is an online search tool, <http://apps.irs.gov/app/eos/>, that allows users to search for organizations eligible to receive tax deductible contributions, organizations whose tax exemption has been automatically revoked for not filing a Form 990-series return or notice for three consecutive years, and organizations that have filed a Form 990-N (also called an e-Postcard), an annual notice required to be filed by small exempt organizations.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Advocate (including through the National Taxpayer Advocate's issuance of a Taxpayer Advocate Directive) that TE/GE address the needs of the 149 organizations TAS identified as having submitted Forms 1023-EZ that were erroneously approved. The organizations should be required to demonstrate they amended their articles to comply with the requirements for qualification as IRC § 501(c)(3) organizations;
- Evaluate, on the basis of the results of TE/GE's post-determination audits of Form 1023-EZ filers, the extent to which the audits show significant levels of noncompliance and whether the noncompliance could have been averted through simple revisions to Form 1023-EZ; and
- Evaluate the extent to which TE/GE's broader compliance framework yields information about the behavior, needs, and preferences of exempt organizations.

## 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. The Office of the Taxpayer Advocate is conducting a number of research initiatives, some of which are in collaboration with the IRS and independent researchers. A principal focus of these efforts is to explore issues and approaches impacting taxpayers' willingness and ability to comply with their tax obligations while also minimizing taxpayer burden.

Following is a discussion of the research initiatives TAS is conducting or participating in for the remainder of fiscal year (FY) 2016 and during FY 2017.

### IMPACT OF EDUCATION AND OUTREACH ON EARNED INCOME TAX CREDIT (EITC) TAXPAYER COMPLIANCE

TAS is conducting a study to evaluate the compliance impact of education and outreach on potentially noncompliant EITC taxpayers. TAS Research identified EITC taxpayers who were audited in 2015 and others who were not, but who had similar risk scores to the taxpayers who were audited.<sup>1</sup> We then developed three representative samples from this population:

- **Audit Group:** This group was comprised of taxpayers who were audited in 2015.
- **Test Group:** This group was comprised of taxpayers who were not audited in 2015, but with similar risk scores to the taxpayers who were audited. The National Taxpayer Advocate sent letters highlighting potential errors to this group at the beginning of the 2016 filing season. The letters were specifically designed to inform and educate taxpayers about EITC eligibility rules and to correct common misconceptions in a non-threatening way.
- **Control Group:** This group was also comprised of taxpayers not audited in 2015, but with similar risk scores to the taxpayers who were audited. TAS did not send letters to this group.

During the first quarter of FY 2017, TAS Research will estimate the tax year (TY) 2015 EITC compliance of each of the above groups (*i.e.*, the group composed of taxpayers audited in 2015, the test group, and the control group) using their 2016 filing season Dependent Database (DDb) risk scores and compare them to estimate the impact of our outreach letters relative to audits and no treatment at all. We anticipate completing this research by the end of December 2016.

TAS also plans to repeat this study during the 2017 filing season. We will extend the study design to include a dedicated TAS-operated phone number for taxpayers to call to get enhanced EITC help.

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<sup>1</sup> The IRS selects EITC returns for audit using a rule-based risk scoring algorithm that analyzes the DDb, which contains relationship and residency information on taxpayers' dependents. We will use the DDb scores to identify non-audited taxpayers with high risk scores.

## BUSINESS MASTER FILE TAXPAYER DELINQUENT ACCOUNT COLLECTIBILITY CURVE

In the 2015 Annual Report to Congress, TAS Research reported the results of its study quantifying how the aging of an individual taxpayer delinquency affects dollars collected on individual Taxpayer Delinquent Accounts (TDAs).<sup>2</sup> Some of the principal findings include:

1. Dollars collected in aggregate and as a percent of the balance due decrease significantly during the first three years after the IRS assigns a liability to TDA status, and continue to decline throughout the ten year statutory period for collection.
2. Delinquent modules with balances due not in excess of \$5,000 comprise the vast majority of TDAs (they comprise 75 percent of TDAs). However, over 80 percent of the total amount due resides in TDAs with balances greater than \$5,000. The IRS collects both a higher percentage of subsequent payments and offsets in the lowest balance due categories. Collection and offsets as a percent of the balance due progressively decrease as the balance due rises.
3. Penalty and interest significantly increase the balance owed by taxpayers, particularly when the underlying balance remains unresolved for several years.
4. The IRS abates between a quarter and a third of TDA liabilities, and 40 to 50 percent of its substitute for return (SFR) assessments. It also abates a high proportion of automated under-reporting (AUR) assessments. During the years studied, the IRS abated 15 to 29 percent of AUR assessments.
5. The IRS completely resolves most of its TDA modules within the ten-year collection statute, with a resolution rate of about 80 percent for TDAs assigned in 2003 and 2005.<sup>3</sup> Unfortunately, the percent of TDAs resolved has generally declined thereafter.

During 2016, TAS Research will examine the Business Master File (BMF) Accounts Receivable Dollar Inventory (ARDI) to conduct similar analyses of BMF taxpayers.<sup>4</sup> In particular, TAS Research will explore patterns in dollars collected during the entire ten-year collection statute. Additional analyses will include dollars collected via subsequent payments compared to refund offsets, dollars abated, and how accruals of penalty and interest affect the balance due.

This research will yield information on the time available to effectively collect various BMF delinquencies and on how collection resources and tools, such as offer in compromise (OIC), partial payment installment agreements (PPIAs) and lien subordinations can be more effectively used to resolve otherwise uncollectable liabilities and reduce or eliminate the assignment of unproductive cases to the Collection TDA queue. We anticipate completing this research by the end of December 2016.

2 See National Taxpayer Advocate 2015 Annual Report to Congress vol. 2, 33 (Research Study: *IRS Collectibility Curve*).

3 The liability is completely resolved when no outstanding liability remains. It may be completely resolved because: (a) the taxpayer paid the liability in full, including penalties and interest; (b) the IRS may have determined the liability was incorrect and abated all or part of it; or (c) the IRS may have accepted an offer to compromise the tax liability for less than the full amount.

4 The BMF stores tax return information for business taxpayers with the following return types (among others):

- ◆ Employment Tax Returns (Form 941, Form 943, Form 944, Form 945);
- ◆ Unemployment Tax Return (Form 940);
- ◆ Corporate Income Tax Returns (Form 1120 series, except International Tax Returns);
- ◆ Fiduciary Tax Returns (Form 1041, Form 1041-A, Form 5227);
- ◆ Partnership Tax Returns (Form 1065, Form 1065-B);
- ◆ Estate and Gift Tax Returns (Form 706 and Form 709 series);
- ◆ Exempt organizations (Form 990, Form 990-EZ, Form 990-T, Form 990-PF, Form 990-BL, Form 4720); and
- ◆ Excise Tax Returns (Form 11-C, Form 720, Form 730, Form 2290).

## IMPACT OF LIEN FILING VERSUS ALTERNATIVE TREATMENTS ON PAYMENT BEHAVIOR

TAS is collaborating with the Small Business/Self-Employed (SB/SE) Division on a study that will evaluate the impact on payment behavior of different treatments (lien filing versus informational letters) on Individual Master File (IMF) taxpayers entering the Collection Queue from the Automated Collection System (ACS). To conduct the study, the project team identified five groups which will be comprised of representative samples of taxpayers drawn from the population of taxpayers entering the Collection Queue from ACS. These groups include:

- **Control Group:** This group will consist of new IMF cases transferred to the Collection Queue in accordance with current procedures.
- **Treatment Group #1:** The IRS will file notices of federal tax lien (NFTL) on a representative group of taxpayers with tax liabilities between \$10,000 and \$25,000 before transfer to the queue. The IRS will consult the pre-lien determination considerations in Internal Revenue Manual (IRM) 5.12.2.3 prior to filing liens in these cases.
- **Treatment Group #2:** These taxpayers will receive a reminder notice that the taxes are still owed and that they need to contact the IRS to resolve their delinquencies.
- **Treatment Group #3:** These taxpayers will receive a new notice that also provides more information about payment alternatives that may be available to taxpayers.
- **Treatment Group #4:** These taxpayers will receive monthly reminder notices throughout the study period.

The project team anticipates that the study will begin in April 2016 and extend into early 2017.

## SERVICE PRIORITIES PROJECT

In response to the National Taxpayer Advocate's concerns that the ongoing cuts to the IRS's budget in FY 2010–2015, and the IRS's response to those cuts, have resulted in unacceptable taxpayer service, TAS and the Wage & Investment (W&I) Division are developing a ranking methodology for the major taxpayer service activities offered by W&I. The new methodology will balance taxpayer needs and preferences against the IRS's need to effectively utilize limited resources, enabling the IRS to make resource allocation decisions that will optimize the delivery of taxpayer services given resource constraints. Congress will also be able to use the results of this methodology to determine whether it is adequately funding core taxpayer service activities. However, limitations imposed by the lack of available data have delayed implementation.

During 2015, the project team worked to fill a number of previously identified “data gaps” using tax year 2013 data that had recently become available and updated the ranking tool. The team then identified the remaining data needs.

In early 2016, TAS procured contractor services to address these data needs. Throughout the remainder of 2016, TAS will work with the contractor to develop and administer a telephone based survey that will expand on the data collected in prior W&I surveys.<sup>5</sup> TAS's goal is to complete survey administration by the end of 2016 and to develop a complete ranking of the major W&I taxpayer services by early 2017.

<sup>5</sup> TAS also worked with independent researchers to develop questions for the survey that explore how taxpayers' perceptions of IRS service and enforcement activities influence trust in the IRS. For a discussion of this initiative, see *Enforced Versus Voluntary Taxpayer Compliance*, *infra*.

## IMPACT OF OUTREACH AND EDUCATION ON TAX COMPLIANCE

TAS is engaged in a multi-year study exploring the impact of a variety of factors on taxpayer compliance behavior.<sup>6</sup> In the second phase of the study, TAS found that compliance norms and trust in government were the principal factors that appear to influence sole proprietor compliance behavior.<sup>7</sup>

In the current study, TAS will explore whether outreach and education can favorably influence compliance norms and trust in the IRS, resulting in improved taxpayer compliance.<sup>8</sup> TAS has contracted with independent researchers who are collaborating with TAS to design the study, analyze the results, and produce a final report evaluating the results in detail, discussing their implications for tax administration, and recommending new IRS outreach and education initiatives.

The team of independent researchers has completed a draft high-level study design which entails testing a variety of outreach methods to taxpayers with outstanding tax liabilities whose cases are in the Collection Queue awaiting assignment. Possible outreach methods currently under consideration include:

- **Rational Appeal:** A letter with information on the composition of the outstanding amount as well as the negative consequences of non-timely payment, such as the further accrual of interest and penalties.
- **Social Norms Appeal:** A letter with an appeal to taxpayers' social norms, such as the high rate of on-time tax payments in the taxpayers' area.
- **Reciprocation Appeal:** A letter with information on how payments are used such as public services that benefit the taxpayer.
- **Threat of Enforcement:** A letter with information on potential penalties and the IRS's capacity to enforce noncompliant behavior.
- **Telephone Service Offer:** A letter with the telephone number of a high-priority support hotline the IRS offers to selected taxpayers during the filing and payment process.

TAS is currently reviewing the proposed study design. TAS is also reviewing the possibility of surveying collection management personnel to determine what impact management attitudes toward taxpayer noncompliance has on taxpayers' ability to resolve collection issues and become compliant in the future. TAS anticipates that it will finalize the design and begin study implementation in FY 2017 and will complete the study by end of FY 2017.

6 See National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 33-56 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*). See also National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1-70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

7 TAS employed factor analysis and logistic regression to analyze the results of a national survey of taxpayers with sole proprietor income (i.e., Schedule C, Profit or Loss from Business (Sole Proprietorship)). See National Taxpayer Advocate 2013 Annual Report to Congress vol 2, 33 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*). See also National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

8 The phase 2 study found that trust in the federal government, the tax laws and the IRS appear to influence compliance behavior. We are focusing solely on trust in the IRS, since we believe that the IRS can take actions to directly influence this component.

## ENFORCED VERSUS VOLUNTARY TAXPAYER COMPLIANCE

As a part of our multi-year study exploring the impact of a variety of factors on taxpayer compliance behavior, TAS is working with independent researchers on a new study. The study will explore how taxpayers' perceptions of and emotional responses to IRS service and enforcement activities influence trust in the IRS and taxpayer compliance behavior. The principal goal of our research will be to test a hypothesis of the "Slippery Slope" framework that trust in the tax authority and its legitimate exercise of power leads to higher voluntary compliance.<sup>9</sup>

To conduct the study, TAS will work with the independent researchers to develop a telephone-based survey that will explore taxpayers' perceptions of and emotional responses to the power and legitimacy of IRS enforcement, and its commitment to help taxpayers understand and meet their tax obligations. Survey respondents will remain anonymous, but their responses will be linked to compliance information. This will enable us to explore relationships between their responses and compliance behavior. Our goal is to complete this research by the end of 2017.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Complete a study evaluating whether soft letters or audits influence the subsequent compliance behavior of EITC taxpayers;
- Study how the aging of a delinquency affects dollars collected on BMF TDAs and identify potential implications for IRS collection policy;
- Collaborate with SB/SE to evaluate the impact on payment behavior of different treatment methods (lien filing versus informational letters) on IMF taxpayers entering the Collection Queue from ACS;
- Collaborate with W&I to complete a ranking of the major W&I taxpayer services using existing data and additional data collected by a new TAS survey to be administered in FY 2017;
- Collaborate with independent researchers to explore the impact that various treatment methods (letters) have on the payment behavior of taxpayers in the Collection Queue; and
- Collaborate with independent researchers to explore how taxpayers' perceptions of and emotional responses to IRS service and enforcement activities influence trust in the IRS and taxpayer compliance behavior.

9 E. Kirchler, E. Hoelzl, & I. Wahl, *Enforced Versus Voluntary Tax Compliance: The "Slippery Slope" Model*, (2007). Paper presented at the 32nd IAREP Annual Colloquium, Ljubljana, Slovenia, Values and Economy; 9-12 (Sept 2007).



## Efforts to Improve Taxpayer Advocacy

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### TAS INTAKE STRATEGY RESOLVES TAXPAYER PROBLEMS AND BRINGS CORRECT CASES TO TAS

The TAS Intake Strategy focuses on TAS's primary mission to serve the most vulnerable taxpayers and to speak directly with these taxpayers at the earliest opportunity. TAS receives case referrals from two sources — internal referrals from IRS toll-free lines (including the National Taxpayer Advocate toll-free line<sup>1</sup>) and external referrals from taxpayers and practitioners through letters, faxes, and office visits. TAS has historically had Intake Advocates in the local offices to handle the external referrals, as well as those cases the IRS loaded onto the system through internal referrals.<sup>2</sup>

In early 2013, TAS established the Centralized Case Intake (CCI) function to handle internal referrals from the National Taxpayer Advocate toll-free line.<sup>3</sup> Under the CCI process, IRS employees staffing the National Taxpayer Advocate toll-free line directly transfer calls they believe meet TAS criteria to TAS Intake Advocates through the TAS toll-free line.<sup>4</sup> The CCI strategy affords Intake Advocates the opportunity to spend the appropriate time necessary to complete an in-depth interview to validate that the taxpayer's account-related issue(s) are appropriate for TAS or to resolve the taxpayer's issues during initial contact.

#### CCI Continues to Enhance TAS's Service to Taxpayers

Through the second quarter of Fiscal Year (FY) 2016, CCI Intake Advocates answered 38,169 calls transferred from Wage and Investment (W&I) employees, a 126 percent increase compared to the same period in FY 2015.<sup>5</sup> They also created 27,811 TAS cases from those transferred calls, a 109 percent increase compared to the same period in FY 2015.<sup>6</sup>

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1 The National Taxpayer Advocate's toll-free number is 1-877-777-4778.

2 Previously, when the IRS toll-free lines received a case they determined met TAS criteria, they would load the case onto the Accounts Management System (AMS) which would then be transferred directly to TAS. This process continues for all IRS toll-free lines except the NTA toll-free line. NTA toll-free calls are now handled under the CCI process.

3 Memorandum of Understanding Between The National Treasury Employees Union and the Internal Revenue Service Regarding TAS Toll Free Intake Line Proof of Concept (Apr. 18, 2013).

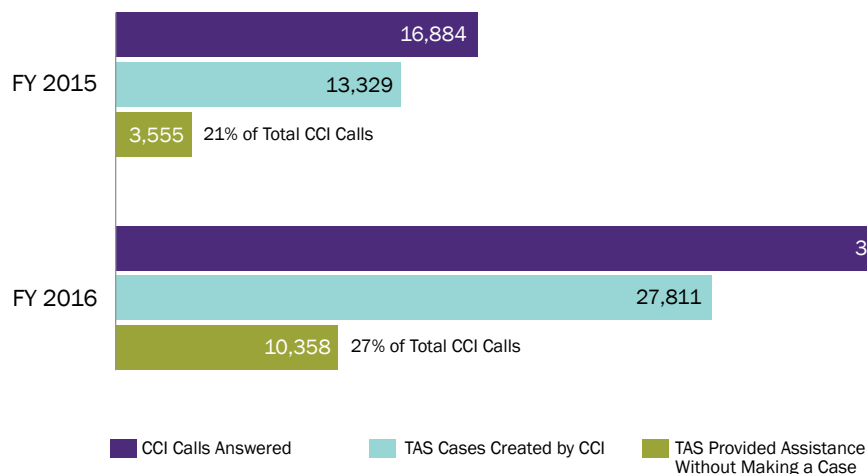
4 Effective February 29, 2016, and until further notice, the direct dialed ASK-TAS1 line is closed. The decision to close the line will allow TAS to maximize its telephone staffing.

5 See IRS, *Aspect Application Activity Report*, (Oct. 1, 2015 - Mar. 31, 2016).

6 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Apr. 1, 2016).

FIGURE 5.1.1<sup>7</sup>

### CCI Calls Answered and TAS Cases Created, October-March, FYs 2015 and 2016



For the remaining 27 percent (10,358) of calls,<sup>8</sup> CCI Intake Advocates addressed taxpayers' concerns and avoided opening new TAS cases, allowing TAS to use its resources for more complex cases requiring specialized skills. Intake Advocates resolved the calls by providing the taxpayer with an explanation of their account-related issues, by walking taxpayers through self-help options available on [irs.gov](http://irs.gov) to help them resolve problems on their own more expeditiously, and by educating taxpayers to avoid similar problems in the future.

### TAS Successfully Concludes CCI Negotiations With National Treasury Employees Union (NTEU)

CCI began as a pilot program. TAS and NTEU, however, recently signed a Memorandum of Understanding on the Change in Intake Process which includes the establishment of the CCI Organization.<sup>9</sup> With this agreement, Intake Advocates at the centralized sites will be under a separate director, rather than under the Local Taxpayer Advocates (LTAs).<sup>10</sup> While the centralized sites will be a separate function that handles direct transfers from the NTA toll-free line, all TAS Intake Advocates perform the same essential intake duties, including the extended initial interview and case building.

<sup>7</sup> IRS, *Aspect Application Activity Report*, (Oct. 1, 2015 - Mar. 31, 2016); Data obtained from TAMIS (Apr. 1, 2016).

<sup>8</sup> *Id.*

<sup>9</sup> Memorandum of Understanding Between the National Treasury Employees Union and the Internal Revenue Service Regarding Change in the Intake Process Which Includes the Establishment of the Centralized Case Intake (CCI) Organization (May 16, 2016).

<sup>10</sup> Under the CCI proof of concept model, the Intake Advocates reported directly to the LTAs.

### Delegated Authorities Will Further Enhance Taxpayer Service

One of the most critical outcomes of the NTEU negotiations is that all Intake Advocates will soon have a new Internal Revenue Manual (IRM) section dedicated to them and they will have new delegated authorities.<sup>11</sup> Previously, Intake Advocates had no authority to take any action on a case other than to take the taxpayer's information and enter the case into Taxpayer Advocate Management Information System (TAMIS). Obtaining delegated authorities for the Intake Advocates allows TAS to fully implement the Intake Advocate strategy. Intake Advocates will be able to take many of the initial actions that Case Advocates currently take — address changes, ordering transcripts, setting up streamlined installment agreements and securing simple collections holds. Taxpayers who speak with our Intake Advocates at the earliest possible opportunity experience the benefit of working with a TAS employee who can take some initial actions, possibly assist the taxpayer and close the issue without accepting a case in TAS, or referring the taxpayer to the proper area for assistance, including self-help options, or create a case in TAS and begin case building by requesting pertinent documents. This approach allows TAS to have contact with the taxpayer as soon as possible, often in real time, and will free up critical time for the Case Advocates while also providing additional experience to our Intake Advocates so they can qualify as a Case Advocate.

### Staffing Challenges Continue to Limit CCI Expansion

TAS continues to look forward to a potential expansion of the CCI program. CCI is a telephone-based operation that we have not historically had in TAS. The workload in CCI is dependent on what happens on the IRS toll-free line. If the IRS puts more assistors on the phone, then more calls get transferred to CCI and we cannot keep up with the demand. If the IRS wants to increase the level of service on the phones, it can pull staffing from elsewhere and put more people on the phones. TAS does not have enough Intake Advocates to keep up with demand during peak season because we do not have nimble staffing that can be moved around as demand increases. As we look to expand CCI, TAS is considering the best staffing model for CCI.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Train all TAS Intake Advocates on delegated authorities to allow them to handle basic processes to resolve taxpayer issues;
- Develop and implement a quality measurement system on the intake process and a customer satisfaction measurement process to measure the effectiveness of CCI;
- Identify next steps to expand the CCI process to accept transfer calls in real time from assistors staffing other W&I Accounts Management toll-free product lines, including the general 800-829-1040 product line; and
- Conduct an analysis of LTA offices to determine the correct number of Intake Advocates they need to handle the referrals that come to the local offices through phone calls, letters, and faxes.

11 TAS, *Authority of the Taxpayer Advocate Service Employees to Perform Certain Administrative Functions* (July 27, 2015).

## TAS CONTINUES TO EVALUATE AND EXPAND ITS LOCAL PRESENCE TO BEST MEET TAXPAYER NEEDS

Under 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. TAS has previously maintained 75 local offices<sup>12</sup> throughout the country (including the District of Columbia and Puerto Rico) and over the past year, has reevaluated the placement of those offices. As the IRS moves away from a local presence and geographic focus on taxpayers, the statutory authority of TAS having a local presence has become an even more important aspect of its strategy. TAS remains committed to ensuring all taxpayers who are in need of TAS's services have access to them. Because populations shift over time, and different taxpayer issues emerge, TAS periodically revisits its geographic locations and the allocation of staffing.

Early in 2015, TAS conducted a detailed analysis of case receipts and taxpayer demographics to identify areas that have a large population of taxpayers who need TAS services but do not currently have a TAS office. As a result of this analysis, TAS has opened three new offices: San Diego and San Jose in California, and St. Petersburg, Florida. TAS has staffed these offices by not backfilling attritions in other TAS locations. These new offices will ensure that TAS can continue to meet the needs of taxpayers where they work and live.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Identify potential new TAS office locations as taxpayer populations and needs continue to shift.

## TAS TRAINING INITIATIVES AND LEADERSHIP DEVELOPMENT IMPROVE ADVOCACY AND TAXPAYER SERVICE

TAS continues to focus on ensuring employees receive ongoing education in protecting taxpayer rights, tax law and procedures, and on how to advocate effectively for taxpayers. Our educational programs are tailored around our occupational tracks to ensure we deliver the right training to the right employees at the right time. TAS has provided technical training workshops during FY 2016 on tax law issues such as Appeals Judicial Approach and Culture, Alternative Dispute Resolution, Taxpayer Bill of Rights (TBOR), Advocating When Working Collection Cases, and the Affordable Care Act. With the focus on advocacy and protecting taxpayer rights, these courses engage employees in the learning process through cases studies, role plays, videos, demonstrations, and group discussions. By using a combination of local face-to-face initiatives with virtual and online training, TAS is able to maximize its training efforts despite its budgetary limitations.<sup>13</sup>

TAS will continue this focus on technical training in FY 2017, and expand our use of external trainers, such as Low Income Taxpayer Clinic (LITC) attorneys, Certified Public Accountants, and Enrolled Agents to assist in training TAS employees. By using external trainers who are handling taxpayer cases on a daily basis, we can ensure our employees are aware of not only the technical issues, but understand the taxpayer's perspective and the challenges they face in complying with their tax obligations and understanding the tax laws.

<sup>12</sup> IRS Pub. 1546, *Taxpayer Advocate Service Is Here to Help* (Jan. 2016).

<sup>13</sup> One example of online training is Lynda.com, a low-cost online video repository of courses available any time, on any device.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Deliver comprehensive training on Delegated Authorities which increase the ability of all Intake Advocates to identify and resolve technical issues up front. The training will include employment tax training, financial analysis, advocating in fraud-related cases, math-error adjustments, and other technical topics;
- Provide training to TAS employees on the Most Litigated Issues in the National Taxpayer Advocate's Annual Report to Congress to ensure TAS employees are aware of emerging technical issues and advocacy opportunities;
- Use external trainers, including LITC attorneys, Certified Public Accountants, and Enrolled Agents to ensure TAS employees receive a fresh perspective on issues they face when working with taxpayers;
- Incorporate advocacy tips and ways to protect taxpayers' rights into all of our training and development, including a comprehensive writing course detailing how to create case action plans and histories in documentation that captures all advocacy efforts; and
- Offer external training and Continuing Education credits offered through professional societies, such as the American Bar Association, and the American Institute of Certified Public Accountants CPE Direct or CPEExpress programs, among others.

## TAS REDESIGNS CABIC TOOL TO ENHANCE EMPLOYEES' RESEARCH CAPABILITIES AND IMPROVE SERVICE TO TAXPAYERS

In addition to training, TAS has strengthened the advocacy tools available to its employees to ensure they have accurate and easily accessible information to assist taxpayers as quickly as possible. The Case Advocacy by Issue Code (CABIC) tool allows employees to quickly find sources and references in which to perform research, conduct case building, and aid in accurate Operations Assistance Request routing. The previous CABIC system was difficult to navigate and much of the information was outdated.

In FY 2016, TAS deployed the redesigned CABIC tool that contains links to the latest IRMs and interim guidance, case building and advocacy tools (such as links to TBOR), as well as available technical training materials for specific issue codes. The new CABIC allows Case Advocates to quickly find information they need for their advocacy efforts, reducing the time they spend researching and maximize the time they can spend resolving taxpayer cases. The new CABIC also allows for easier updates, ensuring that the information available to TAS employees is always the most up to date guidance.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Roll out the redesigned CABIC to the remaining issue codes not included in the initial launch; and
- Update the CABIC with new guidance as it is released to maintain the accuracy of the information available.

## TAS REFOCUSES QUALITY STANDARDS TO BETTER GAUGE ADVOCACY EFFECTIVENESS

TAS quality measures gauge its effectiveness in achieving its mission of helping taxpayers resolve problems with the IRS and recommend changes that will prevent the problems. TAS's quality measures are based on our guiding principle of advocacy,<sup>14</sup> official guidance, and statutory requirements.

TAS developed a proposal for revising its quality standards to better align our quality standards with our advocacy mission. The revised standards focus on important aspects such as resolving taxpayer issues, protecting and informing taxpayers of their rights, keeping taxpayers informed and identifying systemic issues that will assist IRS leadership in integrating the taxpayer's perspective into tax administration.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Implement the revised quality standards; and
- Use the results to increase TAS's effectiveness in advocating for taxpayers by identifying opportunities to improve processes and guidance, make recommendations that will prevent the problems and address employee training needs.

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<sup>14</sup> The willingness and ability to see the situation from a taxpayer's perspective, advocate for the taxpayer's rights, and assist IRS leadership in integrating the taxpayer's perspective into tax administration.

## TAS Technology

### TAS FOCUS ON IRS ENTERPRISE CASE MANAGEMENT (ECM) AND THE TAXPAYER ADVOCATE SERVICE INTEGRATED SYSTEM (TASIS)

The IRS's information technology (IT) systems, particularly its case management systems, require a significant investment of funding to promote productivity and efficiency gains and improve taxpayer service. TAS is operating with a 1980s legacy system known as the Taxpayer Advocate Management Information System (TAMIS). TAMIS is largely obsolete and requires case advocates to perform many tasks manually that can and should be automated. As described in detail in previous Objectives Reports to Congress, TAS worked with the IRS's IT function and a contractor to develop the requirements for a replacement system known as the Taxpayer Advocate Service Integrated System. About 70 percent of the programming for TASIS has been completed.<sup>1</sup>

Highlighting the importance of TASIS, the Senate Appropriations Subcommittee on Financial Services and General Government has repeatedly included it on a list of six "major information technology project activities" about which it has directed the IRS to submit quarterly reports.<sup>2</sup> Approximately \$20 million has already been spent on TASIS out of a total projected cost of about \$32 million.<sup>3</sup> TASIS was within an estimated six months of completion when in March 2014, the IRS halted all work on TASIS due to budget constraints. The National Taxpayer Advocate has concern over this decision for three reasons:

1. TASIS would allow TAS's case advocates to be much more efficient, reducing the number of case advocates needed for a given number of cases, so it would save money after a few years;
2. It makes no business sense to pull the plug on a successful IT project after more than 60 percent of the funds have been spent and it is within six months of completion; and
3. There are many business units in the IRS that would benefit from a new case management system, and the TASIS system includes many useful case management features that could be adapted to meet those units' needs.

#### IRS Enterprise Case Management (ECM)

The IRS is currently undertaking an assessment of its case management systems as part of a comprehensive project to create a servicewide ECM solution. The term "case management" is used in a comprehensive sense to refer to electronic recordkeeping systems the IRS uses to track information about interactions with respect to taxpayers' tax returns or other tax-related matters. These systems include audit and collection case records for individuals and large, medium, and small businesses, exempt organization determinations, whistleblower claims, automated substitutes for returns, the automated underreporter (AUR) program, criminal investigations, and the TAS case management system.

ECM offers a future vision for consolidated case management that will address the need to modernize, upgrade, and consolidate multiple aging IRS systems. The IRS now supports approximately 200 such

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1 *Internal Revenue Service FY 2017 Budget Request: Hearing Before the S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations*, 114th Cong. 27 (2016) (statement of Nina E. Olson, National Taxpayer Advocate).

2 See S. REP. No. 114-97, at 39 (2015); S. REP. No. 113-80, at 34 (2013). In 2014, a similar provision was included in the Senate Appropriations Committee's draft report, but the draft report was not adopted for that year.

3 *Internal Revenue Service FY 2017 Budget Request: Hearing Before the S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations*, 114th Cong. 27 (2016) (statement of Nina E. Olson, National Taxpayer Advocate).

systems,<sup>4</sup> few of which communicate with one another and none of which provides an electronic substitute for the paper case file (*i.e.*, there are reams of paper supplementing whatever records are included in the electronic system). The IRS's current case management system structure requires employees to retrieve data from many systems manually, maintain both paper and electronic records, transcribe or otherwise import information from paper and other systems into their own case management systems, and ship, mail, or fax an estimated hundreds of thousands, if not millions, of case management files and supporting documents annually for management approval, quality review, and responses to Appeals and Counsel.

The IRS ECM solution involves developing a common infrastructure for multiple projects to share. Implementation of the solution will provide the IRS with a consistently efficient approach to case management across all business units. The National Taxpayer Advocate agrees that the IRS needs a servicewide ECM solution and is very supportive of such efforts. However, she is concerned about the IRS's failure to leverage the comprehensive work already completed in creating TESIS.

### The Versatility of TESIS

As the National Taxpayer Advocate has discussed in previous Objectives Reports to Congress, TESIS is a versatile case management system that would replace TAMIS, TAS's current antiquated system. While ECM focuses on case selection and work assignment capabilities, among other things, TESIS focuses on case intake and case-building functions, creating virtual case files with data auto-populated from other IRS systems and information transmitted electronically between functions for review and action. Once TESIS is completed, the IRS can incorporate elements of TESIS into core ECM for use by other IRS business units, including the Exempt Organization function, Appeals, Whistleblower Office, and the Innocent Spouse, Identity Theft, and Offer in Compromise units.

When TAS learned that TAMIS was slated for retirement, it capitalized on the opportunity to integrate all of its systems and business processes into a single state-of-the-art application. TAS developed over 4,000 business requirements<sup>5</sup> for the case management system aspect of TESIS functionality, including:

- Fully virtual case files;
- Electronic access to other IRS case-management systems and automatic retrieval of taxpayer information;
- Electronic submission and tracking of Operations Assistance Requests (OARs);<sup>6</sup>
- Full access to all virtual case information for purposes of management and quality review;
- Taxpayer (and representative) ability to submit Form 911, *Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order)*, and case-related documentation electronically;
- TAS and taxpayer (and representative) ability to communicate digitally;
- Taxpayer (and representative) ability to electronically check the status of a case in TAS; and
- An electronic case assignment system.

4 Email from Director, ECM to TAS Acting Deputy Executive Director, Case Advocacy (Intake & Technical Support) (Mar. 11, 2016).

5 TESIS Business System Requirements Report, October 28, 2011.

6 IRS Form 12412, *Operations Assistance Request*, is the form TAS uses when it lacks the statutory or delegated authority to perform an action on a case and must request the IRS to perform the action.



These are just some of the capabilities contained within the TASIS Business System Requirements Report, which collectively illustrates the TASIS case management component will not just replace TAMIS but will significantly increase the productivity of TAS case advocates because they will no longer spend their valuable time tracking down paper documents or inputting information into multiple systems. Moreover, taxpayers will be able to communicate efficiently with TAS and electronically send key case information and documents. This functionality will enable our case advocates to spend their time advocating for taxpayers, rather than performing manual input and tracking documents and IRS actions.

The IRS's decision to halt TASIS funding was a significant setback for TAS's case advocates and therefore for the taxpayers they serve. Moreover, even apart from supporting TAS's critical work, the foundation built through TASIS can benefit the IRS's ECM improvement efforts. Because TAS has a working knowledge of almost all other IRS case management systems, it designed TASIS to serve as the basic system upon which other IRS divisions could add modules and functionality to meet their specific needs with minimal reprogramming costs. Thus, the time, planning, development, and programming that TAS and IT have invested in TASIS can benefit all of the IRS.

At present, it is not clear the extent to which TASIS objectives will be included in the ECM plan or how TASIS will impact or align to the ECM solution. TAS is ready to begin final TASIS programming as soon as funds are available. At the time the project was halted, it was estimated that six months and \$12 million would be needed to complete Release 1 programming, testing, and launch.<sup>7</sup> At this time, despite the demonstrated savings of TASIS and its benefits for all of the IRS, no funds are allocated to TASIS. If TASIS is not funded to completion, TAS will be forced to invest time and funds in upgrading TAMIS. However, this would be extremely wasteful, and fail to provide TAS's case advocates with the tools they need to assist taxpayers in resolving their problems with the IRS.

## FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Advocate for funding to complete the programming, testing, and deployment of TASIS as well as to maintain its long-term functionality;
- Advocate for information technology funding for the IRS to upgrade and streamline its ECM systems; and
- Advocate for the IRS to incorporate the TASIS foundational work into its ECM solution.

## OTHER TAS TECHNOLOGY EFFORTS

### SharePoint 2010

TAS is maximizing the capabilities of SharePoint 2010 as a stopgap measure to assist with providing some of the functionality that was expected with the release of TASIS. TAS has solely funded and delivered a number of technology solutions to meet some business needs that were slated to be satisfied with TASIS. We have used SharePoint to create new workflow processes to streamline and automate items such as the Annual and June Reports to Congress, employee suggestions, forms, training, events, and recommendations.

<sup>7</sup> Internal Revenue Service FY 2017 Budget Request: Hearing Before the S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations, 114th Cong. 27 (2016) (statement of Nina E. Olson, National Taxpayer Advocate).

### Deployment of Revamped Case Advocacy Tool

In fiscal year (FY) 2016, TAS upgraded its antiquated Case Assistance by Issue Code (CABIC) tool, which allows its case and intake advocates to quickly access advocacy reference information on the IRS intranet. TAS redesigned the CABIC site in SharePoint and transformed it to a dynamic knowledge management system. CABIC is now a central repository that includes a search function, a catalogue of issue codes, and common reference tools known as “Quick Links,” and has the ability for users to leave comments and “like” pages. The new CABIC site also contains key messages from the National Taxpayer Advocate that are highlighted within each topic along with reminders to ensure elements of the Taxpayer Bill of Rights are addressed when advocating for taxpayers. Finally, the new CABIC solution allows for easier maintenance and updates of content by TAS staff in real-time.

### Taxpayer Digital Communications

Taxpayer Digital Communication (TDC) is a pilot project, slated to begin in the first quarter of FY 2017, which TAS continues to develop in conjunction with IRS Online Services. Under this initiative, taxpayers will have the ability to communicate with their assigned TAS case advocate using a secure web-based portal that allows one-way and two-way communication, including live text chat, voice chat, video chat, and screen sharing. TDC also plans to deliver notifications and alerts by text message and feature smart phone interactivity.

TDC will enhance communication and information sharing between TAS employees and taxpayers. This will benefit TAS employees by facilitating their work processes, including electronic OARs, and allowing them to advocate more efficiently for taxpayers by reducing taxpayer burden and providing faster relief. TAS plans to pilot the portal to process levy and Earned Income Tax Credit cases in several TAS offices.

## APPENDIX 1: Evolution of the Office of Taxpayer Advocate

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).<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, this section directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an annual report to Congress about the quality of taxpayer services provided by the IRS. This report was 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 (PRP), the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2, Congress believed it sufficient to require that “all PROs should take direction from the Taxpayer

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

2 *Id.*

3 *Id.* at 3737.

4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453 (July 30, 1996).

5 Joint Committee on Taxation, 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).

Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc.”<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 Taxpayer Assistance Order (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>

7 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 21 (Dec. 18, 1996).

8 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453–54 (July 30, 1996).

9 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 21 (Dec. 18, 1996).

10 *Id.*

11 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 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> The definition of “significant hardship” in IRC § 7811 was expanded in 1998 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 significant hardship.<sup>18</sup>

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

12 Report of the National Commission on Restructuring the Internal Revenue Service: A Vision for a New IRS 48 (June 25, 1997).

13 Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699 (July 22, 1998).

14 *Id.* at 701.

15 IRC § 7803(c)(4)(A)(iii).

16 IRC § 7803(c)(4)(A)(iv).

17 IRC § 7811(a)(2).

18 See, e.g., H.R. CONF. REP. NO. 105-599, at 215 (1998).

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>

In June 2014, the IRS adopted the Taxpayer Bill of Rights (TBOR) — 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 system*.<sup>21</sup>

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19 Treas. Reg. § 301.7811-1(a)(4)(ii), 76 Fed. Reg. 18,059 (Apr. 1, 2011).

20 See IR-2014-72 (June 10, 2014).

21 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401 (Dec. 18, 2015).

## APPENDIX 2: Taxpayer Advocate Service Case Acceptance Criteria

<b>TAS Case Acceptance Criteria</b>	
<p><i>As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.<sup>1</sup> TAS case acceptance criteria fall into four main categories.</i></p>	
<b>Economic Burden</b>	Cases 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
<b>Criteria 1</b>	The taxpayer is experiencing economic harm or is about to suffer economic harm.
<b>Criteria 2</b>	The taxpayer is facing an immediate threat of adverse action.
<b>Criteria 3</b>	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
<b>Criteria 4</b>	The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
<b>Systemic Burden</b>	Cases 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>
<b>Criteria 5</b>	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
<b>Criteria 6</b>	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
<b>Criteria 7</b>	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
<b>Best Interest of the Taxpayer</b>	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>
<b>Criteria 8</b>	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair the taxpayer's rights.
<b>Public Policy</b>	TAS acceptance of cases 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>
<b>Criteria 9</b>	The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.
<p><small>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-13-1115-007, <i>Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy</i> (Nov. 2, 2015).</small></p>	

## APPENDIX 3: List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent low income taxpayers before the IRS and assist taxpayers in audits, appeals, and collection disputes. LITCs can also help taxpayers respond to IRS notices and correct account problems.

If you are a low income taxpayer who needs assistance in resolving a tax dispute with the IRS and you cannot afford representation, or if you speak English as a second language and need help understanding your taxpayer rights and responsibilities, you may qualify for help from an LTC that provides free or low cost assistance. Eligible taxpayers must generally have incomes that do not exceed 250 percent of the Federal poverty guidelines published annually by the Department of Health and Human Services.<sup>1</sup> Income ceilings for 2016 are shown below:

### LITC Income Guidelines (250 Percent of the Federal Poverty Guidelines)

Size of Family	48 Contiguous States, D.C., and Puerto Rico	Alaska	Hawaii
1	\$29,700	\$ 37,100	\$34,175
2	\$40,050	\$50,050	\$46,075
3	\$50,400	\$63,000	\$57,975
4	\$60,750	\$75,950	\$69,875
5	\$71,100	\$88,900	\$81,775
6	\$81,450	\$101,850	\$93,675
7	\$91,825	\$114,800	\$105,575
8	\$102,225	\$127,800	\$117,525
For each additional person, add	\$10,400	\$13,000	\$11,950

Although LITCs receive partial funding from the IRS, LITCs, their employees, and their volunteers are completely independent of the federal government. Clinics receiving federal funding for the 2016 calendar year are listed below. These clinics are operated by nonprofit organizations or academic institutions.

In lieu of an LTC, 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>.

<sup>1</sup> Internal Revenue Code (IRC) eligibility requirements: <https://www.gpo.gov/fdsys/pkg/USCODE-2009-title26/pdf/USCODE-2009-title26-subtitleF-chap77-sec7526.pdf> and The Federal Poverty Guidelines: <https://aspe.hhs.gov/poverty-guidelines>.



### Low Income Taxpayer Clinic List

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center, Inc.	800-478-3474 907-562-0335	Yupik, Cupik, Aleut, Inupiaq, Tlingit/Haida, Athabaskan
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-832-4570	Spanish
AR	Little Rock	UALR Bowen School of Law LITC	501-324-9441	Spanish
	Springdale	LITC at Legal Aid of Arkansas	800-967-9224 479-442-0600	Spanish, Marshallese
AZ	Chinle	DNA People's Legal Services LITC	928-871-4151 435-727-5809	Navajo
	Phoenix	Community Legal Services LITC	800-852-3075 602-258-3434	Spanish, Other languages through interpreter services
	Tucson	Taxpayer Clinic of Southern Arizona	520-622-2801	Spanish, Other languages through interpreter services
CA	Fresno	Central California Legal Services LITC	800-675-8001 559-570-1200	Spanish, Hmong, Other languages through interpreter services
	Los Angeles	Bet Tzedek Legal Services Tax Clinic	323-939-0506	Spanish, Russian, Other languages through interpreter services
	Los Angeles	KYCC LITC	213-232-2700	Spanish, Korean
	Los Angeles	Pepperdine LITC	213-673-4831	Spanish
	Northridge	Bookstein Tax Clinic	818-677-3600	Spanish, Farsi
	Orange	Chapman University Tax Law Clinic	714-628-2535	Spanish, Vietnamese, Mandarin
	Riverside	Inland Counties Legal Services LITC	951-368-2555 888-245-4247	Spanish, Other languages through interpreter services
	San Diego	Legal Aid Society of San Diego Inc. LITC	877-534-2524	All languages through interpreter services
	San Diego	University of San Diego LITC	619-260-7470	Spanish
	San Francisco	Chinese Newcomers Service Center	415-421-2111	Chinese, Cantonese, Mandarin, Toishen
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-782-8978	Spanish
	San Jose	Santa Clara University Law School LITC	408-288-7030	Spanish, Vietnamese, Chinese, Other languages through interpreter services
CO	Denver	University of Denver Graduate Tax Program LITC	303-871-6331	Spanish
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3288	Spanish
	Hartford	UConn Law School Tax Clinic	860-570-5165	Spanish, French, Polish, Chinese (Mandarin), Russian, Other languages through interpreter services
DC	Washington	The Catholic University LITC	202-319-6788	Spanish, Other languages through interpreter services
	Washington	The Janet R. Spragens Federal Tax Clinic	202-274-4144	All languages through interpreter services
	Washington	University of the District of Columbia David A. Clarke School of Law LITC	202-274-7315	All languages identified in DC Language Access Act

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
DE	Wilmington	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-298-3252	Spanish, Hindi
FL	Jacksonville	Three Rivers Legal Services LITC	866-256-8091 904-394-7450	Spanish, Bosnian
	Miami	Legal Services of Greater Miami Community Tax Clinic	877-715-7464 305-576-0080	Spanish, Haitian Creole
	Orlando	Community Legal Services of Mid-Florida LITC	866-886-1799 407-841-7777	Spanish, Creole, Vietnamese, Other languages through interpreter services
	Plant City	Bay Area Legal Services Inc. LITC	800-625-2257 813-232-1343	Spanish, Creole, Other languages through interpreter services
	Plantation	Broward/Collier LITC	954-765-8950 239-775-4555	Spanish, Creole
	St. Petersburg	Gulf Coast Legal Services LITC	800-230-5920 727-821-0726	Spanish, French, German, Italian, Swahili, 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, Haitian Creole
GA	Atlanta	The Philip C. Cook LITC	404-413-9230	Spanish
	Hinesville	JCVision and Associates, Inc.	912-877-4243 866-396-4243	Spanish
HI	Honolulu	Legal Aid Society of Hawaii LITC	808-536-4302	Chinese, Japanese, Korean, Filipino, Chuukese, Other languages through interpreter services
IA	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-1193	All languages through interpreter services
ID	Boise	University of Idaho College of Law LITC	877-200-4455 208-364-6187	Spanish
	Twin Falls	La Posada Tax Clinic	208-735-1189	Spanish
IL	Chicago	Center for Economic Progress Tax Clinic	888-827-8511 312-252-0280	Spanish, Polish, Chinese
	Chicago	Loyola University Chicago School of Law LITC	312-915-7176	All languages through interpreter services
	Elgin	Administer Justice	877-778-6006 847-844-1100	Spanish, Other languages through interpreter services
	Wheaton	Prairie State Legal Services LITC	855-829-7757	Spanish, Other languages through interpreter services
IN	Bloomington	Indiana Legal Services LITC	800-822-4774 812-339-7668	All languages through interpreter services
	Indianapolis	Neighborhood Christian Legal Clinic	888-243-8808 317-429-4131	Spanish, Chinese, French, Russian, Arabic, Burmese, Karen, Hakha Chin
	South Bend	Notre Dame Tax Clinic *estimated start date May 1, 2016*	574-631-3272	Spanish
	Valparaiso	Valparaiso University Law Clinic	888-729-1064 219-465-7903	All languages through interpreter services
KS	Kansas City	Kansas LITC	800-723-6953 913-621-0200	Spanish, French, Vietnamese, Polish, Serbo-Croatian, German

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
KY	Covington	Center for Great Neighborhoods LITC	859-491-2220	Spanish
	Louisville	LITC at the Legal Aid Society, Inc.	800-292-1862 502-584-1254	All languages through interpreter services
	Richmond	LITC of AppalRed Legal Aid	800-477-1394 859-624-1394	All languages through interpreter services
LA	Baton Rouge	Southern University Law Center LITC	225-771-3333	Spanish
	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	Spanish, Vietnamese
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-371-1234	All languages through interpreter services
	Jamaica Plain	Legal Services Center of Harvard Law School LITC	866-738-8081 617-522-3003	Spanish
	Springfield	Springfield Partners LITC	413-263-6500	Spanish, Vietnamese
	Waltham	Bentley University LITC	800-273-9494 781-891-2083	Spanish, Portuguese, Russian, Chinese, Haitian Creole
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-547-6537	All languages through interpreter services
	Baltimore	University of Baltimore School of Law LITC	410-837-5706	Spanish, Other languages through interpreter services
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	Spanish
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	517-336-8088	All languages through interpreter services
	Grand Rapids	West Michigan LITC	616-774-0672	Spanish, Other languages through interpreter services
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-292-4150 612-332-1441	Spanish, Somali, Hmong, Russian, Arabic, Oromo, Amharic
	Minneapolis	Ronald M. Mankoff Tax Clinic	612-625-5515	Somali, Spanish, Hmong
MO	Kansas City	Legal Aid of Western Missouri LITC	800-990-2907 816-474-6750	Spanish, Other languages through interpreter services
	Kansas City	UMKC - Kansas City Tax Clinic	816-325-6201	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 662-234-2918	All languages through interpreter services
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	All languages through interpreter services
NC	Charlotte	Western North Carolina LITC	800-247-1931 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	Spanish, Other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
NH	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	All languages through interpreter services
NJ	Camden	South Jersey Legal Services LITC	800-496-4570 856-964-2010	Spanish, Other languages through interpreter services
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	Spanish, French Creole, Portuguese, Korean, Hindi, Arabic
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	Spanish, Korean, Hindi, Urdu, Hebrew, Other languages through interpreter services
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	Spanish
NM	Albuquerque	University of New Mexico School of Law Business and Tax Clinic	505-277-5265	Spanish
	Albuquerque	New Mexico Legal Aid Taxpayer Clinic	505-243-7871	Spanish, Other languages through interpreter services
NV	Las Vegas	Nevada Legal Services LITC	866-432-0404 702-386-0404	Spanish, Mandarin, Other 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	718-636-1155	Spanish, Other languages through interpreter services
	Brooklyn	Brooklyn LITC	800-696-7778 718-487-2300	Spanish, Hebrew, Yiddish, Other languages through interpreter services
	Buffalo	Erie County Bar Association Volunteer Lawyers Project LITC	800-229-6198 716-847-0662	Spanish
	Central Islip	Touro Law Center LITC	631-761-7080	
	Hempstead	Hofstra Law School Federal Law School	516-463-5934	Spanish
	Jamaica	Queens Legal Services LITC	347-592-2178	Spanish, Chinese, Korean, Other languages through interpreter services
	New York	Fordham Law School Tax Litigation Clinic	212-636-7353	Spanish
	New York	The Legal Aid Society LITC	212-426-3013	Spanish, Mandarin Chinese
	Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	Spanish, Other languages through interpreter services
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	Spanish, Other languages through interpreter services
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777 216-687-1900	Arabic, French, Mandarin, Russian, Spanish, Swahili
	Columbus	The LITC of The Legal Aid Society of Columbus	877-224-8374 614-224-8374	All languages through interpreter services
	Columbus	Southeastern Ohio Legal Services LITC	800-589-5888 614-221-7201	All languages through interpreter services
	Toledo	Legal Aid of Western Ohio LITC	877-894-4599 419-724-0030	Spanish, Other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
OK	Oklahoma City	The LITC at Oklahoma Indian Legal Services	800-658-1497 405-943-6457	All languages through interpreter services
	Tulsa	Legal Aid Services of Oklahoma LITC	918-584-3338	
OR	Gresham	Catholic Charities El Programa Hispano LITC	503-489-6845	All languages through interpreter services
	Portland	Legal Aid Services of Oregon LITC	888-228-6958 503-224-4086	Spanish, Mixteco Bajo, Mandarin, Japanese, Other languages through interpreter services
	Portland	Lewis & Clark LITC	503-768-6500	All languages through interpreter services
PA	Harrisburg	The LITC of MidPenn Legal Services	844-675-7829 800-326-9177	Spanish
	Philadelphia	Pennsylvania Farmworker Project LITC	888-541-1544 215-981-3800	Spanish, Other languages through interpreter services
	Pittsburgh	University of Pittsburgh School of Law Taxpayer Clinic	412-648-1300	Spanish, French, Other languages through interpreter services
	Villanova	Villanova Federal Tax Clinic	610-519-4123 888-829-2546 888-655-4419 (SP)	Spanish, Other languages through interpreter services
	Washington	Southwestern Pennsylvania Legal Services LITC	724-225-6170	Spanish, Russian, Chinese, Other languages through interpreter services
RI	Providence	Rhode Island Legal Services LITC	401-274-2652 800-662-5034	Spanish, Other languages through interpreter services
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	All languages through interpreter services
SD	Vermillion	University of South Dakota LITC	605-677-6342	All languages through interpreter services
TN	Memphis	Memphis Area Legal Services LITC	901-523-8822	Spanish
	Oak Ridge	Legal Aid Society of Middle Tennessee and the Cumberland Tennessee Taxpayer Project	866-481-3669 865-483-8454 x240	Spanish, Other languages through interpreter services
TX	Fort Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	Spanish
	Fort Worth	Texas A&M Univ. School of Law LITC	817-212-4124	Spanish
	Houston	Houston Volunteer Lawyers LITC	713-228-0735	Spanish, Mandarin, Vietnamese, 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 LITC	713-646-2990	Vietnamese, Spanish, Other languages through interpreter services
	Lubbock	Texas Tech University School of Law LITC	800-420-8037 806-742-4312	Spanish
	San Antonio	Texas Taxpayer Assistance Project-Texas RioGrande Legal Aid	888-988-9996 210-212-3747	Spanish
UT	Provo	LITC - Centro Hispano	801-655-0258	Spanish, American Sign Language, Tagalog, Arabic
	Salt Lake City	University of Utah LITC	TBD	

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
VA	Fairfax	Legal Services of Northern Virginia LITC	703-778-6800	Spanish, Korean
	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, Other languages through interpreter services
VT	Burlington	Vermont Low Income Taxpayer Project	800-889-2047 802-863-5620	All languages through interpreter services
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158 206-685-6805	Spanish, Russian, Chinese, Korean
	Spokane	Gonzaga University School of Law 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	LITC of The Legal Aid Society of Milwaukee	888-565-8135 414-727-5326	Spanish
	Wausau	Wisconsin Judicare Northwoods Tax Project	800-472-1638 715-842-1681	Spanish, Hmong
WV	Charleston	Legal Aid of West Virginia LITC	866-255-4370 304-343-4481	Spanish, Other languages through interpreter services
WY	Cheyenne	Wyoming LITC	866-432-9955	Spanish, French

## APPENDIX 4: TAS Performance Measures and Indicators

### Resolve Taxpayer Problems Accurately and Timely

Measure	Description	FY 2016 Target	FY 2016 March Cumulative
Overall Quality of Closed Cases <sup>1</sup>	Percentage of sampled closed cases meeting the prescribed attributes of timeliness, accuracy, technical, and communication.	91.0%	90.9%
Case Accuracy	Percentage of sampled closed cases where TAS resolved the taxpayers' problems completely and correctly through all stages of the case, including: developing action plan, resolving primary issue, addressing related issues, coding systems properly, and identifying case factors.	88.0%	87.5%
Technical	Percentage of sampled closed cases where TAS and IRS took actions in accordance with the tax code, IRM, and technical and procedural requirements.	90.5%	89.7%
Recourse or Appeal Rights	Percentage of sampled closed cases where TAS explained recourse and appeal rights, if applicable, when TAS did not provide the requested relief.	99.0%	97.2%
Timeliness	Percentage of sampled closed cases where TAS took timely actions including initial actions, initial contacts, TAO consideration, TAMIS documentation, and case closure.	93.5%	92.6%
Communications	Percentage of sampled closed cases where TAS effectively communicated information, requested the correct information, wrote complete and accurate correspondence, and provided an appropriate apology, explanation, and education.	94.8%	94.0%
OAR Reject Rate <sup>2</sup>	Percentage of TAS's rejected requests for IRS operating division or function's actions ( <i>i.e.</i> , Operations Assistance Request, or OAR).	Indicator	2.9%
Expired OAR Rate <sup>3</sup>	Percentage of OARs that were open at end of a period where the Requested Completion Date (RCD) or (if present) Negotiated Completion Date (NCD) is more than five workdays overdue.	Indicator	5.6%
Customers Satisfied <sup>4</sup>	Percentage of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	Baseline	
Customers Dissatisfied	Percentage of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	Baseline	
Solved Taxpayer Problem	Percentage of taxpayers from the customer satisfaction survey who indicate the Taxpayer Advocate Service employee did their best to solve the taxpayer's problems.	Baseline	
Relief Granted <sup>5</sup>	Percentage of closed cases where TAS provided full or partial relief.	Indicator	78.6%
Number of TAOs Issued <sup>6</sup>	Count of Taxpayer Assistance Orders (TAOs) issued by TAS.	Indicator	82

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- Results for Quality (weighted) are through January 2016. March results are not available at the time of this report.
- OAR Reject Rate excludes reject reason 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 2016 TAMIS report used run date Apr. 1, 2016.
- FY 2016 is a baseline year because TAS is revising the customer satisfaction survey and methodology.
- TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing. IRM 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.
- IRC § 7811 authorizes the National Taxpayer Advocate to issue a 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 2016 Target	FY 2016 March Cumulative
Median – Closed Case Cycle Time	Median number of days taken to close TAS cases. This indicator <i>does not</i> include reopened cases.	Indicator	53
Mean – Closed Case Cycle Time	Mean number of days taken to close TAS cases. This indicator includes reopened cases.	Indicator	78.9
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all hours reported to the Executive Director of Case Advocacy).	141.6	130.8
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	388.5	354.7
Systemic Burden Receipts	Percentage of systemic burden receipts, Criteria 5 through 7, compared to all receipts excluding reopened case receipts.	38%	42.6%

### Protect Taxpayer Rights and Reduce Burden

Measure	Description	FY 2016 Target	FY 2016 March Cumulative
Accuracy of Closed Advocacy Projects <sup>7</sup>	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.	95.0%	90.8%
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.	95.0%	100%
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.	95.0%	82.6%
Overall Quality of Immediate Interventions <sup>8</sup>	Percentage of the immediate interventions meeting the timeliness, technical, and communication quality attributes' measures.	88.0%	100%
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	44
Satisfaction of SAMS Users <sup>9</sup>	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%	78%
Satisfaction of TAP members <sup>10</sup>	Percentage of Taxpayer Advocacy Panel (TAP) members who indicate they agree or strongly agree to the member survey question, "I have been satisfied as a member of the TAP."	95%	80%

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7 FY 2016 results based on four advocacy project closures through February 2016.

8 FY 2016 results based on one immediate intervention closure through February 2016.

9 For FY 2016, Systemic Advocacy revised the question to "I would recommend SAMS to others as a way to elevate systemic issues."

10 The TAP survey is administered to second and third-year Panel members.



Measure	Description	FY 2016 Target	FY 2016 March Cumulative
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.	91%	80%
Internal Management Document (IMD) Recommendations Made to IRS	Count of TAS IMD recommendations made to the IRS.	Indicator	657
IMD Recommendations Accepted by the IRS	Percentage of TAS's IMD recommendations accepted by the IRS.	Indicator	62%
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/SPOC and Annual Report to Congress).	Indicator	2
Advocacy Effort Recommendations Accepted by the IRS	Count of TAS advocacy effort recommendations accepted by the IRS.	Indicator	2

### Sustain and Support a Fully-Engaged and Diverse Workforce

Measure	Description	FY 2016 Target	FY 2016 March Cumulative
Employee Satisfaction <sup>11</sup>	Percentage 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.	75%	

11 Employee satisfaction and employee participation are from the Federal Employee Viewpoint Survey (FEVS). 2016 results are not available at the time of this report.

## APPENDIX 5: Glossary of Acronyms

Acronym	Definition
ABA	American Bar Association
ACA	Affordable Care Act
ACS	Automated Collection System
ADR	Alternative Dispute Resolution
AFSP	Annual Filing Season Program
AGI	Adjusted Gross Income
AICPA	American Institute of Certified Public Accountants
AIMS	Audit Information Management System
AJAC	Appeals Judicial Approach and Culture
ALE	Allowable Living Expenses
AM	Accounts Management
AMS	Accounts Management System
AMTAP	Accounts Management Taxpayer Assurance Program
AOTC	American Opportunity Tax Credit
APA	Administrative Procedure Act
APTC	Advanced Premium Tax Credit
ARC	Annual Report to Congress
ARDI	Accounts Receivable Dollar Inventory
ATIN	Adoption Taxpayer Identification Number
ATM	Automated Teller Machine
AUR	Automated Underreporter
AWSS	Agency Wide Shared Services
BL	Black Lung (990-BL)
BLS	Bureau of Labor Statistics
BMF	Business Master File
BOD	Business Operating Division
BPMS	Business Performance Measurement System
BPR	Business Performance Reviews
CA	Case Advocate
CAA	Certified Acceptance Agent
CABIC	Case Assistance by Issue Code
CAR	Communications Assistance Request
CCA	Chief Counsel Advice
CCI	Centralized Case Intake
CCISO	Cincinnati Centralized Innocent Spouse Operation
CDP	Collection Due Process
CDR	Coverage Data Repository

Acronym	Definition
CDW	Compliance Data Warehouse
CES	Consumer Expenditure Survey
CHIP	Children's Health Insurance Program
CHIPRA	Children's Health Insurance Program Reauthorization Act (of 2009)
CI	Criminal Investigation
CIS	Collection Information Statement
CNC	Currently Not Collectible
CONOPS	Concept of Operations
CPA	Certified Public Accountant
CSED	Collection Statute Expiration Date
CSR	Customer Service Representative
CTC	Child Tax Credit
CY	Calendar Year
DACA	Deferred Action for Childhood Arrivals
DCI	Data Collection Instrument
DDb	Dependent Database
DIF	Discriminant Index Function
ECM	Enterprise Case Management
EFDS	Electronic Fraud Detection System
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
EO	Exempt Organizations
EP/EO	Exempt Plan/Exempt Organization
EPP	Employee Protection Program
ESC	Executive Steering Committee
ESL	English as a Second Language
ESRP	Employer Shared Responsibility Payment
ETAAC	Electronic Tax Administration Advisory Committee
ETLA	Electronic Tax Law Assistance
FAQ	Frequently Asked Question
FAST	Fixing America's Surface Transportation
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
FCC	Federal Communications Commission
FEVS	Federal Employee Viewpoint Survey
FFI	Foreign Financial Institution
FOIA	Freedom of Information Act

Acronym	Definition
FPL	Federal Poverty Line
FPLP	Federal Payment Levy Program
FT	Financial Technician
FTB	Family Tax Benefit
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GPO	Government Publishing Office (formerly Government Printing Office)
HCTT	Health Care Tax Tip
HHS	Department of Health and Human Services
HR	Human Resources
IA	Intake Advocate
IAREP	International Association for Research in Economic Psychology
ICS	Integrated Collection System
ID	Identity
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IDT	Identity Theft
IDTVA	Identity Theft Victim Assistance
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IPSO	Identity Protection Strategic Oversight
IPSU	Identity Protection Specialized Unit
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRP	Information Returns Program
IRPAC	IRS Practitioner Advisory Committee
IRS	Internal Revenue Service
IRSAC	Internal Revenue Service Advisory Committee
IRSN	Internal Revenue Service Number
IRTF	Individual Return Transaction File
ISRP	Individual Shared Responsibility Payment
ISU	Innocent Spouse Unit
IT	Information Technology
ITIN	Individual Taxpayer Identification Number
IVO	Integrity & Verification Operations

Acronym	Definition
IWV	Income Wage Verification
JCT	Joint Committee on Taxation
JOC	Joint Operations Center
LB&I	Large Business & International
LIF	Low Income Filer
LITC	Low Income Taxpayer Clinic
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LMSB	Large and Mid-Size Business
LOS	Level of Service
LTA	Local Taxpayer Advocate
MAGI	Modified Adjusted Gross Income
MEC	Minimum Essential Coverage
MFT	Masterfile Tax
MOU	Memorandum of Understanding
MSP	Most Serious Problem
MTLP	Municipal Tax Levy Program
N/A	Not Applicable
NACUBO	National Association of College and University Business Officers
NCD	Negotiated Completion Date
NFTL	Notice of Federal Tax Lien
NIST	National Institute of Standards and Technology
NTA	National Taxpayer Advocate
NTEU	National Treasury Employees Union
OAR	Operations Assistance Request
OASDI	Old Age, Survivors, and Disability Insurance
OD	Operating Division
OD/Fs	IRS Operating/Functional Divisions
OIC	Offer in Compromise
OLS	Office of Online Services
OMB	Office of Management and Budget
OPERA	Office of Program Evaluation & Risk Analysis
OPM	Office of Personnel Management
OUO	Official Use Only
OVC	Offshore Voluntary Compliance Initiative
OVD	Offshore Voluntary Disclosure
OVDI	Offshore Voluntary Disclosure Initiative
OVDP	Offshore Voluntary Disclosure Program
PATH	Protecting Americans from Tax Hikes
PCA	Private Collection Agency

Acronym	Definition
PCIC	Primary Core Issue Code
PDC	Private Debt Collection
PF	Private Foundation
PIN	Personal Identification Number
POA	Power of Attorney
PPIA	Partial Pay Installment Agreement
PPS	Practitioner Priority Service
PRO	Problem Resolution Officer
PRP	Problem Resolution Program
PTC	Premium Tax Credit
Pub. L. No.	Public Law Number
PY	Processing Year
QRP	Questionable Refund Program
RCD	Requested Completion Date
Rev. Proc.	Revenue Procedure
RICS	Return Integrity and Correspondence Services
RRA 98	IRS Restructuring and Reform Act of 1998
RRP	Return Review Program
RRT	Rapid Response Team
RTS	Real Time System
S. Comm.	Senate Committee
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System
SB/SE	Small Business/Self-Employed Division
SDOP	Streamlined Domestic Offshore Procedures
SERP	Servicewide Electronic Research Program
SEVIS	Student Exchange Visitor's Information System
SEVP	Student and Exchange Visitor Program
SFOP	Streamlined Foreign Offshore Procedures
SFR	Substitute for Return
SITLP	State Income Tax Levy Program
SNAP	Supplemental Nutritional Assistance Program
SP	SharePoint
SPDER	Servicewide Policy, Directives, and Electronic Research
SPEC	Stakeholder Partnerships, Education, and Communication
SPOC	Single Point of Contact
SRP	Shared Responsibility Payment
SSA	Social Security Administration

Acronym	Definition
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
SSN	Social Security Number
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TANF	Temporary Assistance for Needy Families
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR 1	Taxpayer Bill of Rights
TCE	Tax Counseling for the Elderly
TCPA	Telephone Consumer Protection Act
TD	Treasury Directive
TDA	Taxpayer Delinquent Account
TDC	Taxpayer Digital Communications
TE/GE	Tax Exempt and Government Entities Division
TFOP	Tax Forms Outlet Partner
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TNT	Tax Notes Today
TPC	Tax Policy Center
TPI	Total Positive Income
TPP	Taxpayer Protection Program
Treas. Reg.	Treasury Regulation
TSP	Thrift Savings Plan
TY	Tax Year
UPC	Unpostable Code
U.S.	United States
USDA	United States Department of Agriculture
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
W&I	Wage & Investment
WIRA	Wage and Investment Research and Analysis
WISS	Wage and Investment Strategies and Solutions



TAXPAYER  
ADVOCATE  
SERVICE

