2015 National Taxpayer Advocate Annual Report to Congress
Most Serious Problems Encountered by Taxpayers:
IRS and TAS Responses

MSP #1 - 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

PROBLEM

During the past year-and-a-half, the IRS has developed a "future state" plan that details how the agency will operate in five years. There are many positive components of the plan, including the goal of creating online accounts through which taxpayers will be able to obtain information and interact with the IRS.

However, the plan raises at least two significant concerns. First, implicit in the plan — and explicit in internal discussions — is an intention on the part of the IRS to substantially reduce telephone and face-to-face service. Second, to the extent taxpayers require help; the IRS is developing procedures to enable third parties like tax return preparers and tax software companies to provide it — an approach that will increase taxpayer compliance costs.

TAS Recommendation	**[1-1] The National Taxpayer Advocate recommends that the IRS immediately publish its CONOPS, publicize them widely, and seek comments and suggestions from the public.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS has taken – and continues to take – steps in this area to highlight the evolving Future State plan and gain feedback.

IRS Action	We agree with the essence of the National Taxpayer Advocate's recommendation to get insights from the taxpaying public about how we envision interacting with taxpayers in the future. Our Future State efforts to date have been informed by insights from taxpayers and tax professionals, as well as research into taxpayer behaviors and preferences. We will continue to get feedback from many sources, especially taxpayers, to help us improve the taxpayer's experience in a rapidly evolving world. The IRS has been actively discussing and highlighting the evolving Future State for quite some time. The IRS Commissioner and Deputy Commissioners have been describing aspects of the Future State in various forums, both internally and externally, for well over a year. This includes ongoing dialogue about the shape and course of Future State developments with numerous stakeholders. As a further illustration of the IRS's commitment to getting feedback on the Future State, the IRS has been working to support and publicize the Taxpayer Advocate's Public Forums on the Future State. Through early May, the IRS promoted these Forums through national news releases, social media and irs.gov. IRS is committed to continuing to get and incorporate taxpayers' perspectives in the Future State, including through the IRS Nationwide Tax Forums in summer 2016, efforts that also involve the Taxpayer Advocate's Office. IRS continues to engage numerous advisory groups established for the express purpose of providing taxpayer insights. These groups provide meaningful insights about how the Future State may impact taxpayers and those who serve them. The media has likewise been active in informing the public about the Future State. The Commissioner's National Press Club speech on the Future State earlier this year garnered considerable press coverage, sparking Congressional and public interest. IRS efforts to share information also include publishing a wide range of Future State material on irs.gov, and highlighting these documents extensively in numerous media interviews and public appearances. The Commissioner of Internal Revenue and others have periodically briefed Congressional staffs and members as well as NTEU officials on the Future State development. Likewise, IRS has placed Future State information on its internal intranet site to inform employees about developments. Even before the National Taxpayer Advocate's Annual Report, the Commissioner of Internal Revenue and others have acknowledged that not all taxpayers are willing or able to interact digitally and underscored IRS's commitment to serve them through the channel they choose. The vision is still under development to ascertain how interactions can produce a more positive taxpayer and employee experience. We are also updating and tailoring our various taxpayer surveys and conjoint analyses to get taxpayer perspectives about various aspects of the envisioned Future State. We will continue to use a variety of venues to listen, understand and accommodate the taxpaying public's views in our quest to improve the taxpayer experience.

TAS Response	The National Taxpayer Advocate acknowledges the IRS has taken significant steps since the publication of her report to publicize details of the Future State plan. To date, however, it is not clear the IRS has seriously sought public comments or adjusted its plan to take public comments into account. We urge the IRS both to continue a public dialogue and to give more weight to taxpayer and practitioner needs and preferences as it refines and implements its long-term plans.
TAS Recommendation	[1-2] The National Taxpayer Advocate recommends that Congress hold hearings during the next few months on the future state of IRS operations. These hearings will help foster better communication between the IRS and Congress on the front-end, potentially reducing the risk of continuing conflict in the future. These hearings should seek testimony from groups representing the interests of individual taxpayers (including elderly, low income, disabled, and limited English proficiency taxpayers), sole proprietors, other small businesses, and Circular 230 practitioners and unenrolled tax return preparers. They should also include witnesses who can address the additional compliance burden the CONOPS will impose on various categories of taxpayers as well as the likely impact of the CONOPS on the overall rate of voluntary tax compliance.
IRS Response	Because this recommendation relates to congressional oversight, TAS did not request an IRS response.
IRS Action	N/A
TAS Response	N/A

MSP #2 - IRS USER FEES: The IRS May Adopt User Fees to Fill Funding Gaps Without Fully Considering Taxpayer Burden and the Impact on Voluntary Compliance

PROBLEM

The IRS is actively considering user fee increases that would replace its reduced appropriation. User fees that seem reasonable to the IRS in a vacuum may seem outrageous to taxpayers when added to the costs of recordkeeping, filing and paying taxes, and paying professionals for help in navigating complicated rules and procedures that the government created. If user fees discourage taxpayers from using IRS services, they can be inconsistent with the IRS's service-oriented mission, reduce voluntary compliance, and erode taxpayer rights. However, the Internal Revenue Manual (IRM) does not require the IRS to consider these items. As a result, the IRS may increase user fees without fully considering the consequences.

TAS Recommendation	**[2-1] Revise the IRM to require the IRS to avoid adopting (or retaining) a fee that would:** **a) Have a significant negative impact on the IRS's service-oriented mission, voluntary compliance, or taxpayer rights and burden (including other compliance burdens taxpayers may face, such as the costs of hiring preparers or other third parties); or** **b) Include fixed or indirect costs when demand for a service is in flux or that make the fee disproportionate to the value received.**
IRS Response	a) Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. b) No actions planned, as pursuit of this recommendation would conflict with the letter and spirit of OMB Circular A-25, particularly how costs are determined and reconsidered.
IRS Action	a) The IRS is currently working closely with National Taxpayer Advocate on a revision to IRM 1.32.19 that includes references to analyzing the impact of the fee in various contexts, including on low-income taxpayers, taxpayer rights, cost of collection, and tax administration generally. b) N/A

TAS Response	a) The National Taxpayer Advocate commends the IRS for working with TAS to improve the user fee IRM. As described above and in the MSP, the IRS should not, and is not required to, adopt fees that have a significant negative impact on the IRS's service-oriented mission, voluntary compliance, or taxpayer rights and burden. Nor is it required to set fees at full cost when demand for a service is in flux or that make the fee disproportionate to the value received, even for fees covered by OMB Circular A-26. Circular A-25 states that fees must be "fair" and based, in part, on the "public policy or interest served," and agencies can seek a waiver to set a lower fee based on anything that "in the opinion of the agency head or his designee, justifies an exception." b) In past years IRS employees have proposed that the IRS set fees below full costs for these reasons, whether through a waiver or otherwise. Recommendation 2-1(b) is intended to formalize the IRS's past practice in this area, and we hope that the IRS reconsiders its position, which would seem to require BUs to discontinue that practice.
TAS Recommendation	**[2-2] Before establishing or raising any user fee, estimate the effect of the fee on demand for service, as needed to determine if the fee would impair the IRS mission, voluntary compliance, or taxpayer rights. This analysis should also demonstrate that the proposed fee does not pass along indirect or fixed costs or combine with other costs that would make it seem excessive from the taxpayer's perspective.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	As noted above, the IRS is currently working closely with the National Taxpayer Advocate on a revision to the user fee IRM that includes references to analyzing the impact of the fee in various contexts, including on low-income taxpayers, taxpayer rights, cost of collection, and tax administration generally. The determination of whether a fee "seem(s) excessive" is, however, largely subjective and not something contemplated by the OMB Circular or statute.
TAS Response	The National Taxpayer Advocate appreciates that the IRS is working with TAS to improve the user fee IRM. As noted above, however, OMB Circular A-26 states that fees must be "fair" and based, in part, on the "public policy or interest served," and agencies can seek a waiver to set a lower fee based on anything that "in the opinion of the agency head or his designee, justifies an exception." As a result, the Circular arguably requires the IRS to consider whether a fee would be viewed as excessive and, thus, unfair in the opinion of the IRS or the public when evaluating whether to request a waiver. The IRS has not adopted this recommendation or addressed the National Taxpayer Advocate's concern. It should reconsider its apparent intention to ignore OMB Circular A-26.

TAS Recommendation	**[2-3] Publish the user fee analysis (described above) and address any comments from internal and external stakeholders before adopting or increasing a fee.**
IRS Response	National Taxpayer Advocate Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	In appropriate cases where the IRS publishes a notice of proposed rulemaking adopting or increasing a user fee, the IRS will set forth in that notice a description of how the proposed user fee was computed and will solicit public comment regarding the computation. As with all notices of proposed rulemaking, stakeholders may request a public hearing to comment on the proposed rule. All public comments will be considered before the publication of final regulations adopting the user fee.
TAS Response	The IRS has agreed to solicit comments "in appropriate cases" on the computation of the subset of user fees that it sets by regulation. However, it should ask for and consider public comments on all aspects of a proposed fee (e.g., effect of the fee on voluntary compliance, taxpayer burden, and taxpayer rights), rather than just computational issues. It should also solicit comments on fees that it sets without promulgating a regulation. If it does not disclose all aspects of its analysis and consider public comments to the analysis before adopting a fee, it is more likely to make ill-informed decisions that are inconsistent with its mission, impose excessive burden, violate taxpayer rights, and erode voluntary compliance.

MSP #3 - FORM 1023-EZ: Recognition As a Tax-Exempt Organization Is Now Virtually Automatic for Most Applicants, Which Invites Noncompliance, Diverts Tax Dollars and Taxpayer Donations, and Harms Organizations Later Determined to Be Taxable

PROBLEM

Since July 2014, the Tax Exempt and Government Entities division (TE/GE) has addressed backlogs in its inventory of applications for tax-exempt status by allowing certain organizations to use Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Form 1023-EZ adopts a "checkbox approach," requiring applicants merely to attest, rather than demonstrate, that they meet fundamental aspects of qualification as an exempt entity. Form 1023-EZ does not solicit any narrative of the organization's activities, any financial data, any substantiating documents, or any explanatory material. With the adoption of Form 1023-EZ, the IRS effectively abdicated its responsibility to *determine* whether an organization is organized and operated for an exempt purpose. TE/GE intends to address the noncompliance it helped create by shifting more resources to audits.

TAS Recommendation	**[3-1] Revise Form 1023-EZ to require applicants, other than corporations in states that make articles of incorporation publicly available online at no cost, to submit their organizing documents.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. TAS recommends that some – but not all – Form 1023-EZ applicants submit copies of their organizing documents. Under the recommendation, corporations organized in states that have documents viewable on-line would not need to submit them. This recommendation would result in disparate treatment of applicants, potentially causing confusion and decreasing customer satisfaction. Moreover, a requirement for organizing documents would preclude electronic filing. Additionally, review of organizing documents would increase case processing time, disrupting the efficiencies gained through the EZ process. The IRS continues to rely on pre- and post-determination reviews to identify potential compliance problems associated with the form.
IRS Action	The IRS will continue to pursue collaborative efforts with state agencies working toward an on-line multi-state charity registration system.

TAS Response	Seeking access to an online multi-state charity registration is an admirable long term goal, although it does not constitute action taken to address the National Taxpayer Advocate's concern. In the meantime, there is nothing improper about requiring organizations to submit their articles of incorporation as part of their Form 1023-EZ application, or excepting from the requirement those whose documents are already available online. Moreover, it is not the case that documents cannot be attached to electronic IRS filings. This is already being done for applicants seeking certification as a Certified Professional Employer Organization (CPEO). TE/GE could explore the feasibility of a similar system for accepting Form 1023-EZ applications. Unless TE/GE is able to quantify the extent to which reviewing organizing documents would increase case processing time, the basis for concluding that such "efficiency disruption" is not justified is unclear. Reviewing organizing documents, which would lead to a lower rate of erroneous approvals, would not necessarily result in unacceptable processing times.
TAS Recommendation	**[3-2] Revise Form 1023-EZ to require applicants to provide a description of their actual or planned activities and submit summary financial information such as past and projected revenues and expenses.**
IRS Response	Recommendation Not Adopted. Activity descriptions and financial information are an unnecessary burden on smaller organizations that historically contributed little to overall compliance efforts. The IRS must balance risks to the Treasury against the resources available when administering the tax law. A significant portion of the time spent by a revenue agent in review and development of a Form 1023 application relates to an organization's description of its activities, with concomitant burden on the applicant. Substantially all efficiencies derived from the Form 1023-EZ would be lost, and overall taxpayer burden would increase. An IRS form becomes "EZ" precisely by removing narratives, attachments, or material that requires manual processing; for comparison, the widely-used Form 1040-EZ attaches no schedules. The IRS continues to rely on pre- and post-determination reviews to identify potential compliance problems associated with the form.
IRS Action	N/A

TAS Response	TE/GE has clarified in a separate conversation with TAS that its reference above to having "historically contributed little to overall compliance efforts" relates to small organizations rather than to activity descriptions and financial information; TE/GE does not express any position on the effect of requiring activity descriptions and financial information on compliance. In fact, TE/GE has never measured whether requiring this additional information drives better compliance. The National Taxpayer Advocate can attest from personal experience, on the other hand, that requiring an applicant to identify and describe in writing its intended activities is an indispensable first step for the organization to understand whether it qualifies for IRC § 501(c)(3) status. If not, the organization may revise its planned activities in order to meet the statutory requirements, or decide not to apply for exempt status at all; either outcome saves IRS compliance resources. The assertion that efficiencies would be lost if applicants were required to provide, and the IRS to evaluate, a purpose statement is perplexing. TAS found that it takes very little time to review a purpose statement and most purpose statements are acceptable. Form 1023-EZ is already streamlined; soliciting and considering fundamental information about the applicant would presumably still yield efficiencies, compared to Form 1023 processing, but with less incidence of erroneous determinations. Finally, TE/GE does not quantify the cost of pre-determination reviews or post-determination audits. Its basis for concluding that its approach is a better use of resources is unclear.
TAS Recommendation	**[3-3] Make a determination only after reviewing the Form 1023-EZ application, the applicant's organizing documents, its description of actual or planned activities, and its financial information.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS makes a determination only after reviewing the Form 1023-EZ application. Historically, the IRS denied exemption to less than 1% of all applications for exemption, even after submission and review of organizational documents, activity descriptions, and financial data.
IRS Action	To improve accuracy in the Form 1023-EZ process, the IRS has, for example, modified the on-line submission to request verification of the Employer Identification Number (EIN). Out of concern for accuracy in the determination process, the IRS has instituted pre-determination and post-determination review of statistically valid samples of Form 1023-EZ applications.

TAS Response	The fact that TE/GE reviews Form 1023-EZ in its current form does not constitute an action taken to address our concerns, and we view this response as declining to adopt our recommendation. It is true that TE/GE has instituted pre-determination reviews, but it ignores the data these reviews provide. TE/GE appears unimpressed to learn that there is a significant difference in outcome depending on whether an application is subject to pre-determination review or not (77 percent vs. 95 percent). It seems equally unconcerned that the TAS sample found deficiencies in the dissolution and purpose clauses of applicants' publicly available organizing documents. It is not clear whether TE/GE reviewed all organizations in the TAS sample, but TE/GE notes that of organizations in the TAS sample whose articles it reviewed, up to half had inadequate clauses. It is admirable that TE/GE has sought to ensure that the proper EIN is being used, but as long as it refuses to take into consideration its own data, its "concern for accuracy" appears overstated. The outcomes of post-determination audits remain to be seen.
TAS Recommendation	**[3-4] Where there is a deficiency in an organizing document, require an applicant to submit a copy of an amendment to its organizing document that corrects the deficiency and has been approved by the state, even where the documents are available online at no cost, before conferring exempt status.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. There is little risk associated with attestations as to organizational documents. Historically, failure of the organizational test seldom has been the basis for denial. On exam, a defect in organizational documents rarely has led to revocation or directly linked to non-compliant activity. In the past, the IRS pursued perfection by the organization of flaws in its organizing documents.
IRS Action	The IRS plans to specify procedures for revocation due to failure of the organizational test when an applicant attested during the determination process that it would amend an organizational document but ultimately made no good faith effort to do so.
TAS Response	Historically, the IRS required organizations to adjust their organizing documents to conform to the legal requirements, which as the IRS notes averted denials and revocations. With Form 1023-EZ, that safeguard is no longer in place. Every Form 1023-EZ applicant attests that its organizational documents conform to the legal requirements, yet many of them do not actually conform, as TE/GE's own pre-determination reviews and the TAS study demonstrate. These organizations are not required to demonstrate that any deficiency, even if discovered in a pre-determination review, has been corrected. Organizations should not have to wait for an audit to learn of a defect in their organizing document, whether the defect results in revocation or not.

MSP #4 - 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

PROBLEM

The IRS uses the Pre-Refund Wage Verification Program (hereinafter — Income Wage Verification or IWV) to temporarily freeze an individual's refund when it detects potentially false wages and withholding. The National Taxpayer Advocate first expressed concerns with the IRS's inability to properly identify, process, and timely release refund freezes in 2003. Despite certain improvements, such as technological advances and procedural and policy changes, the IRS's screening processes in this program continue to harm taxpayers with legitimate returns. The National Taxpayer Advocate acknowledges that any screening method will result in false positives but remains concerned that the IRS does not track the false positive rates for the IWV program, and thus, is unable to determine the precise filters or screens stopping legitimate refunds. Moreover, the IRS does not have adequate procedures to promptly review and adjust its fraud detection filters, rules, and models. Finally, taxpayers whose refunds the IWV program freezes cannot reach a live assistor in the Integrity & Verification Operation (IVO) unit. These shortcomings burden taxpayers whose legitimate refunds are substantially delayed. As a result, the taxpayers' *rights to be informed*, *to quality service*, *to challenge the IRS's position and be heard*, *to privacy*, and *to a fair and just tax system* are jeopardized.

TAS Recommendation	**[4-1] Begin tracking the IVO false positive rates by model or filter during the filing season, perform regular global reviews, and quickly adapt filters, rules, and models based on levels of confidence in each similar to the TPP.**
IRS Response	IRS Actions to be Adopted/Addressed.

IRS Action	In April 2016, RICS began reporting each Return Review Program Non-Identity Theft model False Detection Rate (FDR) separately and documenting the results. This information will be shared with Taxpayer Advocate Service on a periodic basis. In addition, we are currently creating baseline statistics for the IVO program and will monitor the FDR of each fraud model separately. For clarification, our non-identity theft model reporting uses the metric of a false detection rate. A false detection rate is the number of false positives divided by the number selected. We believe the false detection rate more accurately reflects the performance of a selection model. Throughout the remainder of Calendar Year (CY) 2016, the FDR metrics for the Non-IDT models will be reviewed by IRS leadership, with in-year model adjustments to be implemented where prudent to minimize the selection of falsely detected returns. At the end of CY 2016, the business team will perform a comprehensive assessment of fraud model performance, and issue recommendations for larger-scale improvement to filters, rules and models to be implemented at the start of the next Filing Season.
TAS Response	The National Taxpayer Advocate is encouraged by this new development and appreciates the IRS's recent commitment to begin tracking Non-IDT model false detection rates. However, because the IRS just began tracking this data in April 2016, TAS is currently unable to determine if the IRS can properly identify the major factors that are causing the greater percentage of frozen legitimate refunds and the steps the IRS will take when a problem with a filter or model is identified. TAS looks forward to discussing the results with the IRS and recommends a consistent, collaborative effort moving forward.
TAS Recommendation	**[4-2] Establish target false positive rates for each process and filter and create a process to adjust selection rates so that the false positive rates do not exceed target level.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.

IRS Action	The establishment of precise target false detection rates per Fraud Model ("Non-Identity Theft Model") would be challenging to implement because specific FDR are typically not available until several months into the filing season. In addition, new models which are developed to detect emerging fraudulent trends may exhibit false detection rates which could exceed a level set prior to the start of the filing season and require monitoring and adjusting. However, the IRS has a strong commitment to balance increased detection of refund fraud with taxpayer burden concerns. We are in the process of creating baseline statistics for the IVO program and will monitor the false detection rates of each fraud model separately. The overall results will be reviewed to make adjustments where prudent to minimize the selection of false positive returns, while continuing to ensure prevention of fraudulent refunds.
TAS Response	The Consolidated Appropriations Act of 2016 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. By accelerating the deadline to January 31, the IRS will be able to confirm wage and tax information earlier in the filing season and have more time to analyze false positive rates in real time and adjust accordingly. Additionally, achieving greater accuracy in false positives means the IRS is serious about doing "real time" filter or model adjustments. For instance, if there is an emerging return fraud scheme and it results in a 50 percent false positive rate, then the filter or model is not working as intended. It is very likely that it is selecting wrong returns, *i.e.*, the legitimate ones instead of the fraudulent ones. If the IRS realizes the importance of minimizing taxpayer burden and being accurate in the return selection process, it will commit to a target rate, which can serve as an aspirational goal for its employees. A staggered plan to meet the target false positive rate would allow the IRS to move step-by-step in that direction until the rate is met. TAS also suggests that IRS consider what other industries (*e.g*., financial, insurance, banking) have adopted as measures to minimize false positives.
TAS Recommendation	**[4-3] Collaborate with TAS on implementing the new legal requirement to file returns and statements related to employee wage information and nonemployee compensation on or before January 31 of the year following the calendar year to which such returns relate.**

IRS Response	IRS Actions Already in Progress.
IRS Action	Under the Consolidated Appropriations Act, 2016, the deadline for filing Forms W-2 and W-3 and nonemployee compensation with the SSA has effectively been accelerated to January 31, beginning in calendar year 2017. The act also delayed issuance of certain refunds to no earlier than February 15th for credits or overpayments claimed on the return. We are working to enhance IRS systems so that income information received from the SSA can be processed and posted immediately to the IRMF, and in turn be leveraged for systemic income and withholding verification. A working group was established to identify appropriate system and procedural needs. We agree that TAS should be included in this working group.
TAS Response	The National Taxpayer Advocate is pleased the IRS is working on posting wage and tax information quicker 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 being included in the working group.
TAS Recommendation	**[4-4] Reinstate the Pre-Refund Program Executive Steering Committee to coordinate policy and other servicewide processes and business rules and include TAS in the steering committees as a charter voting member.**
IRS Response	Recommendation Not Adopted. The IRS does not plan to reinstate the Pre-Refund Program Executive Steering Committee, as the current operational oversight structure for reviewing and approving model, rule and filter changes has proven to be effective in both offering rigorous deliberation of any proposed changes, while also serving to foster innovation in detecting new fraud patterns.
IRS Action	N/A

TAS Response	The National Taxpayer Advocate is disappointed by the IRS's decision not to reinstate the Pre-Refund Program Executive Steering Committee (ESC). While the IRS may believe that current operational oversight structure for reviewing and approving model, rule, or filter changes is adequate, the continuing high rate of false positives in the IWV program suggests otherwise. Without the ESC, the IRS is not adequately equipped to discuss problems associated with fraud detection data mining rules at a servicewide level, and does not have a suitable forum to discuss potential flaws in filters and models which could lead to effective, real time adjustments. As stated in the 2013 and 2015 Annual Reports to Congress, the National Taxpayer Advocate recommends the IRS should re-instate the Pre-Refund Program ESC as a forum for the exchange of information about systemic issues among IRS functions and for ideas about how to resolve these issues.
TAS Recommendation	**[4-5] Create a sub-committee under the Business Rules and Requirements Management office with the authority to implement real-time modifications to screening rules and filters pertaining to tax fraud detection, resolution, and prevention, which directly affect RRP systems development; include a TAS representative as a member of this sub-committee.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	There is an operational structure in place that addresses fraud model modifications in an almost real time atmosphere. We will provide the National Taxpayer Advocate with an overview briefing of any model modifications on a periodic basis.
TAS Response	The National Taxpayer Advocate is pleased the IRS is now recognizing the need to address fraud model modifications in a real time atmosphere. False positive data, if monitored and analyzed in real time, can be used by the IRS to improve its fraud prevention, minimize harm to taxpayers, and preserve IRS resources. However, under the current operational structure, in scenarios where the IRS can update models or filters in real time, it needs approval from the Business Rules and Requirements Management (BRRM) office. BRRM does not meet regularly; therefore, any "real time" change request that requires immediate attention must go through a time-consuming process resulting in more refund delays. Creating a sub-approval group authorized to implement real time modifications to screening rules and filters would allow a quicker resolution of systemic issues and minimize taxpayer harm.

TAS Recommendation	**[4-6] Create a Taxpayer Call Area in IVO, which will include front-end outgoing verification calls to taxpayers from the IVO unit and the answering of direct taxpayer calls about refunds.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	IVO currently performs front-end phone calls to employers to conduct a verification of the income claimed on the taxpayers return. An IRS letter/notice is generated to the taxpayer to inform them of the delay in refund issuance as a result of possible third party verification being completed and provides the appropriate timeframe this review may take. Toll-free assistors have guidance on how to respond to phone calls associated with this process; as a result direct phone contact with the taxpayer within IVO would not provide additional information to expedite resolution. We are in the process of reviewing IVO end-to-end processes to determine if there are opportunities to increase efficiency or reduce taxpayer burden. The reviews will ensure that the appropriate notices/letters are generated to keep the taxpayer informed, as well as ensuring that refunds are released timely, as applicable. Legislation accelerating the due date of information returns to January 31 will enable IRS to leverage the data to complete systemic verification of the income and withholding upfront, reducing refund delays and taxpayer burden.
TAS Response	The National Taxpayer Advocate is encouraged by the IRS's recent commitment, both systemically and financially, to improving telephone service for taxpayers. However, it does not seem that the IRS has fully comprehended or addressed the recommendation. Unlike within the TPP, the IRS still does not provide a dedicated phone number for taxpayers to call the IVO unit. When a taxpayer is able to reach a Customer Service Representative (CSR) the taxpayer will find that the CSR does not have access to the EFDS or RRP histories and cannot give specific responses to taxpayer inquiries. By creating a dedicated phone number staffed with CSRs with proper access to taxpayer case histories, taxpayers will not only be provided with a specific update regarding their refund status, but they may also be able to assist the IRS by providing additional information to complete the IRS's inquiry.

MSP #5 - 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

PROBLEM

The IRS is planning to develop an online taxpayer account system. We are pleased that the IRS is moving forward with plans to develop such a system, due to the benefits to both taxpayers and the IRS. However, the IRS cannot ignore the service needs of a significant portion of the taxpayer population who still require more personalized service options, such as face-to-face or telephone services, due to preference or lack of internet access. In addition, even the most technologically savvy taxpayers may at times need to use personal services because the issue they have is not conducive to resolve online. While in the current budget environment it is 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 the taxpayers' *right to quality service, right to be informed*, and *right to pay no more than the correct amount of tax*.

The National Taxpayer Advocate also remains concerned about the scope of the self-correction authority set forth in the draft IRS Concept of Operations (CONOPS). It is unclear if these corrections will constitute an amended return or if the original return remains unprocessed until corrected. These options have legal consequences to the taxpayer with potential negative impacts on taxpayer rights.

TAS Recommendation	**[5-1] Conduct a biennial nationwide survey of taxpayers to identify trends and determine the types of transactions or other activities taxpayers would be willing to conduct with the IRS digitally. The survey should include oversamples of low income, Spanish-speaking, and small business taxpayers to ensure that the IRS tracks their needs.**
IRS Response	Recommendation not Adopted as Written, but IRS Actions Taken to Address Issue Raised by the National Taxpayer Advocate.

IRS Action	The IRS will continue to study the taxpayer base to identify taxpayer preferences and ensure continued access to the services that will allow taxpayers to meet their tax needs. The Taxpayer Choice Models in English and Spanish informs the IRS about taxpayer service channel preferences for current service offerings and to gauge taxpayer reactions to service channel changes. The current Web-First channel migration conjoint study continues this work. For taxpayers likely to use the online services, this research will help us identify activities and types of transactions or interactions the taxpayers will be willing to conduct with the IRS. Where applicable, our research includes samples of low income, Spanish-speaking, and small business taxpayers to ensure that their needs are considered.
TAS Response	In its response, the IRS expressed an unwillingness to conduct a biennial survey to support the Services Priorities Project – that is, to find out what service channels the taxpayers really need or prefer. Instead it is going to conduct surveys of already on-line taxpayers to determine what web services they want. More importantly, the IRS's response indicates that IRS's plans to primarily focus on online services in the future state – contrary to evidence from Pew Research Center, Forrester Research, NerdWallet, and the Federal Reserve, as discussed in the National Taxpayer Advocate public forums.[1]
TAS Recommendation	**[5-2] Conduct research to identify the taxpayer base who will use the online taxpayer account system as well as other online service offerings. For those taxpayers likely to use the online services, the research should break it down by specific types of transaction or interaction with the IRS. Further, if a taxpayer has indicated that he or she will not use the program, the research should address the reasons for not using the program.**
IRS Response	IRS Actions Already In Progress.

[1] For transcripts and written statements including relevant research findings submitted for the National Taxpayer Advocate Public Forums held in Washington, D.C., *see* http://taxpayeradvocate.irs.gov/public-forums (last visited July 20, 2016).

IRS Action	Moving into the future, the IRS will continue to study taxpayer preferences to ensure continued access to the services that will allow taxpayers to meet their tax needs. The Taxpayer Choice Models, developed through conjoint surveys with taxpayers, will inform the IRS about taxpayer service channel preferences for current service offerings and to gauge taxpayer reactions to service channel changes. For taxpayers likely to use the online services, this research should help us identify specific types of transactions or interactions the taxpayers would like to have available. The research will also inform the Service of reasons taxpayers choose not to use online services.
TAS Response	Given the evolving nature of technology and cybersecurity measures, TAS encourages the IRS to continue to conduct this research into the future. Further, we encourage the IRS to work with the National Taxpayer Advocate in developing these studies and evaluating the results.
TAS Recommendation	**[5-3] Incorporate into the CONOPS, budget initiatives, and in the strategic plan recognition and plan for meeting the service needs of those taxpayers who are not likely to use online service offerings. Such plan should take into account the reasons for the taxpayer's behavior and potentially tailor the personal services to meet those needs.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. We fully recognize that not all taxpayers will wish, or have the means, to use online services. The IRS will continue to offer service by traditional channels including telephone, correspondence, and face-to-face interactions. These channels will continue to be included as a part of our future state and strategic initiatives as well as our budget requests.
IRS Action	N/A
TAS Response	TAS is pleased the IRS recognizes the importance of continued support of "traditional" service channels. We encourage the IRS to explore ways to improve the service levels on those channels and to not view them as second-best services.

TAS Recommendation	**[5-4] Research taxpayer response to the necessary online account system cybersecurity and authentication measures to determine the percentage of taxpayers who decide the necessary barriers to entry are too burdensome and avoid online account access as a result.**
IRS Response	IRS Actions Already In Progress.
IRS Action	Secure Access will launch new tools that will provide a wealth of data with regard to the product's usability. Data collected will point to customer pain points and provide indicators regarding how the product can be improved to widen usability while balancing the persistent need for security. Google Analytics on the eAuthentication pages will identify potential barriers in each step of the process and enable the IRS to further assess options. The IRS will use this data to adjust the authentication experience in ways that reduce burden while ensuring the secure protection of taxpayer data.
TAS Response	The National Taxpayer Advocate supports the IRS's efforts to implement state of the art e-authentication measures to access the online applications. However, these necessary precautions will serve as a barrier to entry for significant portions of the population. The delicate balance between security and access means that a significant majority of taxpayers will continue to use "traditional" service channels. Accordingly, the IRS must devote sufficient resources to these channels to meet taxpayer demand and attain acceptable levels of service. This will ensure that all taxpayers have access to IRS services in order to comply with the tax laws.

MSP #6 - PREPARER ACCESS TO ONLINE ACCOUNTS: Granting Uncredentialed Preparers Access to an Online Taxpayer Account System Could Create Security Risks and Harm Taxpayers

PROBLEM

The National Taxpayer Advocate has advocated for years that the IRS develop an online account system for taxpayers. The IRS has identified online account access as one of the top ten initiatives needed to achieve its compliance vision. Online account access would enable taxpayers, preparers, and authorized third-parties to securely interact with the IRS to obtain return information, submit payments, and receive status updates. Despite the anticipated benefits of the system, the National Taxpayer Advocate is concerned that taxpayers will be harmed if the IRS does not restrict preparer access to the system to those preparers who are subject to IRS oversight under Circular 230. In addition, the IRS should clearly define the scope of preparers' access to online accounts and enable the taxpayer to maintain strict control over preparer authorizations. Finally, it is crucial that the IRS develop and implement procedures to ensure that preparers do not exceed their authority when accessing taxpayers' online accounts.

TAS Recommendation	**[6-1] Limit preparer access to the taxpayer online account system to only those preparers subject to IRS oversight under Circular 230.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	A cross-functional IRS team, including members from the TAS, is currently working on analysis and policy planning. As a result of the team's findings, we will make determinations based on legal requirements, procedural guidelines, and business needs, to improve taxpayer services. Upon completion of the study and analysis of findings, the IRS will take this recommendation under consideration.

TAS Response	The National Taxpayer Advocate is pleased the IRS acknowledges the risks of unregulated preparer access to taxpayer online accounts. We continue to believe that restricting access to the online account to only those subject to oversight under Circular 230 will protect taxpayers from preparer misconduct and incompetence. This protective measure is crucial if the preparers have the ability to self-correct on behalf of the taxpayer. We also encourage the IRS to review the materials submitted and the transcripts for the National Taxpayer Advocate Public Forums in which this important issue is discussed.
TAS Recommendation	**[6-2] Develop the online account system so it validates the preparer's Preparer Taxpayer Identification Number (PTIN) information. If the preparer is not subject to Circular 230 oversight, the system should block certain authorization checkboxes automatically.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	A cross-functional IRS team, including members from the TAS, is currently working on analysis and policy planning. As a result of the team's findings, we will make determinations based on legal requirements, procedural guidelines, and business needs, to improve taxpayer services. Upon completion of the study and analysis of findings, the IRS will take this recommendation under consideration.
TAS Response	TAS encourages the IRS to consider the consequences of not implementing this important measure. The provisions of Circular 230 and Revenue Procedure 2014-42 restrict the type of practice in which unenrolled preparers can engage before the IRS. Only those unenrolled preparers with records of completion from the voluntary Annual Filing Season Program can represent a taxpayer before the IRS during an examination of a return that is prepared and signed by that preparer. Failure to build these requirements into the system will potentially harm taxpayers and provide a gateway for preparer misconduct.

TAS Recommendation	**[6-3] Develop the online account system so that the taxpayer can adjust preparer authorizations by checking a separate box for each type of action the designated preparer can take on the taxpayer's behalf. The checkboxes should use plain language explanations that Taxpayer Advocacy Panel (TAP) members and Low Income Taxpayer Clinics (LITCs) have reviewed.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	The cross-functional team, including members of the TAS, will work on specific components, capabilities and business requirements which will include the following considerations: • The taxpayer may add, change or delete authorizations once authenticated • The taxpayer will choose a role to be granted to the third party • The taxpayer defined role will determine additional rules that determine specific access allowed Upon completion of the study and analysis of findings, the IRS will take this recommendation under consideration.
TAS Response	It is unclear why the IRS does not agree with this recommendation, given the principles it has articulated above. TAS encourages the IRS to develop a system in which the taxpayer maintains absolute and detailed control over third party authorizations. Further, the authorization should use plain language explanations so that the taxpayers fully understand what they are authorizing the third party to do on their behalf.
TAS Recommendation	**[6-4] Develop procedures to track preparer access to the taxpayer's online account and verify the taxpayer authorized the actions taken.**

IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	The cross-functional team, including members of the TAS, will work on specific components, capabilities and business requirements. Upon completion of the study and analysis of findings, the IRS will take this recommendation under consideration.
TAS Response	It is unclear why the IRS does not agree with the basic principles of this recommendation, which should form the basis of any study of the issue. TAS encourages the IRS to develop the system to track and restrict preparer actions based on the taxpayer's permissions granted. Failure to do so could lead to unauthorized disclosures by the IRS in violation of IRC § 6103 violations.
TAS Recommendation	**[6-5] Develop procedures to automatically alert the taxpayer of any preparer activities on the online account system and provide information to the taxpayer on how to report unauthorized access.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	The cross-functional team, including members of the TAS, will work on specific components, capabilities and business requirements. Upon completion of the study and analysis of findings, the IRS will take this recommendation under consideration.
TAS Response	TAS encourages the IRS cross-functional team to review the transcripts and materials submitted for the National Taxpayer Advocate Public Forums in which this topic was discussed. The taxpayers should be informed of all actions take on the taxpayer's behalf. The method and frequency of delivery could be specified by the taxpayer.

TAS Recommendation	**6-6] Work with the Department of Treasury to issue guidance specifically applying the provisions of IRC §§ 6713 and 7216 to unauthorized access to the online account system. In addition, the IRS should work with Treasury to revise Circular 230 sanctions to include sanctions for preparers who conduct, or attempt to conduct, unauthorized transactions on the online account system.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	The cross-functional team, including members of the TAS, will work on specific components, capabilities and business requirements. The IRS recognizes it must protect taxpayer information by ensuring that taxpayers authorize an approved representative, identify the data to be shared with the representative and determine the length of time the representative has access to the data. Upon completion of the study and analysis of findings, the IRS will take this recommendation under consideration.
TAS Response	TAS appreciates the IRS considering this very important matter. However, it is unclear why the IRS does not agree with general principal stated in this recommendation, which should form the foundation for any review by the cross-functional team. Due to the evolving technology in tax administration since the drafting of both disclosure Code provisions, we believe guidance is a necessary reminder to both internal and external stakeholders of the consequences of using and disclosing taxpayer data accessed through the online account.

MSP #7 - 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

PROBLEM

During late 2014 and 2015 the IRS eliminated the last four tax attaché posts abroad. International taxpayers now must either call an overwhelmed, tolled IRS telephone number in the United States or obtain information from irs.gov. Apart from the attachés, the only free option for taxpayers to ask a specific question and receive a response from an IRS employee was the Electronic Tax Law Assistance Program (ETLA), which the IRS terminated in October 2015. The IRS has shut itself off from international taxpayers with no way of knowing whether it is providing the service taxpayers need. Given the complexity of international tax rules and the potentially devastating penalties for even inadvertent noncompliance, the IRS's withdrawal of dialogue makes it more likely taxpayers will get it wrong.

TAS Recommendation	**[7-1] Reopen the four international tax attaché offices and provide funding for TAS to establish one Local Taxpayer Advocate (LTA) position at each office.**

IRS Response	Recommendation Not Adopted. The IRS recognizes the issues faced by individual U.S. taxpayers working, living, or doing business abroad. We continue to look for opportunities to improve services delivered to this taxpayer base. Improving taxpayer services to assist taxpayers in fulfilling their U.S. tax obligations is an important strategic goal for the IRS. The goal of the IRS is to ensure that all taxpayers with an obligation to pay U.S. tax have the education and assistance that they need. At the same time, the IRS must leverage its resources to focus on the most efficient and effective ways to provide taxpayer service as we address our compliance risks. The primary purpose of the IRS's foreign posts was to facilitate relationships and interactions with foreign governments. Although the activities of IRS personnel stationed overseas included taxpayer assistance and outreach, the predominant functions performed involved government-to-government interactions. As interactions among governments have accelerated and expanded in recent years, many more IRS employees, any of whom may be located geographically anywhere in the United States, interact on a regular basis with their counterparts in foreign tax administrations in increasing numbers of jurisdictions around the world. This trend has resulted in a greater acceptance of government-to-government interactions through e-mail and other technological tools, which can be accentuated by travel when necessary to address particular issues or problems. The ultimate outcome has been a reduced need to physically maintain a contingent of employees in foreign jurisdictions. Accordingly, we took into account our global mission, technological advances, and budgetary constraints, and made the decision to realign functions and positions from foreign-based to U.S.-based. The budgetary funding in light of increased costs to maintain the foreign posts, combined with existing workload, security concerns, and available technology, required the development of alternative approaches to providing services to taxpayers living abroad. In fiscal year 2015, IRS funding was reduced by $346 million, with another $250 million specified for mandated costs; this is the equivalent of a discretionary budget reduction of almost $600 million. The IRS had to make difficult decisions about areas where costs could be reduced. One decision the IRS made was to close the foreign Tax Attaché offices and eliminate the costs associated with the operation of the foreign posts. Most of the work such as responding to exchange of information requests could be handled more efficiently by IRS personnel located in the United States and already performing similar work. Other work, including services to international taxpayers, could likewise be integrated into functions carried out in the United States.

IRS Response Continued	The IRS is committed to our expatriate community as well as meeting our international obligations. The IRS continues to provide free tax assistance and return preparation through its Volunteer Income Tax Assistance (VITA) program at VITA sites located overseas at U.S. military bases. In addition, the IRS has expanded the services provided through IRS.gov. International taxpayers have indicated that obtaining tax information through the IRS website is the preferred channel. The IRS has redesigned the international pages on IRS.gov to be more useful to international taxpayers and has added the following features: • A redesigned international landing page organized by taxpayer category. Each category links to a separate landing page with relevant categories. • Links about the effect of the Affordable Care Act on U.S. citizens and resident aliens living outside the United States. • A Tax Map of international tax topics that makes it easier to search and find topics of interest. • A link from the "Make a Payment" Main Page with instructions on how to make electronic payments via a foreign bank account for taxpayers living abroad who no longer have a U.S. bank account. • The expansion of the Frequently Asked Questions page for the international taxpayer. • The development of six YouTube videos for international taxpayers. • The development of two international topics on the Tax Trails interactive section. • A link to a newly developed page providing tips on effectively receiving a refund, including information on how to reduce foreign addresses, to reduce undelivered mail returned to a U.S. embassy. • Links in Help and Resources to provide easy access to other relevant pages such as Report of Foreign Bank and Financial Accounts (FBAR) and Foreign Account Tax Compliance Act (FATCA). All of these sites allow for efficient sharing of relevant information for taxpayers residing outside the United States. Additionally, taxpayers can obtain tax assistance, including assistance with account issues, through the International Taxpayer Service Call Center at 267-941-1000. Alternately, overseas taxpayers may also fax their written tax questions to IRS by dialing 267-941-1055. Lastly, taxpayers in Guam, the Bahamas, U.S. Virgin Islands, or Puerto Rico, can call 800-829-1040 for assistance. The IRS will continue to seek new ways to improve taxpayer assistance to all taxpayers both in the United States and abroad while promoting voluntary compliance. The closures of the overseas post of duty offices will increase efficiencies in achieving the IRS mission and help us move forward with our strategic priorities during a declining budget environment. Consequently, the IRS does not believe reopening the four Tax Attaché offices is appropriate at this time.
IRS Action	N/A

TAS Response	The IRS's response overlooks much of the important work done by the attaché offices abroad. As detailed in the MSP, the attachés provided a valuable feedback loop between taxpayers and the IRS, allowing the IRS to learn firsthand about the problems international taxpayers faced and then use that information to better tailor its resources for these taxpayers. The IRS response lists numerous website resources available to international taxpayers, but does not provide any toll-free options for taxpayers outside the United States or its territories to interact with IRS employees. Without this interaction, the IRS may not know whether its website resources are even meeting the informational needs of international taxpayers. Contrary to the IRS's suggestion that closing the attachés will increase efficiencies, the IRS may actually become less efficient because instead of answering taxpayers' questions upfront and being proactive in response to their needs, the IRS may have more problems to fix later, requiring the revision of established procedures and increased enforcement action.
TAS Recommendation	**[7-2] Conduct impact studies to determine the effects on taxpayer service, compliance, and revenue by opening additional tax attaché offices around the world.**
IRS Response	Recommendation Not Adopted. As noted above, the primary purpose of the IRS's foreign posts was to facilitate relationships and interactions with foreign governments. The IRS determined that existing foreign posts should be closed and that the IRS would render existing functions, including providing assistance to international taxpayers, in other ways, such as through technological tools. The same primary variables (budget, security, and technology) that resulted in this decision to close the existing posts argue against opening additional offices. As a result, the IRS will not conduct impact studies about opening additional foreign posts.
IRS Action	N/A
TAS Response	Without conducting impact studies, the IRS cannot make an informed decision about closing the attachés or opening additional offices abroad. The IRS indicated that it looked at budget, security, and technology in making its decision, but gives no indication that it considered cost-benefit analysis based on taxpayer service, voluntary compliance, and revenue. Improved taxpayer service and increased compliance could result in revenue equal to or greater than any budgetary costs associated with reopening the closed attachés or opening additional ones. However, the IRS persists in refusing to consider these factors. Furthermore, the IRS has not shown that its current or planned technology will allow it to provide a substitute for all of the services offered by the attachés.

TAS Recommendation	**[7-3] Reestablish the Electronic Tax Law Assistance (ETLA) (or a similar program) with timeframes for responses and create a process for using the information from ETLA inquiries in updates to IRS internal and external materials, including the irs.gov website.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS is committed to enhancing the service it provides to international taxpayers in a cost effective manner. Since the launch of ETLA in 2005, the IRS has developed additional web-based self-service channels. The International Taxpayers page on irs.gov is packed with information designed to help taxpayers living abroad, resident aliens, nonresident aliens, residents of U.S. territories and foreign students. The web site also features a directory that includes overseas tax preparers. Online tools such as Tax Map and the International Tax Topic Index are valuable sources to locate answers to tax questions. These online tools assemble or group IRS forms, publications and web pages by subject and provide users with a single entry point to find tax information. Other self-assist tools available on irs.gov include Forms and Publications, FAQs, Tax Topics, Tax Trails, and the Interactive Tax Assistant (ITA). In 2015, the IRS created six videos to assist international taxpayers with some of their most common questions. The videos topics include: • Filing Requirements • Foreign Earned Income Exclusion • Individual Taxpayer Identification Number (ITIN) • Filing Status if Married to a Nonresident Alien • Foreign Tax Credit • Introduction to the International Taxpayers Web Page In October 2015, the IRS added two international tax topics to the Tax Trails application on irs.gov. • *Am I required to file a U.S. individual income tax return (for U.S. citizens/resident aliens living abroad and nonresident aliens?* • *Filing Status of a U.S. Citizen or Resident Alien Married to a Nonresident Alien* Three new ITA international topics are scheduled for deployment to irs.gov in January 2017: • *Am I qualified for the Foreign Earned Income Exclusion?* • *Do I qualify for the Foreign Tax Credit?* • *Do I need an ITIN (Individual Identification Number)?*

IRS Action	Deploy three ITA topics to irs.gov January 2017.
TAS Response	The National Taxpayer Advocate appreciates the increased focus on providing resources for international taxpayers by grouping information in a single place on the website, creating targeted videos, and expanding the Tax Trails and ITA. While these are helpful, they are not a substitute for ETLA. The web self-service tools do not provide a method by which taxpayers can communicate with IRS employees to ask their individual questions and receive a specific response. While the IRS can attempt to provide answers to what it believes are common questions, the IRS is unable to learn what questions taxpayers really have and provide answers to. The IRS's expansion of online resources, which do not actually provide for any interaction between taxpayers and IRS employees, does not address the issues raised by the National Taxpayer Advocate regarding the termination of ETLA. Reestablishing ETLA is a cost-efficient option for filling the gap created by the elimination of all channels of direct communication with taxpayers abroad which left the IRS not only being unable to provide direct answers to tax law questions of those international taxpayers who are willing to comply, but also being unable to know whether it is providing the information taxpayers need through the only remaining channel – irs.gov. The IRS fails to comprehend the importance and the net effect of this recommendation, which is a reversion back to a dialogue with taxpayers, an important part of fair and effective tax administration which cannot operate in a vacuum.
TAS Recommendation	**[7-4] Allocate funding for staffing additional telephone service to accommodate the need created by the expansion of international enforcement activities.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow.

IRS Action	We agree with your recommendation to increase the staffing on our International telephone line and will consider implementation if resources and funding become available. The International telephone line is considered a specialty product line and Accounts Management (AM) strives to deliver a higher Level of Service (LOS) on this line than the general toll-free line. We have set the LOS for International telephone service at five percent higher than our general toll-free line. Once the projected increase in demand is determined for the expansion of international enforcement activities, then we may need to adjust LOS.
TAS Response	The National Taxpayer Advocate recognizes the IRS's budgetary constraints and is pleased that the IRS is prioritizing service to taxpayers who face limitations in how they can contact the IRS. Once the increase in demand is determined, the IRS should allocate appropriate staff and funding to achieve the higher level of service for the international line.
TAS Recommendation	**[7-5] Create a task force to analyze and provide a report within one year on the barriers to Voice Over Internet Protocol (VOIP) usage and partnering with the U.S. Department of State to employ Virtual Service Delivery (VSD) technology for taxpayers at U.S. embassies and consulates.**

IRS Response	The IRS created a task force which included representatives from Information Technology, WebEx Information Technology and the International Individual Taxpayer Assistance office. The task force identified the following barriers and issues with the Voice Over Internet Protocol (VOIP) technology for use in international taxpayer assistance that do not exist in the public switched telephone network (PSTN):
	
	• A "live" person is still needed on the call.
	• An "active" high speed internet connection is needed by each user.
	• A computer, adapter or specialized telephone is required for each user.
	• VOIP providers generally piggyback off the networks established by Internet Service Providers (ISP); this poses security risks.
	• Mobile telephone and other devices are considerably more expensive to call internationally than landlines.
	• Free or low cost providers generally provide poor sound quality.
	• Most VOIP providers do not operate in all countries.
	• VOIP technology is subject to a number of challenges to satisfying security concerns, including:
	  ○ Eavesdropping
	  ○ Identity theft
	  ○ Phishing, which involves a fake party calling as a trustworthy organization to request confidential or critical information
	  ○ Viruses and malware issues
	  ○ Denial of Service, which is carried out by flooding a target with unnecessary SIP (Session Initiated Protocol) call signaling messages in order to take control of a system remotely
	  ○ Spamming
	  ○ Phishing attacks
	  ○ Call tampering
	  ○ Older firewalls may not recognize VOIP protocols and block traffic
	  ○ VOIP security is only as reliable as the underlying network security of each user
	  ○ Man-in-the-middle attacks that intercepts call-signaling SIP message traffic and masquerades as the calling party
	  ○ Wireless systems expose VOIP vulnerabilities.
	
	The IRS is unable to implement VSD communication through U.S. embassies at this time, as the IRS currently does not have the VSD technology capabilities required for such communication.

IRS Action	N/A

TAS Response	The National Taxpayer Advocate is disappointed by the IRS's lack of commitment to transparency and by the incomplete or misleading information provided in response to TAS's formal information request during the drafting of this MSP. TAS specifically asked the IRS what the barriers were to using Voice Over Internet Protocol (VOIP) for all overseas taxpayers. The only part of the IRS's response applicable to that question stated: "Based on the IRS experience as a tenant of the US Embassy in London, the service does not allow call forwarding and taxpayers cannot use the phone system to contact an IRS taxpayer service line in the United States." The IRS's elaborate response above identifies a multitude of issues with using VOIP for all overseas taxpayers, and such information would have been useful during the drafting of the MSP. Moreover, we note that many of the issues the IRS identified as challenges to VOIP are also concerns shared by regular telephone (for instance, social engineering, eavesdropping, or phishing, etc.). Thus these vulnerabilities are not a valid reason for refusing to use Virtual Service Delivery (VSD) technology for international taxpayers. The IRS can and should acquire secure VSD communication technology widely used in private sector. If spotty online access or lack of high speed internet were a concern, the IRS would have retained the four attaché offices abroad instead of shifting most material on the irs.gov site. Finally, if the IRS had tax attachés, at least in Europe, it would have assisted international taxpayers to reach the IRS via phone as many phone companies have free calling within Europe and to the United States. The National Taxpayer Advocate hopes the IRS will continue to explore ways for taxpayers abroad to make toll-free calls to the IRS and will reevaluate the use of VOIP or similar methods if technological changes are made to mitigate the security and accessibility concerns.
TAS Recommendation	**[7-6] Reinstate the International Individual Taxpayer Assistance (IITA) Team, with a formal charter, regular meetings, objectives, and measurable results.**

IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS continues to recognize the importance of a team focused on international taxpayers and welcomes the opportunity to continue working with National Taxpayer Advocate. Improving taxpayer service to U.S. taxpayers who work, live, and conduct business abroad is an important strategic goal for the IRS. The International Individual Taxpayer Assistance Team (IITA) was established in 2012, partly in response to a National Taxpayer Advocate recommendation. The IITA program was made permanent in 2013, with an identified Program Manager. Since that time, the IITA reviewed and evaluated services provided to the international taxpayer and has completed the following actions: • Redesigned the landing page for international taxpayers on IRS.gov to group the content of the information by type of taxpayer. • Developed six YouTube videos. • Developed two question-and-answer formats for the Tax Trails interactive site. • Provided a "Preparing for the Tax Season" summary of useful information that was made available at embassies and posted on the State Department website. • Added a link to information on how to make electronic payments via a foreign bank account for taxpayers living abroad who no longer have a U.S. bank account. • Added information on receiving refunds, including information on providing a correct and updated address, to minimize undelivered checks. • Added a link for Affordable Care Act information for the international taxpayer • Improved and added questions on the FAQs page. • Added a "Tax Map" of international tax topics to make it easier to search and find topics of interest. The IITA Program Manager continues to explore and develop ways to improve services to the international taxpayer community, including through the use of web-based seminars. The IRS continues to believe that an IITA team with a more formal structure may limit the IITA's ability to quickly react to identified needs and direction of the services provided to the international taxpayer. For example, the IITA as structured was able to provide the "Preparing for the Tax Season" summary for the State Department within 2 weeks of receiving the request.
IRS Action	The recent realignment of the IITA program requires an evaluation to assess the strategies, mission, needs, and future direction of the program. The IITA continues with an ad hoc operating structure that allows the IITA to provide the quickest, most responsive, service. After we evaluate the effectiveness of the realignment, the IRS will consider the structure, goals, and functions of the IITA team.

TAS Response	Without a formal charter, regular meetings, objectives, and measurable results, the IITA will likely become inactive again. As noted in the MSP, the IITA accomplished little during the last two fiscal years. A formal charter could ensure the group meets regularly, includes representatives from various IRS offices who are involved with international taxpayers (including TAS), and is held accountable for achieving results. A single program manager is not a substitute for a cross-functional team.

MSP #8 - APPEALS: The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers

PROBLEM

Appeals recently implemented the Appeals Judicial Approach and Culture (AJAC) project in hopes of enhancing "internal and external customer perceptions of a fair, impartial and independent Office of Appeals." Although AJAC's aspirations are commendable, its practical implementation is eroding the very perceptions of fairness and objectivity that it claims to bolster. For example, non-docketed Appeals cases have fallen by 25 percent between fiscal year end (FYE) 2011 and FYE 2015, a decline that AJAC has only perpetuated. Further, AJAC is being used as a justification by Compliance to intimidate taxpayers and deny their right to an administrative appeal. If taxpayers are able to get to Appeals, they are subjected to an AJAC regime that is causing cases to bounce back and forth between Appeals and Compliance and resulting in curtailed review by Hearing Officers of the cases they retain.

TAS Recommendation	**[8-1] Permanently discontinue the Letter 5262 series and preserve taxpayers' rights to an appeal even in cases where all requested information is not provided to Compliance.**
IRS Response	IRS Actions Already Implemented. On June 9, 2015, SB/SE suspended the use of Letter 5262, Examination Report Transmittal-Additional Information Due (Straight Deficiency) and similar letters. After further review, SB/SE decided to permanently discontinue the use of these letters and is in the process of: • Drafting interim guidance (IG) to communicate the permanent discontinuance of Letter 5262, and similar letters; and • Drafting talking points for managers to use in conjunction with the IG during group meetings to communicate the permanent discontinuance of Letter 5262 and similar letters.
IRS Action	N/A

TAS Response	The National Taxpayer Advocate is pleased that, as recommended, the Letter 5262 series is being permanently discontinued. TAS will monitor that the IRS completes the actions outlined above.
TAS Recommendation	**[8-2] Loosen Appeals Judicial Approach and Culture (AJAC) restrictions to allow Hearing Officers to exercise more discretion regarding whether additional factual development or analysis within Appeals would materially assist case resolution.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Appeals hearing officers have discretion, as indicated in IRM 8.6.1.6.5, to determine whether additional factual development or analysis is needed. There is nothing in the IRM that restricts their judgment. Appeals reviews a decision rendered by the Compliance function. Additional factual development or investigation conducted in Appeals compromises objectivity and impartiality.
IRS Action	N/A
TAS Response	TAS does not agree that the IRS is taking actions to address this recommendation. Under Appeals Judicial Approach and Culture (AJAC) policy and practice, Hearing Officers are provided with minimal discretion to determine when even modest factual investigation or verification can most efficiently be done in Appeals. TAS is aware of cases in which Hearing Officers, in conjunction with taxpayers, were willing to undertake limited factual investigation that would have led to a quick settlement. Nevertheless, AJAC, as currently applied, required the Hearing Officers to send the cases back to Compliance, causing unnecessary delay and expense for both taxpayers and the government. In order to best facilitate administrative case resolution, Hearing Officers should not be subject to a rigid set of "one size fits all" requirements. They should have the flexibility and authority to determine when a reasonable degree of case development within Appeals would assist taxpayers and the IRS to achieve a time-efficient and resource-effective case settlement. This type of discretion, responsibly exercised, would increase, rather than decrease, perceptions of objectivity and fairness.

TAS Recommendation	**[8-3] Provide Hearing Officers with revised guidance and enhanced training emphasizing quality substantive review, rather than mere satisfaction of procedural requirements by expanding timeframes and retaining Appeals' jurisdiction where appropriate, as the best means of providing taxpayers with the right to appeal an IRS decision in an independent forum.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Appeals recently updated its Appeals Policy FAQs (formerly referred to as AJAC FAQs) to provide additional clarification. Appeals also maintains a SharePoint site where employees can review prior questions and answers and submit new questions. In addition, Appeals conducted on-line training sessions for employees. Appeals hearing officers must use their judgment in determining when information or a case should be returned to Compliance – however, Appeals is not the first finder of fact and does not develop cases.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate applauds Appeals' efforts to update policies, enhance information accessibility, and provide Hearing Officers with additional training. In order for these efforts to be effective, however, guidance and communications must be redesigned to emphasize quality substantive review, not just compliance with procedural requirements. Moreover, the larger Appeals Judicial Approach and Culture (AJAC) policies and practices generating an adversarial environment, incentivizing the unnecessary return of cases to Compliance, and resulting in a lack of quality substantive reviews must be revisited and revised. Only then will additional guidance and training for Hearing Officers be effective in furthering Appeals' mission.
TAS Recommendation	**[8-4] Develop and implement an outreach plan aimed at practitioners to help them understand what is needed for a successful appeal and to provide Appeals with information about the difficulties experienced by taxpayers and practitioners under Appeals Judicial Approach and Culture (AJAC).**

IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Appeals is engaging in a number of external communication efforts. The publicly-available Appeals Policy FAQs have been revised and are posted on irs.gov. Publication 5 is being revised to reflect the policy changes. Also, on irs.gov / keyword: Appeals, there is a link titled "What Can You Expect from Appeals?" that explains our commitments, taxpayer responsibilities and general timeframes. Appeals is also planning two presentations for the 2016 Nationwide Tax Forums to help practitioners understand what is needed for a successful appeal.
IRS Action	N/A
TAS Response	Appeals' outbound communications to taxpayers and practitioners are good, although there is room for improvement. For example, Appeals can further expand outreach to attorneys, CPAs, and other taxpayer representatives in various venues ranging from the American Bar Association (ABA) Tax Section, to the American Institute of Certified Public Accountants (AICPA). Additionally, Appeals would benefit greatly from soliciting and heeding comments and suggestions from taxpayers and stakeholders, who have valuable insights to share regarding the very real difficulties they are experiencing under AJAC.

MSP #9 - COLLECTION APPEALS PROGRAM (CAP): The CAP Provides Inadequate Review and Insufficient Protections for Taxpayers Facing Collection Actions

PROBLEM

The IRS developed the Collection Appeals Program (CAP) as a response to congressional concerns regarding the rights of taxpayers subject to collection activity relating to liens, levies, and installment agreements. CAP hearings provide taxpayers with some distinct benefits in comparison to Collection Due Process (CDP) Appeals, including expedited timeframes and the ability to challenge determinations regarding installment agreements. They remain severely limited, however, in the remedies and scope of review they offer taxpayers. CAP rejects substantive review and a consideration of collection alternatives, which would involve a balancing of the proposed collection action versus the taxpayer's legitimate concern regarding intrusiveness of the collection action, in the name of speed, a circumstance that has only been made worse by procedures implemented under the Appeals Judicial Approach and Culture (AJAC) project. Further, pursuit of a CAP hearing by a taxpayer can inadvertently cause the loss of all substantive administrative and judicial review of a collection action.

TAS Recommendation	**[9-1] Revise the policies and procedures governing Collection Appeals Program (CAP) to allow Hearing Officers the expanded authority, and where necessary, the additional time to review Collection alternatives and remand cases to Collection for consideration of those alternatives.**

IRS Response	Recommendation Not Adopted. CAP is designed to deliver a prompt response regarding the appropriateness of the action proposed or taken based on law, regulations, policy and procedures after considering all of the relevant facts and circumstances (see IRM 8.24.1.1.1(9)). With a turnaround goal of 5 business days, CAP provides taxpayers with an immediate decision and helps avoid inconveniencing third parties longer than is necessary when they are holding property subject to levy. The Appeals hearing officer is allowed to exercise judgment and consider if any new taxpayer information should be reviewed by Collection or if the current facts and circumstances (as provided by the taxpayer to Collection and forwarded to Appeals) are sufficient for Appeals to determine the appropriateness of the issue under appeal. See IRM 8.24.1.2.7(7). Other Appeals programs offer taxpayers the benefit sought by this recommendation. Taxpayers have the opportunity to raise collection alternatives in an Offer in Compromise, Installment Agreement or a CDP hearing if they file a timely appeal (see IRM 8.22.4.2.2, *Summary of CDP Process*). In addition, if they miss the deadline, taxpayers still have one year to submit a request for an Equivalent Hearing (beginning the day after the date of the CDP levy notice and beginning the day after the end of the five-business-day period following the filing of the Notice of Federal Tax Lien) and raise collection alternatives.
IRS Action	N/A
TAS Response	CAP's primary weakness is its inflexibility, expressed in terms of a lack of substantive review and a prohibition against the consideration of alternative Collection options. CAP's rigidity and limited parameters are partially explained by Appeals' laudable desire to hasten review and provide an expedited decision. Nevertheless, an incomplete or ill-considered decision is not made better for having been reached more quickly. While speed is an important priority, Appeals should also focus on allowing a robust review and dialogue with taxpayers so that CAP proceedings can reach the best decision for all concerned at the earliest possible stage. CAP hearings and Collection Due Process (CDP) appeals will, of necessity, involve different degrees of substantive review. Nevertheless, CAP hearings could still include a meaningful level of inquiry sufficient to allow for the consideration of collection alternatives and a quality answer based on the existing facts after remand to Collection when the circumstances dictate. This can be done without significantly altering timeframes. Without such a capacity, CAP will continue to be a narrow program of limited use to both taxpayers and the IRS.

TAS Recommendation	**[9-2] Issue guidance specifying that taxpayers' use of Collection Appeals Program (CAP) will no longer preclude them from receiving an independent reconsideration via a Collection Due Process (CDP) appeal based on either issue preclusion or *pro forma* adoption of the prior CAP decision.**
IRS Response	Recommendation Not Adopted. While the Appeals hearing officer may adopt a persuasive decision made in a prior CAP proceeding as part of a CDP determination, the hearing officer independently reaches the determination, which is subject to an abuse of discretion review by the U.S. Tax Court. The hearing officer can consider any additional documentation, facts or changes regarding the taxpayer's circumstances and decide whether the same proposal, previously rejected by Collection and sustained in a CAP hearing, merits another look.
IRS Action	N/A

TAS Response	If a taxpayer proceeds with a Collection Appeals Program (CAP) hearing and if that proceeding concludes before a Collection Due Process (CDP) appeal is lodged, then the issue raised and considered in the CAP hearing may be precluded from consideration in a subsequent CDP appeal. This risk exists because the completed CAP hearing could be treated as a "previous administrative proceeding" under IRC § 6330(c)(4). In this event, the taxpayer would lose the additional benefits provided by a CDP appeal such as substantive review, consideration of Collection alternatives, application of the balancing test, and judicial oversight of the outcome. Even if the issue is not precluded from a subsequent decision in a CDP appeal, the Hearing Officer conducting the CDP appeal still has the option of adopting the decision made in the procedurally-focused CAP hearing. This adoption would in effect also deprive the taxpayer of many of the benefits conferred by a robust CDP appeal, including substantive review, consideration of Collection alternatives, and application of the balancing test. Hearing Officers are allowed to take this approach as long as the taxpayer does not present any new information or arguments in the CDP appeal regarding the issue raised in CAP. A CDP review would be appropriate if a taxpayer raised collection alternatives, but the risk remains in the present AJAC environment that a Hearing Officer might mistakenly or precipitously invoke issue preclusion or adopt the prior CAP decision. Thus, under a variety of circumstances, taxpayers availing themselves of the attractive aspects of CAP could unwittingly forfeit their ability to seek a CDP appeal. This approach by the IRS unnecessarily and unjustifiably jeopardizes the *right to appeal an IRS decision in an independent forum*, the *right to challenge the IRS's position and be heard*, and the *right to privacy*. Further, it acts as an affirmative deterrent to the use of an already underused program.
TAS Recommendation	**[9-3] After implementing the improvements in Collection Appeals Program (CAP) discussed above, make a concerted effort to publicize the benefits of CAP and ensure that Hearing Officers and all IRS employees with taxpayer contact more effectively inform taxpayers and their representatives about the availability of CAP hearings.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Although no additional action is being taken on recommendations 9-1 and 9-2, Appeals has updated videos explaining collection alternatives and is planning a presentation for the 2016 Nationwide Tax Forums to help practitioners understand what is needed for a successful appeal.

IRS Action	N/A
TAS Response	The National Taxpayer Advocate commends Appeals for updating the videos on collection alternatives and presenting at the Nationwide Tax Forums. Nevertheless, TAS recommends that CAP be revised as described in the ARC to make it more fair and effective for taxpayers. Then these expanded uses and benefits can be extensively publicized to taxpayers and their representatives. Likewise, IRS personnel can be educated regarding the revised program and required to consistently and affirmatively make taxpayers aware of its offerings and advantages.

MSP #10 - LEVIES ON ASSETS IN RETIREMENT ACCOUNTS: Current IRS Guidance Regarding Levies on Retirement Accounts Does Not Adequately Protect Taxpayer Rights and Conflicts With Retirement Security Public Policy

PROBLEM

Taxpayers rely on retirement accounts to fund living and other expenses after retirement. Congress for years has encouraged retirement savings and formulated policies to protect these rights. Current Internal Revenue Manual (IRM) guidance lacks a definition for flagrant conduct (a prerequisite for the levy) and contains inadequate instruction for analyzing future retirement calculations. The IRS guidance that explains the steps required before a retirement account can be levied contains inadequate detail, and is insufficient to protect taxpayer rights or enable taxpayers to meet basic living expenses in retirement.

TAS Recommendation	**[10-1]: In collaboration with TAS, revise the IRM on retirement account levies to define flagrant conduct, which should include elements of willful and voluntary conduct that appears to be a gross violation from a reasonable person standard, include examples of extenuating circumstances that can mitigate flagrant conduct, require a full pre-levy financial analysis, and educate taxpayers about actions available to avoid a levy on a retirement account.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Since June 2015, prior to issuance of the National Taxpayer Advocate's 2015 Report to Congress, the IRS has been holding discussions with the Taxpayer Advocate Service (TAS) to revise the flagrant conduct examples in the IRM on retirement accounts. As part of these discussions, we asked TAS for any data to support a need to revise the definition of flagrancy, or any data that would show revenue officers are abusing discretion based on the current definition. TAS referenced a single case; however, in that lone example, the Deputy Commissioner determined the levy decision, including the revenue officer's flagrancy assessment, was appropriate. Based on those discussions, on January 19, 2016, we submitted the negotiated proposals in an IRM update which clarified the flagrancy examples and included reference to pre-levy considerations. The IRS is continually educating taxpayers through our various letters and contacts on their rights which include information to request review by an independent Office of Appeals, an explanation of the entire process from examination (audit) through collection, and explaining when TAS may be able to assist the taxpayer.
IRS Action	Clearance for the IRM 5.11.6.2, Funds in Pension or Retirement Plans has been completed. We are in the process of holding a final executive level meeting to address TAS comments before publication.

TAS Response	The IRS is persistent in its refusal to define flagrant conduct. As such, the decision as to whether a taxpayer is flagrant is still dependent upon the judgment of the individual Revenue Officer using Internal Revenue Manual (IRM) examples. The National Taxpayer Advocate is pleased that the IRS has addressed some of her concerns by providing additional examples of flagrant conduct in IRM 5.11.6.2. As stated above, TAS continues to negotiate with IRS on providing a clear definition of flagrant conduct prior to clearing IRM 5.11.6.2.
TAS Recommendation	**[10-2]: The IRS should identify calculators that it can use, such as those provided by the Social Security Administration (SSA) or Thrift Savings Plan (TSP), to determine the impact of a levy on a retirement account on the taxpayer's future well-being. Alternatively, the IRS could create its own calculator.**
IRS Response	Recommendation Not Adopted. The IRS believes the current guidance on financial analysis ensures taxpayers are treated in a uniform manner. Collection employees are required to determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate remains concerned the guidance in Internal Revenue Manual (IRM) 5.11.6.2 on whether the taxpayer depends on the money in the retirement account is inadequate to ensure consistent treatment amongst taxpayers. The instructions point to IRS Publication 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*, to determine the taxpayer's life expectancy but 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 factoring any growth in retirement funds or projecting future increases in necessary living expenses. TAS has developed a theoretical model of a "retirement needs" 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. We plan to introduce the calculator to the IRS in conjunction with the upcoming negotiations concerning the Area Director approval memorandum; the National Taxpayer Advocate will also brief the Commissioner of Internal Revenue on the calculator. Moreover, TAS plans to use the calculator to support its advocacy efforts on behalf of taxpayers with retirement account levy cases in TAS.

TAS Recommendation	**[10-3] Create a unique Designated Payment Code for retirement levy proceeds or a unique identifier within the Integrated Collection System to identify, track, and review retirement levy cases.**
IRS Response	Recommendation Not Adopted. Creation of a Designated Payment Code (DPC) or unique identifier is unnecessary for Collection to evaluate the effectiveness of retirement levies, as they are evaluated on a case-by-case basis and require executive-level approval. Additionally, there is no systemic method for capturing DPC data and a manual retirement levy DPC would have an inherent human error component. The IRS believes the current approval process ensures taxpayers are treated in a uniform manner and internal guidance is being followed.
IRS Action	N/A
TAS Response	As part of this MSP, TAS requested the IRS to provide the taxpayer identifying numbers of taxpayers whose retirement accounts were levied in Calendar Years (CYs) 2014 and 2015. The IRS responded with a list of thousands of potentially levied taxpayers but advised it had no way to positively identify those taxpayers whose retirement accounts had been levied. As such, IRS has no way to perform a valid quality review on groups of cases with retirement asset levies. Additionally, stakeholders such as TAS and the Treasury Inspector General for Tax Administration (TIGTA) have no way of reviewing IRS performance in this area. Given the fact that retirement levies have potentially life-altering consequences for taxpayers, it is imperative that IRS create some method to identify these cases.
TAS Recommendation	**[10-4] Postpone the Automated Collection System (ACS) retirement levy pilot program until all of the National Taxpayer Advocate's concerns have been addressed, and if they are not able to be addressed, do not implement the pilot.**

IRS Response	IRS Actions Already Implemented. The purpose of the pilot is to determine whether levies should be issued on Thrift Savings Plan (TSP) accounts, not all retirement accounts. The pilot procedures were developed and shared with the staff of the National Taxpayer Advocate. Forty-eight separate issues were identified as discussion points in the procedures. Over the course of several meetings between representatives of the National Taxpayer Advocate and the Collection Inventory, Delivery and Selection group, agreement was reached on all 48 items and the pilot began on January 19, 2016. We are monitoring the pilot cases through a Data Collection Instrument (DCI) and, once the pilot is complete, we will analyze the DCI for conclusions and recommendations. We briefed TAS on March 14, 2016 regarding the status of the pilot and will continue to provide information and updates as the pilot progresses and after conclusion of the pilot.
IRS Action	N/A
TAS Response	TAS has been advised by IRS that the Automated Collection System (ACS) Thrift Savings Plan (TSP) levy pilot will be discontinued upon its completion. TAS plans to review the pilot report upon its completion to ensure that the IRS does not plan to transition the pilot into a permanent program. In addition TAS will review cases from the pilot and compare the IRS data collection instrument with the one created by TAS.

MSP #11 - NOTICES OF FEDERAL TAX LIEN (NFTL): The IRS Files Most NFTLs Based on Arbitrary Dollar Thresholds Rather Than on a Thorough Analysis of a Taxpayer's Financial Circumstances and the Impact on Future Compliance and Overall Revenue Collection

PROBLEM

Notices of Federal Tax Lien (NFTLs) establish priority of the government's interest in a tax debtor's property by putting the public, including third party creditors, on notice of an existing lien. Several TAS studies show that NFTLs can unnecessarily harm taxpayers and reduce their ability to become or remain compliant with their federal tax filing obligations. NFTLs also generate significant downstream costs for the government, often without attaching to any tangible assets. The IRS files most NFTLs based on an arbitrary dollar threshold of the unpaid liability, with over 21 percent of liens filed without human involvement in determining lien filing, rather than conducting a thorough analysis of the taxpayer's individual circumstances and financial situation, or consideration of the NFTL's impact on future compliance and collected revenue. Current IRS lien policies can have a negative impact on taxpayers' economic viability, ability to pay the past debt, and comply in the future.

TAS Recommendation	**[11-1] Revise the IRM to require employees to make multiple attempts to initiate a meaningful personal contact with the taxpayer by phone or through mailing notices, instead of filing a NFTL after just one attempt. The IRS should adopt an early intervention policy similar to the new standard in the mortgage industry that requires two contacts, one of which is a person-to-person attempt, rather than simply mailing a letter.**

IRS Response	Recommendation Not Adopted. The IRS's procedures on NFTL determinations adhere to Policy Statement 5-47, which states: A notice of lien shall not be filed, except in jeopardy assessment cases, until reasonable efforts have been made to contact the taxpayer in person, by telephone or by a notice sent by mail, delivered in person or left at the taxpayer's last known address, to afford him/her the opportunity to make payment. All pertinent facts must be carefully considered as the filing of the notice of lien may adversely affect the taxpayer's ability to pay and thereby hamper or retard the collection process. In practice, the IRS usually does not file a NFTL after just one attempt at contact. Prior to a NFTL filing determination being made, taxpayers generally are provided two to four notices of the balance due, attempts are made to contact the taxpayer by phone when a phone number is available and, if assigned to a Field Revenue Officer (RO), additional personal contact may be attempted. Mandating additional contact attempts would inappropriately reward taxpayers actively avoiding the IRS. The process used by the mortgage industry, as alluded to by the National Taxpayer Advocate, is not relevant as it pertains to situations where the mortgage company has already filed notice of the mortgage and is foreclosing as a secured creditor. The analogous situation for the IRS would be when seizure or judicial foreclosure is instigated after the NFTL had been filed.
IRS Action	N/A

TAS Response	TAS remains concerned that the IRS continues filing NFTLs based on an arbitrary threshold amount with little management review rather than on focusing on "meaningful" contact with the taxpayer. IRM 5.12.2.2(1) instructs employees to make "reasonable efforts" when contacting the taxpayer before filing a NFTL which includes the issuance of the statutory assessment notice and the balance due notices sent during the collection process. The IRM does not require a "live" contact with the taxpayer. As a result, many NFTL determinations may be perceived as "checking the box," without actually attempting meaningful contact to resolve the tax liability. In Fiscal Year (FY) 2015, the IRS filed approximately 21 percent of NFTLs automatically without human involvement in determining lien filings,[2] and, contrary to congressional intent, the IRM only requires managerial approval when requesting an NFTL deferral and not filing of an NFTL.[3] Meaningful and personal contact, such as a "soft" letter followed by a telephone call, sends a timely message to a taxpayer. Often a reminder is all that is necessary to resolve past-due debts prior to placing them in full collection. It would be beneficial for the IRS, in terms of saving NFTL filing fees and promoting taxpayer rights and future compliance, to make multiple attempts to contact taxpayers by phone and through mailing monthly reminder notices (or SMS) instead of filing an NFTL after just one attempt. In addition, the TAS research study confirms that a contact early in the collection process provides the best results and improves the collection of revenue. We believe that requiring a "live" contact with the taxpayer will not inappropriately reward taxpayers actively avoiding the IRS but instead facilitate voluntary compliance and promote taxpayer rights. TAS disagrees with the IRS's statement that the process used in the mortgage industry as irrelevant because it demonstrates that early intervention proves to be a successful and efficient method of collection. The NFTL is akin to a notice of default on mortgage, not a filing of a secure interest in property, and it negatively affects the taxpayer's financial viability and the ability to borrow to pay off the tax debt.
TAS Recommendation	**[11-2] The IRS should increase the ten-day timeframe for filing an NFTL to enable taxpayers to reach out to the IRS and provide financial information.**

[2] *See* National Taxpayer Advocate 2015 Annual Report to Congress 112, note 5.
[3] *See* National Taxpayer Advocate 2015 Annual Report to Congress 114, note 18; National Taxpayer Advocate 2014 Annual Report to Congress 226, 229.

IRS Response	Recommendation Not Adopted. There is no ten-day requirement in which a NFTL must be filed. For cases assigned to ACS, the NFTL filing determination decision is generally made at the point of case disposition or when the taxpayer defaults on an agreed plan of action. For cases assigned to Field Collection, the RO has ten days after the initial contact attempt, which occurs within 45 days of case receipt, to make a NFTL filing determination. That determination can be to file, not file, or defer filing the NFTL and is made on a case-by-case basis.
IRS Action	N/A
TAS Response	TAS is concerned that the IRM generally requires an NFTL filing determination to be made within ten calendar days from the initial attempted contact or initial actual contact date, whichever date is earlier. Thus, many determinations to file NFTLs may be made without a full financial information and evaluation of the ability or consideration of collection alternatives. TAS's analysis of IRS data in this MSP confirms that only about one in three taxpayers can get through to the IRS to make payment arrangements prior to the NFTL filing. Because of the low Level of Service, the IRS may view taxpayers as being unwilling to pay, when in fact they are trying to reach the IRS. Thus, given the short timeframes for taxpayer response, an NFTL may then be filed against taxpayers who are trying to reach the IRS and cannot. This situation not only harms the taxpayer but also erodes trust in fair tax administration and can undermine future compliance. In its response to a TAS information request in conjunction with this MSP, the IRS has provided that "lien filing determinations are not tracked." As such, the IRS does not know the number of NFTL determinations that are made, and of that number, how many resulted in an NFTL actually being filed, and the length of time between the determination and filing. TAS believes that the *rights to challenge the IRS and be heard* and *to a fair and just tax system are jeopardized* when the IRS fails to consider the taxpayer's specific facts and circumstances.
TAS Recommendation	**[11-3] The IRS should continue to mail monthly notices to the taxpayers while the account is in the queue, Automated Collection System (ACS), or the field.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS currently does not mail monthly notices on collection status accounts. This recommendation will be evaluated in the ACS "Lien Pilot" currently in process. Outside of the pilot, resource limitations make the recommendation impractical and could compromise the IRS's ability to provide timely, quality service to taxpayers.

IRS Action	Notices for the pilot have been approved and issuance began in April 2016. The pilot is scheduled to last 9-12 months or possibly longer. After the pilot has concluded and results analyzed, a determination on the recommendation will be made.
TAS Response	The National Taxpayer Advocate is looking forward to evaluating the results of the Lien Pilot and is pleased that the notices for the pilot have been approved. TAS also acknowledges the IRS's budget limitations. However, when looking at this recommendation, the IRS should consider the cost-benefit analysis, as this relatively low-cost investment may result in a significant improvement in taxpayer service, voluntary compliance, and revenue collection. As stated in the MSP, tax administration agencies around the world, including Sweden, Australia, Norway, and New Zealand, successfully use reminders, specifically "gentle" reminders, to increase tax payment compliance and prevent enforcement measures. For example, New Zealand saw an increase of on-time payments by 12.6 percent between 2010 and 2013 by simply using SMS to provide real-time reminders of key payments to a targeted group of taxpayers.
TAS Recommendation	**[11-4] In collaboration with TAS, develop criteria for conducting the lien pilot as agreed upon with the National Taxpayer Advocate and refrain from decreasing the NFTL filing monetary threshold until the results of the lien pilot can be examined and discussed.**
IRS Response	IRS Actions Already in Progress. The IRS has been actively collaborating with the National Taxpayer Advocate on the Lien Pilot criteria since January 2015. No changes have been made to the systemic NFTL filing threshold. Notices for the pilot have been approved and issuance began in April 2016. The pilot is scheduled to last 9-12 months or possibly longer. After the pilot has concluded and results have been analyzed, a decision will be made on the NFTL determination threshold.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is pleased that the IRS has not made changes to the systemic NFTL filing threshold. As stated above, TAS appreciates the IRS's willingness to proceed with the Collection Lien Pilot based on the four treatment groups plus a control group, as the National Taxpayer Advocate recommended. TAS is looking forward to working with Collection on the pilot.

TAS Recommendation	**[11-5] Amend the IRM and related e-Guides and training materials to incorporate rules for NFTL filing determinations. The rules should specify that the following items are needed prior to filing:** • **"Meaningful contact";** • **Analysis of the taxpayer's financial situation, including a hardship determination if needed;** • **Consideration of collection alternatives;** • **Application of the balancing test, which is to balance the need for efficient collection of the tax with legitimate concerns of the taxpayer that actions be no more intrusive than necessary; and** • **The impact on future compliance.**
IRS Response	Recommendation Not Adopted. Current NFTL filing determination guidance is sufficient and effective. All IRMs containing guidance on NFTL filing determinations were cleared through TAS. Training material and the ACS e-Guides are based on the IRM and used in conjunction with it. They do not establish guidance that is not in the IRM. E-guides and training material related to NFTL filing determinations are routinely updated to conform with their respective IRMs (5.12.2 for Field Collection; 5.19.4 for ACS).
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed that the IRS has refused to adopt this recommendation. TAS respectfully disagrees that current IRS guidance is sufficient and effective as written. Current guidance does not require the employees to attempt meaningful contact, to analyze the taxpayer's financial situation, including a hardship determination, to consider collection alternatives, and to apply the balancing test prior to filing the Notice of Federal Tax Lien (NFTL). As stated above, this results in automatic NFTL filing based on the fact that the liability is assessed, notice and demand is sent, and the taxpayer has not responded for whatever reason, even if he or she could not reach the IRS because of the low Level of Service (LOS). In addition, considering factors provided in the recommendation will result in the IRS not filing unproductive liens (i.e., those that would not attach to any tangible assets, harm the taxpayer's creditworthiness, and cost the government a substantial filing fee).
TAS Recommendation	**[11-6] Incorporate credit scoring and automated asset verification into financial analysis for making NFTL filing determinations in ACS, with the provision to elevate close call and complex cases to a manager.**

IRS Response	Recommendation Not Adopted. Collection cases are analyzed systemically prior to assignment either to ACS or Field Collection. Current financial information is requested from taxpayers and considered when available. Accessing taxpayer credit records is restricted by policy to protect taxpayer privacy. Establishing credit score thresholds for NFTL determinations would result in inequitable treatment of taxpayers.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed about the IRS's unwillingness to use automated financial analysis and risk-scoring mechanisms to make NFTL determinations and to periodically monitor the risks associated with a particular taxpayer. These tools are broadly used in the private sector and assist creditors in effectively managing collections. The IRS's resistance to innovation is baffling. At the very least, the IRS could replace the mandatory NFTL filing on currently not collectible (CNC) taxpayers and on taxpayers with no assets with a system of automated subsequent filing determinations. These automated subsequent filing determinations would be based on periodic monitoring of whether the taxpayers have acquired assets or their financial situations have improved by developing software that can incorporate analysis of information from Accurint® and IRS internal databases. This type of analysis would enable the IRS to continue to protect the government's interest in any future assets without unnecessarily harming taxpayers.
TAS Recommendation	**[11-7] For accounts moving from ACS to the queue, revise the IRM to require employees to conduct a limited financial analysis based on a Form 433-F, *Collection Information Statement*, and refrain from filing an NFTL, if the employee has determined there are no assets or reasonable expectation of the taxpayer to acquire assets in the future.**
IRS Response	Recommendation Not Adopted. Current financial information is requested from taxpayers and considered when available. On manual transfers to the queue, the employee makes a NFTL determination that could include non-filing of the NFTL.
IRS Action	N/A

TAS Response	The Queue is an administrative remedy used for inventory management. The National Taxpayer Advocate remains extremely concerned that there is no attempt to contact the taxpayer prior to assignment to the Queue. IRM 5.19.4.5.3.2(4) specifically states: "Reassignments to the Queue (TFQU) – File a NFTL when the aggregate assessed balance is $10,000 or more, excluding any individual Shared Responsibility Payment (SRP) balances." This statement does not include any reference to individual consideration of the taxpayer's facts and circumstances other than the dollar amount of the lien. TAS is concerned about the harm to the taxpayer prior to the IRS considering whether the NFTL would attach to tangible assets or rights to property. IRS employees should be instructed not to file a lien if they are unable to locate assets and to refrain from filing an NFTL within the ten-day period if no concerted effort is made to contact and speak directly with taxpayer.
TAS Recommendation	**[11-8] Update the e-Guides with a series of questions determining if the taxpayer has or is likely to have assets to which an NFTL can actually attach.**
IRS Response	Recommendation Not Adopted. ACS e-Guides are based on the IRM and used in conjunction with them. E-guides do not establish guidance that is not in the IRM.
IRS Action	N/A
TAS Response	TAS agrees that the e-Guides need to be revised in conjunction with the revision of the IRM discussed in recommendation 11-5 above. E-guides would provide additional decision trees and examples supplementing the factors described in the recommendation. The IRS should not automatically file NFTLs without a meaningful contact, an analysis of the taxpayer's financial situation, consideration of collection alternatives, application of the balancing test, which is to balance the need for efficient collection of the tax with legitimate concerns of the taxpayer that actions be no more intrusive than necessary, and the impact on future compliance. As stated above, this approach will improve voluntary compliance, promote taxpayer rights to privacy and to fair and just tax system, and save government resources used for filing unproductive liens.

MSP #12 - THIRD PARTY CONTACTS: IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers' Businesses and Reputations

PROBLEM

The IRS does not empower taxpayers to provide information that would make third party contacts (TPC) unnecessary. Nor does it periodically inform them about the TPCs it made, as required by statute, so that they can mitigate damage to their reputations.

TAS Recommendation	**[12-1] Include with a TPC notice a specific request for information that would make the TPC unnecessary, except where the IRS employee documents that a TPC notice exception applies or that requesting the information from the taxpayer would be pointless (e.g., because the IRS needs to verify information already provided).**
IRS Response	Recommendation Not Adopted. Our current procedures require the examiner/officer to initially request information pertaining to an audit/collection process from the taxpayers to eliminate or reduce the need to conduct a TPC. These procedures are outlined in Internal Revenue Manual (IRM) Sections 4.10.2.8.1.1.2, 4.10.2.8.2.1.2, and 5.1.10.3.2. Taxpayers receive a Form 4564, *Information Document Request (Examination)*, or a Form 9297, *Summary of Taxpayer Contact (Collection)*, specifying what records are needed as well as the due date for the information. During the audit/collection process, if additional information is needed, subsequent requests will be provided in writing and due dates determined on a case-by-case basis. Taxpayers can also ask clarifying questions regarding the information requested.
IRS Action	N/A
TAS Response	The IRS response does not address the concerns that prompted the recommendation 12-1. As described in the MSP, IRS procedures (including those cited in the IRS response) do not require employees to request the information from the taxpayer before requesting it from third parties, and a review of IRS case files conducted by TAS found that employees did not do so in 22.8 percent of field exam cases and in 11.1 percent of field collection cases. The IRS response seems to ignore the problem that employees are tarnishing taxpayers' reputations by contacting third parties without first giving them an opportunity to provide the information that the IRS needs. However, we hope the IRS will address this problem in the training that it provides to employees.

TAS Recommendation	**[12-2] Allow the taxpayer at least ten days to provide the information being requested before making the third party contact to obtain it.**
IRS Response	IRS Actions Already Implemented. According to current procedures for Examination and Collection, the number of days granted to provide requested information is determined on a case-by-case basis. While examiners/officers generally allow more than 10 days, the time for requested information to be presented is discussed and adjusted/increased as needed on a case-by-case basis related to the individual taxpayer needs and complexity of the examination or collection situation.
IRS Action	N/A
TAS Response	The IRS's response does not appear to address the concerns that prompted recommendation 12-2. As noted above, TAS found that employees did not request information from taxpayers before requesting it from third parties in 22.8 percent of field exam cases and in 11.1 percent of field collection cases that TAS reviewed. When they did request the information, they did not always wait ten days before requesting it from a third party. TAS has also received complaints from practitioners that employees do not provide taxpayers with enough time to provide information. The IRS response suggests it has declined to address this problem. However, we hope the IRS will address this problem in the training that it provides to employees.
TAS Recommendation	**[12-3] Send the taxpayer a copy of any written request for information from a third party within three days of any non-exempt contact (except in collection cases), as the IRS does in connection with third-party summonses.**

IRS Response	Recommendation Not Adopted. IRC §7609 (third-party summonses) is a mandatory request for information guided by specific legal, time, and response requirements. IRC §7602 (third-party contacts) is a voluntary request for information. Examination currently follows Procedure and Administration Regulation § 301.7602 for guidance on reporting requirements for IRC §7602 (c)(3), *Exceptions*. The following paragraph, from the preamble, appears on page 2 of the regulations: [4] [T]hese final regulations do not finalize the provisions in the proposed regulations regarding periodic reports. Subsequent to the issuance of the proposed regulations, the IRS determined that the issuance of periodic reports may result in harm to third parties and, accordingly, has determined that periodic reports should not be issued. Taxpayers will continue to receive pre-contact notice and may specifically request from the IRS reports of persons contacted. The IRS is following the current guidance and procedures as listed in the Treasury Regulation.
IRS Action	N/A
TAS Response	The IRS's response does not address the concerns that prompted recommendation 12-3. Rather, the IRS reiterates that it is ignoring IRC § 7602(c)(2), which requires that it send TPC reports to taxpayers "periodically" rather than only upon request. The response does not justify its continued violation of the statutory requirement, nor does it address the National Taxpayer Advocate's observation that providing a copy of nonexempt TPCs to taxpayers could save resources, as employees would not have to track and report those already disclosed to the taxpayer.
TAS Recommendation	**[12-4] Provide taxpayers with periodic TPC reports of TPCs not already provided (if any), as required by IRC § 7602(c)(2).**
IRS Response	Recommendation Not Adopted. TPC reports are currently being provided by the most current guidance as stated in Procedure and Administration Regulation § 301.7602-2 (e)(1). The preamble to the final Regulations states, "[T]he IRS determined that the issuance of periodic reports may result in harm to third parties and, accordingly, has determined that periodic reports should not be issued. Taxpayers will continue to receive pre-contact notice and may specifically request from the IRS reports of persons contacted."

[4] This position was made public when the regulations were published in the Federal Register in December 2002.

IRS Action	N/A
TAS Response	The IRS's response does not address the concerns that prompted to recommendation 12-4. It does not explain the IRS's implicit conclusion that a preamble to a regulation can trump a statutory mandate. Nor does it explain how withholding periodic reports, which would only contain the names of third parties who have no fear of reprisal and whose identities would be disclosed upon request by the taxpayer, actually addresses its concerns about "harm to third parties."
TAS Recommendation	**[12-5] Modify TPC notices to inform taxpayers of their right to receive post-TPC reports periodically and to explain how to request these reports.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Publication 1 explains the TPC report is available upon request, and we are adhering to our current procedure as discussed in recommendations #3 and #4 (§ 301.7602-2 (e)(1)). The suggestion to explain "how to request reports" is actually a process improvement recommendation from the Exam TPC Program Review conducted in October 2015, where it was determined that our existing guidance was not communicated adequately. The SB/SE Examination function is currently updating our IRM and future TPC training modules to instruct examiners to explain to taxpayers how to request reports.
IRS Action	Updating the IRM (Examination) and future TPC training modules (Examination and Collection) to instruct employees to explain to taxpayers how to request reports.
TAS Response	The National Taxpayer Advocate appreciates that the IRS is updating the IRM and instructing employees to inform taxpayers how to request TPC reports. However, employees do not always communicate directly with taxpayers. If the TPC notices do not specify how taxpayers may request TPC reports, fewer taxpayers will not know how to request them. The IRS's reluctance to inform taxpayers of their rights violates the taxpayer's right to be informed.

TAS Recommendation	**[12-6] Require employees to document the basis (i.e., "good cause") for the reprisal and other exceptions to TPC reporting, require supervisory review of such documentation, and train employees on how to apply them.**
IRS Response	Recommendation Not Adopted. Examiners/Officers are following the current procedures in regards to reprisal considerations (Procedure and Administration Regulation §301.7602-2 (f)). Requiring the IRS to investigate each claim of potential reprisal would intrude into the third party's affairs and require IRS employees to make judgments that they are not well positioned to make. IRS employees are instructed to take reprisal determinations very seriously. Commissioner Rossotti testified[5], "We have instructed our employees to take reprisal claims by third parties at face value. We made this decision to avoid a situation, where by virtue of our second-guessing of a claimed fear of reprisal, we make the wrong call and disclose the contact, only to have the third party suffer harm as a result." The adoption of Procedure and Administration Regulation 301.7602-2 offers additional protection to all individuals involved in a TPC changing the original periodic reporting practices outlined in IRC §7602(c).
IRS Action	N/A

[5] Senate Finance Committee hearing, held on Feb. 2, 2000.

TAS Response	The IRS misconstrues recommendation 12-6. The IRS has delegated the authority to make reprisal determinations to low-graded (GS-4 and GS-5) employees.[6] When IRS employees make reprisal determinations, they must have a "good cause" for the determination.[7] In addition, they "should document the case file with the facts surrounding the decision and complete a Form 12175 as outlined above to document the reprisal determination," according to expired IRS training materials.[8] As described in the MSP, however, none of the IRS employees who made reprisal determinations in the files that TAS reviewed recorded the facts surrounding the decision (i.e., reasons for why they made them). This is unsurprising because the current IRM does not echo the expired training materials, and the IRS's current quality reviews do not check to see if there is any basis for reprisal determinations. At present, it appears that an IRS employee could label every TPC as "reprisal" to avoid the reporting requirements. No inaccurate determination could be detected because the employee is not required to document the basis for the determination. This lack of oversight and accountability violates the *right to privacy*, which includes the right to "expect that any IRS inquiry… will comply with the law."
TAS Recommendation	**[12-7] Improve measures to ensure management knows when and how employees are not following TPC procedures. For example, the IRS's reviews should regularly compare TPCs reflected in the administrative file to those reported to TPC coordinators (e.g., through supervisory, quality, or operational reviews) and require TPC coordinators to acknowledge receipt of these forms. To facilitate these reviews, the IRS may need to require employees to include information on the Form 12175 that it can tie back to the TPCs referenced in the administrative file in cases where a reporting exception applies (e.g., reprisal).**
IRS Response	Recommendations Not Adopted As Written, But IRS Actions Taken To Address Issues Raised by the National Taxpayer Advocate. Exam completed a review on the TPC Program in October of 2015. The review concluded that increased guidance and/or training are necessary to improve examiner awareness of TPC requirements. Quality Review Attribute 607 (Taxpayer Rights) is evaluated on 100% of cases reviewed by the National Quality Review System (NQRS) program, and they specifically look for any third party contacts and related documentation. Managers also review this attribute when conducting case reviews to ensure third party reporting procedures are followed.
IRS Action	The IRS is developing refresher training and IRM updates for the SB/SE Examination and Collection functions. We are also updating review practices and working with the NQRS program on system updates to capture TPC occurrences and errors during reviews of SB/SE Examination cases.

[6] See IRM 1.2.52.13, Delegation Order 25-12 (Rev. 1) (May 22, 2009).
[7] Treas. Reg. § 301.7602-2(f).
[8] IRS response to TAS information request (June 29, 2015).

TAS Response	The National Taxpayer Advocate is pleased that the IRS is developing refresher training, updating its IRM, and working with the National Quality Review System (NQRS) program to capture TPC errors. The IRS response is unclear about whether these changes will address the concerns that prompted recommendation 12-7. TAS found that for violations of Exam Quality Review Attribute 617 (Taxpayer Rights), the IRS does not associate a "reason code" with third party contact rule violations. As a result, the only way to determine if a failure for "other" reasons is due to third party contact problems is to review the narrative provided by the reviewer.[9] When the IRS searched the narratives for FYs 2012-2014 cases closed by Small Business/Self-Employed (SB/SE) Division Revenue Agents (RAs) and Tax Compliance Officers (TCOs) that failed Attribute 617 for "other" reasons, it found no mention of third party contact violations. This may suggest that reviewers were not looking for such violations, perhaps because there was no reason code for them or because they were difficult to detect.[10] TAS found it challenging to review violations of TPC procedures because IRS employees are not always required to include the TPC's identity on Form 12175 or the TPC database. Nonetheless, TAS's review found that in 42.1 percent of the field exam cases and in 48.5 percent of the field collection cases that it reviewed non-exempt TPCs were missing from the TPC database.[11] Similarly, SB/SE found that in 36 percent of the field exam cases with TPCs that it reviewed, examiners did not properly document TPCs reflected in case histories on Form 12175.[12] We hope the changes the IRS is making will address these problems.

[9] IRS response to TAS information request (May 18, 2015).
[10] *Id*.
[11] TPC Sample (2015) (Q9). These omissions often (94.5 percent in exam cases and 34.5 percent in collection cases) occurred because the RA or RO did not send Form 12175 to the TPC coordinator, or in 57.2 percent of the collection cases, because the RO did not use the proper pick list item.
[12] SB/SE, Third Party Contact, Program Review Report, Field Exam Special Processes 5-6 (Oct. 30, 2015).

MSP #13 - WHISTLEBLOWER PROGRAM: The IRS Whistleblower Program Does Not Meet Whistleblowers' Need for Information During Lengthy Processing Times and Does Not Sufficiently Protect Taxpayers' Confidential Information From Re-Disclosure by Whistleblowers

PROBLEM

In 2006, in the light of empirical evidence that audits initiated on the basis of whistleblower information are an efficient means of recovering unpaid tax liabilities, Congress added subsection (b) to Internal Revenue Code (IRC) § 7623. The new provision requires the IRS to award certain whistleblowers an amount between 15 and 30 percent of the collected proceeds, created the IRS Whistleblower Office (WO), and provides for Tax Court review of whistleblower award determinations. The legitimate purpose of enforcing tax compliance, when accomplished by using whistleblowers, creates risks for the subject of the whistleblower claim, especially when the claim is unsupported or not pursued. Voluntary compliance may be undermined if taxpayers perceive the IRS is not adequately guarding their tax information. The whistleblower program as currently administered by the IRS and existing IRC provisions does not adequately balance these concerns.

TAS Recommendation	**[13-1] Revise the regulations under IRC § 7623 to provide that a whistleblower "administrative proceeding" within the meaning of IRC § 6103(h)(4) commences with the whistleblower's submission of Form 211.**
IRS Response	Recommendation Not Adopted. As set forth in the preamble to TD 9687, the whistleblower award administrative proceeding was provided to facilitate communications with whistleblowers before the IRS makes an award determination. Similar to the National Taxpayer Advocate's proposal, commenters to the proposed regulations advocated beginning the administrative proceeding upon receipt of Form 211. Treasury and the IRS determined that beginning the administrative proceeding earlier in the lifecycle of a whistleblower claim would not meaningfully increase a whistleblower's ability to participate in the administrative proceeding, the purpose of which is to determine what award, if any, is appropriate. Additionally, the Whistleblower Office assigns claims out to the Operating Divisions for investigation. As such, action on a claim may largely occur outside of the Whistleblower Office. Treasury and the IRS determined that the adopted whistleblower administrative proceeding framework struck the appropriate balance between the protection of taxpayer returns and return information under IRC § 6103 with the interests of whistleblowers in a meaningful opportunity to participate in the administrative process.

IRS Action	N/A
TAS Response	By adopting regulations that provide for the whistleblower administrative proceeding to commence only when the IRS proposes an award, the IRS forecloses the possibility of communicating with whistleblowers pursuant to the IRC § 6103 (h)(4) exception as it develops the case. While the amount of the award, if any, may be the focus of the whistleblower administrative hearing under existing regulations, nothing prevents the IRS from considering other information in the course of such a hearing. It is true, as the IRS notes, that action on a claim may occur while the case is being developed in another function of the IRS, but the relevance of this observation is not clear. Whistleblowers already interact with other IRS functions, and policies and procedures are already in place to protect taxpayer information wherever the case may be in the agency.
TAS Recommendation	**[13-2] Revise the regulations under IRC § 6103 or IRC § 7623 to provide that the IRC §§ 7431, 7213 and 7213A penalties apply to re-disclosures of returns or return information by a whistleblower who has executed a confidentiality agreement as part of an IRC § 6103(h)(4) administrative proceeding, and that the IRC § 6103(p) safeguarding requirements also apply to such a whistleblower.**
IRS Response	Recommendation Not Adopted. IRC §§ 7431, 7213 and 7213A are statutory provisions establishing civil and criminal penalties for the unauthorized disclosure of returns and return information. The IRS lacks authority to expand these provisions to disclosures made with respect to whistleblower administrative proceedings under IRC § 7623. Additionally, the majority of whistleblower claims are rejected or denied within the first two years after submission. Requiring the execution and processing of confidentiality agreements upon submission of a Form 211 and administering compliance with the safeguarding requirements of IRC § 6103(p) would significantly increase burdens on the Whistleblower Office. The IRS does agree with the National Taxpayer Advocate's legislative recommendation to make unauthorized disclosures of return information by whistleblowers subject to civil and criminal penalties under IRC §§ 7431, 7213 and 7213A and to extend the IRC § 6103(p) safeguarding requirements to whistleblowers. Treasury has made similar recommendations as part of the Administration’s Revenue Proposals for fiscal years 2014-2017.
IRS Action	N/A

TAS Response	The IRS does not explain why it lacks authority to revise the regulations to make whistleblowers subject to statutory penalties and safeguarding requirements, but does state it does not agree these statutory provisions should be activated upon execution of confidentiality agreements submitted with Form 211. The IRS appears to be concerned with additional administrative burden, but it is not clear how simply requiring and accepting an additional form from whistleblowers creates significantly more burden. The information the IRS would provide pursuant to the agreement could be decided on a case by case basis, depending on what stage the case is in. Thus, not all confidentiality agreements would require the same level of administrative attention or enforcement. Moreover, as the IRS notes, since 2007, information received by the IRS from whistleblowers has resulted in collections of over $3 billion dollars in additional tax revenue. More frequent and detailed communications between whistleblowers and the IRS which a confidentiality agreement would permit would lead to improved quality of whistleblower submissions as whistleblowers and their counsel learn what kinds of information the IRS finds useful and how that information is best presented. Better submissions would lead to even more collections on the basis of whistleblower information. Thus, it is not clear that any additional administrative costs of requiring confidentiality agreements would outweigh the benefits of adopting this recommendation.
TAS Recommendation	**[13-3] Revise the regulations under IRC § 7623 to require the IRS, upon the whistleblower's execution of a confidentiality agreement as part of an administrative proceeding under IRC § 6103(h)(4), to provide bi-annual status updates sufficient to allow a whistleblower to monitor the progress of the claim (e.g., whether the claim resulted in an audit, whether the audit has concluded, the existence of any collected proceeds, and whether the case has been suspended) according to procedures developed by the Whistleblower Office.**
IRS Response	Recommendation Not Adopted. Recommendation 13-3 is premised on the IRS adopting Recommendation 13-2 to revise the regulations "to require whistleblowers who wish to receive status updates to execute confidentiality agreements that carry the statutory penalties imposed by IRC §§ 7431, 7213 and 7213A, and subjects them to the safeguarding requirements of IRC § 6103(p)." Taxpayer Advocate Service – 2015 Annual Report to Congress, p. 155. As discussed above, the IRS does not plan to implement Recommendation 13-2.
IRS Action	N/A
TAS Response	As the IRS notes, this recommendation presumes the IRS would adopt an earlier recommendation, that it define a whistleblower administrative proceeding as commencing prior to the phase at which an award is proposed. Even if the statutory penalties for nondisclosure did not automatically apply, as the response to recommendation 13-2 suggests, sanctions for redisclosure of taxpayer information could be included in the terms of the confidentiality contract.

MSP #14 - AFFORDABLE CARE ACT (ACA) – BUSINESS: The IRS Faces Challenges in Implementing the Employer Provisions of the ACA While Protecting Taxpayer Rights and Minimizing Burden

PROBLEM

The IRS is charged with implementing complex Affordable Care Act (ACA) provisions that require updating information technology systems, issuing guidance, and collaborating with other federal agencies. For tax years (TYs) 2015 and beyond, certain provisions of the ACA impacting employers become effective. For example, applicable large employers (ALEs) must offer minimum essential coverage (MEC) to their full-time employees. Employers not in compliance with these provisions may be subject to an assessable payment, referred to as the "employer shared responsibility payment" (ESRP). The National Taxpayer Advocate is concerned that the IRS's implementation of the ACA provisions for the 2016 filing season may burden both employers and employees if certain conditions and issues are not addressed. For example, employees in the newly-established ACA Business Exam unit need to receive specialized training on the parts of ACA implementation that impact businesses.

TAS Recommendation	**[14-1] Provide additional guidance to employers and tax practitioners on how to calculate the number of Full Time Employees (FTEs) for purposes of meeting the Minimum Essential Coverage (MEC) requirements.**
IRS Response	Recommendation Not Adopted. The ALE Information Center provides detailed information for employers for meeting the requirements of minimum essential coverage. This page provides a multitude of information that is useful to employers, including How to Determine if you are an ALE, Resources for Applicable Large Employers, and Outreach Materials. In addition, updated educational webinars on IRC §4980H and IRC §6056 were completed in late March and early April. The IRS will continue to monitor available information and update it as needed.
IRS Action	N/A
TAS Response	While the information the IRS puts out on the Allowable Living Expense (ALE) Information Center or other web pages may be helpful to employers, it does not have the same effect as that of formal IRS guidance. With formal guidance, employers and other stakeholders have the opportunity to comment, and employers may rely on such guidance (unlike with FAQs posted on a website).

TAS Recommendation	**[14-2] Publish regulations explaining how the IRC § 4980D excise tax may apply to certain flexible spending accounts and health reimbursement arrangements.**
IRS Response	Recommendation Not Adopted. The Department of Labor (DOL) is the responsible entity to define a group health plan. Once defined, failure to meet the requirements of chapter 100 (relating to group health plan requirements) results in an excise tax. Generally these are Employee Retirement Income Security Act (ERISA) requirements overseen by the DOL, under CFR 29 and the excise tax on failure to meet those requirements is administered by IRS under title 26. DOL is responsible for coordinating with Health and Human Services (HHS) to develop any new guidance and/or regulations. The IRS imposes the IRC § 4980D excise tax when notified by DOL of its applicability and issues the guidance provided by DOL. Treasury Notice 2015-17 provides guidance on the subject. Because DOL, HHS and IRS have been consistent in guidance on IRC §4980D and no statutory changes have been made requiring DOL or IRS to issue additional regulations, we disagree that additional regulations are required to administer IRC § 4980D.
IRS Action	N/A
TAS Response	TAS recognizes that this area of law is complex, with several agencies having responsibility for administering certain provisions of the ACA. But that does not absolve the IRS of responsibility. Rather, the IRS should coordinate with DOL and HHS to ensure there is sufficient guidance interpreting certain provisions, such as the application of the IRC § 4980 excise tax. Allowing uncertainty to linger about the application of this excise tax is not a sign of good tax administration. If issuing regulations under IRC § 4980D is not practical, then perhaps the IRS can provide informal guidance such as FAQs on the IRS website.

TAS Recommendation	**[14-3] Establish a Rapid Response team to assist front-line IRS employees with issues, problems, or questions from employers or tax practitioners.**
IRS Response	Recommendation Not Adopted. The IRS disagrees that a rapid response team is required based on available training and resources. The devotion of scarce personnel to duplicate existing reference material is not an action we believe is required, nor prudent in the current budget situation. There is information on the ACA webpage along with ongoing outreach and education. Guidance alerts are utilized to direct IRS phone assistors in referring taxpayers to the ACA website for information and published regulations. The Tax Professional and Legal Guidance link located on the ACA webpage is also a primary source of information. The IRS will be monitoring all incoming inquires as well as any outreach in considering whether to expand the IRS web resources and Frequently Asked Questions (FAQ's) which will enable more self-help in lieu of staffing a team to handle individual questions.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate does not discourage the IRS from expanding the use of its website to post FAQs and other relevant information. However, TAS believes the IRS should not turn its back on taxpayers who wish to speak to live assistors. The IRS should offer taxpayers multiple channels to inquire about ACA-related questions. By saying it will not form a rapid response team composed of a small network of subject matter experts to address emerging issues and concerns, the IRS is choosing a "static" model of training, as opposed to an interactive, experience-driven model. A static approach creates re-work, and can negatively impact taxpayer satisfaction. The IRS is able to establish a rapid response team without expending additional resources by leveraging its existing network of specially-trained employees with expertise on ACA provisions. TAS used this approach to form a rapid response team, where ACA subject matter experts (spanning both individual and business related ACA issues) meet regularly to discuss emerging issues and provide clarification as necessary. Such an approach would allow the IRS to identify areas where stakeholders are confused, and give the IRS an opportunity to craft better communication regarding these issues in real time, while it develops more formal and extensive guidance to be released later.

TAS Recommendation	**[14-4] Provide employees in its newly-established ACA Business Exam unit with comprehensive and specialized training on the parts of ACA implementation that impact businesses, including training on concepts such as ALE, MEC, and ESRP.**
IRS Response	IRS Actions Already In Progress. The actions suggested in this recommendation are already included in our IRC §4980H implementation plan as shared previously with the Taxpayer Advocate staff. The ACA Enterprise Integrated Program Plan and the SB/SE implementation action plan reflect Tier 3 (Functional) training for the unit that will be stood up to work IRC §4980H cases. The training will be developed for delivery as the components of the infrastructure are developed and scheduled for deployment. Course development is scheduled to begin in September 2016 and training delivery will occur in November-December 2016.
IRS Action	N/A
TAS Response	TAS is pleased that the IRS has taken actions to implement our recommendation.

MSP #15 - AFFORDABLE CARE ACT – INDIVIDUALS: The IRS Is Compromising Taxpayer Rights As It Continues to Administer the Premium Tax Credit and Individual Shared Responsibility Payment Provisions

PROBLEM

Overall, the IRS has done a commendable job of implementing the first stages of the Patient Protection and Affordable Care Act of 2009 (ACA). The 2015 filing season (FS) presented difficult challenges with the introduction of the Individual Shared Responsibility Payment (ISRP) and the Premium Tax Credit (PTC) on tax year (TY) 2014 federal income tax returns. While the IRS performed well overall in FS 2015, several developments will likely result in significant burden imposed on both taxpayers and the IRS in future years. For example, the pre-refund Automated Questionable Credit (AQC) procedures for PTC mismatches are identical to and impose the same burden as post-refund PTC examinations, yet the IRS maintains it can conduct both a pre-refund AQC review and a post-refund audit of another issue, thereby undermining the important statutory protection against multiple audits.

TAS Recommendation	**[15-1] Take preventative measures to avoid ISRP overpayments in the future, such as distributing educational notices about exemptions and exclusions to preparers associated with such overpayments and conducting a comprehensive review and testing of tax filing software to ensure that the problems that arose in FS 2015 do not recur.**
IRS Response	IRS Actions Already Implemented.
IRS Action	During 2015, the IRS conducted extensive research in order to evaluate the filing season results for this initial year of implementing the ISRP. When the analysis indicated significant ISRP over-assessments in certain categories of taxpayers, the IRS promptly implemented both corrective and preventative actions. We sent letters to all taxpayers that had over-assessed their ISRP by more than a specific dollar amount. We conducted specific as well as general outreach and educational sessions with software developers pointing out possible errors in their tax programs. We also highlighted the overstated ISRP calculations in numerous sessions with tax practitioners. For FS 2016, we are again closely monitoring the ISRP assessments on 2015 tax returns. This analysis will be used to measure the effectiveness of our outreach activities and to determine what additional preventative measures may be appropriate.

TAS Response	TAS commends the IRS for providing taxpayers and practitioners with information addressing ISRP overpayments. We encourage the IRS to share its findings from the analysis of TY 2015 returns to determine the efficacy of its previous efforts. While we believe such outreach activities are crucial, we also believe that the IRS should take systemic actions to proactively correct and prevent such overpayments. Such actions include systemically adjusting ISRP overpayment amounts through programming, if feasible, and conducting a comprehensive review and test of private-sector tax filing software for errors resulting in overpayments.
TAS Recommendation	**[15-2] Issue guidance to field compliance employees to assist them in identifying returns with a tax liability resulting from the correction of Forms 1095-A errors in the Second Lowest Silver Cost Plan (SLCSP) information and not pursuing collection, including blocking the accounts from refund offsets.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The IRS issued the appropriate guidance required to ensure employees appropriately handled the special relief granted to taxpayers during the 2015 FS related to erroneous Forms 1095-A that had errors in the SLCSP amount. On April 10, 2015, the IRS issued Notice 2015-30, providing penalty relief for incorrect or delayed Forms 1095-A for taxpayers who timely filed their 2014 return. This relief applied only for the 2014 taxable year. The IRS also issued internal guidance through the Servicewide Electronic Research Program (SERP). The SERP provided employees with guidance for both taxpayers that had not filed a return and taxpayers that had filed and therefore had the discretion of whether or not to file an amended return. The guidance clearly specified that "collection of any additional taxes from these individuals based on updated information in the corrected forms will not be pursued".
TAS Response	TAS commends the IRS for issuing the guidance through SERP to inform employees of the relief provided in Notice 2015-30.

TAS Recommendation	**[15-3] Work with the National Taxpayer Advocate on revising Letters 5591, 5591A, and 5596 for FS 2016 to include the exact date by which the taxpayer needs to file in order to automatically reenroll for the APTC the following year.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	During 2015, the IRS issued letters to recipients of Advanced Payments of the Premium Tax Credit (APTC) that either failed to file or filed an extension to file their 2015 tax return. The letters were used to alert the APTC recipients that failure to timely file a tax return reconciling their APTC could result in their loss of eligibility for future health insurance subsidies. The IRS is closely monitoring the filing patterns of APTC recipients during FS 2016 to determine if there will be a need to issue similar letters during 2016, and if so, will provide the National Taxpayer Advocate the opportunity to review the letter content prior to the issuance of the letters.
TAS Response	TAS appreciates the IRS's commitment to allow the Taxpayer Advocate Service the opportunity to review any letters issued in response to analysis of the 2016 filing season. If the IRS does determine that it needs to issue similar letters in 2016, such letters should clearly state the date by which the taxpayer needs to file to avoid any disruptions in receiving APTC.
TAS Recommendation	**[15-4] Conduct outreach and education to inform taxpayers early in FS 2016 about the consequences of filing for an extension if the taxpayer received APTC. In particular, the information should provide the taxpayer with a specific date in 2016 by which the taxpayer needs to file the TY 2015 return in order to automatically re-enroll to receive APTC in 2017.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.

IRS Action	Information on IRS.gov/ACA specifically tells taxpayers that if they miss the April filing deadline or receive an extension to file until October, they should file their return as soon as possible and should not wait to file. Taxpayers are told to file as soon as possible to reconcile any advance credit payments made on their behalf in order to maintain their eligibility for future premium assistance. In addition to issuing letters, at the end of the 2016 FS, we issued guidance to taxpayers who filed extensions alerting them to file a return as soon as possible if they were a recipient of APTC during calendar year 2015. While we plan to review the possibility of adding to IRS.gov web content a specific date in 2016 by which the taxpayer needs to file their Tax Year 2015 return in order to avoid eligibility issues for 2017 APTC, we are mindful that defining a specific date could be misleading to the taxpayer due to the complexities of the related processes and systems.
TAS Response	TAS is pleased that the IRS is considering adding content on the IRS website providing a specific date to file the tax return in order to avoid APTC eligibility problems. However, the population of APTC recipients may not have the time and ability to research and access the information available online. The IRS must also use its network to communicate this information in a manner likely to reach this population, such as print, television and radio. In addition, we understand that determining a specific date might be difficult. However, even a conservative estimate is more informative than "as soon as possible."
TAS Recommendation	**[15-5] Determine a method to identify all issues relating to a return, as selected by the various filters in the filing season, and include all of the issues in one notice to the taxpayer so that the taxpayer does not have multiple audits with respect to the same return.**
IRS Response	Recommendation Not Adopted. We agree with the goal of minimizing taxpayer burden and confusion and continuously work to refine and improve the efficiency of our compliance processes in an effort to reduce burden to the taxpayer while maintaining adequate revenue protection. We believe the use of the different processes, such as Math Error, Automated Questionable Credit (AQC) and Exam, to resolve different types of issues remains the most efficient method of resolution since it enables us to resolve certain issues at filing or pre-refund rather than holding all issues until audit selection. We sought advice that informs us that AQC requests to the taxpayer for additional documentation, such as proof of premium payments or copies of insurance enrollment forms, should not constitute an examination. Requesting this information is a contact designed to verify a discrepancy between the taxpayer's return and information obtained as part of a matching program. We therefore disagree that we are subjecting the taxpayers to multiple audits.
IRS Action	N/A

TAS Response	The National Taxpayer Advocate disagrees with the IRS characterization of such pre-refund inquiries. She continues to believe that the Automated Questionable Credit (AQC) process and the documentation requirements imposed on the taxpayers under AQC are substantially similar to those in an examination. In addition, the IRS's response states that the use of the different pre-refund and post-refund processes "remains the most efficient method of resolution." She disagrees that multiple contacts with respect to one return is the most efficient way to resolve the issue. As TAS stated in the Most Serious Problem, we strongly disagree with the Office of Chief Counsel on its conclusion. Their response relies on its own administrative guidance provided in Revenue Procedure 2005-32 and does not squarely address the point that the IRS is asking for the exact same information from a taxpayer in a post-refund audit as it asks from a taxpayer in a pre-refund "non-audit." As we previously stated, the Office of Chief Counsel advice is calling a wolf a lamb because it is wearing a sheepskin on its back. Because in our view the AQC review is an examination, the IRS must follow formal audit reopening procedures if it tried to conduct a subsequent examination on the tax return in question.[13]
TAS Recommendation	**[15-6] Conduct outreach and education on the consequences of receiving large lump sum distributions to APTC recipients as well as other organizations making such distributions, such as the Social Security Administration.**
IRS Response	IRS Actions Already Implemented.

[13] The audit reopening procedures can be found in Rev. Proc. 2005-32, 2005-23 I.R.B. 1206 (June 6, 2005); IRM 1.2.13.1.1, Policy Statement 4-3 (Dec. 21, 1984).

IRS Action	The IRS agrees that outreach and education on the consequences of changes in circumstances is extremely important and has emphasized related messaging in meetings/news releases/alerts directed at external stakeholders (e.g. tax practitioner organizations) and with extensive guidance on IRS.gov. Currently IRS.gov does list "a lump sum distribution of Social Security benefits" as a change in circumstances that should be reported to help "avoid large differences between the advance credit payment made on your behalf and the amount of the premium tax credit you are allowed when you file your tax return which may affect your refund or balance due when you file your tax return." IRS.gov also states that "The amount of your excess advance credit payments that you are required to repay may be limited based on your household income and filing status. If your household income is 400 percent or more of the applicable federal poverty line, you will have to repay all of the advance credit payments." IRS.gov also has a link to the Taxpayer Advocate's "Premium Tax Credit Change Estimator".
TAS Response	TAS encourages the IRS to continue to perform outreach on the consequences of receiving such large lump sum distributions for APTC recipients. The IRS has conducted outreach and education on the importance of reporting changes in circumstances to the exchanges. We believe that these messages should all include a specific reference to Social Security lump sum distributions. Furthermore, because a significant portion of the APTC recipient population, including Social Security Disability Insurance (SSDI) recipients, may not have internet or broadband access, the IRS should determine the best way to communicate these messages to this particular population, which may entail nondigital communication channels such as public service announcements on television or radio about changes in circumstances. The IRS should also partner with the Social Security Administration to reach the SSDI recipient population.
TAS Recommendation	**[15-7] Issue guidance to both taxpayers (on the IRS website as well as in the Form 1095-A instructions) and IRS employees (in the IRM) about how taxpayers can use the look-up tool on Healthcare.gov to find their SLCSP premium amount.**
IRS Response	IRS Actions Already Implemented.

IRS Action	We appreciate the National Taxpayer Advocate recognizing the value of the SLCSP look-up tool on Heathcare.gov. Currently on IRS.gov there are multiple links to this look-up tool. The most direct link is found in the section discussing the Form 1095-A which includes the link in the response to the question: What is a second lowest cost silver plan shown on my 1095-A? The link is provided indirectly through references to the instructions for Form 8962, Premium Tax Credit, which also includes a link to the look-up tool. The instructions for the Form 1095-A provide guidance to the Marketplace as the preparer/issuer of this form. For IRS employees, IRMs provide the guidance for responding to taxpayers with inquiries regarding Form 1095-A or non-receipt of Form 1095-A, to contact their Marketplace through www.Healthcare.gov, for the look-up tool, or through one of the contact telephone numbers found at The Health Insurance Marketplace.
TAS Response	TAS continues to believe that the IRM should include specific information on how to access the SLCSP look-up tool. Specifically, the IRM should include instructions on supporting documentation employees can accept from taxpayers when the SLCSP information on Form 1095-A is blank or incorrect. TAS received submissions in the Systemic Advocacy Management System (SAMS) regarding IRS employees refusing to accept taxpayer SLCSP documentation that was either not directly provided by the Marketplace or that couldn't be verified by IRS resources. Without an IRS-developed tool or guidance on how to use the tool available on Healthcare.gov, taxpayers may continue to run into problems proving the SLCSP amount to the IRS.
TAS Recommendation	**[15-8] Provide a similar IRS tool to ensure IRS employees can look-up the SLCSP amount and verify the amount provided by the taxpayer. The IRS should provide employees training on the use of the tool.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	We agree with the National Taxpayer Advocate that certain IRS employees may need access to SLCSP information to verify the amount provided by the taxpayer that may be missing from the Form 1095-A. Currently the information is available to employees with web access through the IRS.gov link to the look-up tool on Healthcare.gov. We continue to evaluate the use of the SLCSP information by employees in the various processing, customer service, and examination functions within the IRS to assess whether currently available information, tools, and guidance are sufficient.

TAS Response	TAS disagrees with the IRS's categorization of their response. We recommended that the IRS develop a tool to look up the SLCSP amount. The IRS has not developed such a recommended tool and is not taking actions to address the need for this tool. We believe that an IRS-provided tool for use by IRS employees could resolve any confusion regarding sufficient documentation to support the SLCSP amount. TAS received submissions in the Systemic Advocacy Management System (SAMS) regarding IRS employees refusing to accept taxpayer SLCSP documentation that was either not directly provided by the Marketplace or that couldn't be verified by IRS resources. An IRS-developed tool and associated training would alleviate this problem and enable the IRS to process impacted returns quicker.
TAS Recommendation	**[15-9] Reform the rules for exchange reporting on Form 1095-A and require the Marketplace to provide the SLCSP amounts on all such forms.**
IRS Response	Recommendation Not Adopted. While we agree with the National Taxpayer Advocate that requiring the Marketplace to provide the SLCSP premium amount on all Forms 1095-A could reduce the burden of certain taxpayers, it is important to note that the reduction in burden would be more than offset by increased burden on the part of taxpayers that purchase health insurance coverage from the Marketplace without ever pursing any financial assistance. The reason for this increased burden is that in order for the Exchange to report the SLCSP, the enrollee cannot use the currently available "streamlined" application but must complete the entire application that requests certain household and financial information that leads to the appropriate SLCSP calculation. In order for HHS to provide the "streamlined" application, an exception to the SLCSP reporting requirement was granted in the regulations that allows an Exchange to satisfy [the] SLCSP reporting requirement if, by January 1 of each year, the Exchange provides a reasonable method by which the SLCSP premium can be determined in order to calculate the PTC on the tax return. Under this special rule, HHS established the current tax tool on its website at https://www.healthcare.gov/tax-tool/ where taxpayers in a federally-facilitated marketplace can input some basic information about their family and obtain their SLCSP premiums. While the IRS and Treasury Department may have legal authority to repeal this special rule related to the SLCSP, the rule allows a streamlined application process that is beneficial to many taxpayers.
IRS Action	N/A

TAS Response	TAS appreciates the IRS's explanation regarding the rationale behind the current exchange reporting rules. We agree that the reduction of burden on one group should not create excessive and unnecessary burden on the remainder of the population.
TAS Recommendation	**[15-10] Expand the Taxpayer Identification Number (TIN) matching program to include health insurers and self-insured employers that are required to file Form 1095-B, Health Coverage.**
IRS Response	Recommendation Not Adopted. We appreciate the National Taxpayer Advocate's recognition of the value of the IRS's Taxpayer Identification Number Matching Program (TMP). The TMP was established for payers of Form 1099 income subject to the backup withholding provisions of section 3406(a)(1)(A) and (B) of the Internal Revenue Code. The IRS has both an Interactive and a Bulk TIN Matching Programs. These programs are established under the authority of Revenue Procedure 2003-9. Revenue Procedure 2003-9 and IRC Section 6050W expanded the IRS's authority provided under Revenue Procedure 97-31, to allow the on-line matching of taxpayer identifying information as provided by payers of income reported on Forms 1099 B, DIV, INT, K, MISC, OID, and PATR. The program is limited to the forms specified and cannot be expanded without legislation. It should be noted that employers can already validate the TINs of current or past employees through a website offered by the Social Security Administration. The Department of Treasury has put forth a legislative proposal that expand the TMP beyond forms where payments are subject to backup withholding.
IRS Action	N/A
TAS Response	TAS appreciates the IRS's analysis of the absence of authority to expand the TIN Matching program as recommended. We are pleased that the Department of Treasury has already made a legislative proposal to expand TIN Matching. Because administrative change was questionable, we also included a legislative recommendation on this topic in our 2015 Annual Report. Legislative action would alleviate the burden on health insurers, self-insured employers, and impacted taxpayers.

MSP #16 - IDENTITY THEFT (IDT): The IRS's Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long

PROBLEM

In general, tax-related identity theft (IDT) occurs when an individual intentionally uses the personal identifying information of another person to file a falsified tax return with the intention of obtaining an unauthorized refund. As of the end of September 2015, the IRS had over 600,000 IDT cases with taxpayer impact (excluding duplicates) in its inventory, up nearly 150 percent from September 2014. In July 2015, the IRS reorganized its IDT victim assistance functions, centralizing them under one umbrella within the Wage and Investment division. While the National Taxpayer Advocate is pleased the IRS has finally adopted this approach, she continues to have concerns about the IRS's IDT victim assistance procedures. For example, the IRS still does not assign a sole IRS contact person to interact with IDT victims with multiple tax issues, it does not track IDT cycle time in a way that accurately represents the taxpayer's experience, and it continues to limit the availability of Identity Protection Personal Identification Numbers (IP PINs) to a small segment of the population.

TAS Recommendation	**[16-1] For identity theft victims with multiple issues or multiple years, assign a sole IRS contact person (and provide with a toll-free direct extension to this contact person) to interact with identity theft victims throughout and oversee the resolution of the case. Alternatively, the IRS should conduct a pilot where selected identity theft victims with multiple issues are assigned a sole employee, and compare results (case resolution time, number of contacts, taxpayer satisfaction, quality, etc.).**

IRS Response	Recommendation Not Adopted, as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. We provide victims of IDT with a special toll-free hotline for assistance, ensuring taxpayers can reach a trained IDT specialist any time during business hours, and not depend on the availability of a single IRS employee. All customer service representatives staffing this specialty line can review the taxpayer's case file and respond to the IDT victim's call. While we believe that this approach provides the best possible experience for the victim, we are reviewing call flow to identify any possible improvements. The IDTVA, as a centralized IDT victim assistance operation, consolidated work that was previously performed by different parts of the IRS, reducing hand-off and multiple cases, thus expediting the resolution of all taxpayer issues. We expanded the case assignment logic to ensure the victims are assigned to an employee with the best skill for all issues and years. For example, if a taxpayer has an exam assessment on one year but no compliance issues for other years, then the taxpayer's cases for each tax year are assigned to an IDTVA exam employee who will resolve both the exam and other issues and years. Assigning the case to one employee results in consistent resolution and provides one contact to initiate and receive correspondence if additional information is required to resolve the case. The correspondence sent at case closing addresses each tax year. We will continue to look for improvements in case management as a part of our IDTVA re-engineering team, which includes TAS members.
IRS Action	N/A
TAS Response	TAS appreciates the improvements that accompanied the creation of the IDTVA. However, we still believe that victims will benefit from having a sole contact person within the IRS when calling to inquire about their IDT case. The creation of a centralized unit in IDTVA is a step in the right direction, but the sole contact person concept should be extended to IDT victims who deal with other IRS functions. Giving IDTVA employees access to CIS is a good idea, but IDT victims, who have undergone a traumatic crime, will be put more at ease if they have the name and number of someone they can deal with every time they call the IRS about their IDT case. For the IRS to dismiss our recommendation because a single employee may not always be available to the victim (due to time differences or sick/annual leave) is disappointing. TAS uses the sole contact person model, and our case advocates have ways of ensuring coverage during periods of unavailability (including a buddy system). Are we really to believe that the IRS cannot think of a similar way to deal with the occasional instances when an IDT victim is unable to reach the designated sole contact person?[14]

[14] The Senate Appropriations Committee expressed support for the National Taxpayer Advocate's approach in its report accompanying the FY 2017 Financial Services and General Government Appropriations bill. The report states: "The National Taxpayer Advocate recommended that identity theft victims with multiple issues should be assigned a sole IRS 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. . . . Recognizing the pervasive and growing problem of tax-related identity theft and understanding the need to assist taxpayers with this issue in a simple and timely manner, the Committee directs the IRS to assign cases of identity theft victims with a sole point of contact at the IRS regardless of the many IRS functions that

TAS Recommendation	**[16-2] Track identity theft cycle time in a way that reflects the taxpayer's experience more accurately – from the time the taxpayer submits the appropriate documentation to the time the IRS issues a refund (if applicable) or otherwise resolves all related issues.**
IRS Response	Recommendation Not Adopted, as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The IDTVA organization tracks the cycle time of IDT cases from the received date of the documentation until all actions are taken to resolve the case, including the action to release the correct refund. The former compliance inventory is now on CIS, and we have one inventory system that provides a consistent method for calculating cycle time from the received date of the taxpayer's documentation until all actions have been taken to resolve the case. The current time to resolve cases in IDTVA's inventory is generally below 120 days.
IRS Action	N/A
TAS Response	The improvements made by centralization of work under IDTVA reorganization have not resulted in an accurate measurement of IDT case cycle time. TAS continues to urge the IRS to compute IDT case cycle time from the taxpayer's perspective – *i.e.*, from the date the case is first received by an IRS function until the date all related actions have been taken to completely resolve the case. For example, even if IRS has taken an action to release a taxpayer's refund, it should keep the case open until the refund is actually issued to the taxpayer. If the IRS closes an IDT case prematurely, it distorts cycle time and underrepresents the harm suffered by IDT victims.
TAS Recommendation	**[16-3] Review and adjust its global account review procedures to ensure all related issues are actually resolved (including issuance of a refund, if applicable) prior to case closure, and conduct appropriate training for its employees.**

may need to be involved in order to resolve the issue for the taxpayer and report on the full cycle time for resolving IDT cases." S. REP. NO. 114-280, at 36-37 (2016).

IRS Response	IRS Actions Already In Progress.
IRS Action	IRS currently conducts a global review process to ensure all related issues are resolved for all cases closed by the IDTVA operation, with only 5% of cases reviewed flagged for further action. The IDTVA Re-engineering Team, which includes members from TAS, reviewed the global review process and as a result, the following changes will be implemented: • Decreasing the time it takes for the global review tool to analyze cases • Improving the skills of the IDTVA employees • Enhancing procedures to decrease the number of cases referred to other functions
TAS Response	TAS looks forward to seeing the recommendations made by the IDTVA Re-engineering Team that would address our concerns about the global account review process.
TAS Recommendation	**[16-4] Expand its IP PIN pilot to allow taxpayers in every state the ability to receive an IP PIN, and convey this option to taxpayers using multiple modes of communication.**

IRS Response	Recommendation Not Adopted, as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The Identity Protection Personal Identification Number (IP PIN) is one tool in our identity protection strategy. The IP PIN is a six-digit number that adds an additional layer of protection for taxpayers who are eligible to receive one. The IRS has determined that expanding the program is cost prohibitive, we are exploring other ways to prevent IDT that are less burdensome to the taxpayer. Combating the sophisticated criminals perpetrating identity theft requires significant resources. With our present resource constraints, it is not possible for us to offer an IP PIN to everyone who has been a victim of IDT through breaches at other agencies or in the private sector. The IP PIN may not be the best level of protection for those taxpayers who have not been victims of tax-related IDT. We are exploring other tools and solutions to increase security of taxpayer data available to a wider cross-section of taxpayers. For example, as a result of the recent Security Summit we are looking at strengthening authentication at the point of filing through collaboration with state tax administrators, tax software leaders, and payroll processing agents. During the Summit, we identified numerous new data elements that can be shared at the time of filing to help authenticate a taxpayer and detect identity theft tax refund fraud. The data has been submitted to the IRS and states with the tax return transmission for the 2016 filing season. Another example is our effort to prevent fraudulent use of Forms W-2. Anticipating identity thieves' continued efforts to obtain Forms W-2 and create counterfeit Forms W-2 in order to file false returns, the IRS launched a pilot program earlier this year testing the idea of adding a verification code to Form W-2 that would verify the integrity of Form W-2 data being submitted to the IRS. For this pilot, the IRS partnered with four major payroll service providers. These providers added a special coded number on approximately 2 million individual Forms W-2 in a new box on the Form W-2 labeled "Verification Code;" each number generated was known only to the IRS, the payroll service provider, and the individual who received the Form W-2. The verification code cannot be reverse engineered, and since this identifier is unique, any changes to the Form W-2 information provided when filed are detected by the IRS. Individuals whose Forms W-2 were affected by the pilot and who used tax software to prepare their return entered the code when prompted to by the software program. The IRS plans to increase the scope of this pilot for the 2017 filing season by expanding the number and types of Form W-2 issuers involved in the test.
IRS Action	N/A

TAS Response	The National Taxpayer Advocate commends the IRS for its efforts in working with other agencies and the private sector to explore various options to make tax return filings more secure. TAS will collaborate with the IRS to explore better, more cost-effective ways to protect the accounts of IDT victims than expanding the issuance of IP PINs.

MSP #17 - AUTOMATED SUBSTITUTE FOR RETURN (ASFR) PROGRAM: Current Selection Criteria for Cases in the ASFR Program Create Rework and Impose Undue Taxpayer Burden

PROBLEM

When a taxpayer who has a filing requirement fails to file a tax return, the IRS is authorized under Internal Revenue Code (IRC) § 6020(b) to use third-party information, such as Forms W-2 and 1099, to determine and assess a tax liability. This is principally worked through the Automated Substitute for Return (ASFR) program, the IRS's key program for enforcing filing compliance on taxpayers who have not filed individual income tax returns but appear to owe a tax liability. If a taxpayer has not filed a return and the IRS determines that a taxpayer has a filing requirement, it will typically select the case to prepare a substitute for return and assess the liability based on the third-party information, but it does not allow any itemized deductions or credits that might be supported by third-party information, and only allows a filing status of single or married filing separately. The ASFR program has poor collection results and a high abatement rate, which shows that ASFR's selection criteria are inefficient and lead to inflated liabilities that are later abated.

TAS Recommendation	**[17-1] Review annually where ASFR assessments have had the most success in getting taxpayers to file an original return and adjust the ASFR selection process to focus on similar types of cases.**
IRS Response	The ASFR program prioritizes cases to ensure the tax law is applied fairly and equitably to all nonfilers in conjunction with the principles outlined in Policy Statement 5-134 that provides that operations should be geared to produce the greatest revenue yield. Basing case selection on taxpayer populations where an original return is likely to be filed focuses enforcement on individuals who become compliant, while ignoring individuals who are not. The National Taxpayer Advocate's recommendation does not consider successful collection for modules where taxpayers did not file, but were assessed under the ASFR process with no subsequent response by the taxpayer. The IRS authority to make assessments in the ASFR program should be used when necessary to assess individuals who will not file voluntarily. Selecting cases based on taxpayers who respond more often would enforce filing requirements and collection on a more compliant taxpayer population, while failing to enforce for taxpayer populations who are least compliant. This would be unfair and inequitable.

IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed by the IRS's reluctance to review annually where ASFR assessments have had the most success in getting taxpayers to file an original return and adjust the ASFR selection process to focus on similar types of cases. As the IRS stated above, the purpose of the ASFR program is to promote filing compliance. This recommendation would focus the IRS's ASFR authority on cases where this objective will most likely be achieved. The National Taxpayer Advocate is not suggesting that the IRS would not attempt to promote filing compliance in other cases where an ASFR assessment has historically not generated an original return, but is rather suggesting that a different approach might be more successful. For example, in cases where the IRS determines that ASFR assessments have typically not generated an original return, it can impose a different approach on these cases (i.e., sending a soft notice and making phone calls to the taxpayer, as is sometimes done by Field Collection and ACS, as explained above). This approach will improve case resolution by focusing on a smaller number of cases and adding the element of in-person contact with taxpayers to solicit and secure tax returns. If these personal contacts prove unsuccessful in securing tax returns, then the IRS should use its Substitute for Return authority (including Automated Substitute for Return) to make the assessment and move forward to collection.
TAS Recommendation	**[17-2] Refine ASFR abatement reason codes, making them more specific, so the IRS can use this information when determining if a case should be selected for the ASFR program.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow. IRS agrees it would be beneficial to include ASFR abatement reason codes to capture additional data for analysis and improvement of the ASFR program. Additional reason codes would be useful in determining why returns are filed, such as when abatements are necessary to move tax liabilities to spouse SSNs for joint returns. However, any changes will be dependent on Information Technology (IT) resources and acceptance of a Unified Work Request (UWR) to perform the work.
IRS Action	The Collection Inventory Delivery and Selection, Non Filer and Inventory Analysis function will coordinate with IT stakeholders to determine whether additional reason codes can be created for ASFR modules. Coordination will occur in FY 2016, with a determination by October 2016. A UWR will be input by December 2016 if IT resources are secured to perform the additional work.

TAS Response	The National Taxpayer Advocate is pleased that the IRS is willing to refine ASFR abatement reason codes. More specific reason codes would allow the IRS to better understand why the ASFR liability was abated and to consider refinement of its ASFR selection criteria based upon that information. The National Taxpayer Advocate understands limited resources is always a consideration, but urges the IRS to take a more analytical view to the commitment of resources for the refinement of abatement reason codes. Specifically, investing in the abatement reason codes, which will allow the IRS to enhance its ASFR collection criteria, would involve a commitment of resources up front, but such costs would likely be offset by mitigating the cost of abating ASFR assessments.
TAS Recommendation	**[17-3] When selecting cases for ASFR, consider third-party documentation that supports exemptions, deductions, and credits before making ASFR assessments.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow. IRS is currently working on additional scoring for the Case Creation Nonfiler Identification Process (CCNIP) and ASFR cases. The ASFR program continues to refine the selection process and began coordination to include additional modeling for case selection in FY 2014. Tax law prevents IRS from including certain exemptions, deductions, and credits that may only be claimed by the taxpayer on a filed return. However, future modeling will be used to select cases that are more likely to result in a tax liability instead of a refund if these credits were claimed on a filed return. Bringing taxpayers into compliance through improved selection criteria will help to close the filing tax gap and improve future filing compliance.
IRS Action	The Collection Inventory Delivery and Selection, Non Filer and Inventory Analysis function will continue to coordinate with the Strategic Analysis and Modeling (SAM) group and IT stakeholders to pursue additional modeling and scoring for Nonfiler case selection. UWRs were submitted in FY 2015 to include placeholders. Implementation is planned for FY 2017. Testing and implementation is dependent on resources available for ASFR inventory.
TAS Response	The National Taxpayer Advocate is pleased that the IRS is willing to consider third party information as part of its ASFR selection criteria. Using this information will enhance the IRS's ability to select cases for ASFR where a liability actually exists, rather than making an assessment on an account that will likely result in abatement, thereby wasting IRS resources that could be better used elsewhere. Again, the National Taxpayer Advocate urges the IRS to consider how the up-front investment of adjusting its selection criteria to consider third party information would result in a more efficient and effective program long term.

MSP #18 - INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS (ITINs): IRS Processes Create Barriers to Filing and Paying for Taxpayers Who Cannot Obtain Social Security Numbers

PROBLEM

Problems obtaining Individual Taxpayer Identification Numbers (ITINs) have long plagued taxpayers who have a tax return filing requirement, but are ineligible for a Social Security number (SSN). When taxpayers cannot obtain ITINs timely, or at all, they may face financial hardship and limitations on where and with whom they can do business. Some taxpayers may drop out of the tax system altogether. ITIN applications and associated returns filings have dropped precipitously in recent years. While the general economic climate and immigration trends help explain this decline, IRS procedures have most certainly contributed to it. Concerns about ITIN refund fraud are legitimate; the IRS's solutions, however, do not effectively target the fraud nor do they balance the anti-fraud regime with the taxpayer's need for a process no more intrusive than necessary, part of a taxpayer's *right to privacy*. As a result, the IRS burdens legitimate taxpayers and harms global commerce.

TAS Recommendation	**[18-1] Allow all ITIN applicants to apply for an ITIN at any time of the year without submitting a tax return as long as they provide other evidence of a legitimate tax administration purpose for the ITIN.**

IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. While considering options to implement the recently enacted Consolidated Appropriations Act, 2016, we will also consider this recommendation to allow certain ITIN applicants to apply for an ITIN any time of the year without submitting a tax return as long as they provide other evidence of a legitimate tax administration purpose for the ITIN. The requirement to submit a tax return with Form W-7, *Application for Individual Taxpayer Identification Number*, was established to ensure the ITIN assigned was used for tax administration purposes. Only a quarter of ITINs issued since inception have been used on tax returns. The ITINs are no longer issued solely based on a statement that an applicant requires an ITIN to file a return without documentation that the applicant needs the number to do so. Current procedures enable the IRS to process ITIN applications submitted with federal tax returns in a timely manner (within ten days). Filing a federal tax return with Form W-7 facilitates compliance with U.S. tax laws and is the only reliable method to ensure a return is filed and safeguard the issuance of ITINs for federal tax administration purposes. Going forward, the IRS will consider the effect of recent legislation which requires deactivation of ITINs not used for the preceding three years to determine if changes in current application practices are warranted. The IRS modified documentation standards in 2012, and required applicants to submit original documents or certified copies of identification documents from the issuing agency with their federal tax return. Additionally, those applicants who meet any of the five exception criteria outlined in Form W-7 instructions can submit their application at any time during the year without a federal tax return.
IRS Action	N/A

TAS Response	To fully address the National Taxpayer Advocate's concerns raised in the Most Serious Problem, the IRS should allow all ITIN applicants to apply for an ITIN at any time throughout the year, without having to attach a tax return, so long as they provide proof of a legitimate tax administration purpose. The IRS's statement, "Only a quarter of ITINs issued since inception have been used on tax returns," appears to contradict TAS's recent research. TAS estimates there have been 23.1 million distinct ITINs issued since the IRS started issuing ITINs in 1996, and an average of 10.3 million ITINs – or about 44.6 percent – were used on a return annually from 2011 through 2015, meaning far more than a quarter of ITINs have not only been used on a return, but used recently.[15] The National Taxpayer Advocate agrees that ITINs should no longer be issued based solely on a statement that an applicant needs the ITIN to file a return. However, she disagrees that filing an ITIN application with a return is the only reliable method for proving a tax administration purpose. In fact, she provides a viable alternative for proving a tax administration purpose in the recommendation that follows this one. The IRS's statement, "Current procedures enable the IRS to process ITIN applications submitted with federal tax returns in a timely manner (within ten days)," is perplexing given that applicants were advised to wait up to 11 weeks for their ITINs to be processed during the 2016 filing season. The National Taxpayer Advocate hopes the IRS will seriously consider the impact of its policy requiring most ITIN applications to be submitted with tax returns, especially in light of the new statutory restrictions requiring deactivation of ITINs and for an applicant to have received an ITIN by the tax return due date in order to receive the Child Tax Credit (CTC) or American Opportunity Tax Credit (AOTC). The new deactivation requirements will likely cause an even greater number of applicants to apply during the filing season, resulting in an even more unmanageable workload and further processing delays. The new restrictions on the CTC and AOTC will exacerbate the harm caused by these processing delays.
TAS Recommendation	**[18-2] Accept documentation such as pay stubs or bank statements as evidence of a filing requirement and thus evidence of a legitimate tax administration purpose for an ITIN.**

[15] IRS, CDW, IRTF Database (Mar. 30-31, 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/unuseditins-to-expire-after-five-years-new-uniform-policy-eases-burden-on-taxpayers-protects-itin-integrity (last updated May 13, 2016).

IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. While considering options to implement the recently enacted Consolidated Appropriations Act, 2016, we will consider this recommendation to allow certain ITIN applicants [to] apply for an ITIN without submitting a tax return as long as they provide evidence of a legitimate tax administration purpose for the ITIN. We appreciate the National Taxpayer Advocate's interest in allowing taxpayers to apply for an ITIN in advance of using it. The requirement to submit a tax return with Form W-7, *Application for Individual Taxpayer Identification Number*, was established to ensure the ITIN assigned was used for tax administration purposes. Filing a federal tax return with Form W-7 facilitates compliance with U.S. tax laws and is the only reliable method to ensure a return is filed and safeguard the issuance of ITINs for federal tax administration purposes. The submission of a pay stub with an ITIN application does not demonstrate the individual will ultimately have a filing requirement. Wage amounts vary and depending on the time of year the ITIN application is submitted the applicant may not be required to file a tax return. There is no assurance of continued employment for the remainder of the year or reasonable assurance the applicant will file a federal tax return after the close of the tax year.
IRS Action	As we consider available options to implement the recently enacted Consolidated Appropriations Act, 2016, we will re-evaluate evidence of filing requirements.
TAS Response	The IRS's response assumes that the only valid tax administration purpose for an ITIN is to file and pay taxes for which the taxpayer has exceeded the filing threshold. Taxpayers who do not meet the filing threshold may have other valid tax administration purposes. For example, they may be seeking a refund of taxes that were over-withheld during the year, or they may be claiming a refundable tax credit, such as the Additional Child Tax Credit. Thus, there may be taxpayers whose wages have not yet or will not exceed the filing threshold, but who will have a valid tax administration purpose for the ITIN. Proving that a taxpayer has some income that could either be subject to tax, has been withheld, or could make the taxpayer eligible for a refundable tax credit should suffice to prove a tax administration purpose for the ITIN. Although there may be cases where the taxpayer applies for and receives an ITIN but does not file a tax return for that year, these ITINs will now be deactivated if they are not used within a three-year period, thus limiting their potential for abuse.
TAS Recommendation	**[18-3] Return by expedited mail all original identification documents sent to the IRS.**

IRS Response	Recommendation Not Adopted as Written, but IRS Actions have been Taken to Address Issues Raised by the National Taxpayer Advocate. IRS currently allows taxpayers to have their original documents returned if they provide a pre-paid express mail envelope. Form W-7 instructions provide an expedited mailing option and states, "Applicants are permitted to include a prepaid Express Mail or courier envelope for faster return delivery of their documents. The IRS will then return the documents in the envelope provided by the applicant." In addition to mailing original identification documents to the IRS, ITIN applicants have other options for submitting original documents including visiting a TAC or a CAA. The volume of original identification documents submitted to the IRS makes it cost prohibitive for the IRS pay to return all documents by expedited mail. Based on a review of calendar year 2014 receipts of over 850,000 applicants, excluding CAA submissions, the cost to return original identification documents using Registered Mail would be prohibitive.
IRS Action	N/A
TAS Response	While acknowledging the costs associated with returning original documents by expedited mail, the National Taxpayer Advocate believes the IRS is imposing a hardship on any applicant who is forced to mail in their original documents because he or she does not have any reasonable, accessible alternatives. As detailed in the MSP, TACs and CAAs are limited in number, in the type of documents they can certify, and in the applicants whom they can assist. As evidenced by the majority of applicants who mail in their documents as opposed to using a TAC or CAA, the IRS is not providing viable alternatives. If the IRS were to provide reasonable options for ITIN applicants, the number of applicants mailing original documents would likely fall and the costs associated with returning those documents by expedited mail would be far less. Although the IRS states above that it has taken actions that address this issue, the IRS's response in essence rejects the recommendation to expedite the return of original documents and provides no alternatives. The IRS also refuses to alleviate the underlying problem that makes expedited return service essential – its demand of taxpayers to submit their original identification documents by mail.
TAS Recommendation	**[18-4] Allow TACs to certify all types of identification documents for ITIN applicants.**

IRS Response	Recommendation Not Adopted. While considering options to implement the recently enacted Consolidated Appropriations Act, 2016, IRS will also consider this recommendation to allow TACs to certify all types of identification documents for ITIN applicants. In January 2013, TACs began authenticating documents in select locations for ITIN applicants. The decision to provide ITIN authentication at the TACs was in response to a TIGTA audit of the ITIN program. This service alleviates taxpayer burden by allowing them to maintain possession of their original identification documents during the ITIN application process. IRS accepts passports and national identification cards because they are the most frequently submitted, internationally recognized and have electronically accessible reference materials that detail security features of identification documents. This allows the TAC employees to become proficient in the authentication of identification documents and reduces any potential risks with fraudulent documents submitted as proof of identification.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate hopes the IRS will further review the possibility of TACs certifying additional types of documents. The IRS's statement that passports and National I.D. cards are the most frequently submitted documents is questionable based on the IRS's own response to TAS's information request in 2013, which stated that civil birth certificates and school records had higher usage rates when submitting an ITIN application. Because under current IRS policy, CAAs cannot certify documents for dependents, it is even more important for TACs to be able to certify documents submitted by dependents, such as school and medical records, which can only be used by dependents. By accepting ITIN applications throughout the year with proof of a valid tax administration purpose, the IRS could reduce the surge in ITIN applications that come in during the filing season. As a result, the IRS could dedicate fewer employees to certify ITIN applications at TACs because they could do this work throughout the year, as opposed to having to accommodate most of the applications at once. This would give the IRS greater flexibility to more thoroughly train these employees so that they could become proficient at reviewing all types of documents. This solution would reduce the burden on taxpayers and at the same time help the IRS reduce the risk of accepting fraudulent identification documents.

TAS Recommendation	**[18-5] Allow CAAs to certify all types of identification documents for dependent ITIN applicants.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions have been Taken to Address Issues Raised by the National Taxpayer Advocate. Other interested stakeholders have made requests similar to this recommendation. As part of the process of implementing the recently enacted Consolidated Appropriations Act, 2016, the IRS will consider this recommendation. To adequately substantiate identity, foreign status and ensure the integrity of certain tax benefits such as the Child Tax Credit, dependent ITIN applications submitted directly to the IRS will continue to require original documents or copies certified by the issuing agency. The TAC employees in key locations will continue to certify passports and national identification cards for dependents in person. The CAAs are still allowed to authenticate documents for the primary and secondary taxpayers and can send in copies of documents with the ITIN application. For dependents, CAAs are required to submit the original documents or copies certified by the issuing agency. Although the TIGTA audit (2012-42-8) recommended the elimination of the CAA program, the IRS implemented a new policy eliminating the CAA's ability to authenticate documents for dependents and requiring CAAs to send in original documentation or certified copies of documentation for dependents to the IRS. The IRS must weigh the convenience of taxpayers being able to use CAAs with the ability to address these kinds of compliance risks. Any changes to policies regarding acceptance of CAA verified dependent ITIN applications will be dependent on the IRS' assessment of compliance risks and the ability to address these risks.
IRS Action	As we consider available options to implement the recently enacted Consolidated Appropriations Act, 2016, we will also evaluate alternatives to Certifying Acceptance Agents authentication of dependent documents.

TAS Response	While the National Taxpayer Advocate shares concerns about fraud within the ITIN program, eliminating CAAs' ability to certify documents for dependents is not narrowly tailored to address any potential fraud – instead, it is a shotgun approach that unduly burdens compliant taxpayers. Further, it may actually hamper the IRS's ability to prevent fraud because CAAs often have specialized knowledge of identification documents used in certain communities and regions, and they can assist the IRS in identifying fraud. The IRS has failed to adopt one of the National Taxpayer Advocate's primary recommendations, to accept applications throughout the year with proof of a legitimate tax administration purpose, which would clearly reduce fraud by giving the IRS two opportunities to detect it – once at the time of the ITIN application and again at the time a return is filed, using all of its electronic filing fraud detection filters. The National Taxpayer Advocate hopes the IRS will meaningfully consider expanding options for dependent applicants as it makes changes to implement the Consolidated Appropriations Act, 2016.
TAS Recommendation	**[18-6] Expand the VITA CAA pilot to include CAAs who are not VITA/TCE sites and allow them to certify all types of identification documents for all ITIN applicants.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions have been Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS remains committed to the promotion and expansion of the Acceptance Agent Program in a way that also ensures compliance. Our effective marketing and outreach strategy includes internal stakeholders such as Stakeholder Liaison and National Public Liaison to recruit colleges and universities, financial institutions, community based organizations, and professional practitioners to expand accessibility throughout the United States. Through participation in IRS Nationwide Tax Forums, college symposiums, tax practitioner conferences, and ITIN seminars, we realized annual increases in the number of applicants in the Acceptance Agent Program. IRS leverages existing relationships with qualified community based organizations to expand services to taxpayers in the communities where they live. We have conducted two pilots to evaluate expanding options for taxpayers. In April 2014, Stakeholder Partnerships, Education and Communication (SPEC) and Field Assistance (FA) initiated a CAA referral pilot. This pilot included authentication of identification documents for primary and secondary applicants only. In August 2015, the CAA dependent pilot was initiated. This pilot allowed authentication of specific identification documents (i.e., passports and national identification cards). IRS will evaluate the results of the pilots to determine if they warrant expansion.

IRS Action	As we consider available options to implement the recently enacted Consolidated Appropriations Act, 2016, we will explore expanding the VITA CAA pilot to include CAAs who are not associated with VITA/TCE sites.
TAS Response	As discussed in the MSP, the CAA dependent pilot as structured will likely have only a minimal effect on dependents who currently mail in original documents because they have no other accessible options. Dependents who must send in their original documents 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. The pilot helps neither of these two groups. Without expanding the pilot, the IRS misses an opportunity to learn how it can effectively implement expanded options for dependents so that they can apply for an ITIN in person as opposed to mailing original documents. The IRS should seek input from CAAs and Low Income Taxpayer Clinics to make decisions regarding which dependent documents can be certified by a CAA. This would help the IRS balance the need for dependent applicants to submit certain types of documents with the ability for CAAs to validate identity and detect fraud based on these documents.
TAS Recommendation	**[18-7] Partner with the Department of State to provide certification of ITIN applications at U.S. embassies and consulates abroad.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions have been Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS instituted a new program change in 2012 that was designed to strengthen the ITIN process and included allowing the acceptance of certified documents from U.S. embassies and consulates abroad. The IRS and the Department of State discuss ways the two agencies can work together, on an on-going basis, to obtain reasonable assurance that copies of foreign-issued identification documents presented by ITIN applicants are true and correct copies of original documents. Diplomatic missions or consular posts can only authenticate Foreign Ministry or other high level seals. The Department of State legally cannot authenticate foreign seals and signatures of 112 countries that are part of the Hague Convention. Identification documents authenticated by countries under the Hague Convention attach an “Apostille.” This validates the signature of the official authorized to sign the document, but does not validate the content of the identification document (i.e., name, date of birth, etc.).
IRS Action	N/A

TAS Response	Under the Consolidated Appropriations Act, 2016, ITIN applicants abroad have extremely restricted options. They can apply either by mail or in person to an IRS employee or designee of the IRS at a U.S. diplomatic mission or consular post. Because the IRS closed all of its attaché offices abroad, the only real alternative to mailing their applications internationally is for applicants abroad to apply at a diplomatic or consular post.[16] The Consolidated Appropriations Act, 2016 gives the IRS the opportunity to work with the Department of State to designate and train employees at these locations to receive ITIN applications and conduct an in person interview to validate the content of the identification documents, similar to what TAC employees and IRS employees in the ITIN unit do now. By not taking up this opportunity and working with the Department of State to offer this service at posts abroad, the IRS appears to be ignoring the intent of Congress for applicants abroad to be able to apply at a U.S. diplomatic or consular post.
TAS Recommendation	**[18-8] Collaborate with TAS on developing criteria for the ITIN study required by law, and include a TAS representative on the study team.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions have been Taken to Address Issues Raised by the National Taxpayer Advocate. The IRS is currently evaluating available options and the best approach to deliver the required ITIN study. Considerations include seeking input from the Taxpayer Advocate Service, the Department of Treasury, as well as all impacted business units, which will ensure that all interested parties have an opportunity to review and provide feedback on the draft study.
IRS Action	The IRS also intends to issue official guidance as it relates to the legislation and allow for public comment and feedback. The IRS recognizes the importance of soliciting and considering the input of all affected stakeholders, including the National Taxpayer Advocate, in implementation of the legislation.

[16] See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title II, § 203 (2015) (codified at IRC § 6109(i)(1)(B)).

TAS Response	Due to TAS's unique statutory mission, the IRS would greatly benefit from collaborating with TAS as it conducts the required ITIN study. TAS is statutorily required to assist taxpayers in resolving problems with the IRS and works hundreds of cases related to ITINs each year. TAS also oversees the Low Income Taxpayer Clinics (LITCs), who are statutorily required to conduct outreach and education to taxpayers for whom English is a second language. By excluding TAS, the IRS excludes this valuable resource as well. Although providing TAS with an opportunity to review and comment on the draft study will be useful, collaborating with TAS at the beginning to design the study would offer greater benefits and ensure the study fully takes into account the experiences and needs of taxpayers, including low income taxpayers. Further, such collaboration at the outset satisfies the intent of Congress in ordering the study.[17] As such, the actions the IRS has taken do not address the recommendation.

[17] Id. (1) IN GENERAL.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study on the effectiveness of the application process for individual taxpayer identification numbers before the implementation of the amendments made by this section, the effects of the amendments made by this section on such application process, the comparative effectiveness of an in-person review process for application versus other methods of reducing fraud in the ITIN program and improper payments to ITIN holders as a result, and possible administrative and legislative recommendations to improve such process.
(2) SPECIFIC REQUIREMENTS.—Such study shall include an evaluation of the following:
(A) Possible administrative and legislative recommendations to reduce fraud and improper payments through the use of individual taxpayer identification numbers (hereinafter referred to as ''ITINs'').
(B) 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.
(C) Strategies for more efficient processing of ITIN applications.
(D) The acceptance agent program as in existence on the date of the enactment of this Act and ways to expand the geographic availability of agents through the community- based certified acceptance agent program under subsection (c).
(E) Strategies for the Internal Revenue Service to work with other Federal agencies, State and local governments, and other organizations and persons described in subsection (c) to encourage participation in the community based certified acceptance agent program under subsection (c) to facilitate in-person initial review of ITIN applications.
(F) Typical characteristics (derived from Form W–7 and other sources) of mail applications for ITINs as compared with typical characteristics of in-person applications.
(G) Typical characteristics (derived from 17 Form W–7 and other sources) of ITIN applications before the
Internal Revenue Service revised its application procedures in 2012 as compared with typical characteristics of ITIN applications made after such revisions went into effect.
(3) REPORT.—The Secretary, or the Secretary's delegate, shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report detailing the study under paragraph (1) and its findings not later than 1 year after the date of the enactment of this Act.
(4) ADMINISTRATIVE STEPS.—The Secretary of the Treasury shall implement any administrative steps identified by the report under paragraph (3) not later than 180 days after submitting such report.

TAS Recommendation	**[18-9] Notify all taxpayers at their last known address at least three months prior to the deactivation of their ITINs and provide guidance for how to reactivate the ITIN or challenge a deactivation the taxpayer believes is in error.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. IRS agrees that taxpayers will need to be made aware that their ITIN is being deactivated and provided guidance on how to reactivate it. While considering options to implement the Consolidated Appropriations Act, 2016, IRS will also consider this recommendation in our determination on the method and timeframe for taxpayer notification. It should be noted that, in some cases, direct mail may be ineffective and cost prohibitive. For example, for ITINs issued years ago and that have not been used in several years, the IRS address of record may not be the taxpayer's current address. Mailing notices to older addresses often results in high volumes of undelivered mail and wasted resources.
IRS Action	The IRS is currently evaluating available options to implement requirements as set forth in the recently enacted Consolidated Appropriations Act, 2016. By June 30, 2016, we will formulate an approach on how we proceed with implementing the requirements to deactivate accounts as set forth in the legislation. Completion of the implementation plan with dates will follow.
TAS Response	The National Taxpayer Advocate understands the IRS is considering options for notifying taxpayers prior to their ITINs being deactivated and hopes the IRS will consult with TAS as it develops notification procedures. There are multiple taxpayer rights issues that are implicated based on how the IRS proceeds. For example, the IRS can protect taxpayers' *right to be informed* by notifying taxpayers at their last known address prior to the deactivations. Notifying taxpayers during the filing season in which they need an ITIN or after they attempt to file with a deactivated ITIN could infringe on taxpayers' *right to pay no more than the correct amount of tax*. This would occur because applicants may not have time to reapply before the tax return due date in order to receive the CTC and AOTC, which require the ITIN to be processed prior to the return due date. Furthermore, for taxpayers who believe a deactivation is an error, notifying them only after their ITINs have already been deactivated could prevent them from exercising their *right to challenge the IRS and be heard*. The National Taxpayer Advocate is aware of concerns with mailing ITIN deactivation or reactivation notices to an address where the taxpayer no longer resides, and hopes the IRS will work with TAS to address these risks and ensure taxpayer rights are protected.

MSP #19 - PRACTITIONER SERVICES: Reductions in the Practitioner Priority Service Phone Line Staffing and Other Services Burden Practitioners and the IRS

PROBLEM

The Practitioner Priority Service (PPS) was designed to be the first point of contact with the IRS for practitioners. Practitioners with questions have a designated professional support line they can call to receive guidance and answers regarding their clients' account-related issues. The IRS reduced the scope of provided services and eliminated necessary staffing to the PPS. As a result, practitioners calling the PPS line spend more time on hold, have a lower chance of getting through to a live customer service representative, and use the PPS for fewer services than in previous years.

TAS Recommendation	**[19-1] Restore staffing levels to FY 2011 levels on the PPS to decrease wait time and eliminate disconnects for the practitioners**.
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate.
IRS Action	The IRS recognizes the importance of delivering a high level of service (LOS) to PPS customers. Congress approved $290 million in additional funding for the IRS for FY 2016, to improve service to taxpayers. We used approximately $178.4 million of this additional funding to add about 1,000 extra temporary employees to help improve service on our toll-free telephone lines, including PPS. Improving the level of taxpayer service on the phones was a priority this filing season. Our levels of service on all telephone lines are a major improvement over 2015 levels. This filing season, we delivered an 83% LOS on PPS. Additional resources were allocated during the 2016 filing season to improve PPS services. We issued only 20,500 disconnects, compared to a 45% LOS for the same time last year with 147,000 disconnects. PPS is consistently planned at a higher level of service than the overall LOS each fiscal year. Level of service for future fiscal years will be dependent on budget and funding availability.

TAS Response	The National Taxpayer Advocate is pleased with the improvement in the LOS provided by the IRS during the 2016 filing season. The IRS needs to continue to fund the PPS at adequate levels to ensure high levels of service for practitioners who rely on the service to address account-related issues on behalf of their clients. The National Taxpayer Advocate looks forward to seeing this trend of improvement continue throughout the remainder of the fiscal year.
TAS Recommendation	**[19-2] Allow the resolution of complex tax law issues by asking questions and receiving answers from assistors.**
IRS Response	Recommendation Not Adopted. The IRS established the PPS product line to provide a dedicated phone line where practitioners can obtain account-related assistance for their clients. Since the inception of this service, the scope has been account-related services, as the IRS is the only source for that information. By using this service, practitioners can resolve their client's issues over the telephone with the assistor. Practitioners have access to tax law resources, as a part of their profession, and IRS.gov provides extensive tax law information for individuals, businesses, and practitioners.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed the IRS will not answer tax law questions during the calls from practitioners on the PPS. As stated in the MSP, the IRS is placing more and more of the burden on taxpayers and practitioners for correctly resolving tax issues. In order to accurately comply with the tax obligations placed upon them, taxpayers and their practitioners should be able to receive answers to their tax law questions in addition to their account-related issues. The National Taxpayer Advocate will continue to monitor this recommendation and will continue to suggest that practitioners be able to receive answers to their questions within the scope of the PPS's services.

TAS Recommendation	**[19-3] Allow practitioners to resolve as many as five client account issues during one call as stated in the IRM.**
IRS Response	IRS Actions Already Implemented. Guidelines in IRM 21.3.10.2.1(2) allow PPS telephone assistors to service up to five clients per call, provided the practitioner has the appropriate authorization on file or is able to fax the authorization information during the time of the call.
IRS Action	N/A
TAS Response	It is true that IRM 21.3.10.2.1(2) specifies that PPS telephone assistors are able to service up to five clients per call but the National Taxpayer Advocate has heard from many practitioners that in practice this does not occur. The National Taxpayer Advocate recommends that additional training and reminders be provided to the PPS telephone assistors to ensure that the IRM is being properly followed and practitioners who call are able to service up to five clients per call, if needed.
TAS Recommendation	**[19-4] Consult with and survey the practitioner community to find out their needs and preferences before making changes to the PPS.**
IRS Response	IRS Actions Already Implemented. The IRS participates in multiple practitioner forums throughout the year and addresses practitioner questions and concerns on an ongoing basis through the Issue Management Resolution System and Stakeholder Liaison Office. We also conduct a Customer Satisfaction Survey for PPS. When feasible, the IRS will continue to consult and survey the practitioner community to find out their needs and preferences before making changes to the PPS product line.

IRS Action	N/A
TAS Response	The National Taxpayer Advocate disagrees that this recommendation has been implemented by the IRS. Hosting infrequent meetings once or twice a year at various functions does not equal a systematic survey of the needs and preferences of practitioners who utilize the PPS to resolve account-related issues. Dialog between practitioners and the IRS is essential as the IRS prepares for the future state and without a statistically representative survey of tax practitioners to determine their needs, the IRS will weaken the value of the PPS. The National Taxpayer Advocate encourages the IRS to work with TAS to develop the survey tools to accurately determine what the needs and preferences of the practitioner communities are regarding the PPS.
TAS Recommendation	**[19-5] Retain the PPS even as online account systems are developed to assist practitioners with account issues that cannot be solved through online channels, and consult with practitioners about the design of a post-online account PPS.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow.
IRS Action	The IRS is committed to meeting practitioner service needs. We currently have no plans to eliminate service on the PPS toll-free line as online systems are developed. However, we anticipate a natural reduction in demand as online services become available. To support the agency's move to digital services, Wage & Investment is working with partners and stakeholders to develop the Bridge to the Future State which will assist in determining the future service initiatives for taxpayers and practitioners. Providing digital services to practitioners is a continuous long term effort which is driven by analysis, requires input from internal and external stakeholders, and is dependent on funding availability.
TAS Response	The National Taxpayer Advocate encourages the IRS to continue to conduct research on taxpayer preferences for various service channels, by type of transaction. However, it is the National Taxpayer Advocate's belief that the PPS will continue to be a much needed resource for practitioners to consult for resolution of their clients' account-related issues and thus should not be eliminated or reduced in functionality. Further, the National Taxpayer Advocate encourages the IRS to work with TAS in developing these studies and evaluating the results.

MSP #20 - IRS COLLECTION EFFECTIVENESS: The IRS's Failure to Accurately Input Designated Payment Codes for All Payments Compromises Its Ability to Evaluate Which Actions Are Most Effective in Generating Payments

PROBLEM

IRS guidance instructs employees to designate every payment it receives from a taxpayer with a specific code. Employees are directed to input a two-digit Designated Payment Code (DPC) to help identify payments, indicate application of the payment to a specific liability, and identify the event that primarily precipitated the payment (*e.g.*, liens, levies, offers in compromise, and installment agreements). The input of DPCs provides a way to track taxpayer behavior and future compliance. However, the IRS is not consistently or accurately applying DPCs, which reduces the IRS's ability to assess the effectiveness of its collection actions. Such failure prevents the IRS from measuring what actions, including processes such as the notice stream and the filing of a Notice of Federal Tax Lien (NFTL), were most successful in getting the taxpayer to pay on a balance due account. As a consequence, the IRS is blindly applying its broad collection powers and resources rather than analyzing accurate information to determine funding priorities (*i.e.*, what actions – sending a letter, making a phone call, or taking collection action – would yield the best return on investment). As a result, IRS actions are likely to be more intrusive than necessary, harming taxpayers and undermining voluntary compliance.

TAS Recommendation	**[20-1] Revise IRM guidance and guidelines for lockbox receipts to require the entry of specific DPCs on all balance due payments.**
IRS Response	Recommendation Not Adopted. The IRS receives certain types of payments from taxpayers at its lockbox. Ninety four percent of those payments do not require a DPC code. These are payments received with a tax return or estimated tax payments (71 percent) and installment agreement (IA) payments (23 percent). For IA payments, the IRS Masterfile System performs a sweep of these accounts and updates the Redesigned Revenue Accounting Control System (RRACS) with the installment agreement payment information through a fully automated process. The remaining six percent of lockbox payments are systemically assigned a DPC code. This ensures that lockbox payments are efficiently processed in compliance with Treasury mandates.

IRS Action	N/A
TAS Response	The National Taxpayer Advocate understands that the majority of payments do not require a DPC, and is pleased overall that the remaining payments are placed in a lockbox with a DPC. However, the National Taxpayer Advocate would recommend that the IRS systemically assign a DPC to payments that are received by an installment agreement. Furthermore, a majority of these DPCs are input manually. In fact, two-thirds of all DPCs, or about 69 percent, are input manually and only 23 percent of DPCs are input systemically.[18] As the National Taxpayer Advocate has discussed in the Most Serious Problem, taking steps towards systemically inputting DPCs would eliminate human error and improve the accuracy of DPCs, allowing the IRS to confidently rely on DPCs and the information they provide when making decisions on where to place its resources. As discussed in the Most Serious Problem, the IRS's own study on DPCs shows that DPC data that is dependent on manual input is not relied upon by IRS analysts since the data is neither accurate nor reliable.[19]
TAS Recommendation	**[20-2] Require Submission Processing employees to verify the presence of an appropriate DPC on payments by conducting regular quality reviews.**
IRS Response	IRS Actions Already Implemented. We agree that a formal and ongoing quality review system is critical to ensuring that Submission Processing employees use the appropriate DPC when required to do so. Verification of the appropriate DPC is already part of our regular quality review process. Please refer to the narrative response for more detailed information.
IRS Action	N/A

[18] IRS, Designated Payment Code Review Report (Dec. 17, 2012). No DPC was used at all for eight percent of the payments reviewed in this report.
[19] *Id.*

TAS Response	The National Taxpayer Advocate understands that a manual review process for DPCs is already in place. However, as the DPCs are used to evaluate the effectiveness of a collection action, a specific targeted review at the headquarters level would verify that the DPCs are being input accurately and as needed. The review could also be used to help identify where the implementation of a systemic way to assign a DPC would be appropriate to improve the accuracy of DPCs data. As mentioned in the Most Serious Problem, an IRS study showed that systemic input of DPCs resulted in an extremely high degree of reliability.[20]
TAS Recommendation	**[20-3] Provide clear and specific guidance about the circumstances under which employees can use a miscellaneous DPC.**
IRS Response	Recommendation Not Adopted. While the exact wording in each IRM is slightly different to benefit the intended audience of that IRM, the specific guidance to employees on the appropriate use of the Miscellaneous Payment DPC is consistent between the IRMs. Please refer to the narrative response for more detailed information.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate believes that the use of different language in describing when the miscellaneous code should be used is confusing for IRS employees and results in inconsistent application of the codes. Failing to provide employees consistent instruction on when the miscellaneous DPC should be used increases the risk of misapplication and compromises the reliability of the DPCs, thereby reducing its usefulness in determining where IRS resources will make the greatest impact.

[20] IRS, Designated Payment Code Review Report (Dec. 17, 2012).

TAS Recommendation	**[20-4] Implement systemic input of most payment codes.**
IRS Response	Recommendation Not Adopted. The major challenge facing the IRS in implementing systemic application of DPCs is that not all collection actions are maintained on a single database. The IRS lacks the resources to develop processes which would perform an analysis across the various information systems employed by the IRS to systemically assign a DPC to a payment. In addition, systemic assignment of DPCs may not accurately identify the event which predicated the taxpayer's payment.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed with the IRS's reluctance to investigate designing programming for systemic input of payment codes. Without accurate payment coding the IRS is unaware what actions, including processes such as the notice stream and the filing of an NFTL, were most successful in getting the taxpayer to pay on a balance due account. While the National Taxpayer Advocate acknowledges that it is impracticable to capture every possible reason or action that caused a taxpayer to send in a payment, it should be both practical and possible to capture much more information than we are doing today. The input of DPCs in most situations would provide a way to track taxpayer behavior and future compliance. The IRS's refusal to implement this recommendation perpetuates the current state, where the IRS is blindly applying its broad collection powers and resources rather than analyzing accurate information to determine funding priorities (i.e., what actions – sending a letter, making a phone call, or taking collection action – would yield the best return on investment).

MSP #21 - EXEMPT ORGANIZATIONS (EOs): The IRS's Delay in Updating Publicly Available Lists of EOs Harms Reinstated Organizations and Misleads Taxpayers

PROBLEM

The IRS maintains a list of tax exempt organizations (EOs) on two publicly accessible online databases, the Exempt Organizations Business Master File (EO BMF) and Exempt Organizations Select Check (EO Select Check). When an exempt organization fails to file an information return or notice for three consecutive years, its exempt status is automatically revoked, the IRS removes the exempt organization from its online-published lists of exempt organizations and places it on a list of automatically revoked organizations. Unless the automatic revocation was due to IRS error, an automatically revoked organization must submit a new application to have its exempt status reinstated. Even if the IRS promptly reinstates the organization or discovers its error, IRS databases will not immediately reflect the organization's restored exempt status because the IRS only updates its databases monthly, except in January when the databases are not updated at all. Therefore, reinstated EOs may lose out on donations or grants they would have received had IRS databases accurately reflected their status, which may be an existential issue for some organizations.

TAS Recommendation	**[21-1] Update EO BMF and Select Check on a weekly basis as is the case for Form 990-N updates.**

IRS Response	Recommendation Not Adopted. TAS recommends that the online publication of EO BMF and Select Check be updated on a weekly basis. The online publication of this information is dependent on monthly extracts that are obtained from the IRS Business Master File (BMF). Modification to the extract would require significant programming changes which are cost prohibitive. Because funding levels are not sufficient, the IRS cannot make the programming changes that would allow for the more frequent updating of EO BMF and EO Select Check as requested. TAS observes that donors may rely on an organization's inclusion on EO BMF and Select Check in determining the deductibility of their contributions. However, the determination letter issued by the IRS to an organization upon the reinstatement of its tax-exempt status after automatic revocation represents proof of the organization's tax-exempt status. An organization is required to make that letter available for public inspection upon request. Donors may rely on an IRS determination letter to confirm an organization's tax-exempt status in lieu of or in the interim before an organization's listing can be published on EO BMF and Select Check after reinstatement. Interested parties may also call the IRS toll-free number to obtain this information. Lastly, TAS mentions erroneous revocations, stating that "even if the IRS promptly reinstates the organization or discovers its error, IRS databases will not immediately reflect the organization's restored exempt status." The IRS implemented a process in March of 2015 to identify and prevent erroneous revocations. The IRS now proactively reviews and researches internal listings of pending automatic revocations to identify and address erroneous revocations that may occur in connection with a determination made on an organization's initial or reinstatement application for tax-exempt status. In this process, correction is made before notification to the organization and publication of the revoked status occurs. Since implementation, over 2,400 erroneous revocations have been prevented using this process.
IRS Action	N/A
TAS Response	TAS commends the IRS for implementing a new process to prevent and reduce the number of erroneous automatic revocations. TAS also understands and appreciates the IRS's challenging budget environment. However, TAS strongly disagrees with the IRS's contention that donors and grantors to reinstated automatically revoked organizations can rely on a determination letter or make a phone call to the IRS to verify the exemption. This statement runs contrary to the IRS's own recognition of grantor and donor reliance on the IRS's EO databases. It also does not accurately reflect realities of the exempt organizations world, where donors and grantors often look solely to the IRS's EO databases. An exempt organization that is not listed on these online databases can be adversely impacted by losing out on donations and grants. Therefore, updating these databases on a weekly basis is critical. This strong business case can be presented to Congress as the basis for additional IT funding.

TAS Recommendation	**[21-2] Until appropriate programming changes can be made, update EO Select Check manually.**
IRS Response	Recommendation Not Adopted. The IRS lacks the necessary staffing to manually update EO Select Check on a systemic basis. On average, the IRS approves approximately 1,800 applications for recognition of exempt status each week. Adding each of these organizations to EO Select Check manually would require additional staffing which is cost prohibitive at this time. Even if IRS had the resources to manually update EO Select Check, doing so could result in issues in light of the current programmatic updates. For example, weekly manual EO Select Check updates together with monthly programmatic updates could corrupt data if the programmatic updates overwrite the manual updates. Making manual updates also would introduce increased risk of erroneous entries, such as transposed EINs, resulting from manual (as opposed to programmatic) input of data. Moreover, manually updating EO Select Check would result in inconsistent information on the IRS website regarding the status of an organization because an organization's corresponding entry on the online EO BMF Extract cannot be updated manually. This could result in taxpayer confusion and burden where a donor or other interested party could locate an organization on EO Select Check because it was manually updated, but could not locate the same organization in the online EO BMF extract, which would still update monthly. Finally, manual updating of EO Select Check would not necessarily result in more frequent posting of information. Before EO Select Check could be manually updated, the IRS would need to verify that the approved organization's information was posted to BMF. This process can take anywhere from two business days to two weeks depending on the type of organization and the nature of the required BMF updates and systemic posting delays.
IRS Action	N/A

TAS Response	After reviewing the IRS's concerns regarding the risk of corrupted data if the IRS performs regular manual updates, TAS agrees with the IRS that the risks of manual updating outweigh the benefits in this particular circumstance. However, the difficulties and concerns that the IRS has articulated about routine manual updates make it even more urgent that it begin the process for scoping and requesting weekly systemic updates, discussed above, and for improved emergency updates, discussed below.
TAS Recommendation	**[21-3] Implement an emergency process that, even when there is weekly updating, allows for manual database updates within 24 hours of the restoration of exempt status.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. For the reasons described in the response to Recommendation 21-2, the IRS generally does not make manual updates to EO Select Check, and is unable to manually update EO BMF (and the EO BMF Extract that appears on the IRS website). As indicated in the MSP, the IRS already has in place processes to make emergency manual updates to EO Select Check where appropriate, generally where updates that should have occurred via automated programmatic updates did not for some reason occur. The IRS will continue its existing process for emergency manual updates. The IRS will continue to prevent erroneous revocations, which has successfully reduced the need for emergency manual updates. As described above, the IRS also has taken and continues to make efforts to mitigate the risk that organizations will erroneously be listed as having their tax-exempt status automatically revoked. Where an organization is erroneously listed, the IRS corrects the error and issues the organization a letter affirming its exempt status that the organization and donors may rely on for the interim period until the organization's entry on EO Select Check and the EO BMF Extract can be updated.
IRS Action	The IRS has a process in place to make emergency manual updates as needed.

TAS Response	TAS commends the IRS for having an emergency process for manual EO Select Check updates and for its new process to reduce the number of erroneous automatic revocations. However, a 24-hour emergency manual updating process is necessary in situations where a donation or grant to an exempt organization hangs in the balance, particularly since, as discussed above, the IRS will not do routine manual weekly updates. As previously noted and as recognized by the IRS, some donors and grantors rely exclusively on EO Select Check to confirm an organization's exempt status. An affirmation letter is thus of little value in these situations.

MSP #22 - EARNED INCOME TAX CREDIT (EITC): 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

PROBLEM

The Earned Income Tax Credit (EITC) population often shares a unique set of attributes that create obstacles for EITC compliance, such as low levels of education and high transiency. Additionally, one third of the eligible population changes every year. Under these circumstances, it is difficult for taxpayers to understand EITC eligibility rules. During the filing season, the IRS provides toll-free assistance for answering basic tax law questions from any taxpayer, and only rudimentary help for taxpayers with EITC questions. By failing to provide EITC taxpayers with a dedicated toll-free helpline staffed by assistors with whom they can check their EITC eligibility, the IRS disregards the specific and unique needs of the EITC population and perpetuates high noncompliance rates.

TAS Recommendation	**22-1] Conduct a study along the lines of the UK experiment to determine how best to serve low income taxpayers. This study should include interviews with taxpayers, nonprofit organizations, and IRS employees, to learn about taxpayer needs and communication preferences.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. To gather information similar to what is recommended, we are conducting the EITC Summit which will bring together a cross section of stakeholders from areas such as the software industry, return preparers, and government agencies, where we will solicit their concerns and suggestions on participation and compliance. We also solicited and consider ongoing feedback on the needs of low income taxpayers through the VITA and TCE community partners.
IRS Action	N/A

TAS Response	The National Taxpayer Advocate commends the IRS for planning an EITC Summit to bring together the software industry, return preparers, and government agencies, and the plan to continue to solicit comments from the VITA and TCE communities. However, by not adopting an actual component that includes direct input from taxpayers, especially those that are not utilizing the VITA and TCE organizations, the IRS is missing out on a significant opportunity to obtain information that could be critical in developing a comprehensive plan. The National Taxpayer Advocate is disappointed this recommendation has not been accepted and continues to believe the IRS should conduct a study along the lines of the UK experiment. The IRS can use the issues raised and knowledge gained in the EITC Summit to better design a more rigorous experiment that includes taxpayers as well as nonprofit organizations, representatives, preparers (including software developers), and IRS employees.
TAS Recommendation	**[22-2] Based on the findings from the proposed study above, create a helpline dedicated to taxpayers who claim the EITC where taxpayers can call in and ask questions about their particular area of concern. This phone line should be staffed by employees with excellent listening and communication skills who have completed training in social work and who can answer specific questions related to EITC eligibility. The IRS should provide, in conjunction with TAS, special training on listening and communication.**
IRS Response	Recommendation Not Adopted. IRS continues to promote a variety of channels for taxpayers to receive help with questions about EITC. These include the toll-free phone assistors trained in tax law and our web resources including the EITC Assistant, an on-line tool available on IRS.gov. This year, between October 2015 and March 2016, over 240,000 taxpayers used the Assistant to determine qualification for the credit and over 1.3 million accessed irs.gov/eitc. Our VITA and TCE partnerships, administered by our SPEC organization, provide tax preparation assistance for EITC taxpayers. In fiscal years 2014 and 2015, they prepared about 744,000 EITC returns claiming over $1.1 billion in EITC. In FY 2016, through April 18, 2016, they prepared almost 695,000 returns claiming over $1 billion in EITC. The IRS led the effort to deliver the tenth annual nationwide EITC Awareness Day on January 29, 2016. The IRS and partners used events and social media to increase awareness of this important credit that benefits workers and their families. Events included news conferences, news releases, e-mail blasts, newsletters and social media interactions. Over 290 local events were held. English & Spanish radio interviews were held with 575 radio stations. The same interviews provided access to over 1,500 local stations. The IRS and its partners tweeted over 2,400 English tweets reaching over 2.6 million Twitter followers and yielded over 5.8 million touches on individuals' Twitter timelines during Awareness Day. The EITC Awareness Day Thunderclap (which is a social media tool that allows organizations, partners and individuals to join together to blast a message of support at the same time to all of their followers social media) had 255 supporters with a potential reach of 372,970 people.

IRS Action	N/A
TAS Response	TAS is disappointed the IRS is not implementing this recommendation. The IRS indicates toll-free phone assistors are trained in tax law. However the IRS has stopped answering any tax law questions outside of filing season. Couple this with VITA sites only being open during filing season and a void for assistance is created. Lengthy wait times impact taxpayers because fewer taxpayers are being assisted, and taxpayers must use their limited minutes waiting on the phone for assistance. Moreover, while VITA and TCE sites perform an important service, they served only about 744,000 EITC taxpayers out of the 27.5 million claiming the EITC annually.[21] And while the EITC Awareness Day is a very important initiative, it is geared to deliver a broad message, not one targeted to the specific questions of a specific taxpayer relating to their specific facts and circumstances. Neither of these initiatives are a substitute for person-to-person assistance.

[21] See Statistics for Tax Returns with EITC, available at http:eitc.irs.gov/EITC-Central/eitcstats.

MSP #23 - EARNED INCOME TAX CREDIT (EITC): 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

PROBLEM

The law surrounding the Earned Income Tax Credit (EITC) is complex. In addition, one third of the eligible EITC population changes every year. At the same time, the population of taxpayers who rely on the EITC often share a common set of characteristics, such as low education and high transiency, which create challenges for taxpayer compliance. Notwithstanding these challenges, the IRS persists in using traditional audits as its primary compliance tool.

TAS Recommendation	**[23-1] Conduct an EITC pilot with three different treatments: a regular correspondence examination, an office audit, and a correspondence examination with one auditor assigned. The pilot should measure the following: direct time on case, no response/drop-out rate, agreed to rate, audit reconsideration rate, and future compliance rate.**
IRS Response	Recommendation Not Adopted. This recommendation proposes that the IRS replace the correspondence audit program with face-to-face audits as conducted during the National Research Program (NRP) process, and use the method for selection of NRP for selection of EITC audits rather than a rule-based selection scoring model. The NRP audits and the Correspondence Exam audits have very different purposes. NRP audits are conducted to determine the compliance in relation to a range of tax provisions including the EITC. The tax returns selected for NRP audits are randomly selected to provide statistically valid information on compliance and help us estimate improper payment rates. These examinations are not selected for non-compliance or ineligibility but to determine risk. Correspondence audits are selected using risk-based scoring models utilizing data from other agencies such as Social Security Administration or Health and Human Services to select returns that have a high probability of not being eligible for the EITC. Replacing correspondence audits with face-to-face audits would significantly decrease the audit coverage on refundable credits and potentially allow billions of dollars of erroneous refundable credits to be paid.
IRS Action	N/A

TAS Response	The IRS has misconstrued the National Taxpayer Advocate's recommendation here. She is not recommending that the IRS use the NRP selection criteria. Rather, she is recommending that the IRS develop a pilot that tests the effectiveness and accuracy of the different methods of auditing EITC taxpayers. In light of survey results that show low income taxpayers prefer in-person interaction and given the primary purpose of audits as educational, the IRS should be willing to expend a small amount of resources to explore whether its current processes promote or erode compliance, help or harm taxpayers. The fact that the IRS is unwilling to undertake this study indicates it is not really serious about understanding the needs of and educating EITC taxpayers.
TAS Recommendation	**[23-2] When an EITC taxpayer calls the IRS with information in response to an audit, one employee should be assigned to the taxpayer's case until it is resolved. If the taxpayer calls back, he or she could have the option to speak to the next available employee or wait for the assigned employee to call back. The IRS should hire employees with a social work background or train existing auditors to conduct the audits.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. IRS assigns one tax examiner to the same taxpayer's correspondence in four of our five correspondence exam operations that conduct EITC audits. We expect the fifth operation will transition to this method by October 2016. Since all of our phone assistors are very knowledgeable about EITC and other refundable credits and can pull up the notes from the previous phone call, IRS believes moving the taxpayer's call to the next available assistor provides the most effective customer service and gets the taxpayer's question answered quicker and more efficiently. Otherwise, the taxpayer may have to wait for a call back as the assigned examiner may be performing other duties.
IRS Action	N/A
TAS Response	TAS is pleased with the response to this issue and would like to be notified when the final group transitions to the one tax examiner to the same taxpayer model the other four groups are following. Since the IRS is now assigning one person to work an EITC exam, the National Taxpayer Advocate expects that employee's name to appear on all correspondence about that exam. Moreover, the IRS can provide the taxpayer with that employee's extension so that when the taxpayer calls with questions or to provide information, he or she can punch in the extension and get immediately to the examiner or his or her voice mail. If the employee is unavailable, the taxpayer can be given an option to speak to the next available assistor. This approach has worked well in TAS, and it will bring great accountability and better communication to the EITC audit process. EITC taxpayers are adults and can make the decision for themselves whether they want a call back from their examiner or they need to speak immediately to someone.

TAS Recommendation	**[23-3] Use NRP data to design a formula for workload selection in addition to (or incorporated into) the DDb that will reach the audits with the most impact for taxpayer education and improvement to future compliance. This would include qualifying child errors that involve the residency test.**
IRS Response	IRS Actions Already Implemented. We agree that an emphasis on outreach, education, and providing taxpayers with options to self-correct errors made on tax returns are important to IRS as we transition to our future state. Many of the IRS's "Future State" initiatives seek to improve the way taxpayers can use technology to securely interact with us. The Future State initiatives reflect how the business of tax administration will change over time for both the taxpayer and the IRS. We continually work to make improvements to processes, tools or the realignment of operations to select better work and tailor compliance treatment streams. One such example is the information received from Compliance Studies for Tax Years 2006-2008, which are based on NRP data. This information was reviewed to determine if our current risk based scoring models to select EITC returns for audit are in need of revision. These studies confirmed that IRS's emphasis on residency and relationship is still appropriate and supported by research. The study also showed that similar EITC errors for self-prepared and paid preparer returns supported our efforts to address compliance from a taxpayer as well as a preparer standpoint. These studies also provide us with important information on the key causes of EITC error which is used to drive our outreach and education efforts. Each year with the help of our partners we conduct significant outreach and education activities to make taxpayers aware of the EITC and help them determine eligibility.
IRS Action	N/A

TAS Response	The IRS responded that outreach, education, and taxpayer self-correction are important features of its Future State initiative. TAS believes that these goals are important now, as well as in the future. While an IRS Future State "vignette" portrays a taxpayer self-correcting her return after the IRS questioned her EITC claim, we believe a better goal is to prevent the erroneous claim from ever occurring.[22] Moreover, we challenge the IRS's assumption that 'self-correction' is appropriate for this category of taxpayers. The Future State assumes an idealized EITC taxpayer that is far-divorced from reality. At every single one of the National Taxpayer Advocate's Public Forums, the IRS Future State EITC vignette, which involves self-correction, has been criticized on fairness, taxpayer rights, and due process grounds.[23] IRS audits are not only a method of preventing the loss of improper EITC claims, but they are also a way to prevent future incorrect claims by educating the taxpayer about EITC rules. We urge the IRS to minimize this "self-correction" approach to EITC taxpayers in its Future State planning. The IRS does not audit a large segment of noncompliant EITC claims, but, instead selects most EITC returns for audit based on their DDb score. However, an analysis of TY 2008 NRP audits shows that 86 percent of the returns where at least some EITC was disallowed did not break a DDb rule regarding that child.[24] Therefore, the IRS has no significant audit presence with those taxpayers who are responsible for most improper EITC claims. Without changes to the selection method for EITC audits the IRS will miss an opportunity to address EITC noncompliance by those taxpayers who do not break DDb rules and, more importantly, to prevent their future EITC noncompliance. We do not dispute that the IRS' selection of EITC returns for audit where one of more of the claimed qualifying children have broken DDb residency and relationship rules produces good audit results. Nevertheless, the IRS' failure to have an audit presence with returns not breaking DDb rules omits a sizeable portion of the noncompliant EITC population, which is likely to remain noncompliant. Unless the IRS adapts its audit selection methods to detect, to the extent possible, these other improper claims, it may have good current year audit statistics, but will have failed to prevent ongoing noncompliance in a large segment of taxpayers claiming EITC, ultimately resulting in a greater loss of revenue.
TAS Recommendation	**[23-4] Revise the IRM with the list of additional documentation listed in the TAS Interim Guidance Memorandum (IGM), as well as IRM updates about accepting alternative EITC substantiating documentation.**

[22] https://www.irs.gov/pub/newsroom/irs-individual-vignette-version-a.pdf.
[23] Statement of Elizabeth Atkinson, Attorney, LeClair Ryan, National Taxpayer Advocate Public Forum, 29-30 (May 13, 2016).
[24] This percentage has dropped in subsequent years, but is still about 70 percent. IRS fact check response (Dec. 16, 2015).

IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. The Audit Improvement Team, made up of IRS staff and members of the Taxpayer Advocate Service, identified some additional documentation that taxpayers may provide and the IRS will accept to support EITC eligibility during an examination.
IRS Action	The IRS will update the IRM to permit tax examiners to accept some of the additional documentation identified. The IRM will also be updated to inform tax examiners that they should consider any other information presented by the taxpayer to strengthen eligibility, even if that information is not reflected in the IRM. An example will be provided.
TAS Response	TAS accepts the IRS response as long as an IGM is issued to cover the change while waiting for the IRM to be updated. We will continue to advocate for inclusion of all of the recommended types of alternate documentation.
TAS Recommendation	**[23-5] Publish and accept Form 8836, Third Party Affidavit, for purposes of substantiating the residency requirement for a qualifying child.**
IRS Response	Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. In February 2016, IRS's Research Analysis and Statistics published the results of a three-year study, for tax years 2009 - 2011, on the use of third party affidavits. This study was conducted as a follow-up to the 2005 EITC Qualifying Child Residency Certification Study mentioned in the National Taxpayer Advocate's (NTA) report. Although the use of third party affidavits had shown promise in the prior study, as that study itself cautioned, the results regarding affidavits could not be generalized to the audit process. The goal of testing third-party affidavits in the audit process motivated the study and was in response to the NTA's prior recommendations. The study published in 2016 suggested that affidavits could potentially benefit some taxpayers if the option to use them were carefully directed to an appropriate subset of audited taxpayers. The study concluded that IRS must consider whether those benefits outweighed other considerations (such as additional IRS costs).

IRS Action	The IRS will identify a population of EITC taxpayers for limited use of a third party affidavit and we will make the affidavit available to that population, taking the impact to resources and available information technology into consideration.
TAS Response	TAS believes that the IRS should allow the use of these affidavits in all EITC audits, not in only certain audits. We have previously expressed our concerns to the IRS about its findings regarding the use of affidavits in its study of a sample of IRS audits from TYs 2009, 2010, and 2011. While we previously conveyed numerous concerns to the IRS about its study, including data quality issues and the process used to evaluate the accuracy of the affidavits, one of our most serious concerns is that affidavits were subjected to mandatory evaluation as the IRS attempted to contact the affiant to verify the accuracy of the claim. However, the IRS did not validate other records and documents submitted by taxpayers to substantiate that the child resided with the taxpayer at least half of the year. Therefore, we are not surprised that records and documents were more likely to substantiate residency when compared to affidavits in this study. In the 2005 EITC Qualifying Child Residency Certification Study, the IRS also subjected records and documents to the same verification process as affidavits. Subsequent to IRS verification, the affidavits were actually more likely to substantiate residency than either records or documents. The option to use an affidavit to establish the residency of a child claimed for EITC purposes should be available to all taxpayers whose EITC claim is audited by the IRS.
TAS Recommendation	**[23-6] Collaborate with TAS to draft IRM guidance requiring correspondence examiners to adjust accounts for the childless worker credit when the taxpayer is ineligible for the EITC with children. This should be done automatically without requiring the taxpayer to request the credit.**
IRS Response	IRS Actions Already Implemented. Correspondence Exam Tax Examiners are already required to consider and adjust taxpayer accounts for the childless worker credit without receiving a request from the taxpayer when the taxpayer responds and they are not eligible for the EITC with children. The IRM (4.19.14.5.5) requires examiners working an EITC audit to determine if the taxpayer meets the requirements. If so, they are instructed to send the taxpayer an audit report reflecting the appropriate childless worker EITC amount. This process cannot be automated due to the different legal requirements and the research required determining eligibility.
IRS Action	N/A

TAS Response	TAS is pleased that Correspondence Exam tax examiners are required to consider and adjust taxpayer accounts for the childless worker credit without receiving a request to do so. However, TAS studies have found that examiners do not, in fact, do so in many instances.[25] Therefore, we will continue to monitor the implementation of this important authority.

[25] Nina E. Olson, *Procedural Justice for All: A Taxpayer Rights Analysis of IRS Earned Income Credit Compliance Strategy* 1-35 (John Hasseldine ed., Advances in Taxation, Volume 22, Emerald Group Publishing Limited) (2015).

MSP #24 - EARNED INCOME TAX CREDIT (EITC): The IRS's EITC Return Preparer Strategy Does Not Adequately Address the Role of Preparers in EITC Noncompliance

PROBLEM

Fifty-five percent of returns claiming EITC were prepared by paid return preparers in tax year 2013. Despite the involvement of so many paid preparers, the EITC suffers from a high noncompliance rate. In response, the IRS has created an EITC Return Preparer Strategy, which incorporates multiple approaches to improve the compliance behavior of EITC return preparers. However, the strategy overlooks opportunities to reach unscrupulous return preparers, which limits the program's effectiveness. Moreover, the IRS does not effectively educate taxpayers so they are equipped to identify and avoid incompetent or unscrupulous return preparers. Finally, without an accurate measure of success for each preparer treatment, the IRS cannot determine if the strategy is taking the most effective approach to increase preparer compliance.

TAS Recommendation	**[24-1] Release the annual analysis for the EITC Return Preparer Strategy to the public, including the measures used to evaluate the effectiveness of the strategy.**
IRS Response	Recommendation not adopted as written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. Each year, we report the results of our strategy in the Department of Treasury's Agency Financial Report, a document that is available to the public. The specifics of the EITC RPS Report is [sic] not shared as it contains detailed information about selection criteria that is only appropriate for internal use. We share overall results and future plans with the preparer community in Nationwide Tax Forum seminars, meetings and seminars with large tax preparation firms and professional organizations, and in webinars. At the start of each year's outreach strategy, we notify EITC preparers of our planned educational and compliance activities through e-News for Tax Professionals, Quick Alerts, news releases, and in the Hot Topics on our Preparer Toolkit.
IRS Action	N/A

TAS Response	As of now, the RPS has been developed, implemented, and analyzed without any feedback from the Taxpayer Advocate Service, practitioners, or other stakeholders, such as community organizations working with low income taxpayers. If the annual RPS reports are made public, the stakeholders with appropriate knowledge and experience can provide feedback on ways to improve the initiative. For instance, community organizations dealing with the effects of unscrupulous preparers could comment on ways to improve contact with unenrolled agents. The IRS claims that the contents of these reports cannot be published because the contents are for official use only. The National Taxpayer Advocate agrees that the selection criteria for RPS action should not be published. However, the details surrounding the activities of the RPS initiative, the methodology for determining its success, and the analysis of its success, should be available for public review. The National Taxpayer Advocate believes that the RPS initiative, which is a major component in addressing EITC noncompliance, should be transparent so that key stakeholders, including Congress, can be fully informed. It should be noted that similar reports, such as Compliance Estimates for the EITC Claimed on 2006-2008 Returns, have been published by the IRS.
TAS Recommendation	**[24-2] Include TAS as a member of the EITC Return Preparer Strategy team.**
IRS Response	Recommendation not adopted as written, but IRS Actions Taken to Address Issues Raised by the National Taxpayer Advocate. We are always striving to make improvements to our education/outreach and compliance strategies. We agree that there may be some opportunities to review the letters we currently send to make a clearer distinction between educational letters and compliance letters and better communicate errors made by the preparer. We believe a team consisting of participants from Refundable Credits Policy and Program Management staff and the TAS to look at this issue would be beneficial.
IRS Action	We will establish a team made up of representatives from internal IRS operations and members of the TAS to review and discuss improvement opportunities for Return Preparer Strategy letters.

TAS Response	TAS partially disagrees with this response. While TAS is pleased to be included in the discussion of RPS letters, TAS strongly believes inclusion in all aspects of the EITC RPS team is crucial. Our experience with EITC cases from our own inventory, our oversight of the Low Income Taxpayer Clinics, our significant research into the sources of tax noncompliance and taxpayer and preparer behavior, our statutory role as the voice of the taxpayer inside the IRS and our advocacy for taxpayer rights enable us to share valuable insights with the team as a valued member. For the IRS to decline including TAS in the team from the outset flies in the face of logic.
TAS Recommendation	**[24-3] In collaboration with TAS and other IRS functions, and based on this annual analysis, determine where to focus resources and how to measure success with a multiyear analysis.**
IRS Response	Recommendation not Adopted. The RPS is a multi-year strategy with an overall goal to reduce EITC improper payments. We use what we learn from each year's results to refine and improve the treatments. As an essential business function, the IRS determines how our limited resources will be allocated to improve the strategy and achieve the goals, considering resource constraints and other program priorities. However, we will share our plan for anticipated return preparer treatments.
IRS Action	N/A
TAS Response	As discussed in our preceding response, TAS is disappointed with the IRS response to this recommendation and will continue to push for inclusion in RPS planning.
TAS Recommendation	**[24-4] Incorporate preparer referrals, both from internal and external sources, and preparers who misuse PTINs, as a selection criterion for compliance treatment in the EITC Return Preparer Strategy.**

IRS Response	Recommendation not Adopted. Preparer referrals are not currently incorporated in our risk-based scoring models as the IRS has other methods of treating potentially unprofessional or criminal behavior. The EITC RPS is to educate preparers on the credit and treat intentional disregard. Some referrals from other areas are a single incident, not yet adjudicated, and may not be an indicator of improper behavior on the part of the preparer. Many Preparer Tax Identification Number (PTIN) errors are unintentional, such as a number transposition or missing digits. We research and identify the correct preparer using a PTIN, and provide treatment to the correct preparer. Improper PTIN use identified by campus operations, research functions, and external sources is analyzed and referred to the Return Preparer Office, as appropriate.
IRS Action	N/A
TAS Response	TAS is disappointed the IRS is not willing to adopt this recommendation. Those referrals that are determined to be single incident, not yet adjudicated could be removed from the sample so that IRS could concentrate on those preparers that are intentionally misusing PTINs. TAS urges the IRS to reconsider its response.
TAS Recommendation	**[24-5] Use measures for evaluating the effectiveness of the strategy on an annual basis that are not limited to measuring protected dollars or return on investment, but also include a year-to-year analysis of the preparer's behavior following treatment.**
IRS Response	IRS Actions Already Implemented. The IRS conducts a series of tests using both test and control groups. Results of each treatment or series of treatments are evaluated on a yearly basis for their effectiveness. This data is used to refine and improve the existing treatments or combination of treatments. Although we do capture dollars protected and ROI, we also capture and evaluate other factors related to change in behavior. This data is reviewed over a period of time to determine if the change is temporary or not.
IRS Action	N/A

TAS Response	TAS is pleased this recommendation has been implemented; however, we will continue to monitor how the IRS actually reviews this data and utilizes it to improve its strategy and approaches over time.
TAS Recommendation	**[24-6] Tailor outreach specifically to the unenrolled preparer population that addresses due diligence requirements and is presented where these preparers operate. This outreach should incorporate TV and radio as well as social media.**
IRS Response	IRS Actions Already Implemented. The IRS outreach to unenrolled preparers was expanded in FY 2016. This effort leverages partnerships with over 550 preparer organizations that reach over 500,000 unenrolled preparers. IRS liaisons provide important compliance messages for distribution to members via virtual newsletters, listservs, and other channels. We partnered with the Latino Tax Professional Association to deliver educational material in Spanish. We continue to provide seminars on EITC due diligence at the IRS tax forums which are attended by preparers at all levels of expertise, including unenrolled preparers. We have an extensive network of preparer alerts designed for immediate electronic distribution and e-news messages delivered electronically to subscribers. Through both our educational and compliance treatment letters, we promote our Tax Preparer Toolkit, emphasizing the due diligence pages. We include the web link in preparer letters. The number of visits to the Tax Preparer Toolkit increased from 33,463 in FY 2015 to 110,909 in FY 2016 during the peak periods of October 1 to March 31, a 231% increase. We also conduct outreach activities through the IRS Nationwide Tax Forums, irs.gov, and social media avenues. We improve our toolkit based on feedback from preparers received at the Nationwide Tax Forums, through e-mail, and other means. Last year, we used social media to send compliance messages to preparer groups and preparers. Each month targeted a specific compliance issue. Data for this effort is not yet available. Each year we produce and promote videos from our tax forum seminar; many preparer groups and employers use the videos for training purposes. Due to budget constraints, we are not able to expand outreach to television or radio.
IRS Action	N/A

TAS Response	TAS commends the IRS for its improvements in unenrolled preparer outreach for 2016 and looks forward to observing the downstream results of these actions.
TAS Recommendation	**[24-7] Conduct a creative, geographic-based public education campaign in conjunction with other internal and external stakeholders including public service advertisements, videos, and tweets in order to educate taxpayers on how to select a competent preparer, what the rules of due diligence require, and the consequences of using an unskilled or unscrupulous preparer, including identity theft. Different marketing approaches should be tested and studied to track EITC compliance over the years.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow. The IRS currently provides information on selecting a preparer and its importance through many mediums. This includes publications, social media, web pages on irs.gov and EITC Awareness Day. We specifically discuss how to choose a tax preparer and what to expect from that preparer. IRS will review and update this information as necessary to prepare for the 2017 filing season.
IRS Action	Due to budget constraints, the IRS is unable to conduct a geographic-based public education campaign or marketing test. However, we will evaluate other less costly options to inform the public.
TAS Response	TAS appreciates the IRS's willingness to adopt this recommendation if there is sufficient funding to cover the cost and encourages the IRS to look at creative funding and partnership opportunities to make up for any potential shortfalls in the budget. However, TAS believes that the cost of such a campaign will be minimal when compared to the positive compliance impact of arming taxpayers with better information. Therefore we encourage the IRS to collaborate with TAS in conducting a creative pilot campaign in a specific geographic community to measure the potential compliance impact versus the cost of such a campaign.